

Manitoba's Cannabis Laws Undercut Potential Cannabis Tourism Revenues

By Nick Noonan (law student)

As you've no doubt heard by now, on October 17, 2018, Canada federally legalized the recreational consumption of Cannabis.¹ The reasons for legalization are well known, and include reducing the burden on the criminal justice system, keeping cannabis out of the hands of children and criminals, and most notably for my purposes, to generate tax revenue. The *Cannabis Act*² gave provinces the power to determine methods of regulation, sale, and distribution in their province. If the province wants to maximize its tax revenue, it is doing a poor job creating an environment conducive to out-of-town visitors coming to experience the province's legal cannabis. This is because essentially the only place to legally consume cannabis in Manitoba, unlike other provinces, is within a private residence, which tourists do not have access to; thus, Manitoba is losing out on potentially millions of dollars in tax revenue.

Within Manitoba's legislation *The Cannabis Harm Prevention Act*³, the consumption of cannabis (by smoking or vaporizing) without a medical license is prohibited:

- In enclosed public spaces (eg. coffee shops, restaurants).
- In open public spaces (eg. parks, beaches, sidewalks).
- In vehicles, on- or off-road.

Additionally, consumption is banned in most, if not all hotels, apartments, condominiums, and rental houses.

Cannabis tourism—that is, residents of a locale where cannabis is not legal travelling to a locale where it is—is a burgeoning multi-million dollar industry, with one report suggesting that “conservative estimates suggest tourist spending on recreational marijuana will be in the hundreds of

¹ *The Cannabis Act*, SC 2018, c 16.

² *Ibid.*

³ *The Smoking and Vapour Products Control Act*, CCSM c S-150; “Toking allowed in homes but few others places under proposed Manitoba law,” *CBC News* (March 20, 2018).

millions of dollars,”⁴ and Canada likely to draw a significant number of international tourists.⁵ However, under Manitoba’s current legal framework, it is difficult for tourists to legally consume cannabis, as they do not have access to a private residence, essentially the only place to do so. Thus, tourists have little reason to bring their consumer and tax dollars to Manitoba.

In Ontario, the *Cannabis Statute Law Amendment Act*, introduced in September, moved to allow “adult-use cannabis to be consumed wherever smoking is permitted,” including giving “hotel owners the ability to allow recreational consumption” in their rooms.⁶ This will provide a clear opportunity for tourists from non-legal locales, such as nearby American states, to visit and consume cannabis in a safe and legal location, providing significant tax dollars to the Ontario government.

Various other Canadian provinces have adopted far more liberal laws around smoking marijuana in public. Both Alberta and British Columbia have a far more tourist-friendly policy toward consumption of cannabis, prohibiting it only in cars, areas frequented by children, and wherever tobacco is restricted.⁷ Ontario’s laws allow smoking in outdoor public spaces, such as the park or sidewalk, but require that consumption occurs more than 20 meters from child-related areas, like playgrounds or schools.⁸ Nova Scotia allows consumption wherever tobacco may be smoked, while Quebec does as well, with the exception of college campuses.⁹ However, in Alberta, municipal governments also have a say in this legislation. For instance, Calgary, instead of being subject to Alberta’s more ‘user-friendly’

⁴ Josh K Elliott “Cannabis IQ: A visitor’s guide to smoking legal marijuana in Canada,” *Global News* (October 17, 2018).

⁵ *Ibid.*

⁶ Matt Lamers “Ontario moves to allow hotel marijuana consumption in boost to tourism industry,” *Marijuana Business Daily* (September 28, 2018); *Cannabis Statute Law Amendment Act*, SO 2018 C-12.

⁷ “A look at each province’s rules for marijuana legalization,” *CTV News* (September 27, 2018).

⁸ *Cannabis IQ*, *supra* note 4.

⁹ *Ibid.*

laws, has prohibited public consumption except for in designated spaces, so-called “green spaces.”¹⁰

It should be mentioned that there are very real logistical difficulties with any changes that must be worked out. One such challenge is with the Canadian Border Security Agency and US Customs and Border Protection regarding allowing ‘cannabis tourists’ into and out of the Canada. Another challenge pertains to the transportation of tourists once they are in Manitoba and have a place to legally consume. Since it is clearly illegal to drive after the consumption of cannabis, these tourists will require alternative methods of transportation, such as bussing or walking, to experience the rest of the City of Winnipeg. This is primarily a city-planning issue, and must be addressed as such.¹¹

One interesting alternative is a string of start-ups (not yet operating in Manitoba), such as the company “Bud and Breakfast,” which seek to get around these issues by charging a fee to visitors for “Airbnb-style accommodations” where they can smoke marijuana “at a private residence.” To my knowledge, this has not been legally challenged or examined at this point, and represents an intriguing, if legally unclear, solution to this problem.

For a Manitoba government whose focus since their election has been stimulating economic growth in the province, Brian Pallister’s Conservatives appear to have legislated away a significant economic opportunity. Travel Manitoba reported over 346,000 “visitor direct entries” from the US Border Crossing into Manitoba in 2016, not to mention over 600,000 trans-border and international entries at the Winnipeg Airport.¹² With polling by Gallup Polls showing that 13% of American adults

¹⁰ City of Calgary, Bylaws and Public Safety, “Public Consumption of Cannabis”; *Cannabis IQ*, *supra* note 4; Jason Markusoff “With its patchwork of half-baked, absurd laws, Canada isn’t ready for legal weed,” *Macleans* (September 13, 2018).

¹¹ Soo K. Kang, Joseph O’Leary & Jeffrey Miller, “From Forbidden Fruit to the Goose That Lays Golden Eggs: Marijuana Tourism in Colorado” (2016) SAGE Open Journals.

¹² <https://www.travelmanitoba.com/tourism-industry/industry-resources/market-research/statistics-indicators/>

currently use cannabis regularly, and 43% have tried the drug, it is clear the cannabis tourism, especially cross-border, represents a significant growth opportunity for the Manitoban economy.¹³ The onus lies on the provincial government to reconsider its legislation in order to take advantage of this potential tax revenue boon.

¹³ Justin McCarthy “One in Eight US Adults Say They Smoke Marijuana,” *Gallup Polls* (August 8, 2016).