

**Recreational Cannabis Laws in the Canadian Provinces of Ontario, New
Brunswick, Alberta and British Columbia:**

A Living Laboratory for Examining Mechanisms of Policy Diffusion

By

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ABSTRACT

RECREATIONAL CANNABIS LAWS IN THE CANADIAN PROVINCES OF ONTARIO,
NEW BRUNSWICK, ALBERTA AND BRITISH COLUMBIA:
A LIVING LABORATORY FOR EXAMINING MECHANISMS OF POLICY DIFFUSION

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Since the inception of Canada's recreational cannabis laws, every province has drafted a corresponding legislative framework. Which aspects of these provincial cannabis laws — namely policy goals, instruments and settings—diffused from the federal government, and which did not? This paper employs a qualitative analysis of material from the federal government and the provinces of Ontario, New Brunswick, Alberta and British Columbia to answer this question. The mechanisms by which policy diffused were coercion, learning and replication, with competition and imitation being absent entirely. The research demonstrates that different forms of diffusion have increased the likelihood for policy myopia becoming a source of policy failure given the overreliance on replication of alcohol and tobacco policies. It recommends that any other jurisdictions considering the development of recreational cannabis policy (1) not impose a restrictive timeline for policy initiation, and (2) not overly rely on policy learning through replication of analogous legislative fields.

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Chapter One: Introduction

In April 2017, Canada's federal government introduced Bill C-45 and Bill C-46. The former aims to legalize recreational cannabis and establish public-private partnerships between the federal government and cannabis growers, while the latter deals specifically with *Criminal Code* amendments to impaired driving laws. Bill C-45 enables provinces to draft their own framework based on shared overarching policy goals, granting them some discretion to determine the guidelines for cannabis regulation. Bill C-46 enhances police power for roadside sobriety checks, and outlines a legal threshold for marijuana intoxicants when field testing drivers. Both federal Bills provide legal direction to provincial legislatures to ensure provincial cannabis policies are harmonized to reflect national goals, while leaving some room for provincial discretion. The federal government set a deadline for provincial policies to be operational by July 1, 2018, though that was later extended to October 17, 2018, which became the official date that both federal Bills—and each provincial policy—came into effect. This makes Canada a living laboratory to examine policy diffusion, which occurs when governments adopt policies that emulate those of other governments (Berry and Berry, 2018, p. 308).

There are many similarities in the recreational provincial cannabis policies that have been proposed, specifically in terms of embracing overarching federal policy goals in the context of legalization. Yet the provincial statutes also differ in certain areas, including age limits, possession maximums, consumption parameters, educational awareness funding, retail and distribution strategies, and personal cultivation policies. This aspect of provincial diversity leads me to ask the following research questions: (1) which aspects of provincial cannabis policy—namely goals, instruments and settings—diffused from the federal government, and which did not? (2) Which mechanisms facilitated this diffusion, and why? To answer these investigative questions, I employ a qualitative analysis of materials from the federal government and the provinces of Ontario, New Brunswick, Alberta, British Columbia. Broadly speaking, I find that each of these aspects of policy (goals, instruments and settings) diffused to the provinces, though they did so in different ways, with interprovincial variation only occurring with respect to policy settings. The mechanisms by which policy diffused were primarily federal coercion and learning, with learning subdivided into learning from other jurisdictions and replicating one's own analogous policies in tobacco and alcohol. Interestingly, diffusion via competition and imitation was absent entirely with no evidence of these mechanisms in any provincial case study. Policy goals and instruments diffused via coercion through Bills C-45 and C-46, with Bill C-45's mandate being heavily influenced from a non-legally binding federal Task Force. The Task Force on Cannabis Legalization and Regulation also initiated federal coercion among provincial policy settings, which was another factor causing diffusion. Diffusion of provincial settings via learning however was largely due to the restricted timeline imposed by the federal government, which limited policy innovation beyond replication and learning from other jurisdictions.

These findings are important for a number of reasons, but most fundamentally they indicate that policy failure is possible because the ineffective legislation will inhibit public and private retailers from meeting consumer demand, which will deter cannabis users from transitioning to the legal market. Policy failure could occur as one of the main goals of Canada's recreational cannabis laws—the elimination of the black market—will not be attained.

This thesis proceeds in the following manner. In Chapter Two I describe the four mechanisms of policy diffusion that will be examined in this study, drawing from mechanisms detailed in Shipan and Volden (2008) and Berry and Berry's (2018) surveys of the diffusion literature. I integrate these mechanisms into Peter Hall's (1993) social learning framework to distinguish between the *goals*, *instruments*, and precise *settings* of cannabis policy in Canada. I also situate Hall's framework within a broader literature discussing Canadian federalism, specifically highlighting how the constitutional division of powers between federal and provincial governments can influence the diffusion of criminal law. Chapter Three focuses on the diffusion of the goals and instruments of cannabis legislation. I show how each of the major cannabis policy components diffused from the federal government through coercion in all four provinces examined, and how a non-legally binding federal Task Force was influential.

Chapter Four applies Hall's framework to the precise settings of New Brunswick, Ontario, Alberta and British Columbia's cannabis policies to identify and discuss the mechanism(s) of diffusion acting at this level of policy, highlighting important patterns and key differences. I find that diffusion occurred in all the provinces, and it did so primarily via coercion, learning from other jurisdictions, and replication of analogous policies. These three factors led to considerable policy similarities, namely, the presence of federal coercion over goals, instruments, and many precise settings. This federal coercion ultimately limited provincial manoeuvrability in terms of policy innovation. Moreover, provincial learning from other jurisdictions focused solely on Colorado and Washington and primarily focused on the failures of the two jurisdictions, rather than examining successes. In the aspects of the provincial policies that were the product of replication, existing federal legislation concerning alcohol and tobacco, in particular, the *Tobacco Act* and the *Importation of Intoxicating Liquors Act*, served as guides.

Chapter Five draws together these chapters and discusses implications for future research. Of particular interest is the integral role played by the federal Task Force in shaping both federal and provincial cannabis policy. This body had no legal force and yet its goals and instruments diffused directly to the federal legislation, and even to some aspects of provincial policy. This is an important finding, as the Task Force's specified goals and instruments were ultimately all contained in Bill C-45, ultimately exhibiting coercion. Beyond the mechanisms of policy diffusion, my research also combines insights from what Wesley (2018) calls "policy replication" in cannabis legislation to explore how federally-mandated provincial legislation can produce unanticipated outcomes, particularly with a short timeframe. Subsequent policy development must not be restricted by a short timeline

as it increases the likelihood of policy failure. As previously mentioned, I argue that ineffective legislation can inhibit public and private retailers from meeting consumer demand, which will deter cannabis users from transitioning to the legal market.

This occurrence could ultimately lead to policy failure, as one of the main goals of Canada's recreational cannabis laws—the elimination of the black market—will go unaccomplished. Despite the fact that provinces have the capacity to learn from and copy other policies, many long-term consequences of cannabis legalization are largely unknown, which increases the potential for what Nair and Howlett (2017) call “policy myopia” becoming a source of policy failure. I demonstrate that different forms of diffusion have increased the likelihood for policy myopia becoming a source of policy failure in cannabis policy given the overreliance on replication of existing alcohol and tobacco policies. This is especially complicated by the constitutional division of criminal justice policy within the context of Canadian federalism. Because Canada is a federal nation with a unitary apex court (the Supreme Court of Canada), provincial variation in implementing certain aspects of cannabis policy—namely impaired driving—is likely to produce a *Charter* challenge that will alter the development of subsequent legislation. I recommend any other jurisdictions considering the development of recreational cannabis policy to (1) not impose a restrictive timeline and (2) not overly rely on policy learning through replication of analogous legislative fields.

Finally, I consider ways in which future studies can build from this research. First and foremost, future scholars can add more provincial case studies to the four examined here in order to further examine mechanisms of policy diffusion. Scholars can also examine the way in which subsequent provincial governments elected after the first cannabis legislation was passed have sought to amend these frameworks absent a short timeline. In this regard, Ontario and New Brunswick are especially useful future cases to be examined. I also argue that future scholars can use Hall's social learning framework to help measure something that has been criticized for being difficult to measure, namely policy diffusion. By integrating Hall's framework into the policy diffusion literature, this research can guide future scholars who wish to measure policy diffusion at any level of specificity, involving any level of government and most importantly, beyond cannabis legislation. Practically, this project could provide important information to non-profit organizations, government agencies, private sector cannabis companies or the wider public. By producing knowledge and informing the quality of discussion around this important and contemporary policy area, this research can prove to be a valuable resource for social scientists, governments, and Canadian society more broadly.

