



CENTRE ON
DRUG POLICY
EVALUATION

A Roadmap for
Cannabis Equity
in Canada to
Inform the
Legislated
Review of the
Cannabis Act

Contents

4 Introduction

4 Objectives and Methods

4 Considerations for Defining Cannabis Equity

PART ONE:

6 What is the State of Cannabis Equity in Canada?

6 Background: Prohibition and Racial Justice

8 Legalization and Approaches to Cannabis Equity

8 Industry Inclusion and Diversity

10 Amnesty

12 Reinvestment of Cannabis Taxes into Equity Programs

PART TWO:

13 How Has Cannabis Equity Been Pursued Outside of Canada and What Has Been the Impact?

13 Case Studies for Cannabis Equity in the United States

14 Industry Inclusion and Diversity

14 — Eligibility Criteria

14 — Prioritization in Licensing

14 — Funding Support

14 — Business Support

14 Amnesty

15 Reinvestment of Cannabis Taxes into Equity Programs

15 Case Study 1: Illinois

15 Industry Inclusion and Diversity

15 — Eligibility Criteria

15 — Prioritization in Licensing

16 — Funding Support

16 — Business Support

16 — Outcomes and Impact

17 Amnesty

17 — Mechanism and Criteria

17 — Outcomes and Impact

18 Reinvestment of Cannabis Taxes into Equity Programs

18 — Restore, Reinvest and Renew Program

18 — Municipal Spotlight: Evanston's Local Reparations Program

Contents

18	Case Study 2: Massachusetts
18	Industry Inclusion and Diversity
18	— Eligibility Criteria
19	— Prioritization in Licensing
19	— Funding Support
20	— Business Support
21	— Outcomes and Impact
21	Amnesty
21	— Mechanism and Criteria
22	— Outcomes and Impact
22	Reinvestment of Cannabis Taxes into Equity Programs
22	Case Study 3: California
23	Industry Inclusion and Diversity
23	— Eligibility Criteria
24	— Prioritization in Licensing
24	— Funding Support
25	— Business Support
25	— Outcomes and Impact
26	Amnesty
26	— Mechanism and Criteria
27	— Outcomes and Impact
27	Reinvestment of Cannabis Taxes into Equity Programs
28	Table: Comparing Provisions for Industry Inclusion and Diversity, as well as Amnesty, in Illinois, Massachusetts, and California
29	Cannabis Equity Initiatives in Jurisdictions with Regulated Cannabis Markets: A Scoping Review
29	Abstract
	<u>PART THREE:</u>
30	How Can Cannabis Equity Be Pursued in Canada?
30	Industry Inclusion and Diversity
32	Amnesty
33	Reinvestment of Cannabis Taxes into Equity Programs
35	References
42	Authors

Introduction

Canada has received praise and international attention for its introduction of a legal regulatory framework for adult cannabis use, which represents a significant departure from a century of cannabis prohibition. While the implementation of a regulated cannabis industry was driven primarily by its potential public health and public safety benefits, reducing the burden placed on the individuals criminalized for cannabis use also served as an impetus for change. In comparison to many jurisdictions in the United States, however, Canadian legalization efforts have done little to explicitly address the harms caused by drug prohibition and to foster equity in the legal cannabis industry. **This report analyzes the impact of the *Cannabis Act* on equity seeking groups and draws on best practices to develop a roadmap for cannabis equity in Canada. It is hoped that this work can inform the federal legislated review of the *Cannabis Act*.**

Objectives and Methods

Our objective is to inform the legislative review of the *Cannabis Act* by charting a path forward for cannabis equity in Canada with recommendations for policymakers based on available evidence and best practices in other jurisdictions with legal cannabis markets. Our report proceeds in three parts corresponding to the following research questions:

Part One: What is the state of cannabis equity in Canada?

Part Two: How has cannabis equity been pursued outside of Canada and what has been the impact?

Part Three: How can cannabis equity be pursued in Canada?

In addition to using public information, all three parts of this report are informed by in-depth interviews with key informants (n=20) including policymakers, researchers, civil society, affected communities, and other relevant

stakeholders. Interviews with key informants complements public information by ensuring accuracy in interpretation as well as addressing data gaps and barriers by supporting the identification of, and access to, relevant resources.

We also draw data and share select aggregate results from the Implementation and Outreach Section, Controlled Substances and Cannabis Branch at Health Canada's survey to all federal licence holders (licenced cultivators, processors, and sellers), conducted in 2022.¹ Within part two, we conducted a scoping review to synthesize the available evidence on the impacts of international cannabis equity approaches to further understand their respective benefits and drawbacks. Methods for the scoping review are discussed in the [corresponding section](#).

Considerations for Defining Cannabis Equity

For the purposes of this report, we limited the definition of “cannabis equity” to:

- Inclusion of people from underrepresented racial groups and genders – with a focus on people adversely affected by cannabis prohibition – in the employment and economic opportunities emerging from the legal cannabis industry,
- Amnesty for people with previous cannabis convictions, and
- Reinvestment of cannabis taxes into equity programs.

We follow others that have defined equity in the legal cannabis industry as encompassing four key elements: equitable industry, equitable justice, equitable communities, and equitable access.² An [equitable industry](#) aligns with our discussion on industry inclusion and diversity, as it is focused on promoting the inclusion and success of currently underrepresented and historically overcriminalized groups in the legal cannabis industry

through access to opportunities and resources. Equitable justice aligns with our focus on amnesty, as it covers the restoration of basic rights of citizenship to individuals with previous cannabis convictions. Equitable communities is focused on supporting communities most impacted by drug and cannabis law enforcement activities through community reinvestment and social programs, and therefore aligns with our emphasis on the reinvestment of cannabis taxes into equity programs. Equitable access – which pertains to ensuring access to legal cannabis products across communities – is beyond the scope of this report. Relevant considerations for further discussion of cannabis equity in Canada may benefit from focusing on equitable access by seeking to ensure equity in the accessibility of legal cannabis products across different communities and addressing barriers to purchase. Recommendations in the area of equitable access are likely to be tailored towards both provincial and territorial, as well as municipal, governments given the approach to cannabis retailers differs by province and territory, and municipalities may decide whether to allow cannabis retailers in their communities, as well as the number and location of retailers.

Much work remains to achieve equity in Canada's cannabis policy. The legislated review of the *Cannabis Act* presents a critical opportunity to begin rectifying inequities resulting from contemporary cannabis policy in Canada. Our findings and recommendations in this report can equip policymakers with the knowledge necessary for redressing harms associated with the history of cannabis prohibition, avoiding the replication of historical disparities in the legal cannabis industry, and foregrounding equity as an essential component of cannabis policy in Canada.

PART ONE:

What is the State of Cannabis Equity in Canada?

Background: Prohibition and Racial Injustice

Cannabis was first criminalized in Canada in 1923 under the *Opium and Drugs Act*. The precise reasons for outlawing the drug at this time remain unknown, but the racial narratives circulating at the time are thought to have had a strong influence.³⁻⁵ From the anti-Asian sentiment that fueled Canada's first anti-drug law in 1908 (the *Opium Act*) to the anti-Black rhetoric that was being embraced by prominent moral entrepreneurs such as Emily Murphy, it can be argued that Canada's early anti-drug laws were rooted in racist and anti-immigrant sentiment. Following the introduction of the 1923 law, law enforcement focus remained on people who used opioids and there was little actual targeting of cannabis-related offences.³ The first seizure of cannabis by police was in 1932, and the first cannabis arrest in 1947.^{6,7}

Canadian cannabis laws were pushed into action in the 1960s and throughout the decade, police cracked down on cannabis with increasing frequency and repressiveness.^{3,8} While in the earlier years of drug prohibition, there had been a clear focus on opiates, in the 1960s cannabis became law enforcement's new illicit drug of concern, a shift that quickly culminated in thousands of arrests each year.⁹⁻¹² In the late 1960s, a royal inquiry (the LeDain Commission) assessed Canada's newly repressive approach toward cannabis and concluded that a number of progressive reforms, including decriminalization of the drug, were necessary.¹³ Nevertheless, the Canadian government failed to heed the LeDain Commission's recommendations and continued to practice the same punitive and repressive

approach to the policing of cannabis.³ In 1986, then-Prime Minister Brian Mulroney declared a war on drugs and 10 years later one of Canada's most punitive anti-drug laws was introduced: the *Controlled Drugs and Substances Act*. Commenting on the introduction of this law, Erickson wrote: "Canada's allegiance to criminalization was affirmed."¹⁴

Beginning in the 1970s, cannabis possession became the most common drug offence enforced across the country.¹⁵ By the late 1990s, it was estimated that over 600,000 people had been given criminal records resulting from possession of cannabis offences.⁹ While the racist foundations of Canada's first drug laws and the racially disparate impact of early drug law enforcement are well documented,¹⁶⁻¹⁸ a lack of racially disaggregated criminal justice data make it difficult to accurately assess the impact of Canada's drug laws on the country's racialized populations throughout the 1950s, 60s, and 70s. Indeed, the failure of Canadian criminal justice agencies to systematically collect and release racially disaggregated data is a major impediment to research in the area. Nevertheless, the limited available evidence demonstrates that the introduction of Canada's war on drugs in the 1980s contributed to the criminalization and a rapid increase in the incarceration of Black people in Canada.^{19,20} As part of its investigation into discrimination in the administration of criminal justice, the Commission on Systemic Racism in the Ontario Criminal Justice System explored racial differences in admissions to custody for drug trafficking

and importation at five Toronto-area provincial correctional facilities following Mulroney's declaration of a war on drugs. The Commission's analysis shows that, whereas in 1986–87 most admissions for trafficking and importation involved white people, by 1992–93 the majority were Black.¹⁹ While admissions for both Black and white people increased over this period, the increase in Black admissions dwarfed those of white people: over the study period there was a 25% increase in white admissions for trafficking/importation at Ontario's Maplehurst facility, 94% at the Toronto Jail, 204% at Metro East, 296% at Metro West, and 667% at the Vanier Centre for Women.¹⁹ By comparison, Black admissions for trafficking/importation increased by 790% at the Toronto Jail, 2,914% at Metro East, 3,300% at Maplehurst, 3,890% at Metro West, and 5,200% at Vanier.¹⁹ Commenting on their findings, the Commission notes that in Ontario, as in many American jurisdictions, the war on drugs contributed to an increase in the imprisonment of Black people and the growth in racial inequality in prison admissions in the late 1980s and early 1990s.¹⁹

Although insightful, the Commission's analysis did not distinguish between the types of drugs which resulted in admission to prison. Over the last several decades, the majority of police-reported drug crime in Canada involved cannabis and the most common offence was possession.¹⁵ One of the few sources of official information on racial disparities in cannabis arrests in Canada to date comes from a special series, published in 2017, by Jim Rankin and colleagues at the Toronto Star. Drawing on data gathered from a Freedom of Information Request, Rankin obtained and analyzed cannabis arrest and charge data from the Toronto Police Service (TPS), the largest municipal police force in Canada, for the years 2003–13. Over this period, the TPS arrested 27,635 people for cannabis possession and possession for the purpose of trafficking offences. When they looked only at cases of simple possession (under 30 grams of dried cannabis or 1 gram of hashish) where the subject had no prior criminal record, the Star's analysis found that Black people were greatly over-represented in arrests for cannabis possession offences. While Black people represented 8.4% of Toronto's population, they accounted for 25.2% of the individuals arrested for cannabis possession—three times their representation in the general population. By contrast, white and “Brown”

Torontonians were arrested at rates relatively similar to their representation in the general population. White people made up 53.1% of the population and 52.8% of those arrested, while Brown people accounted for 14.7% of the population and 15.7% of those arrested.²¹

Building on the work of the Star, Vice News journalist Rachel Browne requested racially disaggregated cannabis arrest data from five cities across Canada (Vancouver, Edmonton, Regina, Ottawa, and Halifax). Owusu-Bempah et al. analyzed these data for the year 2015 and found Black and Indigenous people again over-represented in possession arrests.^{22,23} This pattern was true in all five cities, except Halifax, where only Black people were over-represented in the data. For Indigenous people, the starkest disparities were observed in Vancouver and Regina. Indigenous people in Vancouver were 6.28 times more likely to be arrested for cannabis possession than would be predicted by their representation in the general population. For Black people, the most significant disparities were in Halifax, where Black people were 4.08 times more likely to be arrested for cannabis possession than would be predicted by their representation in the general population.²² The over-representation of Black and Indigenous people in cannabis possession arrests stands in stark contrast to the experience of white people, who were under-represented in arrests in each of the cities examined. Importantly, these racial disparities in arrests exist despite limited evidence of relatively similar rates of self-reported cannabis use across racial groups in Canada.²⁴

