

**December 5, 2016**

## **Will Legal Marijuana be One of History's Most Disruptive Technologies?**

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The market potential for legalized marijuana is enormous. One market in particular that could be significantly impacted is alcohol beverages – a trillion dollar market. Another is the “wellness” market – selling of a natural product with significant health benefits, from pain management to Alzheimer’s and insomnia.

The potential to offer an alternative to the alcohol market also rests on the many well-known health and social hazards of alcohol consumption, from excessive sugar and hangovers to cancer. If the alternative has none of the negatives but also can claim health benefits, then it has the potential to be a significant disrupter.

On November 8<sup>th</sup> nine (9) U.S. states voted on legalizing marijuana with only one state (Arizona) rejecting legalization.

Those other eight (8) states – including California, Florida and Massachusetts – have a combined population greater than Canada. Governments around the world are also considering legalization.

The march toward full recreational legalization continues apace. The world is now looking to Canada as the potential model on how a country can legalize cannabis for responsible adult consumption.

The problem with the U.S. market is a legal one: marijuana remains illegal at the federal level. Although simple possession is not federally prosecuted in those states that have legalized marijuana, because it remains illegal, it causes a host of issues for investors and financial institutions. Under the Obama administration, “guidelines” were issued to federal prosecutors not to allocate resources to possession charges. Additional guidelines were issued to federal institutions. These guidelines have allowed the marijuana industry to operate but with considerable legal issues which can only be resolved by an act of Congress. Until that problem is solved, the U.S. marijuana industry will be stunted in its potential growth. Even the present environment could be upended if the new Trump administration changes the existing guideline. That problem however could benefit Canadian marijuana companies.

The issue for Canada is what will the legislative framework look like?

The Trudeau Government provided several ministers with the mandate to develop a legislative scheme for recreational marijuana. Those Ministers in turn established the Task Force on Marijuana Legalization and Regulations, which is to report in November 2016. That report is to provide advice on what a legalization framework will look like. Certain key issues will be considered, most of which have been the subject of debate and legislation for medical marijuana:



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1. Keeping it out of the hands of minors.
2. Keep profits out of the hands of criminals.
3. Public health and safety of the product.

Those issues were, of course, front and center when the existing regulations were drafted and the system now in place appears to be working well with the exception of at least two (2) significant issues:

1. Distribution – the proliferation of store-front retail distributors; and
2. Derivative products – cookies, drinks and other potential derivative products.

Firstly, with respect to distribution, the good news is that Canada has a well-established government controlled (except Alberta) distribution network for alcohol products. These distribution networks were established after prohibition precisely for the same reasons that are being debated for marijuana, including restricting sales to minors. In order to defuse the profusions of retail store-front operations, the legalization scheme will need to ensure better distribution than that which exists today. The provincial alcohol distribution networks are the logical and simple solution.

With respect to derivatives, this will be an important consideration when designing the legislative scheme. This government will have the benefit of an opinion from the Supreme Court of Canada. In *R v. Smith* whereby a prohibition of derivatives under previous legislation was struck down as being in contravention of Section 7 of the Charter of Rights and Freedoms. The previous government expanded the exemption by including cannabis oil to fresh and dry cannabis. The bigger question is whether a broader set of derivatives will be allowed for commercial distributors. It is that issue which opens up the potential attack by marijuana on the alcohol industry. The rationale behind *R v. Smith* would appear to provide the grounds for the government to allow for the commercial distribution of derivatives.

These issues will be addressed and the answers provided when the government introduces its legislation in the spring of 2017.

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