Chapter Two: Literature Review and Methodology

Introduction

Scholars recognize that, even in a decentralized federation with divided sovereignty, policy decisions made by national governments can influence policy outcomes at the subnational level (Charbit, 2011; Jørgensen, Jogesh, Mishra, 2015; Rohrer, 2016; Kennedy, 2017). In recent decades, the study of policy diffusion has sought to identify precisely why, when, and how this occurs. To explore how policy diffusion has affected cannabis policy, this chapter draws primarily from the work of Frances and William Berry (2018) to define and distinguish between four mechanisms of policy diffusion that will be explored: *learning*, *imitation*, *competition*, and *coercion*. To identify and operationalize the components of cannabis policy that are diffusing, I use Peter Hall's (1993) social learning framework, which describes policymaking as a process that encompasses three components of increasing specificity: (1) overarching goals, (2) instruments used to achieve those goals and (3) the precise settings of those instruments. This integration of Hall's social learning framework into the literature on policy diffusion can be helpful not just for understanding cannabis policy, but also about how policy diffuses in other legislative fields.

After describing Hall's framework, I then apply it to Canada's cannabis legislation, which allows for an analysis of federal and provincial policies. In so doing, I highlight the dynamic that federalism and constitutional criminal law power add to my analysis by briefly explaining these elements within the context of Canadian cannabis policy. After situating and justifying my research in these various literatures, I then describe my methodology: a qualitative analysis of parliamentary transcripts, debates, legislation, government documents and reports from the federal government, Ontario, New Brunswick, Alberta and British Columbia.

Operationalizing Mechanisms of Policy Diffusion

The literature on policy diffusion seeks to explain the mechanisms by which policy is adopted in one jurisdiction because of factors in other jurisdictions (Berry and Berry, 2018, p. 253). Dobbin, Simmons, and Garrett (2007) define policy diffusion as when "policy choices of one [jurisdiction] are shaped by the choices of others," in contrast to "conventional accounts of policy choices" which "point only to domestic conditions" (p. 450). Policy diffusion has been studied both as a global phenomenon among nation-states (see Dobbin et al., 2007), and within subnational jurisdictions and cities in different federations (Calcagno, Walker, and Jackson, 2010; Studlar, 2007). The federal component of recreational cannabis legislation in Canada thus adds a dimension of unexplored complexity for the study of policy diffusion. As recreational cannabis legalization is a novel issue, there exists little scholarship of the phenomenon within the diffusion literature. Bradford and Bradford (2016) have provided a quantitative study of the factors driving the

diffusion of *medical* marijuana legalization in the United States, concluding that policy diffusion was an important driver of policy adoption. However, they did not qualitatively identify the mechanisms by which policy diffused. My study fills this gap by using a qualitative analysis to identify and explain which mechanisms were in operation during the diffusion of cannabis policy in the Canadian provinces that are under examination.

Berry and Berry (2018, pp. 256-260) distinguish between five mechanisms of policy diffusion: *learning*, *imitation*, *competition*, *coercion* and *normative pressure*. The first mechanism is *policy learning*, which occurs when governments observe the apparent successes or failures of similar policies in other jurisdictions, which increases or decreases the probability of adopting a given policy. Learning can apply to observing policy successes or failures: as Dunlop and Radaelli (2013, p. 923) explain, learning is “a process of updating beliefs about policy based on lived or witnessed experiences, analysis or social interaction.” With *policy imitation*, by contrast, policymakers deem another jurisdiction worthy of emulation, prompting the original government to adopt a legislative initiative “independently of any evaluation of the character of the policy or its effectiveness” (Berry and Berry, 2018, p. 257). While learning “focuses on the *action* (i.e. the policy being adopted by another government),” imitation “focuses on the *actor* (i.e. the other government that is adopting the policy)” (Shipan and Volden, 2008, pp. 842-843). For this reason, policy imitation has also been called “political bandwagoning” (Boyd, 2018).

The third mechanism of diffusion, *competition*, is when one jurisdiction adopts a policy to ensure economic advantage over another jurisdiction, or to block another jurisdiction from securing economic advantage over them. The fourth mechanism is *coercion*, when a more powerful jurisdiction encourages another jurisdiction to adopt a policy by incentivizing the decision to implement such policy. In certain cases, this can involve forcing the other government into adoption. Given the importance placed on coercion in my analysis, it is worth exploring its theoretical underpinnings more thoroughly. Scholars often break up this mechanism of diffusion into categories of “hard” and “soft,” with the former referring to the exercise of physical or military coercive force and the latter referring to coercive hegemonic ideas and policy leadership (Dobbin et al., 2007, p. 454). Similarly, Shipan and Volden (2008) identify diffusion via coercion as when “higher levels of government can coercively influence the actions of lower levels by taking the lead in that policy area” (p. 843).

In the context of Canadian recreational cannabis legislation, coercion is operationalized in the form of “policy leadership,” as the federal government had “the ability to influence unilaterally a [provincial] government’s policy choice by altering the nature of the status quo” (Dobbin et al., 2007, p. 456).¹ Coercion—operationalized through policy leadership—is thus a product of the federal government being a more powerful actor than provincial governments (see “Criminal Law in Canada: Federal vs. Provincial

¹ Prior to the federal legalization date of October 17, 2018, the status quo of cannabis possession and distribution was one of federal criminalization and illegality.

Power” below). Dobbin et al. (2007) maintain that this dynamic can be constructed if “the policy arena in question requires coordination,” (p. 456); and as I will demonstrate in proceeding chapters, cannabis legislation is a policy initiative that requires extensive intergovernmental coordination. Given the manner in which I operationalize coercion, statements by legislators that discuss the dominant role of the federal government will be evidence of coercive diffusion. I do not distinguish coercion from other similar concepts such as “blame avoidance,” as Berry and Berry (2018)—the prominent theoretical framework employed in this study—do not operationalize this concept as a mechanism of diffusion in their study.² This distinction between coercion and blame avoidance is justified because “blame avoidance” is comprised of elements that requires the identification of a “blame maker” who “tries to evoke the idea that the target of their accusations is a villain who deserves to be punished” (Hannsson, 2018, p. 555), something distinct from Canada’s cannabis policy experience. Future scholars of policy diffusion should attempt to further disentangle coercion and blame avoidance, as the distinction between the operationalization of these concepts—within the context of Berry and Berry’s (2018) theoretical framework—is absent from the literature.

The final mechanism identified by Berry and Berry is *normative pressure*, whereby a jurisdiction chooses to adopt a policy simply because of shared norms with other governments who have already implemented the policy. Normative pressure can originate from consensus among epistemic or expert communities and is often “reinforced by the participation of agency personnel in intergovernmental professional associations that constitute networks from which policies can diffuse” (Berry and Berry, 2018, p. 257-259). Because normative pressure is difficult to measure and tends to overlap with other mechanisms (particularly learning, coercion, and imitation), I exclude it from my analysis.³

While these mechanisms allow for researchers to explain why aspects of public policy diffuse, they can be aided by identifying the precise features of policy that are actually diffusing. To operationalize cannabis policy in Canada, I use Peter Hall’s (1993) framework. Hall describes policymaking as a process that encompasses three components of increasing specificity: “the overarching *goals* that guide policy in a particular field, the techniques or policy *instruments* used to attain those goals, and the *precise settings* of these instruments” (p. 278, emphasis added). The principal difference between policy goals, instruments and settings is the manner in which these components can change through legislation. For example, the more specific elements of Hall’s policy paradigm—the instruments and precise settings—change regularly. This alteration is seen as “normal

² In the ‘Politics of Blame Avoidance,’ “Weaver (1986) noted that political actors who wield executive power (i.e. Prime Ministers) are often motivated in their policy decisions by the desire to avoid blame,” as receiving blame might lead to diminished voter support in the next election. Naturally, assessing whether coercion is due to “fear of diminished voter support in the next election” (Hannsson, 2018, p. 545-546) is a highly subjective and ambiguous task, which is another reason it has been excluded from my analysis.

³ In their seminal review of mechanisms of policy diffusion from which Berry and Berry draw, Shipan and Volden (2008) also do not include normative pressure, and instead rely on the other four mechanisms.

policymaking,” or what Hall labels first- and second-order change. First- and second-order change are incremental in nature, with second-order change moving one step beyond from what is seen as normal policymaking, yet both still “preserve the broad continuities usually found in patterns (goals) of policy.” First-order change involves the alteration of precise policy settings, while second-order change adjusts both the policy settings and the instruments used to attain overarching goals. Third-order change, by contrast, involves a radical departure from the overarching goals within a policy discourse and encompasses a “paradigm shift” that stretches beyond normal policymaking. Unlike first- and second-order change, third-order change entails simultaneous alterations “in all three components of policy: the instrument settings, the instruments themselves, and the hierarchy of goals behind policy” (p. 279).

