



SUMMARY FROM ENGAGEMENT WITH FIRST NATIONS, INUIT AND MÉTIS PEOPLES

THE CANNABIS ACT AND ITS IMPACTS



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INTRODUCTION

With the coming into force of the *Cannabis Act* (the Act) on October 17, 2018, cannabis was legalized, and the production, distribution, sale, import and export, and possession of cannabis for adults of legal age was strictly regulated. Canada is the first major industrialized country to provide legal and regulated access to cannabis for non-medical purposes, signalling a shift away from the reliance on prohibitive measures to deter cannabis use, and the adoption of an evidence-informed public health and safety approach.

During the Act's development, it was widely recognized that effective implementation of the new legislative framework would require ongoing monitoring to assess early impacts, and flexibility to adapt and respond to emerging policy needs following implementation. For this reason, section 151.1 of the Act mandates a review of the Act to start three years following its coming into force, and that a report outlining findings or recommendations be tabled in both Houses of Parliament no later than 18 months after the launch of the review.

The Minister of Health and the Minister of Mental Health and Addictions have launched a review of the Act. Pursuant to the Act, the objective of the review will be to assess its impacts on public health, including:

- the health and consumption habits of young persons
- the impact of cannabis on Indigenous persons and communities, and
- the impact of cultivation of cannabis plants in a dwelling-house

The *Cannabis Act* and First Nations, Inuit and Métis Persons and communities

Engagement with First Nations, Inuit, and Métis communities on the legalization and regulation of cannabis for non-medical purposes began in 2016 under the auspices of the Task Force on Cannabis Legalization and Regulation. Engagement has continued throughout the development and implementation of the Act and its Regulations. As of August 2022, Health Canada officials have participated in 286 engagement sessions with First Nations, Inuit, and Métis governments, communities and organizations across Canada to better understand their perspectives and concerns regarding cannabis legalization and regulation, share public health information related to cannabis, and to provide details about the Act and its Regulations.

Through this engagement, it has been made clear that Health Canada's public health and public safety objectives align with those of First Nations, Inuit, and Métis when it comes to addressing the risks and harms associated with cannabis. Health Canada understands that for First Nations, Inuit, and Métis leaders, organizations and individuals, discussions about cannabis legalization and regulation are critically linked to broader issues such as self-determination, reconciliation, and economic and community development. Further, Health Canada understands and respects the additional and distinct objectives, considerations, and approaches to cannabis control that exist between First Nations, Inuit, and Métis.

This paper summarizes what Health Canada has learned through engagement with First Nations, Inuit, and Métis representatives from 2016 to 2022. Resolutions, reports, and recommendations from governments and organizations related to the impact of the Act also informed this summary. Limited but growing preliminary data and research will further inform the collective understanding of the impact of the Act and cannabis on First Nations, Inuit, and Métis.

GOALS OF THIS PAPER

The goal of this paper is to summarize and confirm what has been shared with Health Canada from First Nations, Inuit, and Métis partners on key areas related to the Act. Your feedback will help to confirm if Health Canada has properly understood First Nations, Inuit, and Métis perspectives and priorities respecting cannabis. Feedback on

areas that fall outside the scope of the *Cannabis Act* or Health Canada's authorities (for example, criminal law enforcement, taxation, pardons) will be shared with relevant federal partners.

First Nations, Inuit, and Métis are invited to provide written comments to address the questions in this report or provide other comments to inform the legislative review via email to Indigenousfeedbacklegreview-retroactionautochtonesexamenleg@hc-sc.gc.ca or mail to:

Indigenous Feedback Legislative Review
Health Canada
Address locator 03021
Ottawa, Ontario
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Where possible, respondents are invited to share sources and evidence that support their response. Responses will be used to inform the legislative review of the *Cannabis Act*, and in particular the assessment of the impact of cannabis on First Nations, Inuit, and Métis and their communities.

BACKGROUND AND CONTEXT: HEALTH CANADA'S ENGAGEMENT APPROACH

The initial focus of Health Canada's engagement activities was to share information about the Government of Canada's approach to cannabis legalization and regulation and to gather the perspectives and priorities of First Nations, Inuit, and Métis. More recently, the focus shifted to explore and establish arrangements to advance shared objectives, including protecting youth, deterring unwanted cannabis activities, and providing access to a quality-controlled supply of cannabis for adults in First Nations, Inuit, and Métis communities where cannabis is welcome.

Health Canada appreciates the discussions and feedback it has received on a diverse range of interests and priorities. There is now one specific agreement in place between Health Canada and the Mohawk Council of Kahnawà:ke concerning cannabis oversight in their community. In addition, discussions have occurred with another 18 communities located in Quebec, Ontario, Saskatchewan and British Columbia regarding cannabis oversight in their communities.

