



**Cannabis Council
of Canada**

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Response to Online Questionnaire

Cannabis Act Legislative Review

**Taking stock of progress: Cannabis legalization and regulation in
Canada**

Cannabis Council of Canada

November 21, 2022



Introduction

This document is the Cannabis Council of Canada's (C3) response to the Cannabis Act Review online consultation.

C3 is the national and international representative of Health Canada licensed producers and processors of cannabis. C3's membership includes cannabis supply chain participants committed to the success of cannabis legalization. C3's mission is to:

1. Promote industry standards;
2. Support the development, growth, and integrity of the regulated cannabis industry; and,
3. Serve as an important resource on issues related to responsible use of cannabis for medical and non-medical purposes.

Preamble

It has been four years since the historic coming into force of the Cannabis Act. Cannabis producer and processing Licence Holders have a strong body of operational, administrative, and commercial experience under the Cannabis Act and its regulations. Accordingly, the purpose of this preamble is to contextualize the responses to the online questionnaire.

While the legalization of cannabis has been a success on the social, public health, government revenue, and macroeconomic fronts, the same cannot be said for the micro-economics of cannabis Licence Holders (LH). The reality for most LHs is earning unsustainably low margins, which are the result of continuous price compression compounded by high taxes, regulatory fees, and provincial distributor mark-ups. EY's "Economic Analysis of Cannabis Excise Duties, Mark-Ups and Fees", released in May 2022 provides ample evidence of the current challenges to the economic viability of licensed producers and processors of cannabis.

The regulatory burden borne by LHs concedes a substantial competitive advantage to illicit cannabis producers, distributors, and sellers. In light of this situation, C3's advocacy and regulatory efforts are focussed on constructively highlighting the need for urgent changes to the legal, regulatory, and policy framework governing cannabis in Canada.

A financially viable legal cannabis industry is critical to the accomplishment of the public policy objectives of the Cannabis Act. Budget 2022's establishment of a cannabis industry roundtable at Innovation, Science, and Economic Development provides a tacit acknowledgement of the connection between a healthy cannabis industry and the success of cannabis legalization. It is incumbent upon Health Canada to accept that the public policy objectives of the Cannabis Act require a rebalancing of supply and demand side measures.



Four years into a new world, Licence Holders face many issues which require attention from our regulator and from the Government of Canada. We respectfully submit that the Cannabis Act Review process, which will not result in immediate legislative or regulatory changes, is too slow to address the growing threats to survival faced by licensed producers and processors. Accordingly, we are looking to Cannabis Act Review to adopt an iterative approach to its work and to propose interim recommendations to Health Canada in support of the objectives of the Cannabis Act. The Cannabis Act Review Secretariat can count on C3 to be a constructive partner in this endeavour.



Theme 1: Minimizing harms to protect Canadians

What is your view of the current legislative and regulatory restrictions in place to safeguard public health?

The restrictions in place to safeguard public health have been a mixed success. On the positive side:

- There has been no increase in youth consumption and a slight increase in young persons' consumption of cannabis.
- Legal market consumers have access to quality controlled, tested, and regulated products.
- Pre-legalization concerns about danger of legal cannabis for road safety, workplace safety, school safety and public behaviour have failed to materialize. Many of the legislative and regulatory safeguards put in response to these fears have failed to impact cannabis consumption and are acting as a barrier to the legal industry's ability to protect public health by displacing the illicit market.

On the negative side:

- The predominant if not sole focus of government public health efforts related to cannabis has been on the regulation and oversight of legal producers and the legal supply chain. Government efforts to control, let alone eliminate, the illicit market which openly markets and supplies unsafe cannabis products to Canadians (including youth and children) have relied on the legal industry to draw illicit consumers into the legal market. The failures or absence of any government efforts to the supply side of the illicit cannabis industry is a significant public health failure. There is a paucity of government controls and enforcement of the illicit cannabis industry, which pays no taxes, fees or provincial distributor mark-ups and openly uses the internet to market and sell cannabis to Canadians irrespective of age. The uncontrolled supply of illicit cannabis is driving down the price of legal cannabis to the point where the legal industry is facing a viability crisis.
- Adults and youth have easy access to illicit product cannabis that is bad for public health, due to the prevalence of dangerous pesticides, toxins, mold, bacteria in illicit product (see reports on illicit market cannabis from RPC labs, the BC Attorney General, and the Ontario Cannabis Store.)
- Canadian youth (persons 16-19), 40% of whom consume cannabis with 20% of youth consumers being daily users, have open and easy access to illicit cannabis products. There's been no decrease in youth consumption since the legalization of adult-use despite significant prohibitions on the packaging, marketing, and advertising of legal cannabis products. Youth enjoy easy access to illicit cannabis (see. CADS).



- Provincial restrictions on category sales and retail locations are driving consumers to illicit markets for edibles and vapes. The province Quebec does not permit the sale of cannabis vapes, edible gummies or chocolates. These products are popular with legal cannabis consumers. The consequence of Quebec's approach is to send legal users to the illicit market, where vapes and edibles have proven to be unfit for human consumption (source: OCS report and FDA report on EVALI.) The illicit market is able to use the profits of the sale of illicit cannabis to adults to market and supply cannabis to youth.
- The province of Quebec's legal limitation on the age of legal cannabis at 21 is sending young adults, 50% of whom consume cannabis, has negative public health consequences for Quebecers and all Canadians. Again, the profits from this trade are used by the criminal organizations to support activities across the illicit cannabis supply chain.
- The Cannabis Act limits on promotion, packaging and labeling have created a situation where 75% of cannabis consumption is combusted and a substantial percentage of the cannabis flower combusted is high THC. Legal industry is unable to educate consumers about the harm reduction benefits of alternative forms of cannabis consumption and government education efforts are largely absent any harm reduction messaging targeting consumers.
- As a result of the Cannabis Act prohibitions on information, labeling, and packaging (marketing and advertising), the most prevalent source of information about cannabis is the budtender and online illicit market websites and social media.
- THC Potency limits on edibles limit access to legal cannabis and are driving the cannabis consumer to the illicit market for higher potency edibles (more than 10 mg of THC). Sales of edibles in 10 mg THC formats comprise less than 5 % of all legal edibles sales in mature US jurisdictions. Current sales of legal edibles in Canada make up approximately 5% of all sales. In the US, legal edibles comprise 10-13% of all sales of cannabis products. This at least 5% difference in consumption translates into at \$250,000,000 in sales lost to the illicit cannabis market. A simple search for online cannabis edibles will reveal the abundant offering of cannabis edibles with 25% THC concentrations.