The Canadian situation, with respect to racially disaggregated drug enforcement data, is very different to that in the United States, where the over-representation of Black and Latinx people in cannabis arrests statistics are readily available and well documented.²⁵⁻²⁹ In the decade leading up to 2010, there were more than eight million cannabis arrests in the United States, with simple possession accounting for almost half (46%) of these.³⁰ Despite virtually no statistical difference in rates of use between them, Black people were 3.73 times more likely to be arrested for cannabis possession over this period than white people.³⁰ A major driver of cannabis legalization in the United States has been the recognition of these racial disparities in cannabis arrests and the broader impact that the war on drugs and resulting mass incarceration has had

on racialized communities.³¹ The growing literature on the “collateral consequences” of punishment has documented the extensive discrimination and disadvantage faced by individuals who experience arrest and incarceration, as well as the generalized discrimination in community settings faced by those with a criminal record.³² These consequences include diminished educational and training opportunities, reduced employment and volunteering prospects, the denial of equal access to housing, state benefits, and parental rights as well as restrictions on international travel – in sum limitations on full participation in social, political, and economic life.³²⁻³⁵ In America cannabis legalization is increasingly seen as an avenue for social justice, and mechanisms to achieve this goal have been incorporated into legalization at the state level and advanced at the federal level (see for example, the proposed MORE [Marijuana Opportunity Reinvestment and Expungement] Act). A similar approach has yet to be introduced in Canada.⁵

Legalization and Approaches to Cannabis Equity

In 2018, Canada legalized and regulated non-medical cannabis for adult use. Unlike many American jurisdictions that have moved away from prohibition, Canadian regulation did not come in response to increasing public awareness of the racialized harms of the war on drugs.²³ Indeed, the stated aims of Canada’s *Cannabis Act* are to 1) protect young people; 2) promote public health; and 3) reduce the illegal trade in cannabis. In its current form, Canadian cannabis regulation has to date not sought to provide redress to racialized communities disproportionately affected by drug prohibition in the same way that recent American legalization efforts have. Many American states, for example, are taking active measures to lessen the burden of a criminal conviction by working to include racialized populations into the legal cannabis industry, by clearing or downgrading the criminal records of people convicted of cannabis-related offences, and by redistributing a portion of cannabis tax revenues to support community and social services in areas most affected by

drug law enforcement.⁵

Industry Inclusion and Diversity

In contrast to the disproportionately Black and Brown faces who were the casualties of the war on drugs are the overwhelmingly white faces that dominate Canada’s legal cannabis industry.²² Whereas the war on drugs led to the disproportionate criminalization of Black and Indigenous people in Canada, both groups have been systematically excluded from participating as entrepreneurs in legal cannabis industries worth billions of dollars.^{22,31,36} The reasons for under-representation in these industries are numerous. The barriers to entering legal cannabis markets are high as the cultivation, processing, and sales licences needed to operate within a legalized framework are difficult and expensive to obtain.^{31,37} Such an environment favours individuals with deep pockets and strong legal and professional connections—privileges denied to many racialized and otherwise marginalized people.

As Canadian scientific, media, and political commentators have pointed out, the Canadian cannabis industry is dominated by wealthy white males.^{38,39} According to a recent study conducted by the Centre on Drug Policy Evaluation and University of Toronto, 84% of the leaders of licenced cannabis producers and their parent companies in Canada were white and 16% were non-white, with Black people comprising just 1% and Indigenous people 2% of cannabis industry leaders. Taking race and gender together, white men (73%) featured most commonly, followed by non-white men (14%), white women (12%), and non-white women (2%).³⁶ Building on this work, Health Canada subsequently conducted its own research to examine racial, gender, and other forms of diversity among Canada’s licenced cannabis producers. In 2021, Health Canada’s Licensing and Security Division (LSD) sent a questionnaire entitled the *2021 Cannabis Licensing Experience and Leadership Demographics Questionnaire* to its current cannabis licence holders and achieved a 42% response rate for the survey (334 responses out of 790 licence holders). As with the earlier research, Health Canada’s findings revealed an underrepresentation of women in leadership positions within licenced producers (defined as Director, Officer, or other Executive position).

The survey did reveal that racialized people occupied 30% of leadership positions within licenced producers, similar to their representation in the general population. However, the response rate for this question was just 24% (79 responses), representing a small proportion of all licence holders, and should thus be interpreted with caution.¹ Further details about Health Canada’s findings can be found in the accompanying textbox. Unfortunately, available evidence suggests that Canada lags behind the United States in regard to formal efforts to foster equity, diversity, and inclusion in its legal cannabis industry.

To date, the most comprehensive effort to advance inclusion has been a “navigator service” set up by Health Canada to help self-identified Indigenous applicants through the cannabis licencing process.⁴⁰ Although potentially helpful, Valleriani et al., for example, argue that this assistance does not go far enough as the service does little to provide adequate support to those communities marginalized by the legacy of colonialism and ongoing structural racism, including barriers to financial capital and important social networks, while simultaneously presupposing a level of business acumen not equally accessible to all groups.⁴⁰ Ultimately, this initiative misses the mark when stacked up against flagship programs in the United States. The only other related assistance is being provided in British Columbia where the provincial government has committed \$676,000 to help grey-market (operating outside of the regulated framework) cannabis entrepreneurs join the legal industry.⁴¹ This program is expected to help more than 100 entrepreneurs through the provision of support needed to navigate the complex regulatory system.⁴¹ However, there is no requirement that applicants demonstrate that they have been negatively affected by cannabis prohibition, thus limiting the program’s utility as a restorative measure. Finally, Health Canada recently began a process of consulting with equity-seeking groups in an effort to address their under-representation among licenced producers, but this work is in its infancy. On the whole, the lack of action in this area has contributed to a lack diversity in Canada’s cannabis industry. Presenting an opportunity to improve cannabis industry inclusion and diversity, this topic has been included as part of the expanded scope of the legislative review of the federal *Cannabis Act*. During the launch of the legislative review in September 2022, several statements

“The first section of the questionnaire consisted of six questions which pertained to collecting demographics information. The following summarizes the key findings from this section:

- Out of a total of 334 responses, 71% of respondents believed that the cannabis licensing program enables an industry that is gender representative of the Canadian public.
- Nearly 5% of companies self-identify as Indigenous.
- The survey requested demographic information on the percentage of the companies’ leadership positions that were occupied by women, by Indigenous persons, by persons from racialized groups, by LGBTQ2+ persons and by persons with disability. Respondents had the option of responding or skipping any of these questions. As a result, there was some variation in response rates for each question. Results were as follows:
 - Out of 79 responses (24% response rate), **30%** indicated that the majority of leadership positions were occupied by a person from a **racialized group**;
 - Out of 215 responses (64% response rate), **13%** indicated that the majority of leadership positions were occupied by **women** within their company;
 - Out of 36 responses (11% response rate), **12%** indicated that the majority of leadership positions were occupied by **LGBTQ2+ persons**
 - Out of 51 responses (15% response rate), **10%** indicated that the majority of leadership positions were occupied by **Indigenous persons**; and
 - Out of 25 responses (7.5% response rate), **4%** indicated that the majority of leadership positions were occupied by **persons with a disability**.”

Above taken from the Executive Summary of the Licensing and Security Division, Controlled Drugs and Substances Branch, Health Canada report on their 2021 Cannabis Licensing – Demographic Questionnaire.

were made about broadening the focus to include impacts on Indigenous Peoples, racialized communities, and women who face greater barriers to participation in the legal industry, as detailed below.⁴²

“It was very important from a parliamentary perspective to say...we should have a much wider scope of the review to ensure that we get this right. From a parliamentary perspective I would say we were very committed to advancing three objectives...lastly, **to address the past criminalization, and the harms and injustice of past criminalization, and you can think of this in a number of different ways but other jurisdictions around the world including south of the border are better enabling individuals who have been criminalized in the past to participate in the legal cannabis marketplace.**”

– Nathaniel Erskine-Smith, MP (emphasis added)

“We actually broadened that focus...it will also consider impacts on **Indigenous Peoples, racialized communities, and women** who might be at greater risk of harm **or face greater barriers to participation in the legal industry based on identity or socioeconomic factors.**”

– Jean-Yves Duclos, MP Minister of Health (emphasis added)

“The fact that we have such a strong mandate, such a strong panel, that will enable a review that will be a lot more engaged from a consultation perspective, the work will be stronger. They will be **able to listen to and learn from** many, many actors, including Indigenous communities, **Canadians that may have not benefited as much as others from the legalization that took place in 2018, those Canadians for all sorts of socioeconomic reasons that may not have been able to access the entrepreneurship associated to the new industry.**”

– Jean-Yves Duclos, MP Minister of Health (emphasis added)

An emphasis on diversity in the legal industry is reflected in the online engagement process⁴³ and accompanying engagement paper⁴⁴ as an initial step in the legislative review.

Amnesty

The first means of advancing equity in relation to cannabis legalization is the provision of some form of amnesty. Although amnesty can take different forms, it involves retroactively removing the stigma and associated consequences of criminalization, following the introduction of a new law. As noted above, people with a criminal record face a number of challenges related to their criminalization, including in education, employment, housing, parental rights and child welfare, and restrictions over travel. As such, many recent American cannabis ballot initiatives have included a provision to seal or erase criminal records for possession, and to downgrade formerly more serious cannabis-related crimes to less serious ones, in line with the proposed changes to cannabis laws.⁴⁵ How these reforms came to be, what types of measures have been approved, their timing, and the offences targeted have varied from jurisdiction to jurisdiction. As Kilmer points out, jurisdictions considering amnesty have several questions to address, including which offences should be included, whether the onus should be on the individual to seek redress or whether the state will initiate the process, and importantly, whether these records will be “sealed” (i.e., the individuals are “pardoned”¹) or whether they will be fully expunged (i.e., a complete erasure of criminal and administrative records).³⁷

In addition to its practical consequences, the issue of pardons versus expungement raises some important considerations. In a practical sense, pardons differ from expungement in that a “pardoned” or “sealed” record still exists, it is still accessible to certain parties and, ultimately, may be reversed or overturned.³² Expungement, however, typically involves the physical and digital destruction of the criminal and associated administrative records (i.e., charging and court documents). As expunged records no longer exist, there is no practical way for the record itself to continue to impinge upon an individual’s full participation in society.³² Within a moral context, pardons and expungement differ as to where they place responsibility for the original criminalization. In the case of a pardon, the government signals that it forgives an individual for their past wrongdoing (typically following a period of good

¹The terms pardon, record suspension, and “sealed” are used interchangeably when discussing Canada, as they reflect a similar practice in the Canadian context.

behaviour), whereas by fully clearing a criminal record, expungement shows that the government was wrong to have criminalized that behaviour in the first place.

In Canada, the move to grant amnesty for people convicted of cannabis possession came after much discussion and debate. In February 2016, when calls for “pot pardons” began growing louder in Canada, Bill Blair, Canada’s cannabis czar, remarked that the issue was not being contemplated and indicated no willingness to do so.⁴⁶ However, the government came under increased pressure as advocacy groups such as The Campaign for Cannabis Amnesty urged the government to correct for this injustice.³² On October 16, 2018, the day before legalization was set to begin, Public Safety Minister Ralph Goodale announced that the government would allow people with simple possession convictions to have their records suspended.⁴⁷ Several months later, Goodale tabled Bill C-93 (*An Act to provide no-cost, expedited record suspensions for simple possession of cannabis*) and in June 2019, following intense public and political debate, the Bill received Royal Assent. Although a step in the right direction, many commentators have suggested that the government’s efforts with respect to amnesty did not go far enough.

