

Complexity Case-Study:

Legalizing and Regulating Cannabis in Canada: Incremental or Radical Change?

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Legalizing and Regulating Cannabis in Canada: Incremental or Radical Change?

“We have discovered that the regulation of cannabis will touch every aspect of our society. One of the predominant features of our deliberations has been the diversity of opinions, emotions and expertise expressed...

... Because of this complexity and diversity of input, and the challenges associated with designing a new regulatory framework, we recognize there will be much discussion around the implications of our recommendations.”

A FRAMEWORK FOR THE LEGALIZATION AND REGULATION OF CANNABIS IN CANADA

THE FINAL REPORT OF THE TASK FORCE ON
CANNABIS LEGALIZATION AND REGULATION

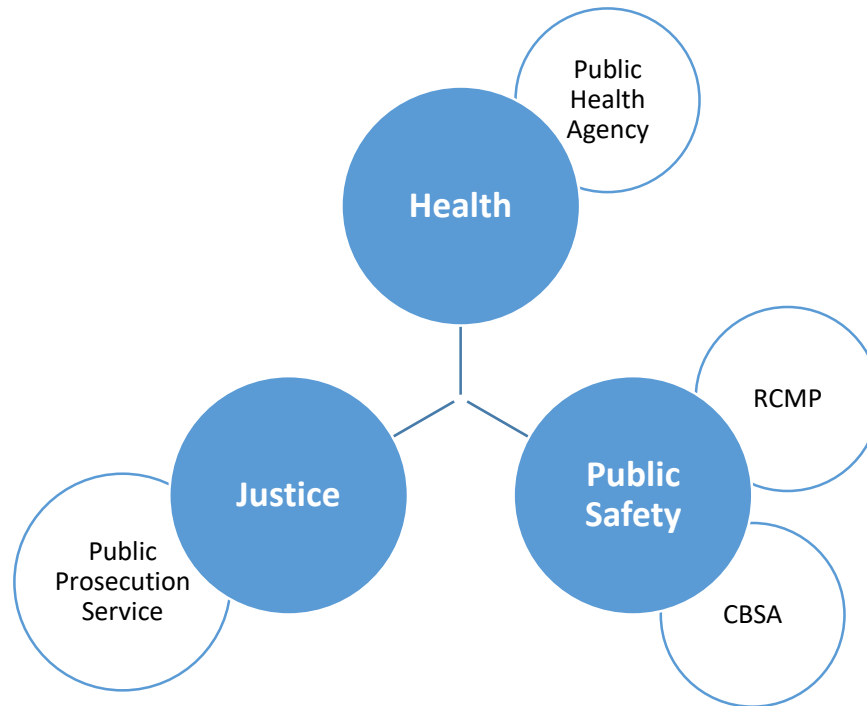


Sources of Complexity

- Cross-cutting – complex environment with a true “diversity of opinions, emotions and expertise”
- Timelines – a lot to do in a relatively short amount of time
- Novel – not the normal business of “incremental change”

Cross-cutting...