Indigenous partners have raised that the *United Nations Declaration on the Rights of Indigenous Peoples Act*, (the UN Declaration Act) commits Canada to take all measures necessary to ensure that all laws, including the *Cannabis Act*, reflect the principles and rights set out in the *United Nations Declaration on the Rights of Indigenous Peoples*, while also respecting Aboriginal and Treaty rights recognized and affirmed by the Constitution. The legislative review of the *Cannabis Act* does not fulfill Health Canada's obligations under the UN Declaration Act in this regard; however, these principles will inform work throughout the legislative review process.

Health Canada understands that First Nations, Inuit, and Métis partners did not consider the development of the Act to have included appropriate consultation. First Nations leaders have called on the Government of Canada to amend the Act to include provisions so that First Nations may govern activities with cannabis in their communities, and participate and benefit from the emerging sector.

While many First Nations, Inuit, and Métis peoples, communities and organizations may be preparing to participate in the upcoming review of the Act, Health Canada understands that they consider the review to be a small part of a broader, long-term, nation-to-nation discussion on the future direction of the Act and complementary federal legislation.

RESEARCH ON CANNABIS USE AND PERSPECTIVES

First Nations, Inuit and Métis have established frameworks and/or principles to govern their information and research. These frameworks and principles guide how data should be collected, protected, used and shared. Research conducted by or in partnership with First Nations, Inuit, or Métis provides the most reliable data, ensures that ethical practices are used in data collection, and that there are direct benefits to the communities involved.

Sustained, First Nations, Inuit, and Métis-led research efforts are expanding the amount of quality, culturally relevant cannabis research and data. While gaps in cannabis research and data remain, in part due to the infancy of the cannabis research field writ large, the emerging, culturally relevant research helps broaden understanding of the specific impacts of cannabis and of the *Cannabis Act* on First Nations, Inuit, and Métis.

At the same time, statistics are only one lens for studying and understanding the impacts of cannabis use and the *Cannabis Act* on First Nations, Inuit, and Métis peoples and communities. The lived experiences of First Nations, Inuit, and Métis, shared with Health Canada through engagement sessions, informs the bulk of Health Canada's understanding of these impacts. Health Canada also acknowledges that this information should be understood in the context of inequities in a variety of health-related outcomes experienced by First Nations, Inuit, and Métis, including around problematic substance use.

For the purpose of this paper, Health Canada is providing an overview of both Indigenous-led and Government of Canada-led research. Health Canada welcomes any additional data or reports (for example, research, survey reports, case studies) that First Nations, Inuit, and Métis partners would be willing to share and would like considered in the context of the legislative review.

Research review

The First Nations Regional Health Survey (RHS)¹, led by the First Nations Information Governance Centre provides critical information about trends in cannabis use and the associated impacts of cannabis use in the period prior to the coming into force of the *Cannabis Act*. The RHS found cannabis to be one of the most frequently reported non-prescription substances used amongst First Nations adults (such as, ages 18 years or older). During Phase 3 (2015-2016), 30% of First Nations adults indicated past-year use of cannabis, and 12% indicated daily or almost daily use. Rates of cannabis use in Phase 3 were similar to those observed in Phase 2 (2008-2010). More than two-thirds of First Nations adults in both Phase 2 (2008-2010) and Phase 3 reported no use of cannabis in the past year. Among First Nations youth (ages 12 to 17), past-year use had declined to 27% in Phase 3, a reduction from 36% in Phase 2, and 33% in Phase 1 (2002-2003). Phase 3 results indicated that nearly three-quarters of youth had not used cannabis in the past year.

Data collection for the fourth phase of the study is underway and will be a crucial source of knowledge about trends in cannabis use and the associated impacts in the period since legalization and regulation.

The Thunderbird Partnership Foundation², through regional dialogue sessions and the Indigenous Community Cannabis Survey (2018), collected additional information on cannabis use among First Nations in Canada. Two hundred and twenty nine (229) adults (ages 26 and older), and 27 youth (ages 18 to 25) completed the survey. Some key findings include that among adults, three-quarters of respondents indicated they had not used cannabis in the past year. The most common reason cited by those using cannabis was pain relief. When asked about perceptions of the impacts of medical cannabis use on relationships, abilities, quality of life and hope for the future, more than two-thirds of respondents expressed that they felt the effects were positive or neutral. For non-medical cannabis, fewer than 15% of respondents believed that non-medical cannabis had positive effects.

¹ First Nations Information Governance Centre, National Report of the First Nations Regional Health Survey Phase 3: Volume One, (Ottawa: 2018). 181 pages. Published in March 2018.

² Thunderbird Partnership Foundation. © 2019. Regional Cannabis Dialogue Report: National Report, Bothwell, ON

Inuit-led discussions on cannabis and mental health published in a 2019 report³ done in partnership with Inuit Tapiriit Kanatami highlights conversations from a two-day forum where representatives from across Inuit Nunangat exchanged knowledge and identified cannabis research gaps and priorities for moving forward. The report speaks to the need for: culturally appropriate and basic public health information related to cannabis; a comprehensive cannabis strategy that builds on experience with tobacco public health strategies; and opportunities to gather and to discuss and share knowledge related to cannabis and mental health.