Under the Act, individuals whose only criminal record is for a simple cannabis possession offence are eligible to apply for a record suspension. These people must have completed their sentence but can still apply if they have outstanding fines or victim surcharges associated with their eligible cannabis conviction. Individuals with charges other than simple cannabis possession are not eligible for record suspensions. Given that a simple possession charge by itself is rare, many of those with criminal records from prior cannabis convictions do not qualify. Bill C-93 also waives the \$631 fee typically required to apply for a record suspension application, however, applicants are still required to pay to obtain documents needed to complete their application—including their certified criminal record from the Royal Canadian Mounted Police and any supporting documents from the police of the jurisdiction in which they were arrested.³² Given that socially and economically marginalized people were more likely to have received a cannabis possession conviction, these costs are likely to constitute a significant barrier to access

for many people in need of relief, such as those who are facing poverty, lacking education, or residing in remote communities. Indeed, the “expedited” process is still cumbersome and involves navigating a difficult government bureaucracy—something also particularly challenging for individuals living on the margins of society.³²

Having placed the onus on the public to seek relief, rather than taking it upon themselves to initiate and carry-out the process, the uptake of the government’s program to date has been very low. Whereas the government estimated that 10,000 people were eligible for a record suspension under Bill C-93 (a figure estimated to be as high as 250,000 by other parties),³² as of October 2021, the Parole Board of Canada received 780 cannabis record suspension applications. Of these, 484 applications were accepted and 288 were returned because they were ineligible.⁴⁸ Thus, over two years after the Act came into force, only a tiny fraction of those the government believed were eligible for relief had received it. Such failure has led commentators to argue that for amnesty to be meaningful, it should include full expungement of records, and the process should be automatic, cost free, and the onus should be on the state to undertake the exercise.⁵

In December 2021, the Government of Canada introduced Bill C-5 *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*. Following the proposal of amendment by NDP justice critic, Randall Garrison, the final version of the bill includes a provision that provides for free, automatic, and permanent “sequestration” of criminal conviction records relating to the possession of all drugs (including cannabis).⁴⁹ Eneajor provides the following explanation of this provision:

“Section 10.6 [of Bill C-5] separates conviction records into two categories: (1) records of a conviction that occurred before the bill came into effect and (2) records of a conviction that occurred after the bill came into effect. Both of these categories benefit from the automatic sequestration of criminal records, with subtle differences. Records for convictions that occurred before the coming into force of the law must be kept separate and apart from other records of convictions within two years after the day the law came into force, that is, they must be sequestered before

November 17, 2024. This provision would apply to all conviction records related to simple cannabis possession, as those offences pre-date the coming into force of Bill C-5.

Records respecting convictions that occurred after the bill came into effect also must be sequestered, and sequestration must occur two years after the conviction or two years after the expiry of any sentence imposed for the offence, whichever is later. Additionally, for this second category of offences, the person convicted of the offence is deemed never to have been convicted of that offence in the first place.”⁴⁹

As Eneajor points out, the sequestration requirement of C-5 is a marked improvement over the cannabis record suspension scheme because it is free, automatic, and keeps relevant historical records (those that occurred before the bill came into force) separate and apart from other criminal convictions. Furthermore, for records generated after C-5 came into force, people convicted of drug possession will eventually be deemed never to have been convicted of that offence. This could prove useful for international travel. However, C-5 has some major shortcomings, especially with respect to cannabis offences. As the “deeming provision” only applies to records generated after it came into force, no historical cannabis possession records (i.e., those that were generated prior to legalization), are eligible. Furthermore, C-5 does not provide for the destruction of cannabis (or other drug possession records). Although separate, they still exist in RCMP and other federal agency databases.⁴⁹ More work is yet to be done to provide for full cannabis amnesty in Canada.

Reinvestment of Cannabis Taxes into Equity Programs

The final major equity initiative involves the redistribution of a portion of the tax revenue generated from legal cannabis back into the communities most harmed by prohibition. Such an approach is increasingly common in the United States (in California, Massachusetts, and Illinois, for example). In doing so, jurisdictions that have instituted such initiatives explicitly acknowledge the devastation caused by the war on drugs and the burden shouldered by the individuals and communities most targeted. They also recognize that the huge sums of money spent on the police, court systems, and correctional institutions deployed as part of the war on drugs took money from the schools, hospitals, and community centres which form the backbones of healthy communities. Unfortunately, Canada has done nothing so far to ensure that portions of revenue generated from legal cannabis are directed back into communities most harmed by prohibition.³¹

PART TWO:

How Has Cannabis Equity Been Pursued Outside of Canada and What Has Been the Impact?

Case Studies for Cannabis Equity in the United States

Soraya El Alj, Nazlee Maghsoudi, Dan Werb, Akwasi Owusu-Bempah

Over the last decade, a growing number of states have legally regulated non-medical cannabis markets for adult use across the United States, with 21 states and Washington DC having now legalized cannabis.⁵⁰ Although early cannabis legalization initiatives did not explicitly address the issues of criminal record expungement or industry inclusion and diversity, recent years have seen the consideration of equity become central to discussions on cannabis policy reform, with states having incorporated social equity provisions into laws pertaining to cannabis regulation.⁵¹ Of the 21 states where non-medical adult use of cannabis has been legalized, 15 have adopted accompanying social equity initiatives. Arizona, California, Colorado, Connecticut, Illinois, Massachusetts, Michigan, New Jersey, New York, New Mexico, Oregon, Vermont, Virginia, and Washington are among the states that have included social equity programs in their cannabis policies. However, significant differences can be observed in the operationalization and implementation of such programs across the various states. Barriers, such as the lack of timely access to capital² as well as complex amnesty procedures,

impede the success of different cannabis equity initiatives.

Our analysis will focus on three hallmark states that have implemented cannabis equity measures: Illinois, Massachusetts, and California. Massachusetts is noteworthy as it was the first state to create and execute a state-level cannabis equity program in 2018.² Illinois and California are often cited as successful models in this area,⁵² with the former seeking a comprehensive approach with robust measures, and the latter having significant municipal diversity. Before delving into the specifics of each state, we define the three elements of cannabis equity that will be considered, namely industry inclusion and diversity, amnesty, and reinvestment of cannabis taxes into equity programs. We then offer an examination of these three equity dimensions for Illinois, Massachusetts, and California, as well as a [complementary table](#) comparing provisions for industry inclusion and diversity, as well as amnesty, across states. Notably, other resources have provided an in-depth analysis of cannabis equity initiatives across the United States and may be helpful supplements to this discussion.^{2,52}

Industry Inclusion and Diversity

One of the primary elements of cannabis equity to be examined is industry inclusion and diversity, namely measures that seek to increase the level of participation of individuals from underrepresented racial groups, particularly those who have been negatively impacted by cannabis prohibition, in the employment and economic opportunities that arise from the legal cannabis sector. Measures can include prioritization in licensing, financial support, and business support.

Eligibility Criteria

The inclusion of individuals in the newly legalized cannabis industry through equity programs requires entrants to meet specific criteria. In certain states, such as Virginia, eligibility for equity programs may include a criterion relating to previous cannabis convictions.² Additionally, income is a common criterion for entry, with Arizona, for example, specifying that eligible individuals must have an annual household income below four times the poverty level.⁵³ Further, residency in a qualifying neighbourhood or municipality is a commonly used criterion, as seen in Illinois and Massachusetts. The specific criteria used to determine eligible neighbourhoods may vary among states, but law enforcement data, historical conviction and arrest rates, socioeconomic status, and unemployment rates are generally used to identify areas most affected by cannabis and drug prohibition.²

Prioritization in Licensing

Most social equity programs rely on licensing priority, exclusivity, or set asides as their core components. These provisions are designed to ensure that individuals who have been disproportionately affected by cannabis prohibition have the opportunity to participate in the legal cannabis industry. Set-asides can take various forms, such as reserving a specific type or number of licences for social equity applicants.² For example, in Arizona, the Social Equity Ownership Program⁵⁴ has set aside 26

licences for social equity applicants. Under New York's social equity program,⁵⁵ half of all cannabis licences are to be issued to social equity applicants. While less common, exclusivity periods have been implemented in states such as Massachusetts, where some licences are exclusively available to social equity applicants for a certain period. Finally, licensing priority has been implemented in some states, such as New Jersey,⁵⁶ where social equity applicants are given priority in review and licensing decisions when applying for licences.

Funding Support

Funding support can be classified into two primary categories: fee waivers and reductions, as well as grants and loans. Both provide financial aid or resources to social equity applicants for help with initial and operational business costs. This is crucial, as without such assistance, social equity applicants may encounter difficulties entering the industry or become vulnerable to exploitative maneuvers from some companies.² For example, the proliferation of social equity programs in Californian cities and counties is a direct result of the California Cannabis Equity Act of 2018, which mandated the allocation of state funds to cities and counties to develop and operate equity programs.⁵⁷

Business Support

In addition, most states that have implemented social equity provisions offer social equity applicants various forms of technical assistance, educational interventions, and other business support measures. The main goal of such measures is to assist social equity individuals in navigating the licensing process and establishing a business with all its operational and regulatory complexities.² An innovative example from Colorado is the Marijuana Enforcement Division's Accelerator Program,⁵⁸ which initiates partnerships between social equity applicants and established cannabis firms.

Amnesty

The second dimension of cannabis equity explored is

amnesty for people with previous cannabis convictions. Sealing or expungement of past convictions is central to cannabis equity schemes but there are significant variations among states, including with respect to eligible offences as well as procedural differences, with some states providing automatic amnesty, while others require the individual to file a petition.⁵⁹

Reinvestment of Cannabis Taxes into Equity Programs

The last element of cannabis equity to be highlighted is cannabis tax reinvestment into equity programs for communities most negatively impacted under prohibition. Such initiatives vary widely across states, ranging from no provisions for reinvestment to local or state-wide initiatives. For example, the Arizonian legalization bill stipulates that part of cannabis tax revenues are to be set aside for a Justice Investment Fund,⁶⁰ which will offer grants to health and non-profit organizations supporting communities disproportionately impacted by cannabis prohibition. Similarly, in Connecticut, around half of the revenues from the cannabis industry will be allocated to a new equity fund which will be used to invest in these communities.⁶¹ Additionally, New Jersey imposes a Social Equity Excise Fee (SEEF)⁶² on the cultivation of cannabis for adult use. Revenues from this tax are earmarked for initiatives designed to offset disparities related to drug laws and caused by cannabis prohibition.⁶³ In some cases, tax reinvestment occurs at the local level, such as in Evanston, Illinois.

Case Study 1: Illinois

In Illinois, adult use of cannabis was legally regulated on January 1, 2020 under the *Cannabis Regulation and Tax Act* (CRTA).⁶⁴ The legalization of cannabis, embodied by the CRTA, was driven in part by equity considerations. Indeed, policymakers claimed this legislation was meant to rectify the injustices resulting from the criminalization of

cannabis by offering and creating financial, business, and redress opportunities for communities that were historically most negatively affected.⁶⁵ The CRTA represents one of the strongest social equity provisions to date including, among others, the creation of a social equity applicant status for licensing, funding, and support for social equity candidates, a *Social Equity Cannabis Loan Program*, and automatic expungement for cannabis offences.² The Illinois Department of Commerce and Economic Opportunity (DCEO) is responsible for managing the various grant programs as well as providing technical support to social equity applicants.⁶⁶

Industry Inclusion and Diversity

Eligibility Criteria

The status of social equity applicant is central to the equity provisions developed in Illinois. This status is conferred to individuals who have been arrested for, or sentenced to, an offence that qualifies for expungement under the CRTA, or who have lived for at least five of the previous ten years in a so-called “disproportionately impacted area.” A disproportionately impacted area is defined as a geographical area that is economically disadvantaged and has been particularly affected by high rates of arrest, conviction, and incarceration during the criminalization of cannabis. The DCEO is responsible for determining which geographic areas fall into this category.⁶⁶ The social equity applicant status can also be granted to a business if at least 51% of the applicant’s current workforce meets the aforementioned criteria.