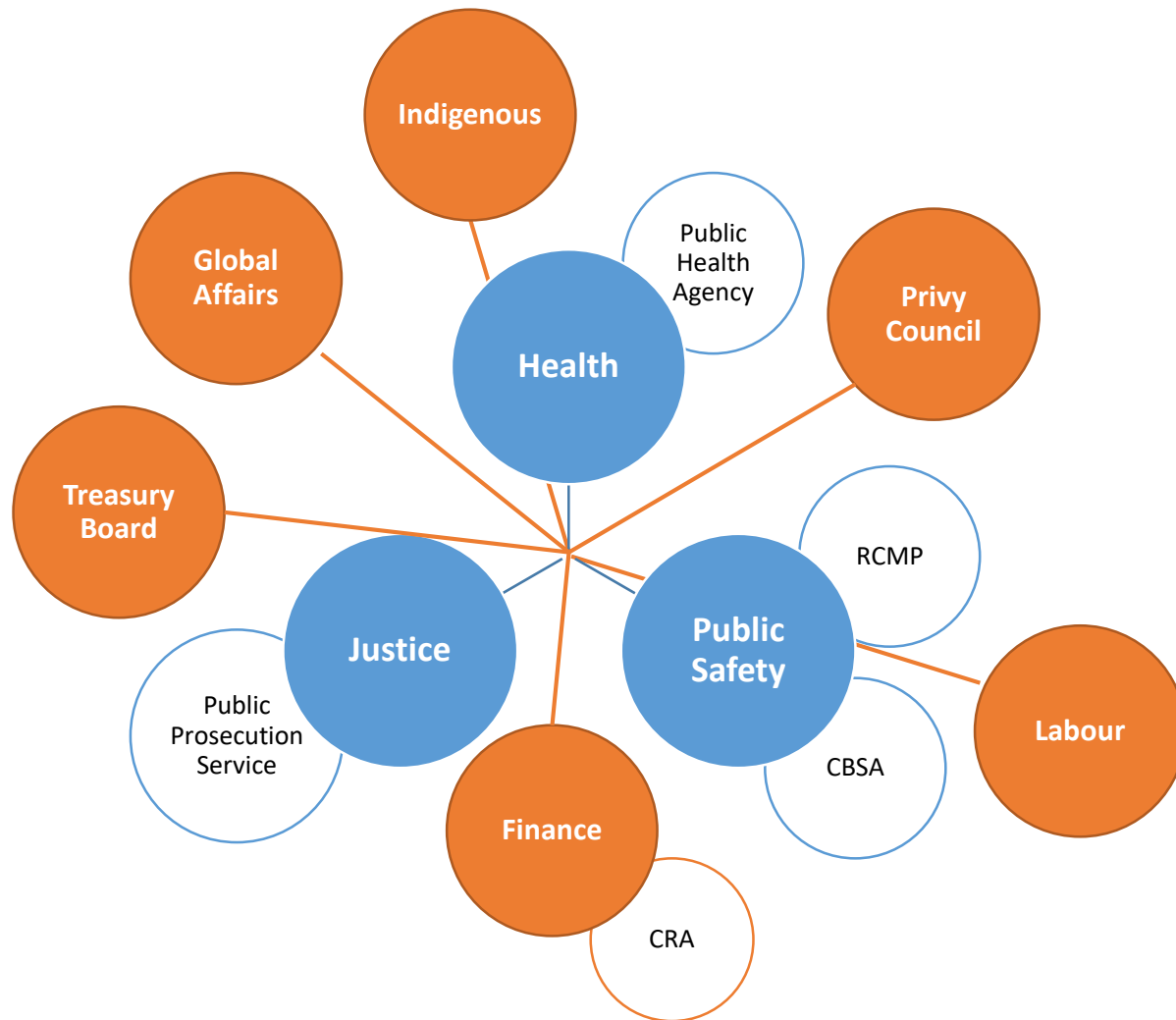
- Three federal Ministers mandated to legalize, strictly regulate, and restrict access to cannabis...



- ...each of which are responsible for very diverse organizations, representing a range of interests