To conceptualize Hall’s principles, it is helpful to consider a hypothetical example of legislation: combating the social ills associated with second-hand smoke, something common in many jurisdictions. The overarching goal of this hypothetical policy is to *limit youth exposure to second-hand smoke*; an instrument used to achieve this goal is *restricting places tobacco can be consumed*; and a precise setting of this instrument is *the distance one must be from a building while smoking*. To understand the distinction, assume that a jurisdiction’s initial law attempted to achieve the *goal* of limiting youth exposure to second-hand smoke by using an *instrument* (restricting the consumption of tobacco), the *precise setting* of which specified a required distance of five metres from a public building.

If a legislature were seeking to amend this law, it could do so via first-order change, which is an alteration of a precise setting of an instrument. An example of first-order change would be a new bylaw indicating that one must now be 10 metres away from a public building, amending the previous 5-metre standard. Such an incremental change is characteristic of “normal policymaking” according to Hall. Second-order change, by contrast, would involve changing an instrument (and consequently a precise setting) used to achieve an overarching goal. This would involve an alteration to the instrument of restricting where tobacco can be consumed, such as a new law that prohibited individuals from consuming tobacco outdoors altogether. This alteration would by its nature change the precise setting of *distance one must be from a building while smoking*. If outside a building, the 10-metre threshold is now irrelevant because the new instrument indicates that smoking is prohibited outdoors at *all times*. This second-order change moves one notch beyond “normal policymaking,” as it is less incremental than the earlier example of first-order change. Finally, a legislature could also change the overarching goal of tobacco policy entirely. Instead of *limiting* youth exposure to second-hand smoke, imagine the unlikely scenario whereby the goal of new legislation was now to *increase* youth exposure to second-hand smoke. This third-order change would involve a radical departure from the previous overarching goal, and constitutes a “paradigm shift” that Hall indicates stretches beyond normal policymaking. Of course, any third-order change involves the alteration of all three components of a policy (goals, instruments and settings).

The literature on policy diffusion connects well to Hall's three components of policy, though previous scholars have yet to bring the two literatures together. By identifying each level of policy by increasing specificity, it is possible to provide a more comprehensive analysis of what mechanisms of diffusion are acting on the goals, instruments and settings of recreational cannabis policy. More importantly, applying Hall's components of policy to cannabis legislation allows for an analysis of federal, provincial, and even municipal governments (although this study excludes the latter), as recreational marijuana policy stems across each level of government. Identifying which mechanisms of diffusion inform these different policy components across multiple levels of government is especially important to the study of Canadian federalism, as many other policy areas beyond cannabis reflect this policymaking dynamic.

Criminal Law in Canada: Federal vs. Provincial Power

A brief discussion of Canadian federalism is warranted in the context of recreational cannabis policy. The Constitution stipulates that the federal government holds power to define the criminal law in Canada: section 91(27) of the *Constitution Act, 1867* (formerly the *British North America Act*) grants the Parliament of Canada "exclusive legislative authority" over criminal law and procedures concerning criminal matters (Baker, 2014, p. 277). This exclusive legislative jurisdiction over criminal law matters given to the federal government is seen to be an important symbol of nationhood in Canada, reassuring a strong central (federal) government (Wells, 1984, p. 583). The Canadian system of exclusive federal jurisdiction over the criminal law is unique when compared to the United States,' as state legislatures have authority to enact criminal laws and are more autonomous and more independent than provincial legislatures in Canada (Field, 1992, p. 113). Esmonde (2002) explains that the Supreme Court of Canada, "in determining the scope of the criminal law power—while always alive to concerns about the appropriate division of powers under federalism—have often been guided by what has traditionally been considered criminal law" (p. 78). In order for legislation to fall under federal criminal law power, it must: (1) contain a prohibition, that is, (2) backed with a punishment, for a (3) "valid criminal law purpose such as public peace, order, security, health and morality" (p. 77).⁴

Canadian provinces by contrast only maintain legislative authority over the *administration* of criminal law (Baker, 2017, p. 429). Therefore, when defining what constitutes criminality in regards to cannabis, the federal government has exclusive authority, as it falls under its power over criminal law. The dynamic stemming from this division of powers explains why the provinces were forced into the adoption of cannabis policy; the federal criminal law element within marijuana policy mandated provinces to create legislation concerning this law's *administration*. This fact may explain why there are many similarities in the recreational provincial cannabis policies that have been proposed,

⁴ As interpreted in *Reference re Validity of Section 5(a) of the Dairy Industry Act* (1949, SCR 1) and *Reference re Firearms Act* (2000 SCC 31, 1 SCR 783).

specifically with respect to the overarching federal goals. But what is most interesting concerns the regulatory provisions (i.e. the instruments and settings) of cannabis policy: why can provinces play an active role in these aspects of the criminal justice policy?

The Supreme Court of Canada's interpretation of federal criminal law power explains why provinces can adjust the instruments and settings of some criminal aspects of cannabis policy. According to Esmonde (2002), the Supreme Court has "carved out a broad area for provincial jurisdiction" which "have permitted the enactment of provincial laws that regulate conduct addressed in the *Criminal Code* where it can be shown that the province acted for a legitimate purpose related to a provincial head of power" (p. 77). Provincial legislatures cannot invade federal criminal jurisdiction "by attempting to stiffen, supplement or replace the criminal law or to fill perceived gaps or defects" (p. 77). The Court's closely divided decision in *Re Assisted Human Reproduction Act* (2010 SCC 61, 3 SCR 457) represented an interpretation of criminal law power that imposed clear limitations on the federal government (Snow, 2015, p. 580). The Court has long argued that Parliament has the onus to determine the "pith and substance" or "matter" of a law in order to make a connection "between its criminal law authority and the provisions that impugne on provincial jurisdiction" (Snow, 2015, p. 586). The establishment of statutes pertaining to the administration of a controlled but legal activity – such as retail, distribution, and personal cultivation strategies for cannabis – is ultimately far more likely to fall under provincial jurisdiction over "property and civil rights" in section 92(13) of the *Constitution Act, 1867* than under the federal criminal law power in section 91(27).

Given the Supreme Court's interpretation of the federal criminal law power, it makes sense that the federal government favoured giving the provinces an active role in some aspects of criminal justice policy relating to cannabis. The federal government did not want to create a dispute over constitutional divisions of power for recreational cannabis policy, as they already faced a limited timeline to deliver the framework. Put differently, this jurisprudence made Parliament aware it could outline overarching criminal-justice goals for cannabis legislation and perhaps even determine some instruments, but that some precise settings, particularly those related to economic dimensions of "property and civil rights," would be left up to the provinces. The Supreme Court's decision in *Re Assisted Human Reproduction Act* (2010 SCC 61, 3 SCR 457), which built on decades of jurisprudence that had expanded provincial jurisdiction over property and civil rights, thus provided Parliament with the ability to proceed accordingly in the development of Bill C-45 and Bill C-46. According to Fields (1992), the Canadian system allows "federal judicial input into the meaning of provincial law," with particular reference to the Supreme Court's ability to interpret challenged provincial laws (p. 113). Although federal judicial input is present, the Canadian Constitution specifies "important spheres of activity in which only provincial

law can operate” (p. 114). One such important sphere whereby provincial law can be enacted deals with the *administration* of federal criminal law.⁵

The literature on Canadian federalism provides another lens of analysis that can be connected with Hall’s framework and the policy diffusion literature. In particular, the role of Canada’s Supreme Court may become of increasing importance as cannabis policy transitions out of its current embryonic phase. According to Schertzer (2016), as many as 57 percent of Supreme Court decisions on matters related to federalism adopt a different interpretation concerning the constitutional division of power between federal and provincial governments. These judicial interpretations differ based upon what model of federalism (classical or collaborative) should be dominant in Canadian governance.⁶ The Supreme Court’s disparity in interpreting Canadian federalism further demonstrates the presence of ambiguity among the interpretation of federal and provincial power as outlined in the *Constitution Act* (1867) (see also Dickson, 2018, p. 101). Therefore, any future cases related to cannabis that come before Canada’s high court could conceivably affect the current dynamic between the federal government and their provincial counterparts.

