

Navigating the Cannabis Maze:

**Discrepancies in
Legalization Within
Canada and the
United States**

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Throughout North America, recreational cannabis is viewed through the lenses of varying conflicting perspectives. Over the past few decades, both Canada and the United States have witnessed a profound paradigm shift in the realm of cannabis legality, accompanied by a consequential reconfiguration of its commercial distribution channels. Both nations have undergone distinct trajectories of transformation, although diverging in their approaches. Canada embraced a relatively straightforward process, while the United States embarked upon a notably intricate and multifaceted journey.

Canada and Cannabis

Canada has a longstanding connection with cannabis that can be traced back to the early 1800s. During that time, the government distributed hemp seeds to farmers as a means to boost the economy. However, in 1923, the Narcotics Drug Act Amendment Bill criminalized cannabis and Canada became one of the first countries to make smoking cannabis illegal.¹ It was not until the 1960s and 70s, when convictions and protests increased, that this law attracted significant attention.²

Although the concept of decriminalization was introduced in 1972, it was not until 2001 that medical cannabis was officially legalized through the Marihuana for Medical Access Regulations (MMAR).³ Subsequently, in the following years, Canada

¹ Daniel Schwartz, A CANADIAN MYSTERY: WHY WAS POT CRIMINALIZED IN 1923? | CBC NEWS CBC NEWS (2014), <https://www.cbc.ca/news/health/marijuana-was-criminalized-in-1923-but-why-1.2630436>

² *Id.*

³ Health Canada, GOVERNMENT OF CANADA CANADA.CA (2022), <https://www.canada.ca/en/health-canada/services/drugs-health-products.html>

decriminalized cannabis entirely and established an improved medical cannabis framework called the Marihuana for Medical Purposes (MMPR).⁴ In 2017, the Canadian government put forth a proposal for full federal legalization through Bill C-45. This would amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts as well.⁵ As promised during his election campaign, Prime Minister Justin Trudeau's Cannabis Act received Royal Assent in June 2018 and came into force in October 2018.⁶

The Cannabis Act, which also controls and regulates how cannabis is grown, distributed and sold, allows for national use by individuals aged 19 and over with possession up to 30 grams.⁷ Although provinces may further restrict possession, sales and use, its regulation is handled by the federal government with a system comparable to cigarettes and other tobacco products.⁸ A crucial factor to note about Canada's regulation of cannabis is that it awards a certain level of legal confidence for recreational users to understand that the laws will be universal regardless of what part of the country they are in. This regulation was aimed at not only protecting individuals but cannabis businesses as well.

Canada adopted an effective pathway leading to the legalization of cannabis by implementing federal cannabis laws. Although each province is responsible for its own

⁴ Marihuana for Medical Purposes - publications.gc.ca, CANADA'S DRUG STRATEGY (2005), <https://publications.gc.ca/collections/Collection/H128-1-05-443-12E.pdf>

⁵ Cannabis Act, CANADA JUSTICE LAWS WEBSITE (2018), <https://laws-lois.justice.gc.ca/eng/acts/c-24.5/page-1.html>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

implementation, the nationwide legalization extends numerous advantages for both businesses and consumers.

Unlike in the United States, Canadian consumers can travel between provinces without concerns about carrying cannabis across province lines.⁹ This also means that adults are able to fly with cannabis and cannabis products on all domestic flights from province to province. Throughout the entire country, adults are legally allowed to possess, purchase and consume cannabis. Canadian citizens also have the right to cultivate cannabis for personal use, with federal legalization permitting up to four plants per household.¹⁰

An effect of national legalization in Canada includes permission for public consumption. This has established consistent regulations that permit cannabis consumption wherever tobacco is allowed. This provides Canadian residents and visitors a legal avenue to consume their cannabis products but also features some restrictions such as in indoor public places, public transit facilities, school grounds or playgrounds, workplaces and within certain distances near doors, windows and in cars.

An important benefit of the way Canada has legalized cannabis surrounds banking and financial transactions. National legalization enables Canadians to use traditional financial institutions for payments relating to cannabis, which includes the ability to use debit or credit cards when purchasing cannabis products and providing opportunities to trade in the country's stock market with cannabis companies.