The Cannabis Act Review is a needed opportunity to understand the unintended consequences of the measures designed to protect public health and to make the changes needed to support the health and public safety objectives of the Cannabis Act.

What controls, if any, would you like to see changed and why?

The inability to constrain access to illicit market cannabis, the inability to regulate the illicit market, and the reality of cannabis use by Canadians points to the need for a revised approach to cannabis control. We need to rethink the entire system of controls which impact the ability



of the legal industry to bring the illicit consumer into the legal market and compete with the illicit industry. We need to rethink controls designed to protect public health which drive up the price of legal cannabis adversely impacting the financial viability of firms competing with illicit products.

The Cannabis Act contains numerous controls, both demand side and supply side, which need to be changed.

On the demand side, the following changes are needed:

1. Controls that prohibit licensed producers from providing consumers with information, in controlled settings, about the effects of cannabis.

The informational limits on cannabis are producing adverse impacts on the health of cannabis consumers. The strict limits on information have created a situation where 75% of products consumed are combusted and the majority of flower consumed is high concentration THC. Legal dispensary budtenders' personal preferences are the main source of cannabis consumer information. Deloitte Canada's *Seeding new opportunities - Listening to Canada's cannabis consumers (2021)*, a people consume cannabis for its effects. Precluding companies from providing consumers with information about the effects of cannabis ignores the reality of legal cannabis and has created a situation where budtenders' personal taste is the sole source of consumer information about the effects of cannabis.

Health Canada's proposed regulations on *Non-Therapeutic Research on Cannabis* will create a path for cannabis companies to conduct consumer research on the effects of cannabis. This regulatory proposal should be accompanied by changes to the controls over information, promotion, packaging, and labeling to support the provision of evidence-based consumer information.

Why make this change? Changing the controls on information about cannabis will lower the demand for high THC flower products and help consumers make informed decisions in controlled settings, e.g., licensed dispensaries and company websites.

2. Controls that prohibit licensed producers from providing consumers with information about safer forms of cannabis consumption (e.g., vaping, edibles).

Three quarters of the legal cannabis consumed is combusted. The informational and promotional limitations on cannabis, preclude the efforts and ability of licensed companies to provide consumers with harm reduction-based information about non-combustible forms of consumption. Sales in the legal vaping and edibles categories in Canada are suppressed when compared to sales in mature US jurisdictions. Legal companies which have invested in



innovation to produce safer forms of consumption are unable to provide consumers with information about the health benefits of non-combustible cannabis products. The recent Health Canada regulatory proposal on “Non-Therapeutic Research on Cannabis” will support licence holder research into the benefits of alternative product formats, but the regulation remains unclear on whether or not companies will be able to provide this type of information to consumers.

Why make this change? Changing the constraints on information and promotion about cannabis in controlled settings will encourage consumers to try less harmful forms of cannabis consumption and lower the demand for high THC flower products.

3. Controls that prohibit licensed producers from building brands that attract the illicit market consumer into the legal market.

The Cannabis Council of Canada does not accept the 66% legal cannabis market share data cited in *Taking Stock of Progress*.

We estimate that the illicit cannabis industry is at least as big as the legal market and generates \$4-5 billion untaxed dollars in yearly cannabis sales. The legal cannabis industry needs the tools to compete with the illicit cannabis market.

Taking Stock of Progress recognizes that consumer choices and consumption are influenced by promotion and advertising strategies. Cannabis companies need to build brands that help the illicit consumer understand who they are buying from and that these companies are made up of people like them. Without branding, legal cannabis is “government weed” that will struggle to connect with the illicit consumer who has a natural disdain for authority and government given the stigmatizing and past and current criminality of cannabis.

Why make this change? Allowing legal cannabis companies to build brands that attract the illicit cannabis consumer will:

- Improve public health.
- Generate more tax revenues for governments.
- Provide legal cannabis companies with the revenue needed to invest in safer forms of cannabis consumption; and
- Limit the revenues used by the illicit cannabis industry to market and sell cannabis to youth.



On the supply side, the following changes are needed:

1. Health Canada must take measures to reform and control the access to medical cannabis personal/designated production program which is a significant source of illicit cannabis.

The use of the personal/designated production program has increased 60% since cannabis legalization (2018 to 2021), while the number of medical cannabis patients has declined by 25%, and access to cannabis has been expanded. There's been no increase in medical cannabis patients, yet a significant increase in the number of medical cannabis authorizations for designated cultivation of cannabis. This fact, along with substantial concerns from the provincial police authorities in British Columbia, Quebec, and Ontario about the abuse of the program by organized criminals point to the need for greater oversight and control of the medical cannabis personal/designated production program by Health Canada. While Health Canada is not responsible for policing organized criminals and the illicit cannabis industry, it is responsible for the oversight and regulation of personal/designated production registrations which impact the ability of legal cannabis to support the health and safety objectives of the Cannabis Act. We respectfully submit, that the inability of Health Canada to control the use of the medical cannabis cultivation program speaks to the need for market-based demand side solutions to the problem of illicit cannabis.

Why make this change? Increasing oversight and control of the medical access designated grow program will:

- Improve public health by reducing the supply of illicit cannabis.
 - Generate more tax revenues for governments.
 - Provide legal cannabis companies with the revenue needed to invest in safer forms of cannabis consumption; and
 - Limit the revenues used by the illicit cannabis industry to market and sell cannabis to youth.
2. Public safety officials must change their approach to policing online illicit cannabis activities.

The illicit market's use of the Internet to market and sell cannabis is a public health and safety hazard. There are no controls over youth access to online illicit cannabis and the limited enforcement efforts are failing to reduce online illicit market activity. *Taking Stock of Progress* acknowledges the challenge, if not futility, of trying to eliminate the illicit market's use of the Internet to market and sell unsafe cannabis products to youth and to adult consumers:



Disrupting illegal online cannabis sales is an ongoing challenge. Policing online activity is complicated – a website can be created in one country, hosted in another, on a domain name registered in yet a third, while selling a product in multiple jurisdictions. Additionally, websites can be set up with ease, and can replace those that have been seized or shut down by law enforcement.