For example, while the criminal aspect of impaired driving is contained within federal Bill C-46, provincial governments regulate this law’s *administration*. Crucial differences in each province’s impaired driving regulations could then theoretically become a catalyst for interest groups or Crown prosecutors to launch a constitutional challenge that may eventually reach the apex court. While constitutional litigation is not a new phenomenon, a change in the interpretation of criminal law power related to federalism may result in a radical departure from the overarching goals within cannabis policy discourse. This type of third-order change is then at the very least possible, given the findings of Schertzer (2016) and thus should be a consideration among future policymakers. For present purposes, however, it is sufficient to say that the federal government has clear jurisdiction over the overarching goals of cannabis policy; that provinces have clear jurisdiction over the economic dimensions of some precise settings; and that either level of government could conceivably set many instruments and settings.

By paying attention to the federal/provincial dimensions of cannabis policy, this study can also contribute to our broader understanding of how federalism affects the criminal law, and vice versa. While there is considerable research on Canadian federalism (Gagnon, 2009; Inwood, 2012; Bakvis and Skogstad, 2012; Hail, 2017) and the limits of the

⁵ “Accordingly, a provincial law ‘will not invade the federal power over criminal law merely because its purpose is to target conduct that is also captured by the Criminal Code’: *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46 at para 32” (as cited in Taylor, 2018, p. 25).

⁶ Clark describes collaborative federalism as collaborative intergovernmental efforts made since the mid-1990s to improve the operation of the nation (Clark, 2016). This model is to be contrasted with classical federalism whereby “the two levels government carried out their respective responsibilities as assigned by the *Constitution Act* (1867) in relative isolation from one another” (Bélanger, 2001).

federal criminal law power (Baker, 2014; Schertzer, 2016; Snow, 2015), there has been limited scholarly attention concerning the jurisdictional authority over recreational cannabis policy in Canada, given the novelty of legalization. Even though there are various studies that examine aspects of medicinal cannabis policy and Canadian federalism (see Ko, Bober, Mindra, and Moreau, 2016; Fischer, Kuganesan, and Room, 2015), recreational marijuana legislation has not been given as much attention.⁷ As cannabis legalization is a new endeavour for federal and provincial governments, there exists no scholarship on the relationship between recreational cannabis policy and Canadian federalism, which is another research gap this study fills.

Methodology

To determine the goals, instruments and precise settings of Canadian cannabis policy, I engaged in a qualitative analysis of parliamentary transcripts, debates, legislation, government documents and reports from the federal government, Ontario, New Brunswick, Alberta and British Columbia. The federal documents include Bill C-45, Bill C-46 and the *Final Report of the Federal Task Force on Cannabis Legalization and Regulation* (hereinafter “Task Force”). As I show, the federal government articulated its overarching goals and the instruments used to achieve those goals primarily through the federal Task Force on Cannabis Legalization and Regulation. The official directives within Bill C-45 and Bill C-46 stem directly the Task Force’s recommendations, even though this body had no actual legal authority to make binding recommendations. As the goals and instruments were the same within each province, much of my analysis focuses on the precise policy settings. The federal Task Force identified four main policy goals: enforcing public safety and protection, establishing a safe and responsible supply chain, minimizing harms of use, and providing access to *medical* cannabis (Canada, 2016, pp. 4-6). As I will argue, the first three of these ended up serving as the overarching goals that diffused to provincial policy. However, because medical cannabis is entirely under federal jurisdiction, there was no provincial policy for it to inform, and it did not serve as an overarching goal that affected provincial policy.

The case studies of Ontario, New Brunswick, Alberta and British Columbia were selected based on a geographical representation of provinces where English is either the primary language of debate (Ontario, Alberta, and British Columbia) or one of two official languages (New Brunswick). As many legislative documents from Quebec—where most French-speaking Canadians reside—are not available in English, selecting New Brunswick as a case study allows for the inclusion of some of the French-speaking population while still maintaining methodological consistency in the analysis of qualitative materials. The case studies were also selected on the basis of population distribution, with these four provinces representing around 66% of the total Canadian population as of 2017 (Statistics

⁷ These studies concern the Canadian medical system and the dynamic between federal and provincial power insofar as medicinal cannabis is under federal jurisdiction but is heavily intertwined with *provincially* controlled healthcare networks.

Canada, 2018). Another factor considered in provincial case selection was ideological culture. British Columbia has long been known as a cannabis haven in North America, while Alberta provided an example of a region traditionally known to have a more conservative political culture (see Wiseman, 2007; Wesley, 2011). Additionally, British Columbia has long been known for their legal and illegal medicinal cannabis industry, and provides a unique opportunity to examine if the presence of a “cannabis culture” had a more profound impact on subsequent policy development in this province.

Ontario’s initial legislative framework includes Bill 174, which created the *Cannabis Act, 2017*, the *Ontario Cannabis Retail Corporation Act, 2017* and the *Smoke-Free Ontario Act, 2017*, and amended other legislation. In New Brunswick, there were four pieces of legislation: Bill 16 (*Cannabis Control Act*), Bill 17 (*Cannabis Management Corporation Act*), Bill 18 (*Cannabis Education and Awareness Fund Act*) and Bill 20 (*An Act to Amend the New Brunswick Liquor Corporation Act*). Alberta had three pieces of legislation: Bill 26 (*An Act to Control and Regulate Cannabis*), Bill 29 (*An Act to Reduce Cannabis and Alcohol Impaired Driving*), and Bill 6 (*Gaming and Liquor Statutes Amendment Act, 2018*). Finally, British Columbia had two pieces of legislation: Bill 30 (*Cannabis Control and Licensing Act*) and Bill 31 (*Cannabis Distribution Act*). For each province, I analyzed legislative debates (reported in Hansard) and committee hearings on each of these Bills, in addition to government press releases and reports from each province. Including the federal and provincial documents described above, this amounted to a total of approximately 1,500 pages. Because the policy change has been recent, I use an inductive methodology, whereby the substance of the categories of policy goals, instruments and settings is determined from the content of the text itself (see Benoit, 2011, p. 271).

It should be noted that cannabis policy frameworks may and have changed due to electoral dynamics. In Ontario, after a decade and a half of Liberal government, Doug Ford’s Progressive Conservative Party won a majority of seats in the province’s June 2018 election. Upon forming government, they announced plans to change Ontario’s distribution model to allow private retail sales, pushing back their opening until at least April 2019. After several weeks of uncertainty following New Brunswick’s 2018 election, Blaine Higgs’ Progressive Conservative government was formed November 2018, replacing the Liberals who had introduced New Brunswick’s cannabis policy. The 2019 federal election could likewise produce a Conservative government that might considerably change the Trudeau Liberals’ cannabis framework. While second- and third-order change in cannabis policy is not likely, new governments may engage in first-order change through the adjustment of precise settings, as indeed the Ford government has through changing Ontario’s retail policy (Westoll, 2018). However, for the purposes of this analysis, I examine the *initial* policy responses from the Ontario, New Brunswick, Alberta and British Columbia governments in 2017. I examined the initial policy responses for two reasons: first, insofar as my primary interest is in diffusion, it is those initial frameworks that were most likely to be affected by the federal guidelines and strict timeline. Second, provincial governments have not published all aspects of the new legislation, and some legislative change remains ongoing. For instance, the Ford government in Ontario has made changes to the provinces retail

framework, but this new policy response will not be available for viewing until its proposed enactment in April 2019.

Conclusion

This chapter has showed how integrating Hall's framework for social learning into the policy diffusion literature can provide scholars with greater precision when measuring policy diffusion. It has also shown how, in a federation such as Canada's, where the federal government defines the criminal law, we should expect to see overarching goals set by the federal government, but that jurisdiction over policy instruments and their precise settings can vary, even in legislation that stems from a criminal law. In the next chapter, I describe the mechanisms of policy diffusion acting on the policy goals and instruments at the provincial level. I begin with goals and instruments because, as it turns out, these policy components stem from the federal Bills C-45 and C-45 (and indeed, from the Task Force before it) and thus are the same for each provincial case study. I will show how Bill C-45 defined and circumscribed the overarching policy goals and instruments while the legislation drafted by each province stipulated the precise settings, before moving onto an exploration of the mechanisms of diffusion acting on each province's precise policy settings in Chapter Four. As the next chapter shows, much of this stems from the initial federal Task Force that was created in 2016.

