

## **ORGANIZED CRIME IN THE CANNABIS MARKET: Evidence and Implications**

Submission to the Cannabis Legalization Task Force

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**PREPARED FOR:** Task Force for the Legalization and Regulation of Marijuana

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**SUBJECT:** **Evidence and Implications of Organized Crime in the Cannabis Market**

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## EXECUTIVE SUMMARY

Claims that portray Canada's current and pre-existing cannabis industry as dominated by organized crime have the potential to misinform government policy and the direction of legislative reform.

This briefing note will assess the evidence that suggests that organized crime is currently involved in the marijuana market in Canada, and to what degree; we also canvass the evidence that describes the characteristics of the participants currently involved in the production and distribution of cannabis.

### Key findings of the best available evidence include:

1. *While the label of organized criminal may be accurately applied to a minority of the individuals involved in the illicit cannabis industry, the defining characteristics of the term are not applicable to the majority.*
2. *Unsubstantiated media and police reports portray the cannabis industry as dominated by organized crime.*
3. *Evidence suggests a very low involvement of organized crime in the cannabis industry in Canada; the majority of those in the industry tend to be non-violent and have minimal, if any, involvement with other criminal activities.*
4. *Those involved in cannabis production are typically small-scale growers who are active members of their communities.*
5. *Those in the cannabis industry have diverse motivations, including supplementing income, reducing costs, pursuing business and personal interest, controlling quality and producing diverse strains, and avoiding the illegal market.*
6. *Most of those involved in the illicit cannabis market are keen to be part of a legal market.*

### Key Recommendations:

1. We recommend that the government focus upon peer reviewed publications and substantiated claims in its construction of regulations respecting cannabis production, use and distribution, in order to produce cannabis regulations that both flow from and reflect the best available evidence.
2. We recommend that the government base the new cannabis regulations on the best available evidence, to allow for a balanced approach that further restricts the operation of organized crime, while allowing for the involvement of a variety of independent producers in the emerging legal market.
3. We recommend that the new regulations be informed by and incorporate the pre-existing cannabis producers and distributors, both small and large, in recognition that they are an important part of the economy and have experience and insights that can provide critical contributions to the policy-making process and to the new legal industry.

## INTRODUCTION

The Liberal government has consistently argued that one of the key benefits of legalization is that of removing the cannabis industry from the control of organized crime. A recent federal discussion paper outlines concerns about organized crime infiltrating the legal cannabis market, stating: "Given the degree to which organized crime is currently involved in the marijuana market, they could continue to produce marijuana illicitly and may attempt to infiltrate a regulated industry." (*The Legalization, Regulation and Control of Marijuana in Canada – Discussion paper Draft, December 2015*)

As the current government has noted, it is critical that a framework for the legalization and regulation of cannabis in Canada be based on the best available empirical evidence. Claims that portray Canada's current and pre-existing cannabis industry as dominated by organized crime have the potential to misinform government policy and the direction of legislative reform.

This briefing note will assess the evidence that suggests that organized crime is currently involved in the cannabis market in Canada, and to what degree, and the evidence that best describes the characteristics of the participants currently involved in the production and distribution of cannabis. As cannabis cultivation and distribution remain relatively understudied in Canada, we also include relevant international evidence.

## BACKGROUND AND EVIDENCE

### 1. What is Organized Crime vis-à-vis the Cannabis Market?

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*While the basic definition of organized crime may be applied to some of the people involved in the illicit cannabis industry, the defining characteristics are not applicable to most.*

- It is a crime to both produce and distribute cannabis in Canada; these are violations of the Controlled Drugs and Substances Act. In order to either produce or to distribute cannabis, some degree of organization is required.
- The RCMP's definition would suggest that three or more individuals, working together to produce or distribute cannabis for material benefit are organized criminals:

“Within Canadian law enforcement, a legal definition for organized crime has only existed since the late 1990s following the enactment of Bill C-95. Amendments to this area of the Criminal Code have led to the present legal definition found within section 467.1(1) of the *Criminal Code of Canada*, which states a "criminal organization" means a group, however organized, that:  
(a) is composed of three or more persons in or outside Canada; and,  
(b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences, that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any one of the persons who constitute the group.” (From the RCMP website, <http://www.rcmp-grc.gc.ca/soc-cgco/what-quoi-eng.htm>)

- The website of Justice Canada notes that there is a lack of consensus about what constitutes organized crime. The posted article on definitional issues in organized crime indicates that the most common defining characteristics cited by those who study the phenomenon are 1) a continuing organized hierarchy; 2) rational profit through crime; 3) the use of force or threat; and 4) corruption to maintain immunity from arrest and/or prosecution.  
([http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr05\\_5/p3.html](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr05_5/p3.html)).