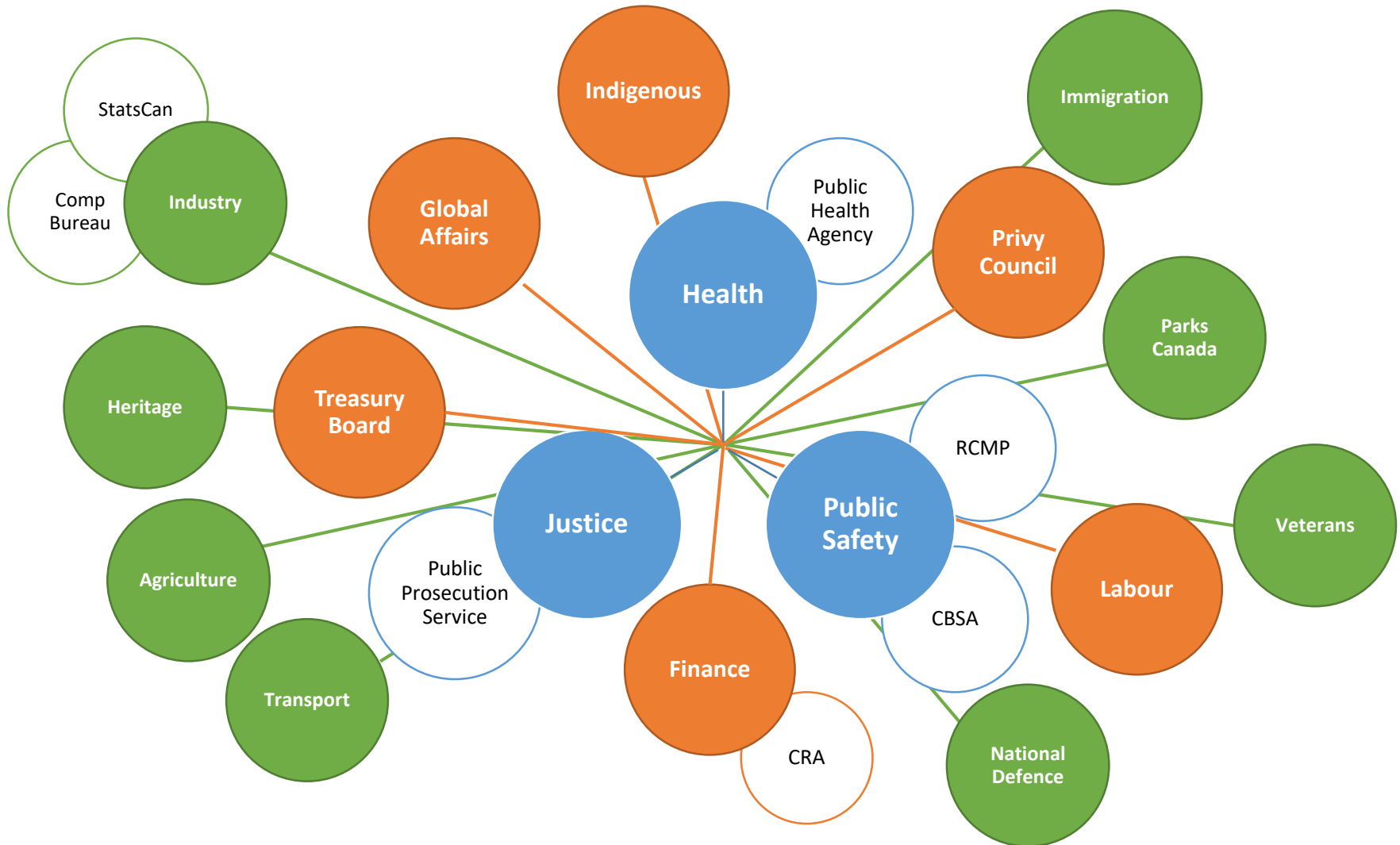
Cross-cutting...

- Central agencies and other key departments needed to be involved in key policy decisions...