One is left to conclude that public safety officials are either unable or do not have the will to eliminate the open use of the Internet by criminal organizations to sell cannabis. In light of this reality, a harm reduction-based approach to cannabis policy and regulation would balance the use prohibitive measures when it comes to the marketing and sale of illicit cannabis with measures that allow the legal industry to attract the illicit online consumer.

Taking Stock of Progress notes:

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 public safety approach.

With four years of legal cannabis experience, the time has come for Canada to adopt an evidence-informed public health and public safety approach to cannabis.

Why make this change? Revising the approach to controls over online activity by the illicit cannabis industry will:

- Improve public health by reducing the supply of illicit cannabis.
 - Generate more tax revenues for governments.
 - Provide legal cannabis companies with the revenue needed to invest in safer forms of cannabis consumption; and
 - Limit the revenues used by the illicit cannabis industry to market and sell cannabis to youth.
3. Increasing the 10 mg THC limit on cannabis edibles to allow legal edible products to capture the illicit market edibles consumer segment.

Taking Stock of Progress notes that with the exception of edibles, THC limits were not placed on cannabis products in order to support the ability of legal cannabis to displace illicit cannabis. Canada's experience with legal cannabis points to the correctness of its approach on THC limits



and the shortcomings of its approach to THC limits on cannabis edibles. The practical effect of the 10 mg limit is to move cannabis consumer to the illicit market to purchase edibles.

Edibles comprise 6% of all legal cannabis products in Canada and comprise 10-14% of all sales in US jurisdictions. Data from mature US jurisdictions with adult use cannabis indicate that edibles in 10 mg THC formats accounts for 6% of all sales and that consumers are looking for higher THC edibles. The edibles category market data from the US suggests that the 10 mg limit on edibles has had the practical effect of ceding \$250 million per year in sales of the edibles to the illicit market. The 10 mg THC limit on edibles is also depriving governments of tax revenues (excise, corporate, and income).

Health Canada's prohibitionist approach to edibles motivated by concerns about child poisonings from illicit cannabis is failing to protect children from illicit cannabis edibles and is contributing to the success of the illicit cannabis industry. There is no evidence that legal cannabis edibles are the source of child poisonings. There is abundant evidence that points to illicit cannabis edibles are the source of the increase in media reports of child poisonings from edibles.

Why make this change? Revising the control on THC in cannabis edibles will:

- Improve public health by reducing the consumption of illicit cannabis edibles.
 - Lower the incidence of child poisonings from illicit cannabis edibles.
 - Generate more tax revenues for governments.
 - Provide legal cannabis companies with the revenue needed to invest in safer forms of cannabis consumption; and
 - Limit the revenues used by the illicit cannabis industry to market and sell cannabis to youth.
4. Governments need to revise their approach to cannabis taxation, mark-ups, and fees, so that legal providers can be financially sustainable while competing with illicit market competition.

Licensed producers and processors earn 28% of the consumer sale price of the cannabis flower sold by the Ontario Cannabis Store. Government taxes account for 28% of the purchase price, provincial distributor mark-ups account for 18% and retailer mark-ups account for 25% of the price to consumers (source: *Economic Analysis of Cannabis Excise Duties and Fees, Mark-ups and Fees*, EY Parthenon, May 2022). Legal cannabis has been subject to significant price compression, due to provincial distributor focus on capturing market share from the illicit market. The combined result of government taxes and fees and illicit market competition is the



present-day commercial reality where licence holders are financially unviable and those that have it use shareholder equity to sell product at a loss.

We are calling upon the federal and provincial governments to revise the cannabis excise tax duty rate to 10% of the purchase price.

Why make this change? Revising governments' approach to the taxation and mark-up of cannabis will:

- Generate more tax revenues for governments.
- Provide legal cannabis companies with the revenue needed to invest in safer forms of cannabis consumption; and
- Limit the revenues used by the illicit cannabis industry to market and sell cannabis to youth.

5. Controls that require child proof packaging for cannabis flower products

Cannabis flower is not psychoactive unless decarboxylated by heating. Ingestion of cannabis flower will not cause intoxication or any harms, nor is it's taste attractive to children. Some alcohol products have a taste which may be attractive to children, yet do not contain any child proof packaging.

Three quarters of all legal cannabis sales are flower. Child-proof packaging adds almost 20% to the cost of cannabis packaging. The child proof packaging requirement and pricing pressure of illicit competition has led to the prevalence of single use plastics for cannabis flower packaging. The child proofing of cannabis flower is unnecessary, costly, and environmentally unsound. Wasteful plastic packaging is one of the principal consumer complaints about legal cannabis products.

Why make this change? First, child proof packaging of cannabis flower does not protect children from any harm related to the ingestion of cannabis. Additionally, eliminating the child proof packaging requirement on cannabis flower will strengthen the legal industry's efforts to compete with the illegal industry and reduce the use of single use cannabis packaging and reducing the adverse environmental impacts of legal cannabis.

Are the current safeguards, outlined above, adequately restricting access and helping to protect the health of youth?

Age limits which preclude youth from purchasing legal cannabis are adequately restricting youth access to legal cannabis.



The current safeguards have failed when it comes to restricting youth access to illicit cannabis or protecting youth health from illicit cannabis. According to the data references *Taking Stock of Progress* legalization has not led to a decrease in youth consumption or a decrease in youth access to cannabis. According to the Canadian Cannabis Survey (2021):

- 37% of youth (persons 16-19) have used cannabis in the past 12 months; and,
- 20% of youth cannabis consumers are heavy users of cannabis (daily or almost daily.)

According to the Canadian Student Tobacco, Alcohol and Drugs Survey (CTADS) cited in *Taking Stock of Progress*, “youth do not perceive cannabis as difficult to access. Recent student surveys report that six out of 10 students in grades 10 to 12 report easy access to cannabis.”

The Current safeguards designed to deter youth consumption are misplaced – the principal if not sole focus is on legal cannabis, allowing an illicit market to openly market and sell cannabis to youth. Government must refocus its youth protection efforts on illicit cannabis and rethink current safeguards designed to protect youth from legal cannabis. There are a number of unnecessary youth access safeguards which drive up the cost of legal cannabis and adversely impacting the ability of legal cannabis to compete with the illicit market. Youth safeguards on legal cannabis which need to be removed include:

- Child proof packaging of cannabis flower products.
- Controls on information and marketing in age-gated settings; and,
- 10 mg THC limit on cannabis edibles.