Chapter Three: Federal Diffusion of Goals and Instruments

Introduction

This chapter will examine the diffusion of the overarching goals and instruments of Canada's recreational cannabis policy and describe the mechanisms of diffusion acting on the two broadest policy components. These policy components are what Hall (1993) calls the overarching *goals* (what guides policies in a particular field) and the techniques or policy *instruments* used to attain these goals (p. 278). To determine policy goals, this chapter draws from federal documents, namely Bill C-45, Bill C-46 and the *Final Report of the Federal Task Force on Cannabis Legalization and Regulation*. As I demonstrate, the federal government articulated its overarching goals and the instruments used to achieve those goals by adopting those set out in the federal Task Force, even though the federal government was not legally bound to follow its recommendations.

The chapter then analyzes government and legislative documents in each of the four provinces to determine the extent to which these goals and instruments diffused into provincial legislation. I find that the diffusion of the goals and instruments of Canada's cannabis legislation—across each of the four provinces—diffused solely from the federal government primarily through coercion, with the government exercising its criminal law power. The integral role played by the federal Task Force in shaping both federal and provincial cannabis policy goals and instruments cannot be understated. The federal government had no legal obligation to follow its recommendations, and yet its goals and instruments diffused directly to the federal legislation. This is an important finding, as the Task Force's specified goals and instruments are ultimately all contained in Bill C-45. This observation demonstrates the staying power of the Task Force, and that it too—not just the federal government's legislation—exhibited coercion. It also is not the end of the Task Force's influence; as will be shown in Chapter Four, the Task Force also influenced precise policy settings in each province.

Recreational Cannabis Policy: Coercive Diffusion of Overarching Goals

In June 2016, the federal government announced the creation of the Task Force on Cannabis Legalization and Regulation—a joint initiative between the ministries of Justice, Health, and Public Health and Emergency Preparedness—chaired by former Minister of Health and Justice Anne McLellan. The *Final Report of the Task Force on Cannabis Legalization and Regulation* was released in November 2016. As noted above, it identified three main policy goals: (1) enforcing public safety and protection, (2) establishing a safe and responsible supply chain and (3) minimizing harms of use (Canada, 2016, pp. 4-6). The framework also contained a section on access to *medical* cannabis, which is treated as a distinct policy field, overseen entirely by the federal government, and thus beyond the scope of analysis for this paper (though it will be discussed briefly in Chapter Five). In response to this Task Force, in April 2017, Canada's federal government introduced Bill C-45 and Bill C-46, which collectively legalized cannabis while amending a number of related

laws. A discussion paper from British Columbia's Ministry of Public Safety and Solicitor General reiterates the influential role of the Task Force and indicated "Bill C-45 is largely based on the recommendations of the Task Force" (British Columbia, 2017a, p. 2). The federal Bills also contained other information not specified from the Task Force, such as the division of administrative powers between the federal and provincial governments, as well as stipulating a few precise settings for the policy instruments. For instance, section 69(1) of Bill C-45 outlines the general authorizations for provincial sales, while section 69(3)(b) stipulates a setting for that instrument, namely that cannabis cannot be sold to individuals under 18 (Canada, 2018a, pp. 41-42). However, the Task Force set the overarching goals that informed diffusion.

I classify the policy diffusion that stems from the Task Force and Bill C-45 and Bill C-46 as *coercive*, which is when a more powerful jurisdiction encourages or forces a less powerful one to adopt a given policy (Berry and Berry, 2018, pp. 258-259). Although the federal Parliament and provincial legislatures are constitutionally equal in Canada's federal system, within the realm of criminal law, they are not. As noted in Chapter Two, section 91(27) of the *Constitution Act, 1867*, gives the federal government broad authority to define the criminal law and renders provincial policy within criminalized areas unnecessary (Canada, 2013, p. 28). Nonetheless, provincial governments still have important powers over enforcement and implementation of federal criminal laws. A good example of this dynamic is illustrated with Canada's new impaired driving laws (as outlined in Bill C-46). While the federal government *defined* what the threshold is for criminal impairment while operating a motor vehicle, it is within the power of the provincial government to execute the law's enforcement and implementation. Indeed, the status quo on cannabis policy in Canada prior to Bill C-45—a number of criminal prohibitions on possession, cultivation, and distribution, each attached to a specific criminal punishment—precluded provincial legislatures from making policy in this field. Although Bill C-45 liberalizes and legalizes rules for cannabis, federal policy in this area, informed by the federal Task Force, nevertheless means the mechanism by which these policy goals diffused was coercion.

My analysis of provincial documents demonstrates evidence of coercive diffusion of these broad policy goals in each province. In Ontario, an online press release concerning cannabis legalization from the Ministry of the Attorney General states that Ontario's *Cannabis Act* will "build on the federal framework in several key areas... establishing safe and responsible retail... [and] shutting down illegal storefronts and supporting prevention and harm reduction" (Ontario, 2017a). Another press release from the Ontario Ministry of Finance stated that Ontario's retail stores would operate in a "socially-responsible manner" that will meet with "federal *requirements* for cannabis sales" (Ontario, 2017b, emphasis added). Similar statements from Members of the Provincial Parliament (MPPs) in Ontario, including those in opposition, confirm that the government felt bound by the federal goals. New Democratic MPP Taras Natyshak stated "there's a federal date looming: July 1, when their legislation is coming down. That's what is *forcing* all the provinces into this action to get something on the books that starts to deal with it, because we're *compelled* by federal legislation" (Ontario, 2017c, p. 537, emphasis added). Progressive Conservative MPP Ross

Romano similarly stated, “the federal government has said it’s going to happen, but we want to make sure it happens safely” (Ontario, 2017d, p. 565).

The same was true in New Brunswick, where the government felt it could not deviate from federal goals originally stated by the Task Force and inscribed in federal legislation. Its 2017 Throne Speech spoke of the “reality announced by the federal government” and promised legislation that would “ensure that public safety is respected by having strong regulations for production, distribution, and sale of cannabis coupled with the necessary awareness programs and enforcement” (New Brunswick, 2017a, p.5). In a press release about its retail model, the New Brunswick government stated, “we feel confident that this model will support the federally stated objectives of legalization” (New Brunswick, 2017b). New Brunswick’s Final Report of the Select Committee on Cannabis echoed the federal government’s overarching goals, noting that Ottawa’s deadline of July 1 gave “provinces and territories a little over a year to create a distribution model and public health and safety initiatives” (New Brunswick, 2017c, p. 1). The report also noted how the federal government’s financial incentives inspired action, insofar as residents in a province without a distribution model “will be able to buy recreational cannabis by mail order from another province,” which would mean “provinces without a retailer will not gain any revenue from the legalization of recreational cannabis but will remain responsible for cannabis-related public health and safety” (New Brunswick, 2017c, p. 1). Even opposition members critical of the government recognized that the provincial government’s hand was forced on the issue, as it had been with others. New Brunswick Finance Minister Cathy Rogers echoed the staying power of the federal Task Force, “this work results from the initial federal task force that was formed and...the objectives of bringing legislation forward” (New Brunswick, 2017i, p. 31).

Statements from members of the Alberta legislature also indicated the coercive power of the overarching policy goals. United Conservative member of the legislative assembly (MLA) Angela Pitt commented, “this is *our duty* as legislators, to be responsible and do the best job that we can in the implementation and regulation of this new law [cannabis] that the federal government has *passed down to us*” (Alberta, 2017d, p. 2022, emphasis added). Indeed, legislators in this province felt such a strong presence of federal coercion that Alberta’s primary cannabis policy (Bill 26) was described by United Conservative MLA Wayne Anderson as “a reaction to the federal government’s legislation on cannabis under Bill C-45” (Alberta, 2017h, p. 2166). Provincial opposition members even expressed sympathy towards the sitting government as they recognized that “they’re told by the federal government that this is the route that we have to go” (Alberta, 2017b, p. 1984). Online government press releases echoed similar language heard in the report from the Task Force, as one headline reads “Albertans’ health and safety will be top priority as the province looks to modernize the *Gaming and Liquor Act* before cannabis is legalized by the federal government” (Alberta, 2018a). Similarly, another government press release contained comments from Minister of Justice and Solicitor General Kathleen Ganley who further reiterated language from the Task Force and Bill C-45. She stated the Alberta government is “focused on keeping cannabis out of the hands of children, keeping profits

away from criminals, and protecting Alberta’s roads, workplaces and public spaces...as our province adapts to this federal decision” (Alberta, 2017a).