⁹ Health Canada, CANNABIS AND CANADIAN BORDERS - CANADA.CA GOVERNMENT OF CANADA (2020), <https://www.canada.ca/en/services/health/campaigns/cannabis/border.html>

¹⁰ Health Canada, GROWING CANNABIS AT HOME SAFELY GOVERNMENT OF CANADA (2022), <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/personal-use/growing-cannabis-home-safely.html>

An interesting feature of legalization in Canada is its prohibition of celebrity promotions. Health Canada, Canada’s cannabis regulator, stated that any celebrity affiliation with a cannabis product or brand, including promotions and marketing, has the potential to be non-compliant with federal law.¹¹ Canadian law bars cannabis promotions through endorsements or depictions of people.¹² This has forced several companies that feature such advertisements to change their marketing strategy. Organigram rebranded its *Trailer Park Buds* products after Health Canada said the branding “appeared to set out a depiction of real or fictional persons through reference to the Trailer Park Boys characters and show.”¹³ Similarly, the implementation of Canopy Growth’s strategy to introduce *Leafs by Snoop* in Canada required significant modifications to eliminate any reference to the rap artist, Snoop Dogg’s name.¹⁴ In

¹¹ Solomon Israel, HEALTH CANADA: “ANY CELEBRITY AFFILIATION WITH CANNABIS HAS POTENTIAL TO BE NONCOMPLIANT” MJBIZDAILY (2021), <https://mjbizdaily.com/health-canada-any-celebrity-affiliation-with-cannabis-has-potential-to-be-noncompliant/>

¹² Health Canada, PROMOTION OF CANNABIS: PROHIBITIONS AND PERMISSIONS IN THE CANNABIS ACT AND REGULATIONS CANADA.CA (2023), <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/laws-regulations/promotion-prohibitions.html>

¹³ Solomon Israel, HEALTH CANADA: “ANY CELEBRITY AFFILIATION WITH CANNABIS HAS POTENTIAL TO BE NONCOMPLIANT” MJBIZDAILY (2021), <https://mjbizdaily.com/health-canada-any-celebrity-affiliation-with-cannabis-has-potential-to-be-noncompliant/>

¹⁴ Matt Lamers, NO SNOOP FOR YOU! CELEBRITY NAMES NOT ALLOWED ON CANADIAN CANNABIS MJBIZDAILY (2022), <https://mjbizdaily.com/no-snoop-for-you-celebrity-names-not-allowed-come-cannabis-legalization-in-canada/>

June 2021, Canopy also ended arrangements with rapper, Drake's *More Life Growth Co.*¹⁵ and then a month later, with actor, Seth Rogen's *Houseplant* business.¹⁶

Some may argue that the extensive regulations in Canada may be seen as burdensome or too complex for some businesses, such as small-scale producers. Compliance with these strict licensing requirements could be costly and its ongoing monitoring could be challenging.

Despite this, Canada has taken a progressive approach to cannabis legalization and the benefits associated with it are immeasurable. Consumer safety was a major concern when cannabis was in its decriminalization period. Legalizing cannabis federally allowed the Canadian government to regulate its production, distribution, and sale. This ensures that consumers have access to safe and quality-controlled product, thus reducing the risks associated with consuming contaminated cannabis. The government has also implemented public health campaigns and educational initiatives related to the use of cannabis.

Legalizing cannabis has created a new source of tax revenue for the Canadian government. Deloitte reported that the cannabis industry has contributed \$43.5 billion to Canada's national GDP between 2018 and 2021.¹⁷ Considering the population of Canada is about the size of the state of California, this is quite significant.

¹⁵ The Canadian Press, RAPPER DRAKE AND CANNABIS COMPANY CANOPY GROWTH END POT PARTNERSHIP CTVNEWS (2021), <https://www.ctvnews.ca/business/rapper-drake-and-cannabis-company-canopy-growth-end-pot-partnership-1.5453660>

¹⁶ Cision, HOUSEPLANT AND CANOPY GROWTH TO CONCLUDE THEIR STRATEGIC RELATIONSHIP IN CANADA CISION CANADA (2021), <https://www.newswire.ca/news-releases/houseplant-and-canopy-growth-to-conclude-their-strategic-relationship-in-canada-837893855.html>

¹⁷ Deloitte Global Report, AN INDUSTRY MAKES ITS MARK, <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/about-deloitte-global-report-full-version-2020.pdf>

The regulated cannabis industry in Canada has created economic opportunities, through the generation of jobs and the taxation of cannabis products that have produced significant funds, that can be used for various purposes.