Under the current framework, what presents the greatest risk to youth in accessing and consuming cannabis?

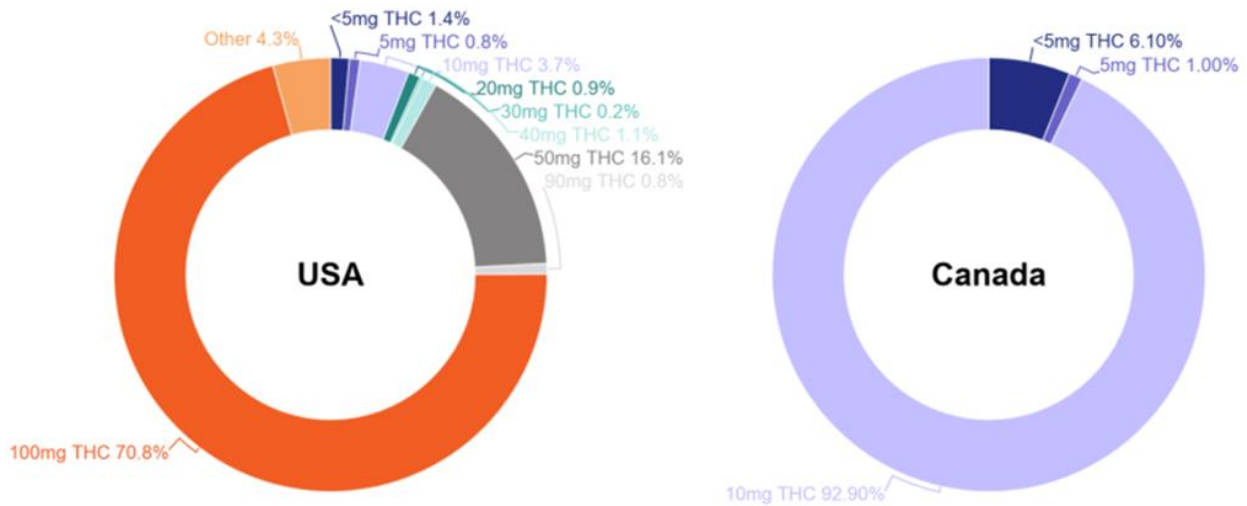
The greatest risk to youth accessing and consuming cannabis lies in the persistence of the illicit cannabis industry and the prevalence of online websites marketing and selling cannabis products. The current framework has a misplaced focus when it comes to youth and cannabis. Governments’ principal focus has been on restricting youth access to legal product, which has been a success, while avoiding the reality of easy youth access to illicit cannabis.

Are there additional sources of information or data that you believe should be considered to support the legislative review?

- US edibles sales compared to Canadian sales (source: Headset IO data)



Edible Unit Volume by Package Size



- US vape sales compared to Canadian sales (Headset IO data)
- *Economic Analysis of Cannabis Excise Duties and Fees, Mark-ups and Fees*, EY Parthenon, May 2022
- Analysis of Illicit and Legal Cannabis Products for a Suite of Chemical and Microbial Contaminants, Diane Botelho*, New Brunswick Research and Productivity Council (RPC).
- Testing finds contaminants in illegal cannabis, Government of British Columbia, Public Safety and Solicitor General, June 2021.
- Ontario cannabis study shows illegal cannabis fails to deliver the goods, OCS and OPP.
- Signalement d’une surdose sévère liée à la consommation de cannabis de rue possiblement contaminé, Direction régionale de santé publique du CIUSSS du Centre-Sud-de-l’Île-de-Montréal (May 5, 2022)
- The Canadian Cannabis Survey 2021 Methodological Report
- Canadian Association of Chiefs of Police, Guidance on personal production of cannabis for medical purposes (May 6, 2021)
- Ontario Association of Chiefs of Police, RESOLUTION 2020-03 Cannabis for Medical Purposes Legislation



- Accurate measurement of illicit cannabis sales and market characteristics (see detailed explanation in our response to *Theme 3: Progress toward establishing a responsible supply chain*).



Theme 2: Education and awareness to support informed choices

To what extent have public education efforts delivered the appropriate messages and reached the appropriate audiences, including youth and young adults?

Public education efforts have been a mixed success.

The principal, if not exclusive focus, of Health Canada's cannabis education efforts has been on informing the public and selected target groups about the health and safety risks of cannabis consumption.

Federal public education and awareness activities have focused on providing youth and young adults, marginalized populations, Indigenous peoples and communities, and other populations at increased risk of experiencing harms related to cannabis use (for example, effects on pregnancy and breastfeeding), with factual information regarding the legislative framework, along with other clear and consistent evidence-based information about the health and safety risks of cannabis use (source: Taking Stock of Progress.)

Given the limited increases in reported consumption among adults of cannabis post-legalization, public education efforts have been a success or have been misplaced. When it comes to informing youth, the consistency of youth consumption of cannabis pre and post legalization (2018-2021), speaks to the shortcomings of the current approach to youth education. Despite large investments into youth-focused educational communications about cannabis, there's been no change in youth use of cannabis.

Public education efforts have failed the cannabis consumer. Public education was intended to provide cannabis consumers with information or educational resources that *"support informed choices, to build knowledge and influence risk perceptions, and ultimately to encourage lower-risk behaviours in relation to cannabis"* (source: *Taking Stock of Progress.*) Three quarters of legal cannabis sold in Canada is combusted and the bulk of combusted flower is high THC product. Sales of cannabis edibles and vapes in Canada are consistently lower than in mature US markets. The prohibitions on cannabis companies providing information to consumers about cannabis (other than its price, availability, and cannabinoid composition), has produced a situation where the cannabis consumer lacks:

- Information about dangers and consequences (health, economic and social) of illicit cannabis.
- Information about the effects of cannabis products in support of decision-making.
- Harm reduction messages about non-combustible cannabis consumption formats and lower THC product formats.



There has been a slight increase (~5%) in young persons' reported consumption of cannabis from 2018 to 2021. The reality is that half of persons aged 20-24 consume cannabis. From a public health perspective, the absence of consumer-focused information targeting this group is a failure. These consumers, more than any others, require evidence-based information about the effects of cannabis products and about the harm reduction benefits of lower THC flower, vapes, and other non-combustible cannabis products.