A 2020 literature scan published by Pauktuutit Inuit Women of Canada⁴ synthesized the available literature on cannabis use by Inuit and other Indigenous peoples in Canada, as well as effective substance use interventions evaluated by or for Indigenous peoples. The review suggests that the relatively higher rates of cannabis use in Inuit Nunangat may be attributed to the relative affordability of cannabis. The review also highlighted findings related to maternal cannabis use and use in the year prior to pregnancy, while also highlighting the lack of sex- and gender-specific data on cannabis use.

A 2021 systematic review published in the *International Journal of Drug Policy* summarized the data available on the prevalence of non-medical cannabis use and associated factors among Indigenous peoples in Canada. All studies included in the review collected data before the implementation of the *Cannabis Act*, and involved First Nations youth and adult participants (both on and off reserve), Inuit participants, or Indigenous youth and adult participants (non-distinction-based studies).⁵ Taken together, the studies suggest a greater rate of non-medical cannabis use among Indigenous peoples in Canada, and identified several factors associated with cannabis use. The review noted the need for relevant research, including knowledge about the contributing factors for cannabis use, and particularly Indigenous-specific factors (for example, intergenerational trauma). The review called for targeted prevention and treatment initiatives, with community engagement to inform their development.

Additional information on cannabis use among First Nations, Inuit, or Métis is available from the Canadian Alcohol and Drugs Survey (CADS) and the Canadian Cannabis Survey (CCS). However, these surveys carry notable caveats regarding relevance and applicability to Indigenous peoples, as relatively few respondents self-identified as First Nations, Inuk, or Métis, which hinders any effort to take a distinctions-based approach to describing the findings. Additionally, national results may obscure important differences in patterns of cannabis use across regions and communities, and some survey designs exclude people living in the far north and First Nation populations living within First Nations communities.

Acknowledging these limitations, the Canadian Alcohol and Drugs Survey (CADS) found that 30% of respondents self-identifying as a First Nations, Inuk, or Métis person reported using cannabis in the past 12 months in 2019, which was unchanged from 27% of respondents who self-identified in 2017. In this survey, past-year cannabis use was higher among First Nations, Inuit, and Métis in both 2017 and 2019 than it was among people not self-identifying amongst these groups.

The Canadian Cannabis Survey (CCS) reports that in both 2020 and 2021, the prevalence of past-year use of cannabis for non-medical purposes was higher among those respondents self-identifying as First Nations, Inuk or Métis than it was among those who did not self-identify (39% and 25%, respectively, in 2021). The prevalence of past-year daily or almost daily use of cannabis for non-medical purposes was higher among those self-identifying as First Nations, Inuk or Métis, than for those who did not self-identify, with 15% of self-identified respondents reporting daily or almost daily use in 2021, as compared to 6% among those not identifying as First Nations, Inuk or Métis. Daily or near daily (for example, five or more days/week) use of cannabis is strongly associated with adverse

³ Mental Health Commission of Canada, Canadian Centre on Substance Use and Addiction, and Inuit Tapiriit Kanatami. (2019). Inuit Forum on Cannabis and Mental Health: Final Report. Ottawa

⁴ Pauktuutit Inuit Women of Canada (2020). Cannabis in our Communities Environmental Scan.

⁵ Wennberg E, Lasry A, Windle SB, Filion KB, Thombs BD, Gore G, Fischer B, Eisenberg MJ. (2021) Non-medical cannabis use among Indigenous Canadians: A systematic review of prevalence and associated factors. *International Journal of Drug Policy*. 90:103081.

health outcomes, particularly related to mental health.^{6,7} The results of the 2021 cycle of the CCS suggest the average age of cannabis use initiation among respondents self-identifying as a First Nations, Métis, or Inuk person was 17.0 years, which was lower than the average age of 20.5 years among non-Indigenous respondents.

Inequities in health related outcomes for First Nations, Inuit, or Métis have worsened over the course of the COVID-19 pandemic and risk growing in the face of recent and continuing confirmations of unmarked burials at the sites of former Indian Residential Schools.⁸ The Government of Canada recognizes that the root causes of problematic substance use amongst First Nations, Inuit, and Métis are complex, with links to individual, family and community wellness; the legacy of colonization; and the Indigenous social determinants of health, such as self-determination, cultural continuity, housing, employment and income in communities.⁹

Health Canada welcomes several Indigenous-led distinctions-based research initiatives currently underway aiming to reflect on health-related issues of cannabis use, including mental health and wellness.¹⁰

Discussion question

- What is your reaction to the cannabis use trends highlighted in this paper?