Prioritization in Licensing

In Illinois, licences for cannabis dispensing organizations, cultivation centres, infuser organizations, craft growers, and transporters are issued through a qualified lottery system.^{2,66} Only qualified applicants, determined through a scoring system, are eligible for the lottery used to award licences. The scoring system aims to promote equity by automatically providing social equity applicants with 20% of the total points available and thus increasing their prospects for approval.⁶⁶

Funding Support

Numerous funding mechanisms have been developed in Illinois to promote equity. Fee reductions have been put in place for social equity applicants providing them with a 50% reduction on application and licensing fees.⁶⁶ Applicants are eligible for fee reductions if all individuals and entities with 10% or more ownership earned less than \$750,000 in the previous calendar year and have no more than two other cannabis business establishment licences in Illinois.⁶⁴ However, these fee reductions may favour highly capitalized applicants. Indeed, lower fees allow social equity applicants with substantial financial resources to submit multiple applications, increasing their chances of obtaining a licence over applicants with lower financial means.² Consequently, in the Chicago region, 901 applications were submitted for only 47 available licences.⁶⁷

Illinois has established the *Cannabis Business Development Fund* which is used to provide low-interest loans and grants to qualified social equity applicants through the *Social Equity Cannabis Loan Program*⁶⁸ to help with the costs of entering the cannabis industry.⁶⁴ However, participants in the *Social Equity Cannabis Loan Program* have experienced significant delays in obtaining capital through financial institutions primarily due to difficulties navigating this industry which is still considered illegal under federal law, as well as numerous requirements that are set independently of the program. In response to these challenges, Illinois launched the *Direct Forgivable Loan Program* in November 2022.⁶⁹ This program, which has received \$8.75 million in state funding, aims to provide immediate access to capital for social equity applicants by offering grants ranging from \$50,000 to \$500,000. Through the *Direct Forgivable Loan Program*, funding is available to all eligible participants regardless of the status of their initial loan application with a lending partner.

Illinois stands out in terms of funding sources as it is the only state other than Vermont that uses licensing and application fees from the cannabis industry to fund its social equity programs. Indeed, the licensing fees collected for the granting of adult-use licences to pre-approved medical operators before January 1, 2021, were collected and deposited into the *Cannabis Business Development Fund*.² Additionally, to provide initial funds, \$12 million

was transferred from the *Compassionate Use of Medical Cannabis Fund*.

Business Support

Through a network of partners, the DCEO provides technical help⁷⁰ and customized support as part of its Adult-Use Cannabis Social Equity Program. Community organizations and educational institutions are among the partners. This service is intended to assist social equity applicants in obtaining and maintaining their licences, as well as to provide legal guidance and assistance with loan applications. The services offered include virtual events, videos, and workshops.

Outcomes and Impact

The start of Illinois' commitment to equity in the cannabis industry has been marked by friction and tension. Numerous lawsuits were filed against the state in April 2022 by participants who believed that the lottery selection process for licences had not been done in an equitable manner. The state responded by awarding more licences, resulting in 185 licences being issued as opposed to the 75 originally planned. However, the granting of these licences was halted for more than a year due to a court decision that prevented Illinois from issuing the 185 new cannabis store licences due to the numerous ongoing lawsuits. This court ruling was lifted in May 2022, allowing the first social equity applicant to begin the licensing process.⁷¹ As various lawsuits have highlighted, the lottery system does not appear to be the best system for distributing licences fairly. Critics claim that the lottery favours those who can afford to file multiple applications and thus maximize their chances.⁶⁷

Despite the various initiatives that have been undertaken, according to a recent report of the Illinois Department of Financial and Professional Regulation,⁷² there is a clear lack of diversity in the newly legal adult-use cannabis industry. The underrepresentation of minority groups and people of colour in senior positions is illustrated by figures included in the report: white individuals make up 88% of majority owners, 71% of minority owners, 90% of

board of directors, and 80% of executives, while Black and Hispanic individuals account for less than 10% of most senior positions. Furthermore, according to the report, there are no operating businesses that are majority owned by social equity applicants, people of colour, or people with disabilities. In addition, only 11% of employees in cannabis dispensing organizations identified as people of colour, suggesting a clear lack of diversity. However, the report promises an improvement when providing data on the conditional cannabis dispensing licences granted in 2023, as all 185 adult use licences have been issued to social equity applicants, representing an increase in new licences of over 100%. Importantly, 59 out of the 185 new licences are majority owned by people of colour. With respect to craft grow licences, 48 of 88 have been awarded to social equity applicants, 42% of which are majority Black-owned.⁷³ The report also presents a plan to improve industry inclusion and diversity through the creation of the disparity study, which will report on the impact of discrimination in the Illinois cannabis industry and include relevant recommendations for reducing or eliminating barriers to entering and participating in the cannabis industry.⁷⁴

Amnesty

Mechanism and Criteria

The CRTA requires that cannabis legalization be accompanied by mechanisms to clear criminal records for minor violations of the *Cannabis Control Act*,⁷⁵ the previous legislation that criminalized the adult-use of cannabis in Illinois. Depending on the type of criminal record, there are different procedures for expungement. Arrests for minor cannabis offences, including possession (with intent to deliver) and dealing, up to 30 grams, that did not result in a conviction are automatically expunged by the Illinois State Police (ISP) and all law enforcement agencies within the state given that the individual did not sell to a person under the age of 18 or was not arrested for a violent crime in the same case as the cannabis charges.^{76,77} Records of individuals convicted of possession (with intent to deliver) and dealing, up to 30 grams, are referred to the Prisoner Review Board (PRB).⁷⁶ The ISP is responsible for identifying and forwarding eligible records

to the PRB for review and consideration,⁷⁷ and does so automatically without a request from the individual. If the PRB determines the records are eligible for expungement, they are transferred to the Governor to grant a “pardon authorizing expungement.” Thereafter, the Attorney General files a petition for the record to be expunged in the counties where the individuals were convicted. Convictions for dealing or possessing up to 500 grams may be expunged by filing court motions. The motion to vacate and expunge in court can be filed either by the individual or the State’s Attorney.⁷⁶ Regarding the expungement of juvenile law enforcement records, a legislation is pending and currently under construction. The proposal, known as House Bill 1952, seeks to ensure that courts automatically expunge cannabis-related offences committed before a person turned 18 if the offence would have also been regarded as a crime if committed by an adult under the *Cannabis Control Act*.⁷⁸ With respect to supports for those seeking amnesty, Illinois launched a state-funded initiative in 2020 called New Leaf Illinois that consists of 18 non-profit organizations that provide free legal representation or information to people who are seeking amnesty for their cannabis offences.⁷⁹

Outcomes and Impact

Illinois leads the way in terms of cannabis amnesty. This commitment to amnesty was already demonstrated by the Governor of Illinois when he granted 11,000 pardons for cannabis-related convictions before cannabis was legalized in the state.⁸⁰ In 2020, the governor announced that over 500,000 expungements had been granted, including over 20,000 gubernatorial pardons authorizing expungements.⁸¹ As of October 2022, the number of expungements stands at more than 800,000, according to the governor.⁸² In June 2022, the governor signed legislation that will take effect in January 2023 and prohibits courts from denying petitions for expungement or sealing based on a positive cannabis test. This new law advances the fight for fairness by closing existing loopholes that continue to criminalize individuals for using cannabis years after its legalization.

Reinvestment of Cannabis Taxes into Equity Programs

Restore, Reinvest and Renew Program

The CRTA includes the creation of a program called the Restore, Reinvest and Renew Program, or R3. The overarching goal of the program is to fund grants aimed at communities that have been impacted by drug prohibition and to build an infrastructure that can address decades of disinvestment, over-incarceration, and trauma, thereby righting the wrongs of Illinois' drug war. By using 25% of cannabis taxes, this program seeks to finance interventions in five areas, namely: civil legal aid, economic development, re-entry, violence prevention, and youth development. This program specifically targets neighbourhoods and communities suffering from high rates of gun injuries and incarceration as well as child poverty and unemployment. In the program's first year, \$35 million was awarded to 80 community groups, including towards trauma services, youth development, and rehabilitation programs. More than 400 applications were submitted, which is the highest known number for any Illinois Criminal Justice Information Authority-managed grant opportunity, demonstrating the high need in such communities.⁸³ In June 2022, the state announced a second round of funding for the program with \$45 million in grants generated from cannabis taxes going towards funding 148 programs (of over 500 applications) in communities most affected by punitive drug policies. Based on feedback from the first round of applications, changes were made to include questions in the forms to ensure equity in the distribution of grants.⁸⁴

Municipal Spotlight: Evanston's Local Reparations Program

Evanston, Illinois, deserves special attention for being the first American city to develop a reparations program.⁸⁵ By imposing a 3% tax on adult-use cannabis sales⁸⁶ in the city, Evanston's Local Reparations Program aims to fund housing assistance and economic development benefits for African Americans (defined as individuals having origins in any of the Black racial and ethnic groups of Africa).^{87,88} On January 13, 2022, the first 16 recipients of Evanston's

Restorative Housing Program were selected to receive a \$25,000 housing grant, a historic day representing the first time since Reconstruction that a government body has granted reparations to African Americans.⁸⁹ However, some are concerned about the program's long-term viability as revenues from cannabis sales in Evanston, which are used to fund the program, are lower than expected. Given the city's single dispensary, fulfilling the promise of reparations appears to be difficult. Proposals to address this issue have been made, including the imposition of a tax on lakefront properties and the transfer of \$5 million from the general fund.⁹⁰ Additional dispensaries may also open in the future if zoning approvals are granted.⁹¹

Case Study 2: Massachusetts

On November 8, 2016, Massachusetts voters approved *The Massachusetts Legalization, Regulation and Taxation of Marijuana Initiative*, also known as Question 4, which aimed to legalize cannabis for adults 21 years and older.⁹² One of the main provisions of Question 4 was the establishment of the Cannabis Control Commission to regulate the market. A key responsibility of the Commission is to ensure and encourage full participation in the cannabis industry by individuals and communities who have previously been disproportionately impacted by cannabis prohibition and criminalization. In 2018, Massachusetts made history by becoming the first state to design and implement a state-wide social equity program with the legalization of cannabis use.²

Industry Inclusion and Diversity

Eligibility Criteria

The Social Equity Program (SEP) was designed to redress the harm caused by cannabis prohibition and resulting incarceration. Access to the SEP is governed by specific eligibility criteria and meeting at least one of the following is required: 1) individuals who have lived in an Area of Disproportionate Impact for at least five years and have an income that does not exceed 400% of area median

income, 2) individuals who have resided in Massachusetts for at least one year and have been convicted of an offence under the *Controlled Substances Act* which formerly criminalized cannabis, or an equivalent conviction in another jurisdiction, 3) individuals who are children or spouses of those who have been convicted of an offence under *Controlled Substances Act* or an equivalent conviction in another jurisdiction, 4) individuals who are Certified Economic Empowerment Priority Applicants if the person listed as the owner on the original certification has lived in Areas of Disproportionate Impact for five of the last ten years, has experience in positions serving disproportionately impacted communities, is of Black/African-American/Hispanic origin, or can demonstrate past experience promoting economic empowerment in Areas of Disproportionate Impact.⁹³ Currently, 29 communities have been designated as “Areas of Disproportionate Impact” by the Commission and are based on the 1) average annual number of drug arrests; 2) average annual rate of drug arrests per 100,000 population; 3) percentage of people living in poverty; and 4) percentage of residents who identified as Black or Latinx. In other words, Areas of Disproportionate Impact were characterized by high rates of drug arrests, which were exacerbated by poverty and racial segregation.⁹⁴

In addition to the SEP, the Commission also developed the status of Certified Economic Empowerment Priority Applicant for those who meet at least three of the criteria in the textbox below.⁹³

Eligibility Criteria for Certified Economic Empowerment Priority Applicants

- Majority of ownership belongs to people who have lived in Areas of Disproportionate Impact for five of the last 10 years.
- Majority of ownership has held one or more previous positions where the primary population served were disproportionately impacted, or where primary responsibilities included economic education, resource provision or empowerment to disproportionately impacted individuals or communities.
- At least 51% of current employees/subcontractors reside in Areas of Disproportionate Impact and will

increase to 75% by first day of business.

- At least 51% of employees or subcontractors have drug-related Massachusetts Criminal Offender Record Information (CORI) but are otherwise legally employable in a cannabis-related enterprise.
- A majority of the ownership is made up of individuals from Black, African American, Hispanic, or Latino descent.
- Owners can demonstrate significant past experience in or business practices that promote economic empowerment in Areas of Disproportionate Impact.

Source: Cannabis Control Commission (2022)⁹³

Prioritization in Licensing

The Commission is obliged to give priority in review and licensing decisions to enterprises owned in majority by Certified Economic Empowerment Priority Applicants or participants in the SEP.² In addition, a period of exclusivity for economic empowerment and social equity licensees was established for at least three years for social consumption establishment, marijuana courier, and marijuana delivery operator licences.⁹⁵

Funding Support

Massachusetts offers an automatic waiver of the application fee for economic empowerment and social equity applicants. In addition, these same individuals receive a 50% discount on annual licensing fees.⁹⁶ Unlike Illinois, in Massachusetts there are no state-level licence caps meaning that there is no limit to the number of licences that can be issued. One can therefore hypothesize that this state will not suffer from the same unintended consequences of fee waivers observed in Illinois.