What additional measures or areas of focus could be considered to continue to close the gap between perception of risks and harms and scientific evidence?

We need to increase the nature and availability of consumer-focused information about cannabis products. The current Cannabis Act definition of “informational promotion” limits the consumers to information to the characteristics, price, and availability of cannabis.” Canadians consume cannabis for its effects (see. *Seeding new opportunities: Listening to Listening to Canada's cannabis consumer*, Deloitte, 2021.), yet the prohibitions on providing them with information about the effects of cannabis has created a situation where the dispensary budtender has become the sole source for consumer information about legal cannabis products.

Second, we need to allow cannabis companies and cannabis retailers to provide consumers with evidence-based information about the effects of cannabis products and the harm reduction benefits of lower THC flower and non-combustible product formats.

Third, it is incumbent upon Health Canada to enact the proposed regulations to the Cannabis Act for “*Non-Therapeutic Research on Cannabis.*”

Fourth, Health Canada must modernize the Cannabis Act and its regulations relating to informational promotion, labeling, and packaging and promotion. This does not mean allowing alcohol or gambling-like public promotion, rather this means allowing evidence-based information to consumers in age-gated settings like dispensaries and permitting information about the effects of cannabis-on-cannabis product labels and packaging.

Fifth, governments need to stop the prevalence of online marketing of cannabis products and CBD by the illicit cannabis industry. The illicit cannabis industry is not subject to the informational, branding, or labeling controls of the Cannabis Act. The result is an open information system that provides consumers with information about the effects and quality of illicit cannabis products. The prevalence of illicit cannabis online marketing and the failure or inability to stop it speaks to the need for changes to the Cannabis Act's prohibitionist approach to cannabis education and information. Consumers have easy access to information and branded illicit cannabis products. A harm-reduction based approach to cannabis education



would acknowledge the needs of consumers and the reality of the illicit market to permit legal cannabis to respond to the needs of consumers.

Are there additional sources of information or data related to education and awareness that you believe should be considered throughout this review?

- The plethora of illicit cannabis online information and marketing available to consumers.
- Peer reviewed research into the health benefits of vaping cannabis compared to smoking cannabis
- Seeding new opportunities: Listening to Listening to Canada's cannabis consumer (Deloitte, 2021 cannabis consumer report.)
- Sales of legal cannabis flower by THC concentration.



Theme 3: Progress toward establishing a responsible supply chain

Do adult Canadians have sufficient access to a quality-controlled supply of legal cannabis?

Not in all instances. Access a quality-controlled supply of legal cannabis is limited geographically, by age, and by product category.

1. Geographic Limits on Access to Legal Cannabis

One quarter of Canadians do not have sufficient access to legal cannabis.

In Ontario, there are almost 2 million Ontarians without access to a legal cannabis dispensary. Ontario cities and towns without access to a legal dispensary include Mississauga, Markham, Pickering, Vaughan, and Oakville.

The province of Quebec has approximately one legal dispensary for every 90,000 residents. The dispensary to store ratio in mature US jurisdictions is 1 store per 10,000 residents. The City of Gatineau, QC (pop. 250,000) has two legal dispensaries. One of these is closed two days a week and open from noon to 5 pm, five days a week. The SQDC in Buckingham, QC, is a 30-minute drive from the urban centre of Gatineau.

There are numerous cities in British Columbia that are significantly underserved by legal cannabis dispensaries. Up to January 2022, there were numerous “cannabis retail deserts” in the BC’s major urban centres. The pace of retail access to legal cannabis in British Columbia can best be described as “slow.”

Geographic limitations on access to legal cannabis permit the illicit cannabis market to respond to consumer demand. Using provincial distributor online sales services as a response to geographic limits ignores the reality of the cannabis consumer who has same day access to illicit cannabis accessed online or in person. Recall that almost half of 20 to 24 year-old Canadians consume cannabis.

Product Limits on Access to Legal Cannabis

Provincial restrictions on product formats - edibles (Quebec) and vapes (Quebec and Newfoundland) prelude access to less harmful forms of cannabis consumption and permit the illicit market to respond to this demand. One quarter of Canadians (9 million people) are unable to purchase legal vaping products. From a harm reduction perspective, this is a failure.

THC Potency limits on edibles limit access to legal cannabis and are driving the cannabis consumer to the illicit market for higher potency edibles (more than 10 mg of THC). Sales of



edibles in 10 mg THC formats comprise less than 5 % of all legal edibles sales in mature US jurisdictions (source: *Headset IO custom data request.*) Sales of 100 mg THC edibles comprise 70% of all legal edibles sales in mature US jurisdictions (source: *Headset IO*). Current sales of legal edibles in Canada make up approximately 5% of all sales. In the US, legal edibles comprise 10-13% of all sales of cannabis products. This at least 5% difference in consumption translates into at \$250,000,000 in sales lost to the illicit cannabis market. A simple search for online cannabis edibles will reveal the abundant offering of cannabis edibles with 25%+ THC concentrations.

The limitations of federal control over provincial jurisdiction and the resulting limitations of access to legal cannabis speaks to need for changes to the prohibitionist approach to cannabis and the move to a risk-based market driven harm reduction approach to cannabis control.

What alternative measures, if any, could the government consider to further strengthen and diversify the legal market?

Governments need to:

- Enforce the law on the use of the illicit market online industry to market and sell cannabis so that Health Canada licence holders can be financially sustainable.
- Regulate and control the use of the medical cannabis personal/designated production program to stop the abuse of this program by organized crime.
- Allow licence holders to provide consumers with evidence-based information about the effects of cannabis products in age-gated settings.
- Allow licence holders to provide consumers with evidence-based information about the effects of cannabis on legal cannabis product packaging.
- Deploy consumer-focussed education campaigns targeting illicit consumers.
- Allow cannabis companies to build brands that attract the illicit cannabis consumer into the legal market; and,
- Revise THC limits on edibles to allow up to 100 mg of THC per package, comprised of single units up to 10 mg each.
- Revise the cannabis excise tax duty rate 10% of the purchase price.”

What alternative measures, if any, could the government consider to better meet the needs of racialized, under-represented or Indigenous communities within the cannabis licensing program?