KEY TOPICS FOR FIRST NATIONS, INUIT, AND MÉTIS

Public health

The *Cannabis Act* is based on a comprehensive public health and public safety approach that aims to better protect Canadians by minimizing the harms associated with cannabis use. Enhanced public awareness of the health risks associated with cannabis use is among the stated purposes of the Act.¹¹

The Government of Canada has provided funding for culturally specific research, knowledge translation, prevention, harm reduction, and treatment programming about cannabis. Budget 2018 announced an investment of \$62.5 million over five years to support the involvement of community-based and First Nations, Inuit, and Métis governments and organizations to lead initiatives in these areas. Since 2018, Health Canada's Substance Use and Addictions Program (SUAP) has directed over \$8.8 million to First Nation communities and organizations, over \$1.5 million to Inuit organizations and regions, and over \$600,000 to a Métis Nation Government to support evidence-informed, Indigenous-led and culturally appropriate cannabis-related public education and awareness activities. Additionally, SUAP transferred over \$5.2 million to Indigenous Services Canada to enhance three existing and separate funding agreements with the Thunderbird Partnership Foundation, the Nishnawbe Aski Nation, and the British Columbia First Nations Health Authority (FNHA). More recently, Budget 2021 provided \$597.3 million over three years for mental wellness services. This included \$20 million annually to enhance existing mental wellness teams and create new teams; and \$16 million annually to support, enhance, and expand wraparound services at existing and new opioid agonist therapy sites. It also includes \$7.5 million annually for pan-Canadian investments to support Indigenous organizations in data collection, tracking performance measurement, evaluation and

⁶ Santaella-Tenorio, J., Levy, N. S., Segura, L. E., Mauro, P. M., & Martins, S. S. (2019). Cannabis use disorder among people using cannabis daily/almost daily in the United States, 2002–2016. *Drug and Alcohol Dependence*, 205, 107621.

⁷ Weinberger, A. H., Pacek, L. R., Sheffer, C. E., Budney, A. J., Lee, J., & Goodwin, R. D. (2019). Serious psychological distress and daily cannabis use, 2008 to 2016: Potential implications for mental health?. *Drug and Alcohol Dependence*, 197, 134-140.

⁸ Ross, A., Dion, J., Cantinotti, M., Collin-Vézina, D., & Paquette, L. (2015). Impact of residential schooling and of child abuse on substance use problem in Indigenous Peoples. *Addictive Behaviors*, 51, 184-192.

⁹ Government of Canada. (2018) Background Document: Public Consultation on Strengthening Canada's Approach to Substance Use Issues. Available at: <https://www.canada.ca/content/dam/hc-sc/documents/services/substance-use/canadian-drugs-substances-strategy/strengthening-canada-approach-substance-use-issue/strengthening-canada-approach-substance-use-issue.pdf>

¹⁰ [Community-Based Research Projects: Cannabis and Mental Health - Mental Health Commission of Canada](#)

¹¹ See section 7 of the *Cannabis Act*.

research to ultimately support communities and the workforce that serves them in improving how mental wellness is addressed in and across systems, sectors, communities and populations.

Key information about the legalization and regulation of cannabis and the health effects of cannabis use were translated into twelve Indigenous languages and made available through [Health Canada's cannabis-related resources for First Nations, Inuit, and Métis](#) webpage or were provided directly to relevant organizations. Health Canada continues to work with First Nations, Inuit, and Métis leaders to help ensure that education and awareness approaches going forward are culturally appropriate, and tailored to specific needs.

Feedback on public health impacts

Inuit

Public health is central in all conversations that Health Canada has had with Inuit about cannabis. Key issues raised include the risk of increased cannabis use, the lack of access to regulated cannabis, the need for Inuit-led and Inuit-appropriate public education and awareness activities, and the need for culturally safe mental wellness services.

Inuit question if the objectives of the *Cannabis Act*, including better protecting young persons and providing adults with access to a quality-controlled, legal supply of cannabis, will result in benefits that equally extend to Inuit. Concerns raised by Inuit reflect their unique community and northern context, culture and language. Inuit organizations raised concerns that legalization and regulation may increase access to cannabis in some communities where problematic rates of substance use already exist and where services to address mental wellness and substance use issues are limited.

In different parts of Inuit Nunangat, Inuit organizations shared that they are exploring how to deal with cannabis issues from different perspectives, with some working to limit access while others are focusing on education, harm reduction and distribution systems that would ensure a safe and consistent supply of cannabis for communities.

From a public education standpoint, a need for more information about the effects of cannabis use on health and well-being was flagged, with organizations calling for increased availability and access to basic information on cannabis, including its effect on mental health. Inuit organizations have consistently called for additional funding for Inuit-led activities, and for culturally appropriate and regionally specific programs and research available in Inuktitut dialects. Organizations have called for further investments in cannabis public education, specifically for Inuit youth and pregnant and breastfeeding individuals, with messaging that emphasizes the importance of lower risk choices for use and supply.