On August 11, 2022, Massachusetts Governor Charlie Baker signed S. 3096,⁹⁷ an act aimed to promote greater equity in the cannabis industry. This new bill aims, among other things, to strengthen the monitoring of Host Community Agreements (HCAs) that cannabis businesses are required to conclude with their host municipalities.⁹⁸ Under this law, municipalities must comply with new

requirements for HCAs including a limitation on the community impact fees that can be charged by municipalities to cover costs such as municipal inspection fees and overtime costs for public safety personnel.^{98,99} Since 2019, the Commission has been advocating for a reform of the HCAs, deemed to present serious barriers to entering the newly legal cannabis industry.¹⁰⁰ As financial barriers seem to be a problem, particularly for minorities, this new legislation allows for more equity by lowering the entry barriers. Another major provision of the new law is the creation of a fund called the *Social Equity Trust Fund*. The purpose of this fund is to encourage the full participation in the legal cannabis industry of people from communities that have been disproportionately affected by the prohibition of cannabis. Through this legislation, 15% of the *Marijuana Regulation Fund* will be transferred to the *Social Equity Trust Fund* each year. This fund will provide grants and loans to economic empowerment and social equity applicants to boost their participation.⁹⁸ Unlike many other states, Massachusetts has frequently been singled out for not providing loans, grants, and other financial assistance to equity businesses. This posed a significant barrier to entry for those who had suffered as a result of cannabis criminalization.¹⁰⁰

Massachusetts is also considering a bill that aims to ensure the equitable empowerment of minority and community-owned businesses that have been disproportionately affected by prohibition. Bill H.178 proposes to establish a fund that would provide low-interest or interest-free loans to eligible businesses, including economic empowerment and social equity applicants. These loans would assist projects in meeting start-up or expansion costs. To establish this fund, the proposed legislation suggests that the state transfer \$10 million from the *Marijuana Regulation Fund* in which the revenues from the state cannabis excise tax, application and licensing fees, and industry fines are deposited, to a *Cannabis Community Empowerment Fund*.^{101,102} Finally, the bill includes a monitoring element requiring the state to produce an annual report including key data such as the number of projects aided by the fund and an assessment of the current advancement of each funded project.^{2,102}

Massachusetts does not use licensing fees as a source of funding. Instead, the legislature has the authority to designate state funds for the social equity program. In the

event that it does not, the funding is organized and comes directly from the Commission, which encourages cannabis businesses to donate 1% of their revenues for community reinvestment.²

Business Support

The overarching aim of the SEP is to provide participants with the tools and training needed to apply for and obtain a licence, and the skills necessary to find employment in the cannabis industry. The state-wide program has an educational focus since it is primarily designed to educate and train participants in the following areas: “entrepreneurship, managerial-level workforce development, re-entry and entry-level workforce development, and ancillary business support.”⁹³ In addition, the program aims to provide technical assistance in the form of tutorials or training provided by Commission-certified vendors, though participation does not guarantee the obtention of a licence.^{93,103}

Under the terms of the Commission’s mandate, each applicant for a Marijuana Establishment licence must provide a detailed plan of how it will positively impact “Disproportionately Harmed People” which includes five categories as defined by the Commission:¹⁰⁴

1. Past or present residents of Areas of Disproportionate Impact
2. Individuals with Certified Economic Empowerment Priority Applicant status
3. SEP participants
4. Massachusetts residents with prior drug convictions
5. Massachusetts residents whose parents or spouses have been convicted of drug abuse

The Commission cites three equity-oriented goals that applicants seeking licensure may choose to pursue in their plan: bringing down barriers to entry into the commercial adult-use cannabis industry for disproportionately harmed individuals, providing mentoring or technical assistance to disproportionately harmed individuals, or providing them with business assets or other benefits.¹⁰⁴

Each applicant for a Marijuana Establishment licence must

also provide a diversity plan to achieve equity for certain demographic groups designated by the Commission:¹⁰⁵

1. Minorities
2. Women
3. Veterans
4. Persons with disabilities
5. People of all gender identities and sexual orientations

Specifically, in a document aimed at providing guidance, the Commission mentions three goals that can be included in the diversity plan: increasing the number of people from the above demographic categories working in the operations of a Marijuana Establishment and providing them with tools to ensure their success; increasing the number of individuals from these groups in leadership and management positions, providing these individuals with assistance to enter the adult-use cannabis industry and increasing the number of businesses owned by people from these categories.¹⁰⁵

Outcomes and Impact

Despite such initiatives and Massachusetts' emphasis on equity in the cannabis industry, the established system has not been entirely successful. As of July 8, 2022, 69.5% of the owners of cannabis businesses were white, compared to only 7.2% of Black-owned businesses.¹⁰⁶ According to Commissioner Nurys Camargo,¹⁰⁷ these low rates can be attributed to the state's lack of financial support. Access to capital does indeed seem to be the main problem for economic empowerment and social equity applicants and represents a serious barrier to entry.¹⁰⁷ Various bills have been passed to create funds to address this challenge and may improve diversity in the industry.^{97,102} While specific licence classes are exclusively available for economic empowerment and social equity licensees for a prespecified period, progress in this initiative to enhance industry inclusion varies among licence classes. Specifically, social consumption establishments have seen little progress in licensing and commencing operations due largely to the need for a change in state law granting municipalities the right to authorize social consumption.²

In Massachusetts, cannabis licensing is conducted at the

state level, but municipalities can also implement their own licensing process if it does not conflict with state laws and regulations. Furthermore, municipalities are responsible for determining the terms and conditions for cannabis businesses operating within their jurisdiction.¹⁰⁸ Massachusetts has been criticized for granting excessive control to cities and towns, which has made it far more expensive to open cannabis businesses and resulted in corruption scandals.¹⁰⁹ Granting power to municipalities over the approval process has also had an impact on equity, as municipalities, unlike the state, are not required to consider equity when granting licences.¹⁰⁹ Indeed, municipalities are not required by law to provide preferential or more favourable contractual terms to applicants for social equity during the HCA process.¹¹⁰ However, it appears that the state is on its way to resolving such issues with the passage of bill S. 3096,⁹⁷ which strengthened the monitoring of HCAs and reduced community impact fees.

Amnesty

Mechanism and Criteria

Since 2018, it has been possible to expunge cases involving crimes that are no longer considered criminal under legalization, such as possession of two ounces or less of cannabis. However, this new law (Mass. General Laws c.276 § 100K) only covers charges of possession and not possession with intent to distribute or other drug-related crimes.¹¹¹ Two mechanisms are available to individuals who wish to receive amnesty for past cannabis offences. First, there is the sealing of a case, which limits the number of people who have access to the criminal record. Once a record is sealed, it can only be accessed by the Department of Early Education and Care, Department of Children and Families, Department of Youth Services, as well as law enforcement services.¹¹² Second, there is expungement, which destroys the entire record so no one has access to it.¹¹¹ Under Massachusetts sealing law, it is possible for an individual to immediately seal offences that are no longer felonies. The process is described as simple, quick, free and is done through a petition.¹¹¹ On the other hand, the possibility of expunging cannabis-related crimes which is also done through a petition is rather limited.¹¹³ Unlike

sealing, a judge has the right and power to refute a motion for expungement because the judge must evaluate whether expungement is “in the interests of justice” before being able to order the expungement of a file.¹¹¹ Many lawyers representing former defendants have denounced the misuse of this clause to block dozens of otherwise eligible claims. Both processes have been criticized for putting the onus on the individual. Indeed, individuals are responsible for learning about the program, determining if they are eligible, searching for records in the complex filing system, and submitting them all by themselves.¹¹⁴

Outcomes and Impact

According to data from the Massachusetts Probation Department, between January 2019 and July 2021, 2,186 expungement applications were filed by people with prior convictions and only 16% were approved. This low rate can be attributed to the aforementioned barriers, such as restrictive eligibility criteria and the broad latitude granted to judges, as well as other factors such as a lack of awareness among former defendants, disorganization of state records, and the length of the process for expungements.¹¹⁴ Several bills are being introduced to address this issue, including Bill S.1048¹¹⁵ which aims to ensure equal access to cannabis expungement by allowing an individual eligible for expungement of a decriminalized offence to apply to expunge the charge without requiring a hearing or other additional actions. Furthermore, this legislation would allow someone who is currently incarcerated for a cannabis offence, which is now decriminalized, to apply for release. At time of writing, the bill was sent to be studied. Another bill, namely Bill S.73,¹¹⁶ was proposed that would require the state to notify former defendants who are eligible for criminal record expungement. Currently, the bill was referred to the committee on Senate Ways and Means.

Reinvestment of Cannabis Taxes into Equity Programs

Although the law that legalized cannabis in Massachusetts contains provisions¹¹⁷ that taxes can be used, among other

things, to fund restorative justice programs and mentoring services in communities disproportionately affected by high rates of arrest and incarceration for cannabis-related offences, the reality is quite different. Excise taxes collected in fiscal years 2019 and 2020 were deposited, as required by law, into the *Marijuana Regulation Fund*. According to a public records request, the vast majority of excise taxes in this fund were allocated to the state’s Division of Alcohol Administration and a smaller portion was used to fund the Cannabis Control Commission.¹¹⁸ There is no database on the use of local option taxes, which allow communities to receive up to 3% of revenue from sales of recreational cannabis, as each municipality decides how the money will be spent. However, the town of Northampton, where one of the first cannabis dispensaries for recreational use opened, can offer some hints as to how the funding was distributed throughout the state. Indeed, the taxes were primarily used to support the city’s general fund, which finances both municipal services and schools.¹¹⁸ In addition, cannabis businesses can be charged community impact fees by cities. This is a 3% fee on sales to offset the costs incurred by the city as a result of the cannabis business. This revenue has primarily been used in Northampton for public transportation projects as well as road and pavement improvements.¹¹⁸ At present, Massachusetts does not appear to use cannabis taxes for community reinvestment purposes.

Case Study 3: California

On November 8, 2016, California passed Proposition 64 into law, legalizing the personal use and cultivation of cannabis for adults over the age of 21, reducing criminal sentences for cannabis-related offences, and allowing for reclassification and resentencing of prior cannabis-related records.¹¹⁹ To reconcile this new law with the existing law on medical cannabis, the *Medical and Adult Use Cannabis Regulation and Safety Act* (MAUCRSA) was adopted in 2017 and laid the groundwork for the legal cannabis market in California.¹²⁰ California’s cannabis industry is regulated at both the state and local levels. Statutes at the state level are laws passed by the legislature that apply to the entire state, and the MAUCRSA is the primary statute.

Further, state agencies create regulations that interpret MAUCRSA and apply to the entire state. At the municipal level, ordinances are created by cities and counties that wish to develop more specific rules. Such ordinances are local in scope and must be consistent with the state-wide regulations and statutes. In order to create a more just and inclusive industry, many cities and counties have passed ordinances to create equity programs for those that have been affected by cannabis and drug prohibition.¹²¹

Industry Inclusion and Diversity

In California, equity programs are locally developed and the state is required to provide funding to assist municipalities with programs that aim to include and support individuals and communities who have been disproportionately impacted by cannabis criminalization to participate in California's legal cannabis market.¹²² While the state funds these programs through grants, there is no state-wide equity program to support industry inclusion and diversity. According to the Department of Cannabis Control, this local focus enables the development of programs that are tailored to the circumstances of local communities and take into account their residents' experiences.¹²³ Oakland and Los Angeles were the first cities to propose equity programs for the legal cannabis industry.¹²⁴ Such programs in both municipalities, along with California's capital city of Sacramento, are discussed below.

In 2017, **Oakland's** Equity Permit Program was launched to reduce and eliminate disparities in the cannabis industry by prioritizing those who have been most severely impacted by the drug prohibition, and by minimizing the barriers that these individuals face in entering the industry.¹²⁵ Oakland's program is often cited as an example of an effective¹²⁴ equity initiative. In 2018, **Los Angeles** launched its social equity program which seeks to repair harm caused by drug prohibition. To fund the program, Los Angeles received approximately \$7.8 million in state funding.¹²² In 2018, the **Sacramento** City Council passed a resolution creating the *Cannabis Opportunity Reinvestment and Equity Program* (CORE)¹²⁶ to assist communities and individuals who have been negatively impacted by the disproportionate enforcement of cannabis laws.