Officials in British Columbia reiterated the coerciveness of the federal government’s overarching goals. Minister of Public Safety and Solicitor General, Mike Farnworth, commented, “this federal legislation creates a corresponding need for provincial and territorial governments to establish cannabis-related laws and regulations... to minimize the harms associated with cannabis use” (British Columbia, 2018d). Farnworth also stated that the legislation was crafted around “goals for legalized cannabis that prioritize public health and safety” and repeatedly commented that the “date set by the federal government” was a significant factor while crafting policy (British Columbia, 2018a). The overarching federal goals from the Task Force (and subsequently Bill C-45) were also explicitly mentioned in a discussion paper from the British Columbia’s Ministry of Public Safety and Solicitor General. The discussion paper notes that British Columbia’s cannabis policy “seeks to balance the objectives of providing access to a regulated supply of cannabis, implementing restrictions to minimize the harms associated with cannabis use, and reducing the scope and scale of...associated social harms” (British Columbia, 2017a, p. 2). This language is almost identical to that used within the report from the Task Force. Indeed, federal coercive mechanisms were established and prominent during the composition of this provincial discussion paper as the Task Force is referenced on all but one page of the entire document (pages 2-4, 6-8), and is even mentioned in the very first paragraph before Bill C-45 and Bill C-46. Each reference pertains to a policy recommendation—nearly all of which were implemented in British Columbia’s final legislation—demonstrating the Task Force’s coercive power on federal *and* provincial governments.

The preceding analysis shows that the overarching goals that informed cannabis policy in Ontario, New Brunswick, Alberta and British Columbia were set by the federal government, and that the mechanism by which policy diffused was coercion. Notably, these goals originated in the Task Force, and largely influenced the federal legislation. When it came to the broad goals of enforcing public safety and protection, establishing a safe and responsible supply chain, and minimizing harms of use, government documents and statements from legislators in both provinces were unequivocal. Language frequently echoed the goals; terms such as “requirements,” “compelled,” “forcing” “mandated” and “told by Ottawa” were common; and provinces were aware that if they did not create a framework broadly consistent with the federal government’s goals, they would risk forgoing revenue while remaining on the hook for public health and safety costs resulting from legalization.

Policy Instruments: Coercive Diffusion Maintained

It should come as no surprise that the overarching goals of cannabis policy were diffused through coercion. Language within these three goals (“public safety,” “protection,” “safe and responsible,” “minimizing harms”) clearly contained a classic criminal law “purpose” defined by a “criminal law substance” that would ensure it fell within federal

jurisdiction over criminal law (see Baker, 2014, pp. 277-278). As is often true of overarching policy goals, the federal government's Task Force objectives lacked specificity but still ensured that the province's policy instruments would also diffuse through coercion. Based on the Task Force recommendations and Bill C-45 and Bill C-46, I identify four policy instruments the federal government specified to attain each of the three overarching goals, for a total of 12 instruments. Like the overarching goals, the policy instruments also diffused directly from the Task Force's recommendations. The instruments are listed in *Table 1*, and are numbered 1-12.

Table 1: Goals and Policy Instruments

	Overarching Goals (from federal Task Force)		
	Enforcing Public Safety and Protection	Establishing a Safe and Responsible Supply Chain	Minimizing Harms of Use
Policy Instruments (from federal Task Force)	(1) Punishment for illegal activities	(5) Production regulations	(9) Promotion, advertising and marketing restrictions
	(2) Personal possession limits	(6) Plan of distribution	(10) Minimum purchasing age
	(3) Place of use	(7) Retail strategy	(11) Public education
	(4) Impaired driving regulations	(8) Personal cultivation	(12) Workplace safety

Enforcing Public Safety and Protection

Within the first goal of enforcing public safety and protection, Bill C-45 specifies criminal punishments for activities (instrument #1) including possession, distribution, selling, importing and exporting, production, and involving a young person (see Mackay, Phillips, and Tiedemann, 2017, pp. 7-12 for a full list). The legislation also includes personal possession limits (#2) of up to 30 grams of dried cannabis in public spaces. With respect to place of use (#3)—where individuals can consume cannabis— Bill C-45 does not explicitly state that provinces must create place of use restrictions.⁸ However, the federal Task Force strongly recommended that provinces introduce some restrictions, and “agree[d] with the widespread view that current restrictions on public smoking be extended to include the public smoking of cannabis” (Canada, 2016, p. 41). As a result, provinces' policy instruments concerning place of use were clearly affected. New Brunswick's Minister of

⁸ For this instrument I have purposely excluded the incorporation of “place of use at work,” as this matter will be encompassed in the instrument of “workplace safety” (#12).

Health Benoît Bourque noted that the province was “taking care of the recreational cannabis portion, which we have been *mandated* to do by the federal government,” which naturally encompasses consumption parameters (New Brunswick, 2017d, emphasis added). Similarly, Alberta Minister of Justice and Solicitor General Kathleen Ganley emphasized that “while the federal government has made the decision to legalize, many important decisions will be left to the province. These decisions include where cannabis can be sold and where it can be consumed” (Alberta, 2017a).

Bill C-46 also includes changes to rules for drug-impaired driving (#4), even though the non-criminal aspects of motor vehicle policy are provincial jurisdiction. Claudio De Rose, policy director at the Ontario Ministry of Transportation, noted that the province was “in a situation with the deadline that was imposed, where we need to move simultaneously with the federal legislation,” and that Ontario was “thinking through and working through with the federal government how the *Criminal Code* can integrate with the *Highway Traffic Act*” in anticipation of the July 1, 2018 deadline (Ontario, 2017e, p. 619). Likewise, an official press release of the Legislative Assembly of New Brunswick explained, “amendments to the *Motor Vehicle Act* will establish a drug-impaired driving program to complement proposed changes to the *Criminal Code* of Canada respecting drug-impaired driving” (New Brunswick, 2017e; see below).

The Western provinces experienced similar coercive mechanisms. During deliberations around Alberta’s new impaired driving legislation (Bill 29), United Conservative MLA Wayne Anderson noted that “the province has decided to align their deterrence sanctions for impaired driving with those of the federal government’s Bill C-46... that deal with offences and procedures related to drug-impaired driving” (Alberta, 2017b, p. 1961). British Columbia’s Minister of Public Safety and Solicitor General, Mike Farnworth provides further evidence of federal coercion as he comments on B.C.’s new impaired driving legislation, which is intended to “harmonize with Bill C-46... creating an authority to prescribe motor vehicle–related *Criminal Code* offences by regulation, and other consequential and housekeeping changes necessary to ensure consistency between federal and provincial law” (British Columbia, 2018i, p. 4423). The minister’s quote about “housekeeping changes” demonstrates the importance of the interpretation of federal criminal law power. Provinces were able to play an active role in this aspect of criminal justice policy relating to cannabis due to the operational dynamics of Canadian federalism, insofar as provincial governments can regulate the *administration* of criminal law.

Establishing a Safe and Responsible Supply Chain

Within the second goal of establishing a safe and responsible supply chain, section 69(3) of Bill C-45 specifically details “the legislative measures in a provincial Act that authorizes the selling of cannabis ... in respect of persons authorized to sell cannabis,” which includes production regulations (#5). Those measure are:

- (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. (Canada, 2018a, p. 41)

Bill C-45 also “establishes a statutory basis on which the designated minister can issue licenses and permits for authorized cannabis-related activities” with respect to a distribution plan (#6) and a retail strategy (#7) (Mackay et al., 2017, p. 1).

All of the provinces maintained these instruments and federal coercion was once again the dominant force behind the subsequent diffusion. In terms of production regulation (#5), New Brunswick Minister of Health Benoît Bourque noted during committee hearings, “the province needs to buy its cannabis from federally licensed producers. It is the federal government that decides the strains and anything related to the type of cannabis. It is not in the purview of the province. It rests solely on the federal government” (New Brunswick, 2018c, p. 11). Likewise, B.C. Minister of Public Safety and Solicitor General Mike Farnworth articulated during question period, “the federal government is responsible for the licensing of production” (British Columbia, 2018j, p. 3076). Ontario Conservative MPP Ross Romano also noted at committee that it is “the province’s job, sadly, to deal with how it will be distributed” (#6) (Ontario, 2017d, p. 587). An official press release outlining New Brunswick’s retail strategy (#7) stressed “the Crown corporation mandated to oversee, conduct and manage the retailing of recreational cannabis in New Brunswick... will support the federally stated objectives of legalization” (New Brunswick, 2017b). Alberta New Democratic MLA David Shepherd also noted that it was up to provincial governments to establish “the framework in place that will allow us to begin the journey of seeing how we as a province are going to be able to regulate and allow the legal sale of cannabis” (Alberta, 2017d, p. 2026).