- The best available evidence (summarized below) suggests that while many of the current cannabis producers and distributors seek a rational profit, the other categories do not apply: there is not a singular hierarchy of marijuana distribution in Canada, or in any province in Canada; there is only a very rare use of force or threat, and very rare instances of corruption to maintain immunity from arrest or prosecution.
- Production and distribution of cannabis are indictable offences, normally a sign that these are serious crimes. However, cannabis prohibition has increasingly been considered a controversial policy, given the substantial lack of compliance with the law, a lack of public support, and inconsistent enforcement. The criminal prohibition of cannabis has served to bring the law and the administration of justice into disrepute, and this limitation was one of the reasons that the Senate of Canada recommended a change to these laws (Canada Senate, 2002, p. 261). The fact that taxation and regulation of cannabis is now being proposed also attests to the low level of seriousness of these offenses (in the absence of any aggravating circumstances).

## 2. Portrayal in Media and Police Reports

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*Unsubstantiated media and police reports portray the cannabis industry as dominated by organized crime.*

- A review of media reports about marijuana grow-ops in 2,524 articles in the *Vancouver Sun*, *Vancouver Province*, *Victoria Times Colonist*, and the national paper, the *Globe and Mail*, over a 15-year span (1995–2009) found the dominant themes in these widely referenced news stories include the linking of most grow-ops to organized crime and often racialized criminal gangs (Boyd and Carter, 2014).
- RCMP-funded research papers assert that marijuana grow ops are an epidemic; a growing problem in British Columbia; “large,” “sophisticated,” and connected to organized crime; and that they pose a significant risk to residential neighbourhoods (fire hazards, violence, etc.) (Dandurand, Plecas, Chin and Segger, 2002; Plecas, Dandurand, Chin and Segger, 2002; Plecas, Malm and Kinney, 2005).
- Police reports suggest increasing involvement of violent organized crime groups in the cannabis trade (RCMP 2009, Rainbow 2010). Although they do not provide evidence, the Organized Crime Agency of BC estimated that 85% of the cannabis market in BC is controlled by organized crime groups (BC OCA, 2011, from Werb et al, 2012).
- Boyd and Carter’s review (2014, pp. 31-33) notes that public RCMP reports are unsubstantiated, i.e. they were not published in peer-reviewed scholarly journals or books and lack any systematically obtained evidence to support claims about marijuana growing and organized crime.
- Based on findings such as those above, Boyd and Carter (2014, p. 186) argue that contemporary media and other claims about marijuana grow ops in Canada constitute a drug scare fueled by the media, RCMP, politicians, and vocal claims makers, legitimizing a continuation of criminal prohibition.
- Fire Chief Len Garis, a vocal spokesperson who links marijuana growing with organized crime, was an expert witness for Canada in a Charter challenge. The judge noted that Garis’ report and testimony in court “was not credible and was biased” (*Allard et al. v. Queen*, 2016, p. 45).

### 3. Actual Ties to Organized Crime and Violence

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*Evidence suggests a very low level of involvement of organized crime in the cannabis industry in Canada; the majority of those in the industry tend to be non-violent and have minimal involvement with other criminal activities.*

- A 2011 federal Department of Justice report studied a random sample of 500 marijuana production cases, drawn from Crown prosecutor case files and RCMP criminal history files over an 8-year period. Only 5% of the files yielded any indication that the offender was affiliated with organized crime or street gangs. There were no charges relating to criminal organizations within the collected data (Solecki, Burnett and Li, 2011).
- An RCMP funded study of marijuana growing operations in British Columbia found that 6 per cent of established grow-ops had firearms on site, a figure that is only marginally higher than the 5.5 per cent of the Canadian population who are in possession of valid firearms licenses (Boyd and Carter, 2014, p. 32).
- The Global Cannabis Cultivation Research Consortium study completed in eleven countries (Australia, Austria, Belgium, Canada, Denmark, Finland, Germany, the Netherlands, Switzerland, the United Kingdom and the United States) produced a usable dataset of 6530 respondents (Decorte & Potter, 2015: 222). It was found that a clear majority of small-scale growers in their study were primarily motivated by reasons other than making money and had minimal involvement in drug dealing or other criminal activities: “about three-quarters of respondents overall (ranging from 62% in Finland to 87% in Belgium and 95% in Canada – although the Canadian sample for this question was small) reported that they had never been convicted of a criminal offence” (Potter et al., 2015, p. 233).
- Hakkarainen and Perala’s (2011) Finnish study found that their growers were mostly engaged in small-scale cultivation, with from one to 10 plants. Their interviewees challenged prohibitionist drug policy and mainstream values and saw themselves as situated between the mainstream and the criminal underworld; they had no ties to organized crime.
- Weisheit’s Illinois study from 1990 found that although growers tended to fear violence from individuals who might steal their crops, they were generally non-violent themselves.
- A clear majority of small-scale growers in their study were primarily motivated by reasons other than making money and had minimal involvement in drug dealing or other criminal activities (Potter et al., 2015).
- Whether large or small, most commercial growers in the United Kingdom maintained relationships with other cultivators, sellers, and equipment suppliers. These grower groups worked together to sell their product and rarely employed violence (Potter and Dann, 2005).