The greatest barrier to participation of racialized and under-represented communities within cannabis licensing program is financial. Access to capital required to get a cannabis licence and



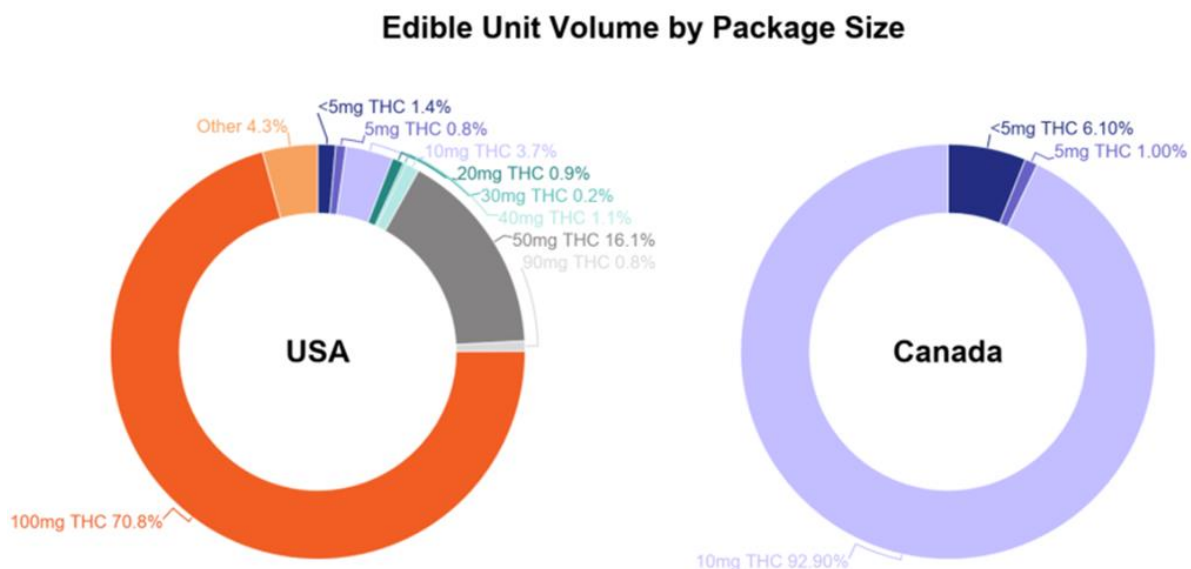
operate a cannabis business. By way of example, licence holders are required to submit a significant bond to the Canada Revenue Agency prior to earning any revenue from the sale of legal cannabis. The Ontario Cannabis Store takes 60 days to pay its suppliers, yet CRA excise duty payments are due 30 days upon sale of products to the OCS.

Fixing the economics of the legal industry – lowering the excise tax, distributor mark-ups and regulatory fees – is required to get capital markets and banks to provide the cannabis industry with access to capital. All other measures designed to improve the participation of these groups are setting people up to fail. Under the current taxation, distribution, and regulatory conditions, we would not encourage anyone to get a cannabis licence.

Another significant barrier to the participation of racialized and under-represented communities within cannabis licensing program is the Cannabis Act regulations which prohibit the creation of brands (informational promotions, packaging and labeling, promotion, and sponsorship). The current Cannabis Act prohibitions on branding preclude the ability of consumers to understand the uniqueness of these companies owned and operated by people from =racialized and under-represented communities. There’s no consumer-friendly way for consumers to understand the companies they buy from.

Are there additional sources of information or data related to the legal market or home cultivation for non-medical purposes that you believe should be considered throughout the legislative review?

- US edibles sales compared to Canadian sales (Headset IO data)





- US vape sales compared to Canadian sales (Headset IO data)
- *Economic Analysis of Cannabis Excise Duties and Fees, Mark-ups and Fees*, EY Parthenon, May 2022
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- *Accurate measurement of illicit cannabis sales and market characteristics*

The Cannabis Council of Canada disputes the 66% legal market share reference in *Taking Stock of Progress*:

Additionally, Statistics Canada's [Household Consumption Expenditure](#) table suggests that, at the national level, the legal share of the value of cannabis consumed has steadily increased, rising to 66% in the fourth quarter of 2021, compared to 9% prior to legalization.

According to "Constructing Historical Cannabis Consumption Volume Estimates for Canada, 1960 to 2015 (Ryan Macdonald and Michelle Rotermann, Statistics Canada, Economic Analysis Division and Health Analysis Division) "*it is critical to recognize explicitly at the outset that estimating cannabis consumption involves considerable uncertainty.*"

The methodology employed by Statistics Canada to measure expenditure on illicit cannabis relies on a survey of cannabis consumers and the scraping of price data from illicit cannabis websites. We submit that the current approach to measure illicit market sales has a number of limitations:



- There is no weighting of the Canadian Cannabis Survey results to account for respondent underreporting on questions that involve social stigma and criminal behaviours. In a nutshell, the survey asks respondents to report if they are breaking the law and to what extent.
- There is no weighting of the Canadian Cannabis Survey results to account for frequency of use. Over 25% of all cannabis consumers are heavy consumers (daily or 4-5 times per week). Heavy cannabis consumers consume the bulk of cannabis consumed in Canada. According to the Office of the Parliamentary Budget Officer, frequent users represent 98% of total cannabis consumption in Canada (source: Legal Cannabis: Fiscal Considerations.) The Canadian Cannabis survey responses about of illicit cannabis consumption need to be weighted by frequency of use. It is not implausible to conclude that heavy users purchase most, if not all, of their cannabis from illicit sources.
- The survey responses about legal cannabis consumption are open to interpretation by the respondents. Responses for the source of legal cannabis include “from a friend”, “an acquaintance, “shared among friends”, a family member. All of these answers could have sourced their cannabis from the illicit market yet would be counted as legal sources.
- The Canadian Cannabis Survey’s refusal rate (47%) and response rate (19%) suggests that the survey may suffer from a bidirectional effect where the context of a survey can have a bi-directional effect where some potential respondents would be encouraging some dissuaded from participating.

Canada needs an accurate measure of illicit cannabis market activity in order to measure the effectiveness of the Canada’s approach to the public health and safety objectives of legalization. Governments and provincial distributors rely of Statistics Canada’s household consumption survey measurement of illicit cannabis sales to limit their responsibilities with regards to eliminating the illicit market and to justify provincial distributor commercial practices, while downplaying the negative public health consequences.



Theme 4: Protecting public safety

What are your general impressions of legal retailers' progress to date in capturing the legal market? Please explain.