United States of America and Cannabis

Similar to Canada, the United States has experienced a momentous upheaval in the realm of cannabis legality and its commercialization. Nonetheless, when contrasting it with the streamlined nature of the Canadian legalization framework, the American approach undeniably manifests as peculiar and intrinsically flawed.

Like in Canada, American production of hemp was encouraged by the US government to boost the economy through the production of rope, sails and clothing.¹⁸ Following the Mexican Revolution of 1910, a wave of Mexican immigrants poured into the United States, bringing with them the practice of using marijuana for recreational purposes. Cannabis became associated with immigrants and the bias toward Spanish-speaking newcomers became intertwined with cannabis.¹⁹ Through the passage of the Marihuana Tax Act, federal restriction of cannabis use and cannabis sale first occurred in 1937.²⁰ This led to a series of enactments of federal laws, such as the Boggs Act in 1952 and the Narcotics Control Act in 1956, which set mandatory sentences for drug-related offenses. A first-offense cannabis possession carried a minimum sentence of 2-10 years with a fine up to \$20,000.²¹

¹⁸ Frontline, MARIJUANA TIMELINE | BUSTED - AMERICA'S WAR ON MARIJUANA PBS , <https://www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html>

¹⁹ *Id.*

²⁰ Mary Barna Bridgeman & Daniel T Abazia, MEDICINAL CANNABIS: HISTORY, PHARMACOLOGY, AND IMPLICATIONS FOR THE ACUTE CARE SETTING P & T : A PEER-REVIEWED JOURNAL FOR FORMULARY MANAGEMENT (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5312634/#:~:text=In%20the%20U.S.%2C%20cannabis%20was,of%20the%20Marihuana%20Tax%20Act.>

²¹ Frontline, MARIJUANA TIMELINE | BUSTED - AMERICA'S WAR ON MARIJUANA PBS , <https://www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html>

There are currently 37 states and 4 territories that allow medical marijuana.²² Of that, 19 states, 2 territories and the District of Columbia have enacted laws to allow the recreational use of cannabis.²³ There are several states that are expected to enact further legislation bills this year and in the upcoming years. However, cannabis remains a Schedule 1 substance in the Controlled Substances Act (“CSA”) of 1970 as enacted during the President Richard Nixon era.²⁴ He declared a “war on drugs” over fifty years ago and the implications of this racist, intolerant policy decision are still visible today in the United States.²⁵ Presently, police make more than 1.5 million drug arrests each year and about 550,000 of those are just for cannabis-related offences alone.²⁶

The Controlled Substances Act makes it a federal crime for anyone to use or possess any amount of marijuana anywhere in the United States. However, current federal and state cannabis policy, on the other hand, complicates this matter. Schedule 1 substances are subject to the most stringent controls and the lower the schedule number, the greater restriction it carries.²⁷ Being defined as a Schedule 1 drug means cannabis is considered to have a high potential for abuse and dependency with no

²² JoAnna Daemmrich & Campbell Robertson, WITH LEGALIZED POT IN THE AIR, A FEDERAL TRIAL RILES ADVOCATES THE NEW YORK TIMES (2022).

²³ *Id.*

²⁴ Drug scheduling, DEA, <https://www.dea.gov/drug-information/drug-scheduling#:~:text=Schedule%20I%20drugs%2C%20substances%2C%20or,%2C%20methaqualone%2C%20and%20peyote>

²⁵ Jamila Hodge & Nazish Dholakia, FIFTY YEARS AGO TODAY, PRESIDENT NIXON DECLARED THE WAR ON DRUGS VERA INSTITUTE OF JUSTICE (2021), <https://www.vera.org/news/fifty-years-ago-today-president-nixon-declared-the-war-on-drugs>

²⁶ *Id.*

²⁷ Drug scheduling, DEA, <https://www.dea.gov/drug-information/drug-scheduling#:~:text=Schedule%20I%20drugs%2C%20substances%2C%20or,%2C%20methaqualone%2C%20and%20peyote>

recognized medical use.²⁸ However, there are 37 states and 4 territories that have allowed for the medical use of marijuana.²⁹ This is contradictory because the federal law implies a lack of medical use altogether, but state laws have accepted its medical value through their legalization policies.