### 4. Who is Involved in the Cannabis Market?

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*Those involved in cannabis cultivation are typically small-scale growers who are active members of their communities.*

- A study in the United Kingdom found that growers are not a homogeneous group in terms of motivations, cultivation techniques, size of operations or their approaches to markets, and their

connections with others who cultivate and distribute cannabis (Rowntree, Potter 2011).

- In Canada, the number of small grow-ops appears to be increasing at a faster rate than the number of large grow-ops (Plecas, Malm et al. 2005, Table 5.2, at p.42 – in Boyd and Carter, 2014).
- Decorte's (2011) study of growers in Belgium found that the majority of growers were a diverse group of small-scale growers (70% grew 20 or fewer plants, 27% grew five or fewer plants). Over 50 per cent of the interviewees and survey respondents in this study grew their cannabis in outdoor settings.
- Small-scale growers in Finland are embedded in the 'cannabis culture,' which emphasizes anti-commercialism, anti-violence and ecological and community values (Hammersvik, Sandberg, & Pedersen, 2012, p. 1).
- Weisheit (1990) found most growers in the United States are middle-aged citizens who quietly engaged in growing for its monetary and aesthetic rewards.
- Most growers in a U.S. study were found to be employed active members of the community whose income from marijuana supplements their legitimate income rather than replacing it (Weisheit, 1992, p. 124).

## 5. Motivations of Those Involved in the Illicit Cannabis Market

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*Those in the cannabis industry have diverse motivations, including supplementing income, reducing costs, pursuing business and personal interest, controlling quality and producing diverse strains, and avoiding the illegal market.*

- Weisheit's 1990 study categorized producers in the United States into 3 categories: *hustlers* who grow marijuana for the business challenge and who would likely be involved in other large-scale businesses if not marijuana; *communal growers* who begin as users and graduate to cultivation as part of their overall interest in marijuana – these growers are the ones most likely to give away marijuana to others; and *pragmatists* who begin growing marijuana because of economic necessity. This latter group grows marijuana to manage difficult economic times, rather than to simply make money.
- Hakkarainen and Perala (2011) study of marijuana growers in Finland revealed that their participants had no ties to organized crime -- they grew for personal use and to share with small groups of friends.
- Hough et al. (2003) note that growers in their sample in the United Kingdom began to cultivate marijuana at home to improve its quality, to save money, and as a way to avoid the illegal market and contact with drug sellers.
- Potter (2011), in an evaluation of cannabis eradication efforts in the developed world, found those who conduct business on a small scale with from one to five plants are using the limited profits from marijuana cultivation to supplement their incomes, whereas for large-scale commercial operations financial motivations were often paramount. As the size of an operation grew, growers were more likely to use strong-arm tactics to avoid law enforcement.
- Decorte's (2011) study of growers in Belgium found that the majority of growers grew cannabis for a variety of reasons: because it was cheaper than buying it on the illegal market; out of curiosity; because of the pleasures of growing, and; to guarantee a source of organic cannabis and milder strains than those found in the coffee shops in the Netherlands.

## 6. Approach to Market and Support for Regulation

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*Many in the illicit cannabis market are keen to be part of a legal market.*

- More than two-thirds of respondents in an Australian study believe ‘only adults should be legally able to grow cannabis’, ‘sale should be limited to licensed commercial businesses’ and ‘commercial growers should be licensed’ -- and that many cannabis growers will want to continue growing cannabis under a non-prohibitionist model (Lenton et al., 2015).
- Most small-scale growers in western cultures would welcome some form of regulation under a legal cultivation regime (Decorte & Potter, 2015: 223).
- Cannabis growers are an important part of the economy (Kalacska and Bouchard 2011).

## CONCLUSIONS AND RECOMMENDATIONS:

- Many of the reports the government has been relying on regarding organized crime in the cannabis market, while imparting valuable perspectives, often ignore peer reviewed Canadian and international research and contain unsubstantiated claims. In order to produce cannabis regulations that both flow from and reflect the best available evidence, we recommend that the government focus upon peer reviewed publications and substantiated claims in its construction of regulations respecting cannabis production, use and distribution.
- The evidence base suggests that despite the illicit nature of the current cannabis market, it is not dominated by organized crime but rather by otherwise law-abiding citizens. Erroneously painting current industry participants as organized criminals, with predatory actions and intentions, could lead to unfounded restrictions on participation in this emerging legal market. We recommend that the government base the new cannabis regulations on the best available evidence, to provide a balanced approach that further restricts the operation of organized crime, while allowing for the involvement of a variety of independent producers in the emerging legal market.
- Cannabis producers, both small and large, are an important part of the economy and should be considered as valuable contributors to the policy process. These are, generally speaking, individuals who want to participate in a legal market premised upon thoughtfully constructed regulations. We recommend that the new regulations be informed by and incorporate this representative segment of the pre-existing market in order to benefit from their insights and experience.

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