Finally, Bill C-45 allows for personal cultivation policies (#8) of up to four plants per household (Canada, 2018a, p. 13). Almost every province—all but Quebec and Manitoba—have embraced the federal threshold for cultivation by allowing households to grow up to four plants. The Quebec and Manitoba governments have opted to impose fines for any personal cultivation, despite Bill C-45 permitting individuals to grow their own cannabis. Both provinces have passed legislation that enable police to administer tickets at their own discretion. Quebec’s penalties are similar to those imposed for violating the province’s tobacco laws, while Manitoba’s rules explicitly state that non-observers will receive a \$2,542 fine (Authier, 2018; The Canadian Press, 2018). As B.C. Minister of Public Safety and Solicitor General Mike Farnworth reiterated, “we have made decisions around the issue of personal cultivation. The federal government has said that four plants was the limit. We have agreed to that” (British Columbia, 2018j, p. 3076). Similarly, an online government resource from Alberta outlines that, “Under federal legislation, adults can grow up to 4 plants per household from seeds bought from licensed cannabis retailers” (Alberta, 2018c).

Minimizing Harms of Use

Perhaps the most interesting case of provincial cannabis diffusion among policy instruments concerns promotion, advertising and marketing restrictions (#9). Of all the policy instruments, this is the one area where there was evidence of both coercion and learning. Bill C-45 bans “any promotion, packaging and labelling of cannabis that could be appealing to young persons or encourage its consumption, while allowing consumers to have access to information with which they can make informed decisions about the consumption of cannabis” (Canada, 2018a, p. ii). The federal restrictions on promotion intersect with provincial retail responsibility insofar as provinces must ensure retailers adhere to these promotion regulations even at the point of sale (Canada, 2018a, p. 19). The legislative summary of Bill C-45 indicates the law drew from “lessons from the way governments in Canada have regulated tobacco and alcohol,” and the federal restrictions set out section 17(1)(e) of Bill C-45 are very similar to restrictions on tobacco advertising (Mackay et al., 2017, pp. 13, 4). This section of Bill C-45 restricts the promotion of cannabis brand elements “in a manner that associates it or the brand element with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring” (Canada, 2018a, p. 18). Such restrictions on lifestyle advertising are also applicable to tobacco products as outlined in section 22(3) of the federal *Tobacco and Vaping Products Act* (Canada, 2018b, p. 18).⁹ An online press release from the Alberta government reiterates that “the federal government has created strict rules about advertising” and “generally mirror what is in place today for tobacco” (Alberta, 2018c). Promotion and advertising is thus the only policy instrument across each overarching goal that diffused through a mechanism other than just coercion.

Bill C-45 allows provinces to establish their own thresholds for a minimum purchasing age (#10), but does not allow provinces to move below 18 years (Mackay et al., 2017, p. 4). As B.C. Minister of Public Safety and Solicitor General Mike Farnworth noted during question period, “the feds have set the age at 18, but the provinces have the ability to change that to another age that they deem to be appropriate,” and as we will see in the next chapter, many provinces chose to alter this precise setting (British Columbia, 2017b, p. 704). With respect to public education (#11), the Task Force recommended implementing an “evidence-informed public education campaign, targeted at the general population but with an emphasis on youth, parents and vulnerable populations... working with provincial

⁹ In the case of *RJR MacDonald Inc. v. Canada* (Attorney General), [1994] 1 S.C.R. 311, “a 7-2 majority of the Supreme Court of Canada concluded that the federal law regulating the use of tobacco products rested” on the Canadian Parliament’s jurisdiction over criminal law, consistent with the division of powers sector, as set out in section 91(27) of the *Constitution Act, 1867* (Beaudoin, 2015). As the federal restrictions for cannabis advertising set out in section 17(1)(e) of Bill C-45 are very similar to restrictions on tobacco advertising, it is evident how this instrument diffused through both coercion and learning. This area of cannabis policy clearly fell under federal authority while simultaneously learning (replicating) from analogous federal policy governing tobacco. This point also further demonstrates how federalism is intertwined within many aspects of recreational cannabis policy.

and territorial partners” (p. 27). In October 2017, the federal government announced funding of \$36 million over five years for a cannabis awareness campaign (Canada, 2017). Nonetheless, the coercion for education as a policy instrument was felt by provincial governments and is observed in the statements from members in the Alberta legislature. United Conservative MLA Leela Aheer stated “the education piece of this is going to be, I think, probably more important even than the enforcement of the behaviours,” while Liberal MLA Dr. David Swann explained a key component was “ensuring that we invest really well in the educational process” (Alberta, 2017c, p. 1963-1964).

Similarly, Rusty Hick, a representative from the Ontario Public School Boards’ Association, noted at committee, Ontario’s legislation “includes implementation components that stem from federal legislation,” with “education [being] a critical component for the successful implementation of the legalization of recreational cannabis” (Ontario, 2017d, p. 581). Ontario’s Ministry of the Attorney General noted the necessity of public education, and the fact that the federal government would take a lead role in defining what that education would include: “In the lead-up to federal legalization, to help ensure public awareness of this transition and the new measures that will take effect, the province is planning a public information campaign, coordinated with the federal government” (Ontario, 2017a). Likewise, New Brunswick Finance Minister Cathy Rogers, when discussing the *Cannabis Education and Awareness Fund Act*, noted that the legislation would “ensure there is funding in place for research, education and awareness programs to be built and put in place as we prepare for the federal government’s July 2018 implementation date” (New Brunswick, 2017f). Workplace safety (#12) was also diffused through coercion. Sections 162-164 of Bill C-45 amend the federal *Non-smokers’ Health Act*—“which restricts smoking in federally regulated workplaces”—to include cannabis within the regulatory framework, while also outlining the regulations by which provinces must abide and incorporate into their own provincial laws (Government of Canada, 2015; Canada, 2018a, pp. 104-105; see also section 8.2(3) of the *Non-smokers’ Health Act*).

Conclusion

This chapter examined the diffusion of overarching goals and instruments within Canada’s recreational cannabis policy and described the mechanisms of diffusion acting on each goal and instrument at the provincial level. It was found that the diffusion of the overarching goals and instruments of Canada’s recreational cannabis legislation—across each of the four provinces examined here, and likely across all ten provinces—diffused solely from the federal government through coercion. The chapter also demonstrates how the federal government articulated its overarching goals and instruments primarily through the federal Task Force, and that it too exhibited coercion. Regardless of the party in power, all four provinces felt compelled quite clearly by both the overarching goals and policy instruments used to achieve those goals set out by the federal government.

The next chapter moves beyond policy goals and instruments to examine the *precise settings* within each province’s legislation. This level of analysis is where one would expect

to see the most variation, because as Hall (1993) notes, first order change affecting precise settings is a common as characteristic of normal policymaking. Moreover, the precise settings of certain policy instruments, particularly those affecting the economic and financial dimensions of cannabis policy are those over which provinces are most likely to have constitutional jurisdiction. Indeed, as the next chapter shows, there was considerable variation among these precise policy settings; nonetheless, there was some similarity as federal coercion was still present with respect to certain settings.

Chapter Four: Precise Policy Settings in the Provinces

Introduction

Chapter Three showed how the diffusion of the overarching goals and instruments of Canada's recreational cannabis legislation diffused solely from the federal government through coercion in each of the four provinces examined. This chapter continues with the analysis of Hall's policy components, this time, examining the *precise settings* within each province's legislation. Precise settings differ from overarching goals and instruments. Hall (1993) explains how while overarching goals "guide policy in a particular field, the techniques or policy *instruments* [are] used to attain those goals, and the *precise settings* of these instruments" are the specific operational details of the subsequent policy (p. 278). The principal difference between policy goals, instruments and settings is the manner in which these components can change through legislation. The more specific elements of Hall's policy paradigm—the instruments and precise settings—change regularly. This alteration is seen as "normal policymaking," or what Hall labels first- and second-order change. This chapter will focus exclusively on the diffusion of the precise policy settings within each province, which is where the most variation between provincial case studies is to be expected—and where future policy change is most likely.

As the analysis demonstrates, diffusion occurred in all the provinces, and it did so primarily via coercion, learning from other jurisdictions, and replication of provinces' analogous policy fields. The significant time constraints imposed on the provinces played a role, particularly with respect to learning from other jurisdictions and replication of analogous fields. Learning from other jurisdictions focused solely on Colorado and Washington (which legalized cannabis in 2014 and 2012 respectively), and tended to warn against failures rather than examining successes, while policy replications typically involved alcohol and tobacco policies. Collectively, the different forms of diffusion led to considerable policy similarities, but also some notable differences in 9 of the 12 precise settings. For instance, there were variations concerning impaired driving regulations and retail strategies. I argue that such variations in terms of impaired driving, having been replicated from analogous policy areas, could produce *Charter* challenges. Despite the fact that provinces have the capability to learn from and replicate other policies, many long-term ramifications of cannabis legalization are largely unexplored, which increases the potential for what Nair and Howlett (2017) call "policy myopia" becoming a source of policy failure.