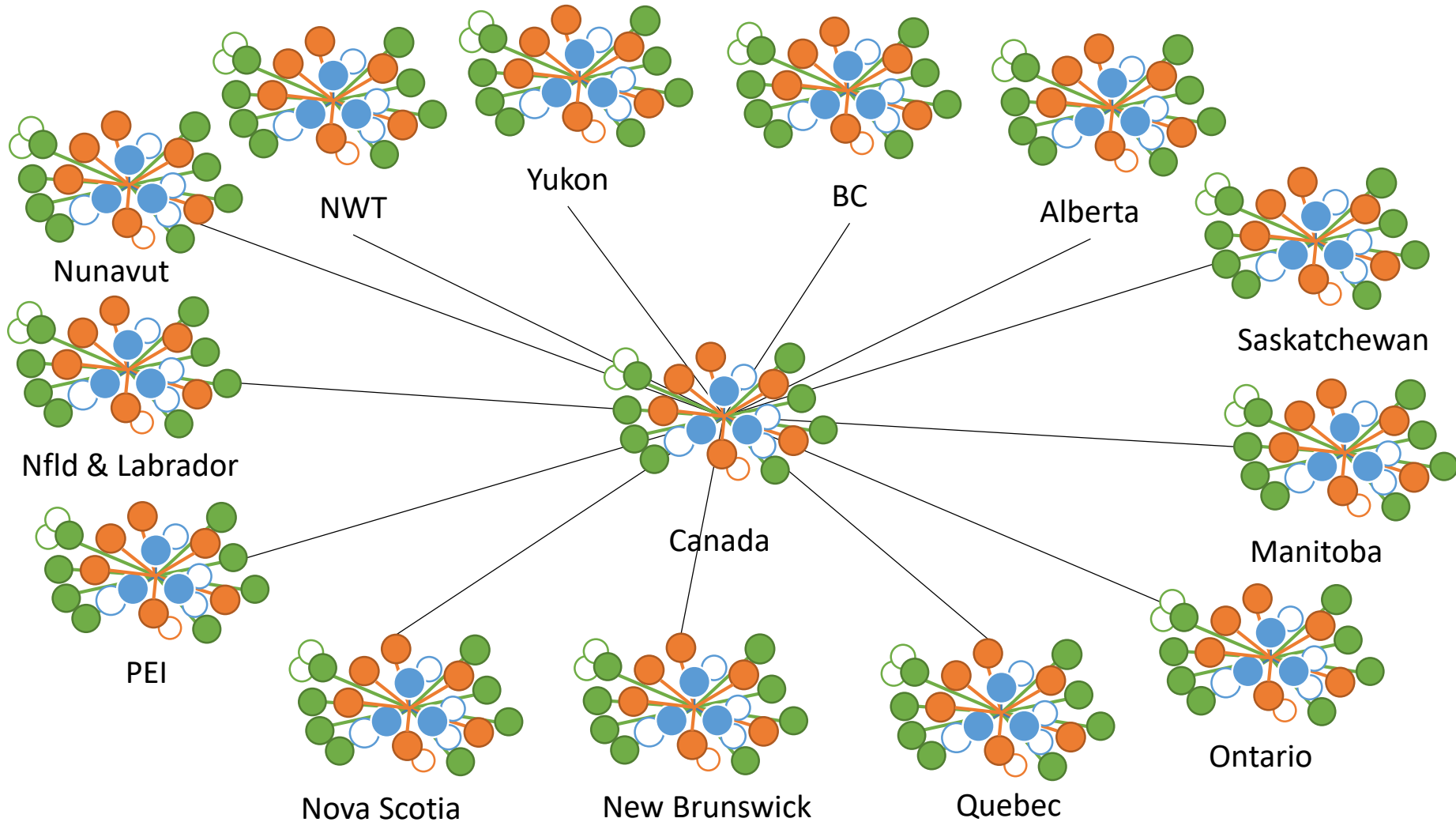
Cross-cutting...

- ... and other federal departments and agencies needed to understand implications and provide advice.



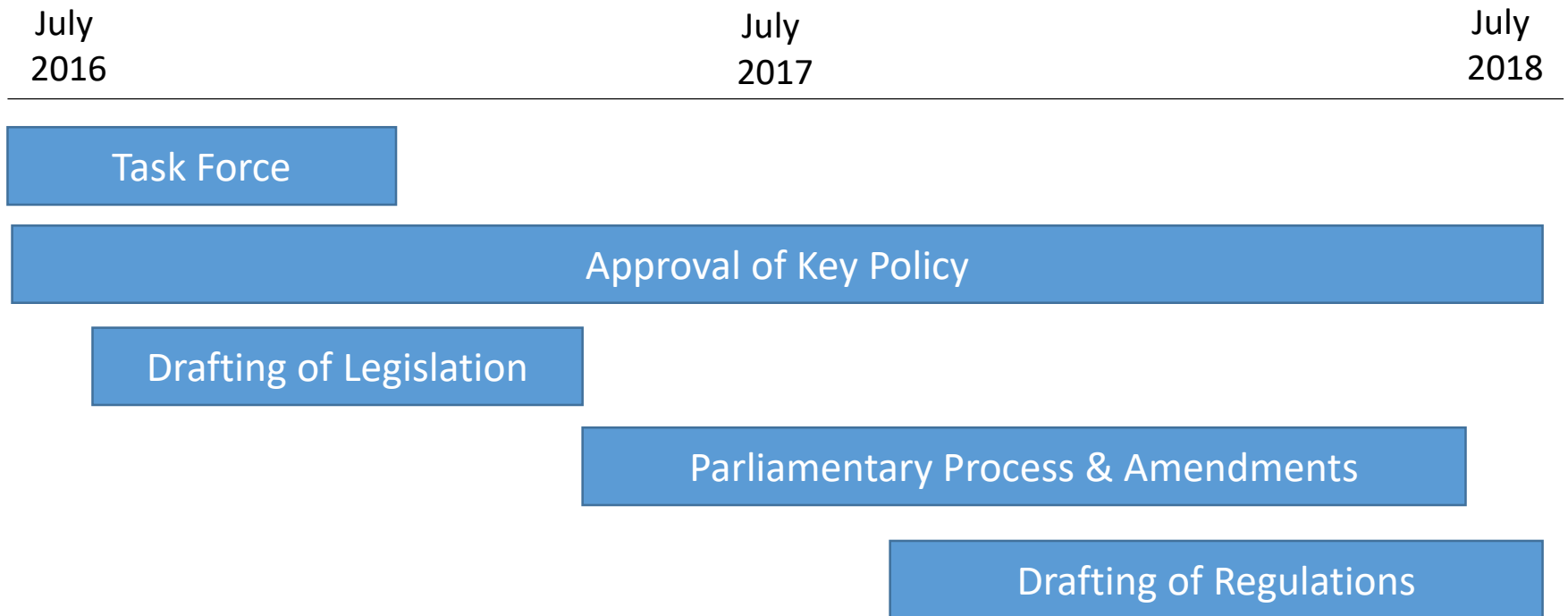
Cross-cutting...

