

# Cannabis Will Not Decriminalize in 2018

Cannabis will not be decriminalized in calendar 2018. No amount of wishing is going to make it happen.

The timing of decrim is extremely important for the impact on valuations, reputations, cash burn, equity raises, staffing decisions, compensation schemes and M&A activity. The longer it takes for decrim to actually take place, the more risk exists for investors, including new risks brought by the pending federal election.

“Decrim” means the first day a retail consumer can walk into a retail store and legally purchase a cannabis product. That means none of the following qualify as decrim:

- when the Senate sends Bill C-45 (the *Cannabis Act*) back to the House of Commons for Third Reading (expected to be on or about June 7/18)
- when the Liberal-majority House of Commons gives Bill C-45 that Third Reading and quickly sends it back to the Senate for its own Third Reading;
- when Royal Assent is given by the Governor-General to Bill C-45; or
- if Canada deals with the international treaties it signed policing the sale of narcotics, which by definition includes cannabis.

Those events will take time to play out, but are mere milestones on the path to decrim. There are other major impediments that will push the first retail date into 2019, and possibly into 2020.

On that list of impediments is that Parliament must deal with Bill C-46 (the *Drugged Driving Act*). Our prior analysis of that problem is here. That problem alone pushed back the

effective date of decrim to at least December of 2018.

Law enforcement agencies across Canada are calling for further delays in decrim so they can obtain the necessary equipment and training to deal with drivers impaired by cannabis. It's not as simple as dealing with a driver impaired by alcohol. Habitual users or persons who've inhaled second-hand smoke can have THC in their systems for weeks, and there is as yet no science or consensus behind how much THC is too much for a driver.

If there are no reliable roadside devices that don't report false negatives or positives, then the *Drugged Driving Act* if passed risks being found unconstitutional as constituting an unreasonable search under the *Charter of Rights and Freedoms*. It is vital that Parliament get this right to avoid having the law struck down.

This isn't new news. Back in 2017, the Canadian Press reported on this issue and said, "Canada's police services say there is zero chance they will be ready to enforce new laws for legalized pot by [summer, 2018]."

The situation hasn't gotten better. As the National Post reported two weeks ago, "...officials with the justice and public safety departments say it's still unknown when roadside screening devices to test for drug impairment will be approved for use."

The *Post* article reports on other infrastructure delays related to roadside testing and police training. Police forces must wait for the Attorney General to sign an order before they can order roadside testing units, assuming any exist which are reliable. For the Attorney General to sign that order, Bills C-45 and 46 must be passed by the House and the Senate, and then a 30-day public consultation period must run. Public Safety then would require time to prepare training and certification for officers on approved devices, and then those

officers must be trained.

None of that can start until Bill C-45 and its associated regulations are brought into legal status. Those two processes cannot run in parallel.

Another major delay involves Canada's First Nations. Section 35(1) of Canada's *Constitution Act, 1982* states, "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." That has been interpreted by the courts to impose an obligation on the Crown to meaningfully consult with First Nations when such aboriginal and treaty rights could be impacted by legislation.

On May 1 of this year, the Senate Committee on Aboriginal Peoples recommended in writing the Liberals delay legalizing cannabis for up to a year to address the legislation's potential for harmful effects in Indigenous communities. The committee said in its report on Bill C-45 that the government did not adequately consult with First Nations, Inuit and Métis communities before pushing ahead with its plan to legalize the drug. If the Liberals don't heed the Senate's report, this failure to consult could ultimately render the *Cannabis Act* invalid as a constitutional breach.

Imagine Bay Street's reaction if that were to happen. Billions of dollars of shareholder value would be erased seconds after the court decision were rendered.

Odds are that won't happen, but the Crown's obligation to consult with First Nations on decrim will bring a delay.

Then comes The Big Risk. The next federal election in Canada is set for October, 2019. Parliament will be dissolved sometime during the summer of 2019 to allow for the election campaign. If decriminalization is delayed a year, as requested by law enforcement and recommended by the Senate Committee, Bill C-45 and Bill C-46 may not make it into law before

Parliament is dissolved. They would then die on the House floor.

Then there would be a delay for the election itself, and then there would be a further delay as the new government takes power, and then further delays as new legislation and regulations would have to be written. Then there would be the same delays as laid out above related to First Nations and general public consultation. That would push the effective date of decriminalization to at least the summer of 2020.

Those delays bring the risk the federal Conservatives would win the 2019 election. That party has a much stronger anti-cannabis stance than does the Liberal Party. If Trudeau Mania 3.0 doesn't play out and the Liberals don't win a majority, expect the next version of decriminalization to be more severe, creating a smaller recreational market. That would negatively impact the cannabis companies.

Counter-balancing that federal election grief is provincial election hope in Ontario, Canada's most populous province. Roughly 36% of Canadians live there. Under the current provincial plan, assuming decrim happens, the current ruling party advocates for a single-source model, where the only source for recreational cannabis would be from government-operated stores. Basic supply chain issues would limit the size of the market, and therefore negatively impact valuations of the cannabis producers. But there is a provincial election underway, and it doesn't look good for the incumbent. The provincial Conservatives, currently polling in first place, have said they would implement a hybrid distribution model with both government and private stores. This would have the effect of eliminating some supply chain bottlenecks and increasing revenue for the cannabis companies.

Decrim will happen. When is an open question. Make your own decision and vote with your investment dollars.