Progress in capturing legal market share is being impeded by government regulations (federal and provincial) designed to prohibit the growth in the cannabis consumer segment. The practical consequence of this prohibitionist approach has been a limit on legal retailers' ability to connect with the illicit cannabis consumer, to promote harm-reduction harm products and to connect with the non-consumer seeking to understand the health and wellness opportunities of cannabis.

On the provincial government front, the following controls are limiting legal retailers' progress to date in capturing the legal market:

- The application of federal regulations related to window coverings make stores unattractive to the new consumer.
- Lack of in-store display is driving consumer to purchase high THC flower from display boards behind the counter.
- Controls and limits over dispensary locations – Quebec, Ontario, and British Columbia – allow the illicit market to respond to consumer demand; and,
- Limits on legal product offerings - Quebec and Newfoundland - allow the illicit market to respond to consumer demand.

On the federal government front, the following controls are limiting legal retailers' progress to date in capturing the legal market:

- The 10 mg THC limit on edibles is driving consumers to the illicit market –\$250,000,000 in sales are being lost to illicit edibles per year.
- Promotional prohibitions in store preclude the ability of Licence Holders to build brands that connect with the illicit consumer.
- Lack of public education about the differences between legal and illegal products.
- Prohibition of consumer-focussed information the differences between legal and illegal products.

Retailers progress in capturing the illicit market is also being driven by the abuse of Health Canada's medical cannabis personal/designated production program by the illicit cannabis industry and the inability to control the illicit cannabis industry's use of the internet to market and sell cannabis.



What additional steps or measures should the government consider to combat the illegal cannabis market?

Canada needs to move its regulation of legal cannabis to a risk-based approach. The current prohibitionist regulatory framework was designed to dissuade and reduce legal cannabis consumption. The unintended consequence has been prohibition of the Health Canada Licence Holders to connect with the illicit cannabis consumer and draw them into the legal market. Given the inability, unwillingness, or failure of law enforcement to eliminate the illicit market, the time has come to move beyond the preventative approach to regulating legal cannabis.

Price compression from untaxed, unregulated and government mark-up free illicit cannabis competition speaks to the benefits of adopt a risk-based approach to cannabis regulation, similar to the approach used for alcohol. Alcohol is responsible for much greater public health and public safety harms to Canadians than cannabis. Yet, Canada has a risk-based approach to regulating alcohol.

The Legislative Review of the Cannabis Act provides the opportunity to use the lessons learned from legalization to move cannabis' regulatory model from preventative to risk-based. The challenge of eliminating the illicit cannabis market, and the harm reduction and government revenue benefits to be gained from replacing illegal cannabis with legal cannabis adds additional impetus to move a risk-based approach to cannabis regulation.

Additional steps and measures required to combat the illicit market include:

- Increase enforcement of illicit cannabis industry's use of the online system to market and sell cannabis. This includes taking steps to stop illicit market's use of the INTERAC payment system.
- Deploy consumer focussed education programs about the health and safety dangers of illicit cannabis products and the organized criminal organizations that make and sell them.
- Allow cannabis companies to provide consumers with information about the effects of cannabis products in age-gated settings.
- Allow cannabis companies to build brands that connect with the illicit cannabis consumer.
- Revise the cannabis retail experience to make the experience more consumer focussed. The current "Nanny State" model, where products are behind the counter, is archaic.
- Allow higher THC edibles formats which attract consumers away from the illicit cannabis market. Permit 100 mg THC packages with individual units of up to 10 mg of THC.



- Revise the cannabis excise tax duty rate to 10% of the purchase price to provide cannabis companies with the revenues needed to invest in alternative products formats and innovative products to attract the illicit consumer.
- Remove public possession limits on legal cannabis products.

Are there additional sources of information or data related to the criminal justice system that you believe should be considered throughout the legislative review?

It would be helpful to have:

- An accurate picture of the cost savings to provinces from reduction in cannabis related offences since the legalization of cannabis.
- An econometric analysis of the lost tax revenues to governments (excise, corporate and income) from illicit cannabis sales.
- An accurate methodology for measure the actual size of the illicit market.
- Public opinion research into the illicit market consumer would support the development of public education campaigns designed to draw the illegal cannabis consumer into the legal cannabis industry.

Sources of information to consider include:

- Analysis of Illicit and Legal Cannabis Products for a Suite of Chemical and Microbial Contaminants, Diane Botelho*, New Brunswick Research and Productivity Council (RPC).
- Testing finds contaminants in illegal cannabis, Government of British Columbia, Public Safety and Solicitor General, June 2021.
- Ontario cannabis study shows illegal cannabis fails to deliver the goods, OCS and OPP.
- Signalement d'une surdose sévère liée à la consommation de cannabis de rue possiblement contaminé, Direction régionale de santé publique du CIUSSS du Centre-Sud-de-l'Île-de-Montréal (May 5, 2022)
- The Canadian Cannabis Survey 2021 Methodological Report
- Canadian Association of Chiefs of Police, Guidance on personal production of cannabis for medical purposes (May 6, 2021)
- Ontario Association of Chiefs of Police, RESOLUTION 2020-03 Cannabis for Medical Purposes Legislation



Theme 5: Access to cannabis for medical purposes

What are your views on the current medical access program for cannabis?

The current medical access to cannabis program provides therapeutic benefits to medical cannabis patients. Nonetheless, the program needs reforms to enhance patient access to benefits of medical cannabis. To many in the cannabis community the Government of Canada's current approach to medical cannabis is focussed on ensuring that governments get their excise duties at the expense of all else.

The abuses of the medical cannabis personal/designated production program and the inability of Health Canada to prevent the abuse is evidence of the need for change to the medical cannabis program. We cite the following data from Health Canada (*Data on cannabis for medical purposes*) as evidence of the abuses of the personal/designated production program:

- Authorizations of personal use average of two (2) grams per day (Active client registrations), yet authorizations for personal/designated production registrations average 40 grams per day across Canada; 61 grams per day in British Columbia; and 40 grams per day in Quebec.
- From October 2018 to December 2021, there has been a 25% decrease in the number of "active client registrations with a federal licence holder", yet there has been a 61% increase in "active personal/designated production registrations" for medical cannabis.
- British Columbia, with 13% of Canada's population, accounts for 46% of all authorizations for personal production over 25 grams per day and 40% of all authorizations for personal production over 100 grams per day.