- And all of this needed to be plugged in and coordinated with 13 provinces and territories



Timelines...

- A lot to accomplish in a short amount of time resulted in concurrent activities that are normally sequential...



- Key challenge was getting timely decisions to ensure continued progress

Novel...

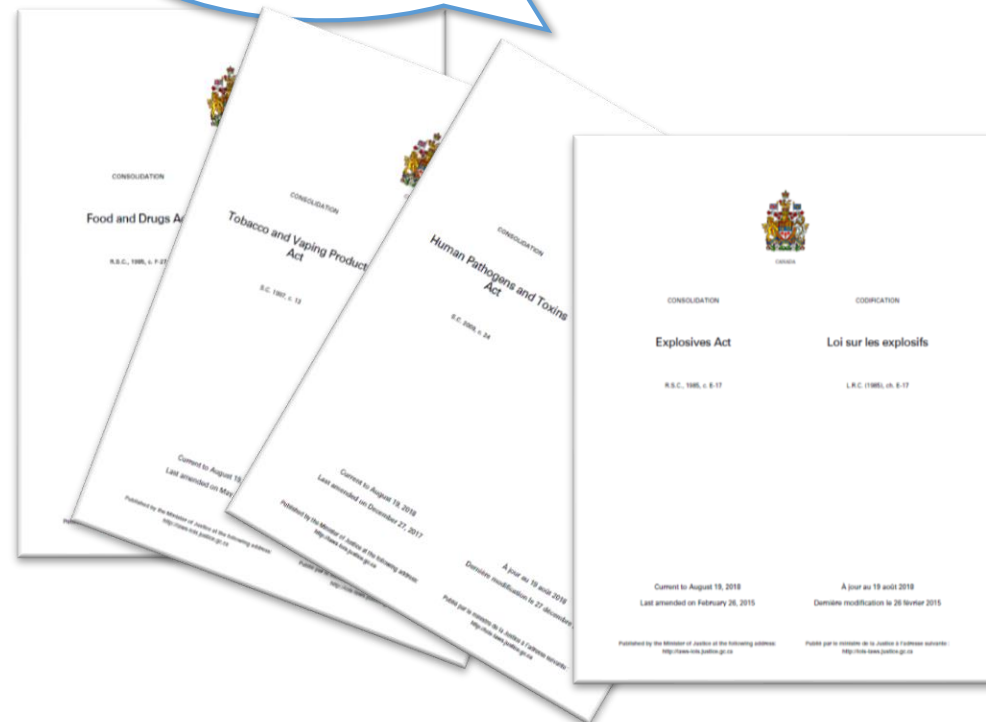
- While there are many analogues for how to regulate certain aspects of cannabis...
- ...the reality is we needed to establish a unique legislative framework specific to the drug, tailored to meet the government's objectives
- There was no single template or example to adapt...
- ...but rather an amalgamation of good ideas from a number of different sources

Control it like tobacco!