Inuit partners shared they are interested in considering how cannabis could be used to support harm reduction activities related to substance use. For instance, partners have identified interest in exploring cannabis use as a substitute for other substances (for example, alcohol), or to help treat trauma or post-traumatic stress. Inuit have indicated that further research on cannabis as a harm reduction tool is needed to better understand the potential harms and benefits.

Inuit have advocated for services, treatment, and rehabilitation centres located in the North. Health Canada has heard that it should consider the following:

- the higher proportion of youth in Inuit Nunangat
- higher rates of cannabis use in some communities compared to the rest of Canada, and
- that well-intended efforts to reduce harms associated with cannabis use may have unintended consequences in the North or complicate health and social programming and aggravate existing challenges

Métis

Métis Nation Government representatives raised public health as a primary interest. Representatives signaled that a holistic approach to public health rooted in Métis culture and history is required to promote health and wellness and to reduce the burden of illness. They flagged a need for additional public education funding and Métis-specific resources to minimize the harms associated with cannabis use in the Métis population.

Federal funding for prevention, education and treatment supports, especially for Métis youth, was raised as a priority. Greater research in exploring the impacts of cannabis on public health in Métis populations is a clear priority for Métis Nation Governments and researchers.

First Nations

First Nations leaders have communicated their commitment to keep cannabis out of the hands of youth, educate their membership about cannabis, and regulate products sold within First Nation communities. As discussed later in this paper (see "Jurisdiction") some First Nation communities have enacted their own community cannabis laws and frameworks that are designed to meet or exceed standards established by federal and provincial/territorial governments. Some of these communities expect Canada to recognize First Nations' cannabis frameworks as an assertion of exclusive jurisdiction, while others expect that Canada will recognize community cannabis laws applying in concert with federal and provincial/territorial rules. They also expect that Canada will take all measures necessary to ensure that its laws are consistent with the *United Nations Declaration of the Rights of Indigenous Peoples*, in line with the *UN Declaration Act*.

Some First Nations have focused their efforts on public health education and dialogue and are leading their own public education initiatives in their communities. Health Canada has worked in partnership with some of these communities to deliver public education information sessions.

A number of First Nations have pointed to challenges in meeting public health goals due to illicit products that are produced and sold in communities without support from Chief and Council. These products, which do not conform to federal requirements regarding packaging and promotion, among other requirements, undermine protections in place for children and youth under the *Cannabis Act* and its Regulations and under First Nations cannabis laws.

First Nations have indicated a high level of interest in the benefits associated with cannabis use for medical purposes, noting its general accessibility and affordability. To increase accessibility for First Nations who require access to cannabis for medical purposes, the federal government has been called on to provide benefit coverage for cannabis for medical purposes through the Non-Insured Drug Benefits (NIHB) program.

Discussion question

- Has Health Canada appropriately identified in this paper the main perspectives, priorities and concerns related to public health? Please explain.
- In your experience, have cannabis public education information and campaigns reached First Nations, Inuit, or Métis audiences? Please explain.

Jurisdiction

Under the Act and its Regulations, a federal licence is required to conduct various activities with cannabis, including cultivation, processing, and research. Licence holders are responsible for complying with the Act and its Regulations, as well as applicable federal, provincial/territorial legislation, municipal, or community by-laws. The Act also permits provincial and territorial governments to authorize certain activities and engage in oversight of retail distribution and the sale of cannabis in their jurisdictions.

Under the Act, there is no similar ability for First Nations, Inuit, and Métis governments to authorize these activities for the purposes of the Act. Rather, through other established legislation and authorities such as the *Indian Act*, the *First Nations Land Management Act*, modern treaties and self-government agreements, or municipal authorities, First Nations, Inuit, and Métis can create additional rules or requirements for cannabis-related activities (for example, zoning bylaws) in their communities. Under the design of the *Cannabis Act*, these additional rules would be consistent and not in conflict with the Act or frustrate its purpose.

Since 2019, Health Canada has held discussions with an increasing number of First Nations who are developing and implementing their own cannabis control measures. These discussions included exploring the possibility for First Nations to increase their oversight of cannabis activities, within the framework of the *Cannabis Act*. Such arrangements support a cooperative application of federal and local cannabis frameworks, consistent with the Act and its Regulations. In June 2021, Health Canada reached the first such mutually beneficial arrangement with the Mohawk Council of Kahnawà:ke.

The Memorandum of Understanding on Cooperation and for the Sharing of Information (MOU) between the Mohawk Council of Kahnawà:ke and Health Canada establishes a process for information sharing in relation to certain cannabis-related activities, including licensing, inspections, reporting and tracking, and compliance and enforcement for licence holders. It supports a cooperative application of federal and local cannabis frameworks, including the review of applications, supporting transparency of licensing and post-licensing activities, and cooperating to support effective oversight of regulated cannabis activities in the community, including inspections. The MOU represents a positive starting place and includes space for future amendments as the Mohawk Council of Kahnawà:ke and Health Canada continue to work together.