The most common rationale for the use of the medical cannabis personal/designated production program is that patients cannot afford medical cannabis produced by a Licence Holder. Reform of the medical cannabis access program starts with eliminating the excise tax on medical cannabis. This change would support the medical patient community's efforts to secure insurance coverage for medical cannabis, which will help to eliminate abuses of the personal/designated production program.

Is a distinct medical access program necessary to provide individuals with reasonable access to cannabis for medical purposes, or can access needs be met through the non-medical framework?

Yes, a distinct medical access program is a necessity. Medical cannabis patients require medical practitioner oversight and support, evidence-based education and information and product formats which respond to the unique needs of patients.



Medical cannabis patients often suffer from multiple medical conditions and are using multiple drugs to treat these conditions. Patients need guidance from health care practitioners on drug interactions and the medical uses of cannabis.

Patients and the public require evidence-based information and education about medical uses and benefits of cannabis. Canada cannot rely on adult-use channel to provide this type of education to patients. In point of fact, the adult-use sales channel (budtenders and dispensaries) and cannabis companies are prohibited from providing consumers and the public with information about medical cannabis products. Practitioners are sole source of legal information about medical cannabis.

Canada's approach to research on medical cannabis needs significant reform in support of patient access. The focus of government-funded research has been on research about the harms of cannabis while there continues to be paucity of research being funded on the therapeutic benefits of medical cannabis. The research framework governing medical cannabis is ill-suited to the reality of medical cannabis use. Currently, all therapeutic clinical research involving cannabis on humans is conducted in accordance with Part C Division 5 of the Food and Drug Regulations - *Drugs for Clinical Trials Involving Human Subjects*. The current process is focussed on evaluating the effectiveness of a single active medical ingredient, whereas in many cases the success of medical cannabis success is based on the fact that the plant contains multiple active ingredients. While the March 2021 changes to clinical research involving cannabis on humans were welcomed, the pharmaceutical research framework is still too rigid for medical cannabis and has stalled cannabis research in Canada. This is to the detriment of the more than 250,000 Canadians authorized to use medical cannabis by a healthcare practitioner.

Health Canada's proposed regulations for "Non-Therapeutic Research on Cannabis", will provide a regulatory model which will increase the ability of Licence Holders to carry out non-therapeutic research into medical cannabis. However, the proposed regulation does not address the lack of therapeutic clinical studies involving cannabis being carried out in Canada. The Cannabis Council of Canada welcomes discussions to bring about the changes we feel are required to improve medical cannabis therapeutic clinical research in Canada so that we may better inform our patients and healthcare partners about the safety and efficacy of our products.

In conjunction with the implementation of a unique research framework, for "Non-Therapeutic Research on Cannabis" it will be incumbent upon the regulator to permit cannabis companies to use the research results to provide patients with evidence-based information about the products they are consuming and for government funding agencies to adopt a collaborative approach to supporting medical cannabis research.



Patients have different product requirements than adult-use cannabis consumers, yet cannabis products are all subject to adult-use product regulations. This is major shortcoming of the current “one-size fits all” regulation of cannabis. Current limits on the composition of cannabis extracts, topicals, and edibles, driven by concerns over youth access to adult-use cannabis, are a barrier to patient access.

Medical cannabis patients require “faster acting” non-combustible forms of cannabis medicine. More patient centered non-combustible cannabis would increase adoption of these formats and support efforts to normalize medical cannabis with practitioners opposed to combustion. Current rules governing cannabis limit the composition of extracts to cannabinoids, carrier oils and stabilizing agents.

When it comes to cannabis edibles, medical patients are underserved by the current adult-use framework. The 10mg of THC limit does not meet the needs of frequent consumers who require higher dosages. Additionally, the cost of 50mg of legal cannabis edibles (5 separate units of 10 mg of THC) is another barrier to medical access. As a result, medical patients turn to the illicit market for edibles or to the personal/designated grow program. It should be noted that consumers are able to purchase high THC capsule products (extracts) which are ingested but cannot purchase edibles of similar potency.

Rules on child-proof packaging of all cannabis products are also a barrier to access to many medical cannabis patients. Arthritis patients struggle to open medical cannabis products. Child-proof packaging adds also adds to the cost of medical cannabis products.

A true distinct medical access program would remove the excise tax on medical cannabis authorized by a practitioner. Placing a consumption tax on a medical product is illogical, if not immoral. Removing the excise tax on medical cannabis would enhance patient access and provide a much-needed signal to insurers about the legitimacy of medical cannabis therapy.

Are there specific reforms that you would recommend?

- Allow patients to access medical cannabis in pharmacy settings, so that patients can benefit from practitioner oversight.
- Eliminate excise tax on medical cannabis.
- Include medical cannabis in any future reforms to medical insurance coverage and coming “pharmacare” program.
- Permit the creation of unique product formats under the medical cannabis access program suited to the needs of medical cannabis patients – high THC edibles, fast-acting extracts, edibles and topicals.



- Allow medical cannabis producers to provide evidence-based information about medical cannabis products.
- Remove child-proof requirements for medical cannabis packaging.
- Increase oversight of the personal/designated production program.
- Support the cost of medical cannabis access for patients with high daily usage authorizations under the personal/designated production program as a way to eliminate these patients from the designated grow program.
- Implement the proposed regulations on “Non-Therapeutic Research on Cannabis.” Health Canada’s regulatory process on matters related to cannabis are a significant obstacle to the patient access and to the ability of the legal cannabis industry to support the public policy objectives of the Cannabis Act.

Are there additional sources of information or data related to the medical access program that you believe should be considered in the legislative review?

- Police data related to illicit cannabis cultivation and sales activity and its connection to the medical cannabis personal/designated production program.
- Analysis of Illicit and Legal Cannabis Products for a Suite of Chemical and Microbial Contaminants, Diane Botelho*, New Brunswick Research and Productivity Council (RPC).
- Testing finds contaminants in illegal cannabis, Government of British Columbia, Public Safety and Solicitor General, June 2021.
- Ontario cannabis study shows illegal cannabis fails to deliver the goods, OCS and OPP.
- Signalement d’une surdose sévère liée à la consommation de cannabis de rue possiblement contaminé, Direction régionale de santé publique du CIUSSS du Centre-Sud-de-l’Île-de-Montréal (May 5, 2022)
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