Regulate it like alcohol!

Treat it like tomatoes!

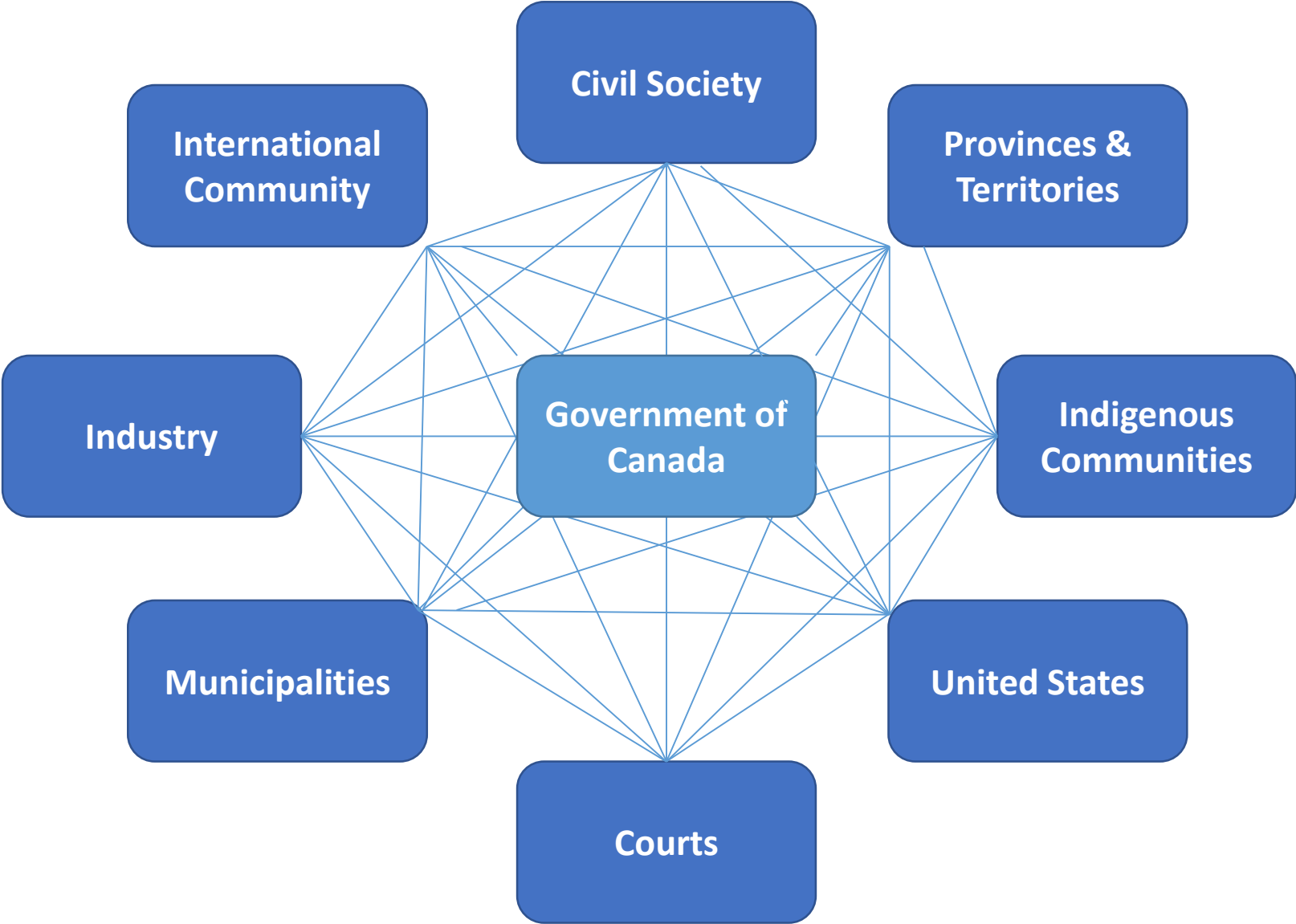
It's still a drug!