Eligibility Criteria

To be eligible for **Oakland's** Equity Permit Program, individuals must have been convicted of a cannabis offence after November 5, 1996, or have lived 10 of the last 20 years in one of the Oakland police beats identified as having the highest number of cannabis-related arrests. In addition, these applicants must also have an income of less than 80% of the city's median income.¹²⁷

Los Angeles' social equity program is divided into three tiers with differing requirements.^{128,129} To qualify for the first tier, 51% of equity must be held by individuals with a low income and a prior arrest/conviction for cannabis in California or a minimum of five years cumulative residency in a disproportionately impacted area. To qualify for the second tier, 33.33% of equity must be held by individuals with a low income and a minimum of five years cumulative residency in a disproportionately impacted area; or a minimum of 10 years cumulative residence in a disproportionately impacted area. To qualify for the third tier, a Social Equity Agreement must be entered to provide capital, leased space, business, licensing, and compliance assistance to those in the first or second tiers.¹³⁰ Disproportionately impacted areas are defined based on cannabis-related arrests. The program offers many benefits¹³¹ including priority treatment for licence applications, technical assistance, fee waivers, grants, and legal services.

In **Sacramento**, five classification categories regulate the CORE program's eligibility requirements. While classifications 3, 4, and 5 are for businesses, classifications 1 and 2 are for individuals. Classification 1 includes individuals who live or have lived in a low-income household in Sacramento and who are an immediate family member of someone who was arrested in Sacramento for a cannabis-related crime between 1980-2011. Classification 2 includes individuals who have lived in a low-income household in specific areas for 5 consecutive years between 1980 and 2011. Businesses that are at least 51% owned by individuals from classifications 1 and 2 belong to classification 3. Classification 4 includes the CORE Program Incubators (i.e., companies that either employ a certain percentage of participants in classifications 1 or 2, contract with CORE participants, donate space and

equipment to CORE participants, or transfer capital shares to CORE participants).¹³² Finally, classification 5 is made up of Cannabis Social Enterprises owned at least 51% by people of classifications 1 and 2 and aiming to improve the financial, social, and environmental wellbeing of the disadvantaged community in which they are located, either structured as a for-profit or non-profit entity.¹³²

Prioritization in Licensing

In **Oakland**, half of all cannabis licences that are issued for cultivators, delivery-only dispensaries, distributors, testing labs, manufacturers and transporters must be issued to social equity applicants or incubators who assist the latter by providing them with three years of free rent.¹²⁵ Permits are thus awarded to equity applicants and general applicants on a 1:1 basis. By “incubating” an equity applicant, general applicants can acquire priority review status. To do so, the general applicant must supply an equity applicant with 1,000 square feet of free commercial space for three years.¹²⁷ As of November 2022, 376¹³³ candidates had expressed an interest in incubating minority-owned enterprises by applying to become incubators.

In **Los Angeles**, social equity applicants are entitled to priority processing for licence applications, priority access to licences, and priority processing for renewal applications.¹³³ Applications for cannabis retail, delivery, and cultivation licences are exclusively open to social equity applicants until January 1, 2025.¹³⁴

In **Sacramento**, all social equity applicants, ranging from classifications 1 to 5, are entitled to priority processing of their application in which the city will review and approve their applications or renewals before any other applications. In addition, individuals and businesses in the 1, 2, 3 and 5 classifications have exclusive access to all future storefront dispensary permits.¹²⁶

Funding Support

Most of the below programs^{135,136} are funded by the state through the *Cannabis Equity Grants Program for Local Jurisdictions*,^{122,137} administered by the Governor’s Office

of Business and Economic Development (Go-Biz), which aims to assist local governments in the fight for greater equity by providing funding for municipal equity programs that support industry inclusion and diversity. In addition, the Department of Cannabis Control may waive licence fees for Californian cannabis equity businesses that satisfy certain conditions. Businesses enrolled in a local equity program can attest to meeting the equity criteria using the Equity Fee Relief Request Form, while those who are not enrolled in the program must provide documentation demonstrating their eligibility based on previous cannabis convictions, income, and neighborhood.¹³⁸

In **Oakland**, social equity applicants qualify for fee waivers.¹²⁵ In 2019, Oakland lowered the tax rate for all social equity businesses with earnings under \$1.5 million,¹³⁹ reducing the capital required to operate a cannabis business which can present significant obstacles to underrepresented and historically criminalized groups. With respect to grants, the Cannabis Equity Grant Program provides grants to candidates after applying and going through a verification procedure. Funding amounts vary and correspond with different business stages, from establishment to expansion.¹⁴⁰ In addition, funds from Go-Biz and the Bureau of Cannabis Control (BCC) are used to promote workforce development opportunities for the cannabis industry.¹²⁴ One specific example is financing the Cannabis Workforce Development Grant Program which awards grants up to \$50,000 to social equity applicants that recruit, train, and/or retain a skilled and diverse workforce.¹⁴¹ Further, in 2017, the Oakland City Council concluded that the lack of personal wealth in low-income regions and federal limits on bank loans were major obstacles for social equity applicants and needed to be addressed.¹⁴² As a result, they passed legislation to establish the Equity Loan Program^{142,143} which reinvests cannabis tax revenue to support historically impacted individuals by providing them with economic opportunities.

In **Los Angeles**, a Fee Deferral Program¹³³ has made approximately \$250,000¹⁴⁴ in total available to social equity applicants to date. Currently, the Department of Cannabis Regulation is working to develop criteria that would regulate entry into the program.¹⁴⁴ Funding has been earmarked to waive application fees for social equity applicants selected for the opportunity to apply for a retail

cannabis licence as part of the retail application lottery held in December 2022.¹⁴⁵ In 2021, Los Angeles created the Social Equity Entrepreneur Development (SEED) Grant Program to provide financial support to social equity applicants.¹⁴⁶ Los Angeles has allocated \$11 million¹⁴⁶ to the SEED Grant Program thus far.

In **Sacramento**, a waiver of the Business Operating Permit (BOP) fee¹²⁶ is available to social equity applicants in classifications 1, 2, 3, and 5. Such applicants are also exempt from terms of the Neighborhood Responsibility Plan,¹²⁶ which aims to reduce the harmful effects of the newly legal cannabis industry by imposing a tax on cannabis enterprises equal to 1% of gross income.¹⁴⁷ A key component of funding support for Sacramento's social equity program is *CORE Capital*,¹³⁵ a six-year borrowing scheme with no interest for social equity applicants and businesses. To secure an initial loan of up to \$50,000, the applicant must have signed a commercial lease for a location or own a premises. Loan repayments will be redirected to *CORE Capital* to keep providing no-interest loans in the future. Sacramento also offers grants through its *CORE Grant Program*.¹³⁶ In 2022, this program will operate with \$4.35 million in funds predominantly allocated to the Tiered Grant Program that offered grants ranging from \$58,000 to \$90,000 to 40 participants, and with \$1 million allocated to a competitive grant application scheme dedicated for bigger projects. Funding amounts vary for each tier and correspond with different business stages.¹³⁶

Business Support

As part of their Equity Permit Program, **Oakland** developed a technical assistance program.¹⁴⁸ Provided by Oakland University as the technical assistance program consultant for 2022- 2025,¹⁴⁸ the free program is delivered to social equity applicants through virtual classrooms, self-paced online courses, and webinars,¹⁴⁹ and offers a variety of courses in business, horticulture, bud tending, and extraction.¹⁵⁰ Oakland also created the Gaining Resources to Achieve Sustainable Success (GRASS) initiative to help equity loan and grant recipients,¹⁴³ and draws on programs utilized by other capital providers, such as microlenders and equity investors, to assure the development and

success of the entrepreneurs they finance. Finally, under its Legal Assistance Program Knox & Ross Law Group,¹⁵¹ Oakland offers limited but free legal assistance to social equity applicants on matters such as licensing, compliance, business formation, capital raising, contracts, commercial leases, and dispute resolution.

As part of their social equity program, **Los Angeles** provides pro bono and low bono legal assistance.¹⁵² This program is the result of a partnership between the Los Angeles Department of Cannabis Regulation (DCR) and the Los Angeles County Bar Association's Cannabis Section. This program aims to foster equal access to legal counsel, encourage fair and equitable participation in the legal cannabis industry, and assist in discouraging predatory behaviour. Social equity applicants receive up to 10 hours of free legal counsel and are eligible for up to 30 hours of legal advice at a discounted rate. Further, the social equity program in Los Angeles provides assistance in the areas of business, licensing, and compliance¹⁵³ including by offering online training on local and state licensing requirements, cannabis-related regulation, business development, workforce development, and cannabis technology. The Business, Licensing and Compliance (BLC) Assistance Program's Learning Management System (LMS)¹⁵³ was also recently introduced by the DCR and allows social equity applicants to access online courses, digital materials, and educational activities on subjects like branding and marketing, budgetary planning, and security requirements.

In **Sacramento**, the CORE program funds an initiative called Sacramento Grow Green¹⁵⁴ to assist people and communities that experience difficulties in establishing cannabis businesses due to the impacts of drug prohibition. This training-oriented program is offered to social equity applicants and comprises business courses, technical assistance, consulting, and mentoring.¹⁵⁵ Between 2019 and 2021, this initiative created/maintained 30 jobs, and 18 of the 255 people who took part in the program are now running a business.¹⁵⁶

Outcomes and Impact

To date, the **Oakland's** Equity Permit Program has been largely successful.¹⁵⁷ As of November 2022, Oakland

had granted over 190 cannabis licences to social equity applicants.¹⁵⁸ Oakland's approach¹³⁹ to licence distribution is widely regarded as one of the most innovative and equitable in the country, with all cannabis licences distributed on a 1:1 basis. Extensive financial and logistical assistance offered in Oakland is an important element of the social equity program's success. However, the Equity Loan Program had mixed results, with several participants defaulting on payments and being sent to collections.¹³⁹ Furthermore, unlike in Los Angeles, there is no premises requirement, thus depleting applicants' monetary resources.¹⁵⁷

Los Angeles' social equity program has been criticized for having significant bureaucratic barriers.¹⁵⁹ Even local leaders and officials entrusted with improving inclusivity have stated that the programs faced many challenges.¹⁵⁹ Obstacles identified include a lack of funding, changing standards, and long processing times for applications.¹⁵⁹ The requirement that all applicants have a property,¹⁵⁷ whether rented or purchased, before applying for a business licence has been the most problematic aspect of the program in Los Angeles. As the processing of licensing applications became bogged down in bureaucratic delays,¹⁵⁹ many people were paying thousands of dollars per month for empty buildings that generate no income. Furthermore, those who can afford attorneys can circumvent such procedural hurdles. Industry experts say it wasn't long before it became clear that those who generally gain in other industries, namely individuals with greater social, political, and economic capital, were also profiting here.¹⁵⁹ On December 8, 2022, the retail application lottery¹⁴⁵ selected 100 verified social equity applicants for the opportunity to apply for a retail cannabis licence in Los Angeles.

In **Sacramento**, the first thirty cannabis retail licences were not granted to Black-owned or equity businesses and had already been awarded by the time the first CORE participants completed the program. However, in April 2021, the city allocated ten additional licences solely to CORE participants to address this issue.¹⁶⁰ In addition, according to the Sacramento Comprehensive Cannabis Study,¹³⁹ market conditions, tax burdens, and the unregulated market are putting pressure on local small businesses. Furthermore, even highly organized and qualified businesses are frequently unable to generate a

profit and struggle to pay state and federal taxes. Among the potential solutions suggested is that Sacramento follow Oakland and reduce its local tax for all social equity businesses while maintaining the current tax for others.