By contrast, the substances enlisted in Schedule 2-5 have accepted medical uses and can be prescribed for medical purposes.³⁰ Interestingly, cocaine is considered a Schedule 2 drug and it is illegal nationally but is listed to have a medical use. However, cannabis, on the other hand, has no recognized medical use but is considered medically legal in majority of the country. The same designation has been given to LSD, heroin and ecstasy. Carrie Cuttler, a psychology professor at Washington State University argued that the “current classification of cannabis as a Schedule I drug does not make sense. It does have medicinal properties and a pretty low potential of abuse.”³¹

Although Congress initially passed the Controlled Substances Act, the classification of the substances enlisted are designated by the Drug Enforcement Administration (DEA) and the Food and Drug Administration (FDA).³² Until the FDA

²⁸ *Id.*

²⁹ Amy J Kellogg, Caitlin A Anderson & Meg C Michiels, A CANNABIS CONFLICT OF LAW: FEDERAL VS. STATE LAW AMERICANBAR.ORG (2022), https://www.americanbar.org/groups/business_law/publications/blt/2022/04/cannabis-fed-vs-state-law/

³⁰ Drug scheduling, DEA, <https://www.dea.gov/drug-information/drug-scheduling#:~:text=Schedule%20I%20drugs%2C%20substances%2C%20or,%2C%20methaqualone%2C%20and%20peyote>

³¹ Shawn Radcliffe, WHAT HAPPENS IF MARIJUANA IS NO LONGER CLASSIFIED AS SCHEDULE 1 DRUG? HEALTHLINE (2022), <https://www.healthline.com/health-news/what-happens-if-marijuana-is-no-longer-classified-as-schedule-1-drug>

³² Drug scheduling, DEA, <https://www.dea.gov/drug-information/drug-scheduling#:~:text=Schedule%20I%20drugs%2C%20substances%2C%20or,%2C%20methaqualone%2C%20and%20peyote>

determines that there is an accepted medical use for cannabis, the DEA has ruled marijuana will remain a Schedule 1 drug.

Each state has its own set of regulations regarding cannabis, leading to inconsistencies in laws, licensing procedures, product standards and taxation. This lack of uniformity creates difficulties for businesses and consumers as they need to navigate different rules when crossing state borders.

This conflict between federal and state law has created challenges in terms of regulation, taxation, banking, and interstate commerce, as cannabis businesses are unable to access basic banking services or operate across state law. As of today, consumers are unable to use any credit or debit cards to purchase cannabis. This has led to several propositions to combat this issue, including the SAFE Banking Act. The primary objective of the SAFE Banking Act was to rectify the acute banking hurdles encountered by cannabis enterprises operating in jurisdictions where cannabis is deemed legal. Upon successful enactment, the Act would facilitate access to crucial financial services that previously would have remained elusive to such establishments due to the existing framework of federal statutes and regulations. By establishing a secure harbor for financial institutions, the Act endeavors to force a symbiotic relationship between banks and cannabis businesses without facing potential legal repercussions. This would improve the industry's access to banking services, reduce cash transactions, enhance transparency and promote the safety and efficiency of financial transactions. However, the SAFE Banking Act failed to pass the Senate several times.

The issue with consumers being unable to use any credit or debit cards or electronic payment is greater than just inconvenience. Since cannabis dispensaries only accept cash payments, this has several implications. Being such a prominent cash-based business, dispensaries are at a high risk for robberies, endangering both the lives of customers as well as employees.³³ There are also dangers that a change in government leadership, like changing presidential administration, could result in a backtracking of relaxed cannabis laws.

Conclusion

In conclusion, the issue of recreational cannabis in North America is subject to contrasting viewpoints, with Canada and the United States experiencing significant shifts in cannabis legality and commercial distribution. While each country has followed its unique path, Canada adopted a relatively straightforward approach, while the United States navigated a complex and problematic journey. These divergent trajectories highlight the complexity of cannabis regulation and the various perspectives surrounding its legalization across the continent.

³³ The Associated Press, POT SHOP ROBBERIES ARE FUELING CALLS FOR A U.S. BANKING BILL NPR (2022), <https://www.npr.org/2022/04/20/1093841615/pot-shop-robberies-are-fueling-calls-for-a-u-s-banking-bill>