Legalizing and Regulating Cannabis: Themes

- Protecting:
 - Public health and public safety
 - Young people by restricting access to cannabis
- Permitting:
 - Adults to possess cannabis
 - Cultivation of cannabis
 - Production of cannabis
 - Sale of cannabis to adults
- Preventing:
 - Illicit activities with cannabis

Complex environment...



Drafting challenges: a few examples

- Distribution and sale of cannabis
- Age of possession
- Possession
- Cultivation for non commercial purposes
- Ticketing

Drafting challenges: Provincial and Territorial Distribution and Sale of Cannabis

Provincially authorized selling

69 (1) A person may possess, sell or distribute cannabis if the person is authorized to sell cannabis under a provincial Act that contains the legislative measures referred to in subsection (3).

(2) Subsection (1) applies only if the provincial Act and the legislative measures are in force.

Drafting challenges: Provincial and Territorial Distribution and Sale of Cannabis

(3) For the purposes of subsection (1), the legislative measures in a provincial Act that authorizes the selling of cannabis are the following in respect of persons authorized to sell cannabis:

(a) they may sell only cannabis that has been produced by a person that is authorized under this Act to produce cannabis for commercial purposes;

(b) they may not sell cannabis to young persons;

(c) they are required to keep appropriate records respecting their activities in relation to cannabis that they possess for commercial purposes; and

(d) they are required to take adequate measures to reduce the risk of cannabis that they possess for commercial purposes being diverted to an illicit market or activity.

Drafting challenges: possession and age of possession

Possession

8 (1) Unless authorized under this Act, it is prohibited :

- (a) for an individual who is 18 years of age or older to possess, in a public place, cannabis of one or more classes of cannabis the total amount of which, as determined in accordance with Schedule 3, is equivalent to more than 30 g of dried cannabis;
- (b) for an individual who is 18 years of age or older to possess any cannabis that they know is illicit cannabis;

Drafting challenges: possession and age of possession

- (c) for a young person to possess cannabis of one or more classes of cannabis the total amount of which, as determined in accordance with Schedule 3, is equivalent to more than 5 g of dried cannabis;
- (d) for an individual to possess, in a public place, one or more cannabis plants that are budding or flowering;
- (e) for an individual to possess more than four cannabis plants that are not budding or flowering; or
- (f) for an organization to possess cannabis.

Drafting challenges: cultivation for non commercial purposes

12. Cultivation, propagation and harvesting — 18 years of age or older

(4) Unless authorized under this Act, it is prohibited for an individual who is 18 years of age or older to cultivate, propagate or harvest, or to offer to cultivate, propagate or harvest :

(a) a cannabis plant that is from a seed or plant material that they know is illicit cannabis; or

(b) more than four cannabis plants at any one time in their dwelling-house

Drafting Challenges: ticketing regime for cannabis

Sections 51 to 58 of the Act

- law enforcement can issue a ticket to an adult in the amount of \$200 plus a victim's surcharge for some offences, for example, for cultivating, propagating or harvesting five or six cannabis plants in contravention of paragraph 12(4)(b) of the Act.

Drafting Challenges: ticketing regime for cannabis

- On introduction of Bill C-45, clause 52, provided that paying the amount within the period set out in the ticket would constitute a plea of guilty to the offence, that a conviction would be entered in the judicial record; that the record would be kept separate and apart from other judicial records. In addition, the judicial record could not be used for any purposes that would identify the accused as a person who was dealt with under the proposed *Cannabis Act*.

Drafting Challenges: ticketing regime for cannabis

- Section 52 now provides that on a guilty plea and on payment of the fine the accused is deemed to have received an absolute discharge and not to have been convicted of the offence.
- Because a judicial record can not be used for any purposes that would identify the accused as a person who was dealt with under the Act the additional requirement to keep the record separate and apart is not necessary.

Some observations

- Achieving change is a complex undertaking
 - What changes?
 - How many changes?
 - When to make changes?
 - Who is involved in changes?
 - Where do changes take place?

- When you think you have the answers ask the questions again!

Thank you