Amnesty

Mechanism and Criteria

Proposition 64 provided means for individuals who had been convicted at the time of prohibition to have their sentences reduced or dismissed. Individuals convicted of cannabis possession, cultivation, possession with intent to sell, sale, or transportation of cannabis were eligible for either reclassification or resentencing. Individuals could petition the superior court for reclassification when they had already served their sentence and were no longer in prison or under supervision. Individuals still serving a sentence or under probation could petition the superior court for resentencing. In this case, the court decided whether to resentence the individual based on the risk the individual poses to public safety. In contrast, reclassifications were based on whether the applicant was convicted of an offence modified by Proposition 64. The specific nature of the offences determined the new sanction assigned. Under Proposition 64, some offences became completely legal, such as possessing less than 28.5 grams of cannabis, while others, such as selling cannabis, were reduced to misdemeanors.¹⁶¹

Moreover, in 2016, then-District Attorney George Gascon collaborated with Code for America, a non-profit organization that develops technology solutions to social problems, to create an algorithm to clear cannabis-related records.¹⁶² This partnership resulted in the creation of *Clear My Record*,¹⁶² a software that reads through criminal history documents and determines which cases are eligible for a relief or downgrade from felony to misdemeanor. In addition, the software automatically fills out the necessary forms for the courts. Currently, the program is being used in several California jurisdictions,¹⁶² including Los Angeles and Sacramento, as well as in Illinois.¹⁶³

In 2018, reclassification and resentencing for cannabis convictions was made automatic through Bill No. 1793.¹⁶³

As a result, the responsibility for this process shifted from individuals to California institutions. This bill was articulated around two main targets. First, prior to July 1, 2019, the Department of Justice was required to review the state's summary criminal history information database and locate any prior convictions that might be dismissed or sealed. The identified cases were then to be transferred to the prosecution of the relevant jurisdictions. By July 1, 2020, the prosecutions were required to review each case and decide whether to contest the dismissal or sealing.

In 2022, additional measures were put in place with Bill No. 1706¹⁶⁴ to facilitate delivery of automatic amnesty by addressing implementation delays and gaps.¹⁶⁵ Under the new bill, courts are instructed to reclassify and resentence cannabis convictions. It also mandates monthly reports from the Department of Justice/Judicial Council on progress made.^{164,166} By setting clear deadlines and guidelines for agencies responsible for clearing eligible files, as well as providing a monitoring and progress reporting mechanism, the new bill aims to ensure that bureaucratic delays and lack of transparency do not prevent individuals from accessing the amnesty for which they are eligible.¹⁶⁵

Outcomes and Impact

By 2020, state prosecutors had identified approximately 144,000 cannabis convictions that were eligible for amnesty using *Clear My Record* technology.¹⁶⁷ This accounts for roughly two-thirds of all eligible cannabis convictions in California. For example, in Los Angeles, 66,000 cases were processed by the end of 2021.¹⁶⁸ In addition, the city's state attorney announced that his office had uncovered 58,000 additional cannabis convictions eligible for sealing.

Despite these efforts to speed up and automate the process, tens of thousands of Californians are still waiting for their criminal records to be processed. According to a Los Angeles Times investigation,¹⁶⁸ at least 34,000 cannabis-related criminal records have yet to be fully processed by Californian courts. Moreover, district attorneys received 191,055 potentially eligible cannabis cases from the Department of Justice for review. They had until July 1, 2020, to submit these cases to the court. Although most counties made it by this deadline, they did not finish

the task of updating the files and sending them to the Department of Justice for background checks. Such delays in processing can have disastrous consequences for people such as in seeking employment, professional licences, housing, and loans. Many California cities attribute the delays to a mixture of factors such as the COVID-19 pandemic, staff shortages, outdated case management systems, old files that require manual review, technical issues, lack of a centralized state-wide registration system, as well as an absence of coordination among counties. While the new measures within Bill No. 1706 are poised to address implementation delays and gaps in delivering automatic amnesty, the impact of this change in benefiting people with past cannabis convictions remains to be seen.

Reinvestment of Cannabis Taxes into Equity Programs

A provision in Proposition 64, which legalized cannabis use for adults, called for the establishment of the *California Community Reinvestment Grants (CalCRG)* program.¹⁶⁹ The organization that funds this program, Go-Biz, is required by law to provide grants to local health departments and non-profit groups to assist them in creating initiatives for communities that have been disproportionately impacted by previous criminalizing drug policies. Such grants are made available to community-based organizations that launch programs in the following fields: job placement, substance use treatment, mental health treatment, system navigation, legal services, and linkage to healthcare-related services. Cannabis excise and cultivation taxes are used to fund the program. For the 2021-2022 fiscal year, 78 grants have been awarded to organizations throughout the state of California.¹⁷⁰ These grants represent \$3.5 million¹⁷¹ in tax dollars reinvested in communities that have been disproportionately impacted by drug prohibition. Such figures are bigger compared to the previous fiscal year in which the state awarded approximately \$29 million in grants to 58 non-profit organizations through the CalCRG program.¹⁷¹

Table: Comparing Provisions for Industry Inclusion and Diversity, as well as Amnesty, in Illinois, Massachusetts, and California

State	Industry Inclusion and Diversity					Amnesty		
	Eligibility Criteria	Prioritization in Licensing	Funding Support			Business Support	Mechanism and Criteria	Who is Responsible?
			Fee Waivers and Reductions	Grants and Loans	Source of Funding			
Illinois	<p>Social equity applicants are individuals (or businesses with 51% of their workforce) meeting criteria including:</p> <ul style="list-style-type: none"> • Previous cannabis offence • Residing in qualifying area 	<p>Scoring system to distribute licences automatically provides social equity applicants with 20% of the total points available, increasing prospects for approval</p>	<p>Social equity applicants can qualify for a 50% reduction in application and licensing fees under certain conditions</p>	<p>Social equity applicants can qualify for grants and low-interest loans</p>	<p>Licensing and application fees from the cannabis industry</p>	<p>Technical help and customized support (e.g., licensing, legal issues, loans)</p>	<p>Expungement procedure depends on type of record:</p> <ul style="list-style-type: none"> • Arrests related to minor cannabis offences: Automatic expungement • Convictions for cannabis offences up to 30 grams: Expungement by Governor pardon • Convictions for cannabis offences up to 500 grams: Expungement by filing court motions 	<p>Responsibility of the state, not the individual, except for convictions for cannabis offences up to 500 grams, in which a court motion must be filed by the individual or the State's Attorney</p>
Massachusetts	<p>Economic empowerment and social equity applicants are based on meeting criteria including:</p> <ul style="list-style-type: none"> • Previous cannabis offence • State residency • Residing in qualifying area • Income • Qualifying populations 	<p>Priority in review and licensing decisions to enterprises owned in majority by economic empowerment and social equity applicants, with exclusivity period of at least three years for social consumption establishment, marijuana courier, and marijuana delivery operator licences</p>	<p>Automatic waiver of the application fee and 50% discount on annual licensing fees for economic empowerment and social equity applicants</p>	<p>New legislation created the <i>Social Equity Trust Fund</i> which will provide grants and loans to economic empowerment and social equity applicants</p>	<p>Funds are designated by the legislature or come directly from the Cannabis Control Commission</p>	<p>Tools, training, and technical assistance (e.g., management, recruitment and employee training, accounting, sales forecasting)</p>	<p>Sealing and expungement of possession charges that are no longer considered criminal:</p> <ul style="list-style-type: none"> • Sealing: Limits the number of people who have access to the criminal record; Quick and free process through a petition • Expungement: Destroys the entire record so no one has access to it; Through a petition and requires the evaluation of a judge 	<p>Both processes are not automatic and put the onus on the individual</p>
California (For Industry Inclusion and Diversity: Oakland, Los Angeles (LA), Sacramento)	<p>Social equity applicants are based on meeting criteria including:</p> <ul style="list-style-type: none"> • Previous cannabis offence • Residing in qualifying area • Income 	<p>50% of all licences set aside for social equity applicants (Oakland)</p> <p>Priority in review and licensing decisions for social equity applicants, with exclusivity on some licence types (LA: retail, delivery, and cultivation licences; Sacramento: future storefront dispensary permits)</p>	<p>Waivers and deferrals for fees (e.g., business operating, licensing, renewal)</p>	<p>Social equity applicants can qualify for grants and no-interest loans</p>	<p>Municipal equity programs are funded by the state through the Cannabis Equity Grants Program for Local Jurisdictions, administered by the Governor's Office of Business and Economic Development</p>	<p>Tools, training, and technical assistance (e.g., business, licensing, compliance); Supports for loan/grant recipients draws on programs used by other capital providers (Oakland); Pro bono and low bono legal assistance (LA)</p>	<p>Automatic reclassification and resentencing for wide range of eligible cannabis convictions</p>	<p>Does not require any action on the part of the individual, as courts are responsible for dismissing or sealing cannabis records</p>

Cannabis Equity Initiatives in Jurisdictions with Regulated Cannabis Markets: A Scoping Review

Lucas Martignetti, Nazlee Maghsoudi, Carolyn Ziegler, Sufiat Fusigboye, Indhu Rammohan, Florencia Saposnik, Mohammad Karamouzian, Akwasi Owusu-Bempah, Dan Werb

Abstract

Background. In several jurisdictions where non-medical cannabis markets have been legally regulated, cannabis equity initiatives – either to support the inclusion of groups disproportionately harmed under cannabis prohibition in the employment and economic opportunities in the legal cannabis industry or to grant amnesty for cannabis offences – have been implemented. Our work explores the best practices and available evidence on these initiatives.

Methods. A scoping review was conducted using a structured approach. Peer-reviewed records were found through keyword searches of electronic databases including Scopus, Medline (via Ovid), Embase (Ovid), PsycINFO (Ovid), CINAHL, Web of Science's Science Citation Index Expanded, Social Sciences Citation Index, and Emerging Sources Citation Index, Sociological Abstracts (ProQuest), EconLit, Criminal Justice Abstracts, and Business Source Premier (EbscoHost). A post-hoc search of grey literature was also completed using Google, Google Scholar, and databases including the Canadian Agency for Drugs and Technologies in Health (CADTH), International Network of Agencies for Health Technology Assessment (INAHTA), World Health Organization Regional Office for Europe (WHO HEN), OpenGrey, Health Management Information Consortium (HMIC), and OAIster. Studies published in English since 2012 were included if they contained original data on the effectiveness of cannabis equity initiatives in jurisdictions with regulated non-medical cannabis markets or if they were a systematic review of such studies.

Results. We screened 2083 full records and 109 full-texts, with one peer-reviewed study and three grey literature reports meeting inclusion criteria. We found gender and racial inequity in senior positions in the cannabis industry in Massachusetts, United States, where participation was low for women of colour and Latinx of all genders. Across jurisdictions in California, United States, equity programs were found to support the entry of people who had been disproportionately affected by cannabis prohibition into the non-medical cannabis industry. Barriers were found in the limited capital and education made available to new business owners as well as the slow speed of the license approval process and communication from licensures, and inconsistencies between municipal-level programs operating within California. Exploitation in incubator relationships due to unequal power between equity and general applicants was also a challenge for such programs. We did not find any studies looking at amnesty for cannabis offences.

Conclusions. There is a dearth of information on the effectiveness of cannabis equity initiatives. While cannabis equity initiatives may help reduce inequity by including people of colour and women in senior leadership positions within the legal cannabis industry, addressing program barriers could better support equitable industry inclusion. Significant research is needed to identify the effectiveness of current cannabis equity initiatives to improve policy where it exists and inform policy in jurisdictions where it has not yet been implemented.

PART THREE:

How Can Cannabis Equity Be Pursued in Canada?

“Now that we’ve got the public health and safety stuff out of the way, or on the way, I think you’re absolutely right that we should absolutely take a much closer look at ‘okay, what do we do to make sure that this is a beneficial industry?’hopefully we’re going to be able to catch up and be supportive of the real positive industry that it has become.”

– Prime Minister Justin Trudeau¹⁷²

Our top line recommendation is that the “Purpose” of the *Cannabis Act* be expanded to include the following: “To promote social responsibility and social equity in connection with cannabis.” This builds upon an objective outlined in the *Ontario Cannabis Retail Corporation Act* and aligns with the *Cannabis Act*’s existing focus on promoting public safety and public health.

Importantly, such an expanded purpose could help drive actions taken to advance the Government of Canada’s commitment to truth and reconciliation. This is in line with the Truth and Reconciliation Commission’s call to action #92ii, which seeks to “[e]nsure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.”¹⁷³ Organizing policy reforms under this directive would promote inclusion and diversity in the cannabis industry more broadly, an objective that has been included as part of the legislated review of the *Cannabis Act*.⁴²⁻⁴⁴

Industry Inclusion and Diversity

Diversity in the leadership of Canada’s legal cannabis

industry is critical to ensure that historically overcriminalized groups are not excluded from the industry. Furthermore, leadership in the industry not only confers decision making power (i.e., over corporate strategy, human resources decisions, etc.), but also opportunities for significant financial rewards. While there have been some limited initiatives to facilitate greater industry diversity, there is a notable absence of government regulation and programs that would structurally address the underrepresentation of racialized groups that were disproportionately targeted and punished under prohibition.