Feedback on jurisdiction

Inuit

Some Inuit communities and organizations have told Health Canada that they want control over whether cannabis activities are allowed in their communities or in parts of their land base, and have requested development of a clear process by which communities could ban the possession of cannabis for non-medical purposes. These bans would be in line with a dry community approach to substances taken by some Inuit communities.

Métis

Health Canada has understood that Métis Nation Governments do not have specific jurisdictional concerns related to cannabis legalization and regulation.

First Nations

Health Canada has heard that respect for First Nation jurisdiction over cannabis activities in their communities is the highest priority related to cannabis for many First Nations. Many First Nations are working to control the spread of activities that are not authorized or supported by community leadership and which are not in conformity with federal/provincial/territorial frameworks. First Nations leaders note that challenges with jurisdiction over cannabis control in communities can make this more difficult.

First Nations have taken different approaches to recognizing the application of the *Cannabis Act* in their communities. Some First Nations do not oppose the implementation of federal and provincial/territorial cannabis regimes in their communities. Other First Nations are working toward having their own community cannabis laws and frameworks apply alongside the Cannabis Act and provincial/territorial cannabis laws. Still other First Nations leaders believe that the best way for the federal government to support shared public health and safety objectives is to respect and support First Nations' exclusive authority to govern cannabis in their communities. Many of these

leaders have expressed that federal and provincial/territorial cannabis schemes have not addressed community interests such as economic opportunities for legal cannabis activities, and preventing the proliferation of unwanted cannabis retailers or producers in their communities. As a result, some communities are asserting self-determination and their own jurisdiction by creating community cannabis frameworks to operate independently of federal and provincial/territorial regimes. These communities may have authorized retailers or producers under their own frameworks, without requiring authorizations under the *Cannabis Act* and provincial or territorial laws.

Some First Nations have told Health Canada that specific legislative changes are required to create First Nation jurisdictional authorities under the *Cannabis Act*, or to create a separate First Nation-specific cannabis legal framework. Proposed changes that have been raised include:

- an ability to provide free, prior and informed consent to federally-regulated cannabis activities taking place in their community, including an authority and clear process to limit or ban cannabis entirely
- partial jurisdiction over some cannabis activities, such as regulating and licensing retail sales
- full jurisdiction over all cannabis activities in their communities, and
- an ability to trade between related Nations, or more broadly to other First Nations

Discussion question

- Has Health Canada appropriately identified in this paper the main perspectives, priorities, and concerns related to jurisdiction and the legalization and regulation of cannabis? Please explain.

Economic development and cannabis supply chain participation

One of the objectives of Canada's approach to the legalization and regulation of cannabis was the establishment of a legal cannabis marketplace capable of displacing the illicit¹² market, and providing adult Canadians with access to a diverse supply of quality-controlled cannabis products, while at the same time restricting youth access.

Indigenous participation in federally regulated commercial cannabis activities is limited, but growing. As of July 31, 2022, 47 Indigenous-owned or -affiliated businesses have received a federal licence to cultivate or process cannabis, including six located within First Nations communities. Of these six, four are located within First Nations communities in British Columbia, one in Quebec, and one in Ontario. As of the same date, an additional 67 individual, self-identified Indigenous applicants were at various stages of the federal cannabis licensing application process. As of July 31, 2022, there were also 32 Indigenous-affiliated hemp licence holders and two Indigenous-affiliated hemp licence applicants..

Health Canada provides services specifically for Indigenous-affiliated federal licence applicants, including:

- **Indigenous Navigator Service:** To guide and assist Indigenous and Indigenous-affiliated applicants, and answer requests from applicants for additional information
- **Cannabis Licensing Advisor:** Offers intensive advisory assistance to Indigenous and Indigenous-affiliated applicants that have strong support from the local Indigenous government and where direct benefits for the community are expected
- **Two-stage review process:** Indigenous and Indigenous-affiliated applicants may have their applications reviewed without a fully built site upon application. This allows for early feedback on an application that could help with financing and construction

¹² For the purpose of this paper, cannabis activities that are not authorized under federal/provincial/territorial cannabis laws are referred to as "illicit" per the definition of "illicit cannabis" in the *Cannabis Act*. In cases where these activities are authorized under First Nations, Inuit, or Métis cannabis control frameworks, Health Canada acknowledges that First Nations, Inuit, and Métis communities do not consider the activity to be illicit.

When possible, Health Canada works with licence holders and community leadership to ensure that Health Canada respects the protocols the community may have in place respecting the entry of Health Canada cannabis inspectors on their lands. For example, Health Canada has signed an agreement with the Mohawk Council of Akwesasne that details protocols for the entry of federal inspectors into Akwesasne, including provisions for notices of inspections to leadership.