Bibliography

- Amy J Kellogg, Caitlin A Anderson & Meg C Michiels, A CANNABIS CONFLICT OF LAW: FEDERAL VS. STATE LAW AMERICANBAR.ORG (2022), https://www.americanbar.org/groups/business_law/publications/blt/2022/04/cannabis-fed-vs-state-law/
- Cannabis Act, CANADA JUSTICE LAWS WEBSITE (2018), <https://laws-lois.justice.gc.ca/eng/acts/c-24.5/page-1.html>.
- Cision, HOUSEPLANT AND CANOPY GROWTH TO CONCLUDE THEIR STRATEGIC RELATIONSHIP IN CANADA CISION CANADA (2021), <https://www.newswire.ca/news-releases/houseplant-and-canopy-growth-to-conclude-their-strategic-relationship-in-canada-837893855.html>
- Daniel Schwartz, A CANADIAN MYSTERY: WHY WAS POT CRIMINALIZED IN 1923? | CBC NEWS CBCNEWS (2014), <https://www.cbc.ca/news/health/marijuana-was-criminalized-in-1923-but-why-1.2630436>
- Deloitte Global Report, AN INDUSTRY MAKES ITS MARK, <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/about-deloitte-global-report-full-version-2020.pdf>
- Drug scheduling, DEA, <https://www.dea.gov/drug-information/drug-scheduling#:~:text=Schedule%20I%20drugs%2C%20substances%2C%20or,%2C%20methaqualone%2C%20and%20peyote>
- Frontline, MARIJUANA TIMELINE | BUSTED - AMERICA'S WAR ON MARIJUANA PBS , <https://www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html>
- Health Canada, CANNABIS AND CANADIAN BORDERS - CANADA.CA GOVERNMENT OF CANADA (2020), <https://www.canada.ca/en/services/health/campaigns/cannabis/border.html>
- Health Canada, GOVERNMENT OF CANADA - CANADA.CA (2022), <https://www.canada.ca/en/health-canada/services/drugs-health-products.html>
- Health Canada, GROWING CANNABIS AT HOME SAFELY GOVERNMENT OF CANADA (2022), <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/personal-use/growing-cannabis-home-safely.html>
- Jamila Hodge & Nazish Dholakia, FIFTY YEARS AGO TODAY, PRESIDENT NIXON DECLARED THE WAR ON DRUGS VERA INSTITUTE OF JUSTICE (2021), <https://www.vera.org/news/fifty-years-ago-today-president-nixon-declared-the-war-on-drugs>
- JoAnna Daemrich & Campbell Robertson, WITH LEGALIZED POT IN THE AIR, A FEDERAL TRIAL RILES ADVOCATES THE NEW YORK TIMES (2022).
- Marihuana for Medical Purposes - publications.gc.ca, CANADA'S DRUG STRATEGY (2005), <https://publications.gc.ca/collections/Collection/H128-1-05-443-12E.pdf>

- Mary Barna Bridgeman & Daniel T Abazia, MEDICINAL CANNABIS: HISTORY, PHARMACOLOGY, AND IMPLICATIONS FOR THE ACUTE CARE SETTING P & T : A PEER-REVIEWED JOURNAL FOR FORMULARY MANAGEMENT (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5312634/#:~:text=In%20the%20U.S.%2C%20cannabis%20was,of%20the%20Marihuana%20Tax%20Act.>
- Matt Lamers, NO SNOOP FOR YOU! CELEBRITY NAMES NOT ALLOWED ON CANADIAN CANNABIS MJBIZDAILY (2022), <https://mjbizdaily.com/no-snoop-for-you-celebrity-names-not-allowed-come-cannabis-legalization-in-canada/>
- Shawn Radcliffe, WHAT HAPPENS IF MARIJUANA IS NO LONGER CLASSIFIED AS SCHEDULE 1 DRUG? HEALTHLINE (2022), <https://www.healthline.com/health-news/what-happens-if-marijuana-is-no-longer-classified-as-schedule-1-drug>
- Solomon Israel, HEALTH CANADA: “ANY CELEBRITY AFFILIATION WITH CANNABIS HAS POTENTIAL TO BE NONCOMPLIANT” MJBIZDAILY (2021), <https://mjbizdaily.com/health-canada-any-celebrity-affiliation-with-cannabis-has-potential-to-be-noncompliant/>
- The Associated Press, POT SHOP ROBBERIES ARE FUELING CALLS FOR A U.S. BANKING BILL NPR (2022), <https://www.npr.org/2022/04/20/1093841615/pot-shop-robberies-are-fueling-calls-for-a-u-s-banking-bill> (last visited May 25, 2023).
- The Canadian Press, RAPPER DRAKE AND CANNABIS COMPANY CANOPY GROWTH END POT PARTNERSHIP CTVNEWS (2021), <https://www.ctvnews.ca/business/rapper-drake-and-cannabis-company-canopy-growth-end-pot-partnership-1.5453660>