Drawing from measures taken by some jurisdictions in the United States, Canada should adopt and adapt social equity programs that provide targeted avenues of entry into the legal cannabis industry, as well as provide financial and related business/technical support, for members of underrepresented groups. However, considering the current climate of Canada’s legal cannabis industry with respect to market conditions and profitability, it may be most suitable in the short-term to create new opportunities for inclusion that have lower barriers to entry than existing federal licences for cultivators, processors, and sellers, and provincial/territorial licences for retailers. Establishing a non-profit model for producers and retailers could

enable increased participation from diverse groups that are currently unable to participate in the legal cannabis industry by addressing these barriers to entry. Should market conditions change, the adoption of social equity programs to diversify the broader legal cannabis industry may be more viable. Importantly, efforts to promote diversity in the existing industry should be advanced as a priority.

A. Establish and incentivize **a new non-profit pathway into the legal cannabis industry**, including for both retailers at the provincial/territorial level as well as producers at the federal level.

- Build on strong domestic and international evidence¹⁷⁴⁻¹⁸¹ for the **design of commercial non-profit cannabis sales and cooperative governance structures** in the cannabis industry in Canada.
- Potential models include **member-based sales** (i.e., regulated ‘cannabis compassion clubs’ in Belgium, Spain, and Uruguay)¹⁷⁸ and **cooperative business models** familiar to Canadians (e.g., Mountain Equipment Co-op).¹⁷⁴
- Such models have achieved a high degree of sustainability for a range of membership sizes, which **reduces financial and logistical barriers to entry that may deter underrepresented groups from participating in legal cannabis markets.**¹⁷⁵⁻¹⁷⁸
- Models may include integrated **verticals in which licensed producers, distributors, and sellers participate.**¹⁷⁸
- Models with **dedicated ‘in-house’ producers that are limited to producing cannabis for members of the cooperative**¹⁷⁹ **can also reduce barriers to entry** for underrepresented groups seeking a pathway into licensed production.
- Non-profit models are also functionally able and **well-positioned to integrate purpose-driven, social, and equity goals into their governance structures.**¹⁷⁴

B. Adopt social equity programs to facilitate **increased access to existing federal licences for cultivation, processing, and selling among historically**

overcriminalized and currently underrepresented groups.

- Define **qualifying criteria** for applicants to social equity programs, including eligibility based on:
 - i. **Previous cannabis convictions:** Individuals – as well as children and spouses of such individuals – who are eligible for sequestration of their conviction records related to drug possession, including cannabis.
 - ii. **Residency in a disproportionately impacted areas and low income:** Individuals living below the area median income who reside in geographic areas that are economically disadvantaged (i.e., high rates of poverty, unemployment) and have been disproportionately affected by law enforcement activities (i.e., high rates of arrest, conviction, incarceration) related to drug criminalization, including for cannabis.
 - iii. **Qualifying populations according to race/ethnicity, Indigenous ancestry, and gender:** Individuals who are part of qualifying populations currently underrepresented in leadership positions in the legal cannabis industry, namely Black and Indigenous people, as well as women.³⁶
- Prioritize granting federal licences to social equity applicants by **setting benchmarks of 15% for the percentage of federal licences to be issued to social equity applicants** and providing **targeted technical support** for social equity applicants throughout the application process as well as **priority processing of their licence applications** during Health Canada’s review process for granting federal licences.
- Provide financial assistance to social equity applicants by **waiving or reducing transactional fees** (i.e., application screening fee, security clearance fee, import/export permit fee) **annual regulatory fees, and corporate income tax.**
- Provide opportunities for financial support to social equity applicants in the form of **grants,**

microloans, and no- or low-interest loans. The Black Entrepreneurship Program - which offers loans (through the Black Entrepreneurship Loan Fund) and microloans (through the microloan pilot program under the Loan Fund) - is an example of a possible model for providing financial support to reduce barriers to entry to the legal cannabis industry for social equity applicants.

- Accompany the provision of financial support to social equity applicants with **business support, including training and technical assistance** (e.g., regulatory compliance, securing capital), to equip them with the necessary knowledge and skills to successfully lead their business.
- Fund social equity programs using **5% of cannabis tax revenues, while ensuring that a minimum comparable level of funding is guaranteed** independent of tax revenues.
- Remove from the licensing process the requirement that applicants have their production facilities “built-out” prior to licensing approvals.

C. Encourage and incentivize greater **diversity among leadership of existing and future federal and provincial/territorial cannabis licence holders.**

- Emphasize the **value in diversifying the racial and gender makeup of executives and directors.**
- **Require licence holders to develop and submit positive impact and diversity plans,^{104,105} as well as collect and report data on the racial/ demographic makeup** of their leadership and broader workforce, to Health Canada.
- **Provide financial and other incentives** for the adoption and successful implementation of diversification strategies by private actors in the legal cannabis industry. The waiving of annual regulatory fees could act as a strong incentive for companies to make progress towards diversity targets.
- Routinely **collect data disaggregated by race/ ethnicity, Indigenous ancestry, and gender identity by government bodies that grant licences for participation in the legal cannabis industry** to monitor progress in improving

diversity. Ensure the timely publication of disaggregated data in a manner that protects the identity of individuals and is open to public scrutiny.

Amnesty

The adoption of Bill C-5, *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*, in November 2022 is a significant step forward for cannabis amnesty in Canada. Unlike the current process for record suspensions, Bill C-5 provides for the free and automatic sequestration of drug possession charges within two years. Another advantage of sequestrations granted under Bill C-5 is their permanency, as there is no legislative authority to revoke them. Despite these benefits, there are limitations to the approach taken in Bill C-5. Individuals with charges other than simple cannabis possession who were ineligible under the present regime of record suspensions continue to be ineligible for sequestrations under Bill C-5. Given that a simple possession charge by itself is rare, many of those with criminal records from prior cannabis convictions do not qualify. For conviction records that occur after Bill C-5 came into effect, the person convicted of the offence is deemed never to have been convicted of that offence in the first place. While suspensions only provide for the setting apart of records, deeming a conviction never to have taken place provides a remedy closer to an expungement and is especially significant for those who wish to cross the border to the United States. Given that this deeming provision is not retroactive, no records for the simple possession of cannabis would benefit from the enhanced protections it offers. Importantly, sequestration still falls short of expungements as records are not destroyed and continue to be available to some law enforcement in Canada and the United States, thus perpetuating the stigma and other harms related to criminal records.

In recognition of how an individual’s life can be derailed by a cannabis conviction, it is critical to include those impacted by previous cannabis convictions in social equity programs that aim to enhance inclusion and diversity in the legal cannabis industry. Providing them with access to financial and professional support - both inside and outside the legal cannabis industry - contributes to restorative

justice through the economic empowerment of individuals most impacted by cannabis prohibition.

- Expand eligible conviction records for sequestration to extend beyond simple possession of cannabis and **include other minor cannabis offences and related administrative charges.**
- Apply **the deeming provision in Bill C-5 to conviction records that occurred before Bill C-5 came into effect**, and thus include records for simple possession of cannabis.
- Adopt regulations to **remove and destroy records after sequestration** so they are no longer accessible to law enforcement and other authorities.
- In accordance with the recommendation above, include those impacted by previous cannabis convictions as **eligible applicants to social equity programs** which aim to enhance inclusion and diversity in the legal cannabis industry.
- Beyond the legal cannabis industry, ensure access to **financial and business support** (e.g., grants and loans for education, professional training) for those impacted by previous cannabis convictions.

Reinvestment of Cannabis Taxes into Equity Programs

Tax revenue generated from legal cannabis sales at the federal and provincial/territorial levels should be used to support the creation of social equity programs to improve diversity in the legal cannabis industry. A portion of cannabis tax revenues should also be used to (re)invest in communities most negatively impacted under prohibition. Considering that laws criminalizing cannabis possession for personal use have had a disproportionate negative impact on Black, Indigenous, and other marginalized people in Canada, a major restorative initiative involves the redistribution of a portion of tax revenue generated from legal cannabis sales into the communities most harmed by prohibition. In doing so, jurisdictions acknowledge the devastation caused by prohibition and the burden shouldered by the individuals and communities most targeted. Moreover, they recognize that the billions of dollars spent on the police, court systems, and correctional

institutions deployed as part of punitive drug policies took money from the schools, hospitals, and community centres which form the backbones of healthy communities. In sum, this approach serves to reverse the impact of the wealth transfer that occurred as money was divested from disadvantaged communities and transferred to the police and other criminal justice agencies in support of drug prohibition efforts.

- Develop a **regime for revenue sharing with Indigenous communities.**
- Adopt measures to direct a portion of **cannabis tax revenues into social equity programs that improve inclusion and diversity in the legal cannabis industry** (see recommendations in the [previous section](#)).
- Adopt measures to divert a portion of **cannabis tax revenues directly to social institutions that serve the communities most harmed by prohibition** (e.g., to schools, hospitals, community health centres).
- Use a portion of cannabis tax revenues to develop a **granting scheme for programs that serve populations most harmed by prohibition** (e.g., educational and mentoring programs, job skills and training programs, crime prevention programs, prisoner re-entry programs).

Monitoring Cannabis Equity

To monitor progress on cannabis equity in Canada, some considerations for the development of metrics and indicators are proposed below.

Industry Inclusion and Diversity

- Have Indigenous, Black, and other racialized populations in Canada been able to benefit financially from entering the legal cannabis industry? How many federal and provincial/territorial licences have been issued to Indigenous, Black, and other racialized populations in Canada? What is the proportion of licences issued to these populations?
- What barriers do Indigenous, Black, and other racialized populations face in entering the legal

cannabis industry?

- Have women been able to benefit financially from legalization? How many federal and provincial/territorial licences have been issued to women? What is the proportion of licences issued to women?
- What barriers do women face in entering the legal cannabis industry?
- Have prior cannabis convictions impeded the ability of individuals to enter the legal cannabis industry?
- Have tailored opportunities been created to lower barriers to entry into the legal cannabis industry for Indigenous, Black, and other racialized populations, women, and individuals with prior cannabis convictions? What financial and business support is available to them? How does the process for granting licences to enter the legal cannabis industry prioritize applications from Indigenous, Black, and other racialized populations, women, and individuals with prior cannabis convictions?
- What data on the race/ethnicity, Indigenous ancestry, and gender of federal and provincial/territorial cannabis licence holders is made publicly available by government bodies to monitor progress in improving diversity in the legal cannabis industry?

Amnesty

- How many Indigenous, Black, and other racialized people in Canada have benefitted from simple cannabis possession record suspensions? What is the proportion of Indigenous, Black, and other racialized people with prior criminal records for charges related to cannabis that have been granted record suspensions?

With respect to the forthcoming sequestration of drug possession charges under Bill C-5:

- How many Indigenous, Black, and other racialized people have benefitted from sequestration of simple cannabis possession charges? What is the proportion of Indigenous, Black, and other racialized people with prior criminal records for charges related to cannabis that have had their records sequestered?
- How does limiting sequestration to simple possession charges impact Indigenous, Black, and other racialized

people with other minor cannabis offences and related administrative charges?

- How does the continued availability of sequestered records to some law enforcement in Canada and the United States perpetuate harm and stigma for individuals with previous cannabis convictions?
- How does sequestration without a deeming provision impact Indigenous, Black, and other racialized people?
- How is the participation of individuals with previous cannabis convictions in the legal cannabis industry supported? What financial and business support is available for their participation in other industries?

Reinvestment of Cannabis Taxes into Equity Programs

- Do Indigenous, Black, and other racialized people see legalization as something relevant to their lives or done to benefit the interests of their communities? Or do they see themselves as alienated from legalization?
- How are cannabis tax revenues used to support social equity programs that improve inclusion and diversity in the legal cannabis industry?
- How are cannabis tax revenues used to support social equity programs that benefit communities most harmed by prohibition?
- How are cannabis tax revenues used to support programs that offer financial and business support for those impacted by previous cannabis convictions?

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Prepared By:

Nazlee Maghsoudi, Manager, Policy Impact Unit, Centre on Drug Policy Evaluation
Dr. Akwasi Owusu-Bempah, Racial Equity Lead, Centre on Drug Policy Evaluation
Dr. Dan Werb, Executive Director, Centre on Drug Policy Evaluation

Additional contributors are identified throughout and include Soraya El Alj, Lucas Martignetti, Carolyn Ziegler, Sufiat Fusigboye, Indhu Rammohan, Florencia Saposnik, and Dr. Mohammad Karamouzian.

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