Provincial and territorial retail frameworks vary considerably, and offer different levels of opportunity for First Nations, Inuit, and Métis participation. In some provinces and territories, opportunities for First Nations, Inuit, and Métis participation are not possible due to the government-run retail market. In other jurisdictions, with private retail models there are mixed results. As of August 1, 2022, a small but growing number of provincially-authorized stores have opened within First Nations communities in BC, Alberta, Manitoba, and Ontario. No provincially-authorized stores are located within Indigenous communities in Saskatchewan, Quebec, New Brunswick, or Prince Edward Island. There is currently one provincially-authorized store located in a First Nation community in each Nova Scotia and Newfoundland and Labrador. In the territories, Nunavut has one store, and there are six stores located in the Northwest Territories and eight located in Yukon.

The cannabis regimes in British Columbia, Ontario, and Quebec allow for the creation of cannabis agreements between Indigenous communities and the provinces. As of August 2022, British Columbia has signed six such agreements with First Nation governments. These agreements support signatories to pursue their vision for participation in the cannabis market while upholding the public health and safety principles of federal and provincial cannabis laws.¹³

Feedback on economic development and cannabis supply chain participation

Inuit

A lack of access to quality-controlled and federally regulated cannabis has been flagged as a potential problem in some Inuit regions as many residents live in small, remote communities in the North with no physical cannabis retail locations. As a result, the majority of residents in these regions may only access cannabis legally through e-commerce, which is not practical given their remote location for deliveries and a lack of access to broadband connectivity. Additionally, it may be difficult for Inuit without debit or credit cards to make online cannabis purchases.

Métis

Many Métis organizations and peoples see legal cannabis and industrial hemp¹⁴ as opportunities for economic development. Health Canada understands that for some communities, there is interest in participating in all parts of the cannabis and/or industrial hemp industry, including industrial hemp farming and cannabis cultivation and processing. These opportunities are seen as tools to increase local employment and economic opportunities.

Métis Settlements General Council Strategic Partnership Initiative (MSGC-SPI) is a multi-sectorial initiative supported by the federal government that seeks to create economic opportunities in the Métis Settlements and Settlement institutions. The initiative aims to achieve this goal by addressing capacity and programming gaps, through strategic investments in community engagement, feasibility studies, business planning, and other relevant foundational support. The end goal is to position each settlement to develop both entrepreneurial opportunities for their membership, and community-owned businesses in various sectors including industrial hemp.

¹³ BC Gov News: Public Safety and Solicitor General, News Release, (posted Sept. 21, 2020) [B.C. enters cannabis agreement with Williams Lake First Nation | BC Gov News](#); BC Gov News: Public Safety and Solicitor General [Cowichan Tribes, B.C. finalize cannabis agreement | BC Gov News](#)

¹⁴ Under federal law, industrial hemp includes cannabis plants and plant parts, of any variety, that contains 0.3% tetrahydrocannabinol (THC) or less in the leaves and flowering heads. THC is the main intoxicating cannabinoid in the cannabis plant.

First Nations

First Nations partners have indicated that more work remains to support their participation in the federally regulated cannabis market. They have identified a lack of access to financing, challenges with traditional banking services, and limited local expertise and information, skills training, and capacity as barriers to economic development and participation. For First Nations already involved in the federally regulated cannabis market, some have identified packaging requirements for cannabis products as being too strict, environmentally unfriendly, and costly. These packaging requirements have been identified as another barrier to succeeding in the federally regulated market.

Some communities have identified that further work is required to ensure that economic opportunities associated with cannabis bring benefits to community members. Many First Nations have expressed concerns with the structure of the cannabis taxation regime. In particular, they press for arrangements in which they would receive all, or a share, of cannabis sales and excise revenues generated from within their communities. Some seek tax revenue sharing agreements with the federal or provincial/territorial governments, while others seek amendments to tax laws to provide opportunities for interested First Nations to levy their own cannabis excise tax in their communities. First Nations have also recommended that any federal or provincial/territorial sales revenue be directed back into communities.

Discussion questions

- Has Health Canada appropriately identified in this paper the main perspectives, priorities and concerns related to supply-chain participation? Please explain.
- In your view, what is needed to support the participation of interested First Nations, Inuit, and/or Métis in the licit cannabis market? Please explain.

Public safety

The Act sets out a range of offences for activities related to cannabis with penalties proportionate to the seriousness of the offence including tickets, fines and terms of imprisonment.

Health Canada continues to collaborate closely with Public Safety Canada (PS) and the Royal Canadian Mounted Police to address the illicit market. PS often joins discussions with First Nations interested in discussing the public safety impacts of cannabis legalization in the community.

Health Canada has not heard public safety concerns from Inuit and Métis partners related to cannabis legalization and regulation.

First Nations feedback on public safety issues

Following the coming into force of the *Cannabis Act*, some First Nations have seen an increase of unwanted illicit cannabis activities in their communities. They have relayed that this may be related to the following:

- The *Cannabis Act* does not provide First Nations with express authority to oversee most cannabis activities thereunder. While First Nations may exercise certain oversight authorities over cannabis by way of other authorities (such as the *Indian Act* or self-government agreements, for example), enforcement of First Nations laws remains challenging for a variety of reasons outlined below
- The small number of authorized cannabis businesses within their communities (production and retail), due to restrictive retail models or other barriers to participation in the regulated market (for example, access to financing, challenges with traditional banking services, limited local expertise and information, skills training, and capacity); and

- The lack of enforcement of criminal prohibitions in the *Cannabis Act* within many First Nation communities due to the sensitive relationship between First Nations and Canadian law enforcement. This can lead to tension between police and the community around enforcement activities, including differences between Chief and Council and police as to what is an "illicit" activity, and whether First Nation or federal/provincial/territorial laws should be enforced

As a result, in many communities, there are increased opportunities for organized criminal activity, health risks due to consumption of untested, illicit products, and a growing dissatisfaction with the application of the Act. In some communities, the presence of illicit operations results in outside traffic and unwanted visitors coming into the community looking to buy illicit cannabis products.

In response to the issues with enforcement of the *Cannabis Act* and, as discussed earlier, as an assertion of jurisdiction and self-determination, some First Nations have developed their own cannabis control frameworks. However, enforcement and prosecution of First Nation cannabis laws is difficult for a variety of reasons, including that the *Cannabis Act* requires that various activities with cannabis be authorized either by the federal government or pursuant to a provincial or territorial law that meets certain minimum conditions. Authorization of those activities pursuant to a First Nation law alone would be insufficient to authorize those activities for the purposes of the Act.

As mentioned above, the *Cannabis Act* does not specifically permit First Nations to authorize certain activities for the purposes of the Act, and police forces and prosecutorial services are very often unable to enforce or prosecute the prohibitions outlined in First Nations cannabis laws. Community laws passed in support of cannabis control, such as trespassing laws to reduce unwanted visitors to illicit cannabis retailers, are equally hard to enforce because they may similarly not be recognized by Canadian courts.

Some communities have requested to have broader discussions beyond the mandate of Health Canada about issues of First Nations policing and prosecutorial support. First Nations have indicated that space for recognition of community-based cannabis laws will help them meet the public health and safety goals they share with the federal government. Such recognition and support for the enforcement of their cannabis laws would help to protect youth, displace the illicit cannabis market in their communities, and achieve the goals of the Act.

Discussion questions

- Has Health Canada appropriately identified in this paper the main perspectives, priorities, and concerns related to public safety and the legalization and regulation of cannabis? Please explain.
- Looking ahead, what are the principal challenges to displacing unwanted and/or illicit cannabis activities within First Nations, Inuit, or Métis communities?
- What actions could the federal government take to support those First Nations, Inuit, and Métis governments seeking to address unwanted illicit cannabis activities in their communities?

CONCLUSION

Through engagement with First Nations, Inuit, and Métis organizations and communities, Health Canada has heard specific interests in the following areas:

- the need to establish governance processes and supports to ensure that First Nations, Inuit, and Métis partners have voices in shaping the future direction on federal policies to meet shared objectives of the *Cannabis Act*
- the need for culturally specific public education and mental health and substance use services
- First Nations, Inuit, and Métis jurisdiction over various aspects of cannabis activities
- increased participation in economic opportunities created by the cannabis market
- the need to address challenges with ensuring public safety through appropriate enforcement tools such as prosecution

The feedback gathered during the past three years of engagement have helped Health Canada shape its understanding of the impact of cannabis legalization and regulation on First Nations, Inuit, and Métis. The publication of this paper is intended to summarize what Health Canada has understood from engagement with First Nations, Inuit, and Métis partners and subsequent engagement on its content will provide the opportunity for partners to validate or correct this understanding. Health Canada sees the publication of this paper as an important first phase of a broader engagement approach with First Nations, Inuit, and Métis meant to continue the conversation with First Nations, Inuit, and Métis on the impacts of cannabis and the *Cannabis Act*.

General comments

- Please provide additional comments you would like to share on the administration and operation of the *Cannabis Act* and its regulations that were not addressed in the previous sections.
- Is there other information would you like considered in the context of assessing the impact of the *Cannabis Act* on Indigenous Peoples and Communities through the legislative review? Please specify.

Questions on engagement during the legislative review

- How should First Nations, Inuit, and/or Métis be engaged in the legislative review of the *Cannabis Act*?
- What distinctions-based engagement models do you recommend as a best practice approach to engagement between the Expert Panel and First Nations, Inuit, and Métis?