Precise Policy Settings in Ontario:

Unlike the overarching policy goals and policy instruments for cannabis, the *precise settings* of each policy instrument were more likely to be determined by provincial governments. Even then, through Bill C-45 and C-46, the federal government did specify certain settings in a coercive manner. For example, while a province can adjust the settings for personal possession limits (#2)—such as requiring locked storage of cannabis in the

home, as in New Brunswick—it cannot authorize an individual to possess more than 30 grams of dried cannabis in a public space. Ontario and Alberta, for example, have not added any specific regulation for the policy instrument related to personal possession and is explicitly using Bill C-45 as a directive to determine its precise settings. In this case, this policy setting has diffused through coercion. *Table 2* identifies the specific settings that Ontario adopted in Bill 174 to apply to each of the policy instruments mandated by the federal government. Below, I organize these settings by the mechanism (or mechanisms) by which they diffused. My analysis reveals that these 12 settings diffused primarily through coercion and learning, with little evidence of imitation or competition.

Table 2: Precise Policy Settings (Ontario)

	Overarching Goals		
	Enforcing Public Safety and Protection	Establishing a Safe and Responsible Supply Chain	Minimizing Harms of Use
Precise Policy Settings (Provincial)	(1) Punishment: Criminal sanctions, and severe provincial sanctions for illegal cannabis offences with an emphasis on <i>large</i> monetary fines	(5) Production Regulations: Set by federal law	(9) Advertising: Set by federal law
	(2) Personal Possession: Up to 30 grams of dried cannabis	(6) Distribution: Decided by Crown corporation	(10) Minimum Age: 19 years
	(3) Place of Use: Private residences, with landlord restrictions	(7) Retail: Government monopoly for retail and online sales	(11) Education: Federal funding only
	(4) Impaired Driving Regulations: Strict regulation with severe criminal penalties (federal), and zero tolerance for <i>certain</i> drivers (provincial)	(8) Personal Cultivation: Can grow up to four plants per household	(12) Workplace Safety: Minimal discretion given to employers

Coercion in Ontario's Precise Settings

The vast scope of the federal framework in Bill C-45 and C-46 is demonstrated by the fact that many precise settings in Ontario still diffused by federal coercion. Most obviously, all criminal sanctions, including the precise settings of those sanctions, are set

by the federal government. Thus many (though not all) of the settings involving some form of punishment are beyond the control of any provincial government, Ontario included. With respect to personal possession (#2), the federal legislation is quite clear at setting the limit at 30 grams of dried cannabis. While Ontario could have opted for an even more restrictive setting (as it did with minimum age; see below), it chose to maintain the federal restriction.

Many other aspects of Ontario's precise settings reflect federal coercion. Bill C-46 sets out a number of criminal punishments for drug-impaired drivers (#4), though it does leave some room for additional provincial restrictiveness outside of the criminal law. For production regulations (#5), commercial or small-scale producers of cannabis must still obtain a *federal* license, which sets the range for how much a corporation can produce. Similarly, Ontario's personal cultivation policies (#8) are aligned with Bill C-45, which permits the growth of up to four cannabis plants per household (Mackay et al., 2017, p. 4). Ontario's promotion, advertising and marketing restrictions (#9) are also the result of coercion: Bill C-45 sets packaging restrictions that permit only one additional branding element (aside from the brand name itself) to be displayed on tamper-proof and childproof packaging; packaging also cannot appeal to young persons, include endorsements or testimonials, cannot engage in "lifestyle" advertising, and cannot be false or misleading (Canada, 2018a, ss. 25-28). The Ministry of Finance stated that "Ontario will comply with federal requirements that restrict advertising, do not permit products to be visible to youth and require a behind-the-counter type of retail environment similar to how tobacco is now sold" (Ontario, 2017b).

Ontario did not address public education (#11), in Bill 174, leaving this task entirely to the federal government's funding described above. The decision not to provide an additional provincial education program was done over the concerns of opposition MPPs. Progressive Conservative MPP Randy Hillier recommended an amendment—one which he admitted "plagiariz[ed] the New Brunswick Legislature and a number of other provincial Legislatures—that would have "recognized the provincial role in education, monitoring and awareness" (Ontario, 2017e, p. 604). However, the amendment was not incorporated into Ontario's subsequent legislation.

Learning in Ontario's Precise Settings

Not all of Ontario's policy settings were the direct result of federal coercion. Indeed, there is considerable evidence of policy learning, which was of two forms. First, there was policy learning from jurisdictions that had legalized cannabis recently, most notably Colorado and Washington. Ontario's initial distribution (#6) and retail (#7) approach to cannabis was to use a government monopoly, and to sell cannabis through a subsidiary of the Liquor Control Board of Ontario (though the new Ford government has announced plans to change this to permit private retail sales). Interestingly, this initial retail and distribution policy—proposed by the previous Liberal government under Kathleen Wynne—diverged from the American states' privatized model. Elena Hasheminejad of the

Ontario Public Health Association claimed that “some of the biggest lessons that we’ve learned from, let’s say, Colorado and Washington is to take a more strict approach and then look at re-evaluating” (Ontario, 2017d, p. 580). The Ontario government noted how the legislation was guided by Ontario’s “experience and expertise with substances like alcohol and tobacco, input from the public and experts, and *lessons drawn from other jurisdictions that have legalized cannabis*” (Ontario, 2017b, emphasis added). Other witnesses made this clear. Brian Patterson from the advocacy group Too Far, Too Fast stated at committee: “it’s critical that the province does enact a regulatory regime that ensures the testing, clearance and protection of products on the marketplace... *as occurred in Colorado*” (Ontario, 2017d, p. 588, emphasis added).

There was a second kind of learning, however: what Jared Wesley (2018, p. 2) calls “policy replication.” As opposed to learning from other jurisdictions, replication occurs when jurisdictions “convert or adapt their own existing approaches in analogous policy fields to address concerns with cannabis.” In this case, the analogous policy fields were alcohol and tobacco. This was clear with respect to punishment (#1). In a dialogue between New Democratic MPP Taras Natyshak and MPP Arthur Potts from the then-governing Liberals, each recognized the need to learn from existing alcohol policy in Ontario and thus *increase* monetary fines for illegal activities. Natyshak proposed to increase the penalty in Bill 174 for selling or distributing cannabis to minors to match the penalty that already exists for selling alcohol to minors (Ontario, 2017e, p. 603). This produced an amendment that “a corporation is liable to a fine of not more than \$500,000 and an individual is liable to a fine of not more than \$200,000 or to imprisonment for a term of not more than one year, or both” (p. 603). This provincial law was to be enacted in tandem with the *Criminal Code*, as Bill C-45 allows provinces to govern some administrative aspects of criminal justice policy concerning recreational cannabis.

This was also the case for place of use (#3). As Attorney General Yasir Naqvi noted, “*Just as we have in the past with cigarettes and other tobacco products, we are committed to limiting the health impacts of second-hand cannabis smoke.*” The government was initially “proposing strict limits on where cannabis can be used:” in Ontario, Naqvi noted that “recreational cannabis use would be restricted to private residences” and “would not be allowed in public places, workplaces or inside any motor vehicle” (Ontario 2017f, p. 7010, emphasis added). Although Ontario’s new Premier, Doug Ford, has indicated that this old approach would be replaced with a framework that allows cannabis use anywhere that tobacco use is not prohibited, policy replication still occurred during the development of the initial and new legislation. This same type of learning was also true for impaired driving (#4). Bill 174 includes a zero-tolerance approach for certain drivers. Claudio De Rose, Director of Safety Policy and Education Branch from the Ontario Ministry of Transportation, noted “we’re proposing to have zero tolerance in place for commercial drivers for both alcohol and drugs... the same regime that exists around zero tolerance for young and novice drivers as it pertains to alcohol” (Ontario, 2017e, p. 627). However, this was not complete replication: Bill 174 stipulates that only novice drivers (G1/G2 class) and commercial drivers may be subject to oral fluid screening devices (as set out in federal Bill

C-46), even though the federal *Criminal Code* permits police officers to require *any* individual to participate in a roadside breath test for alcohol impairment. While it is illegal for all drivers in Ontario to be impaired by cannabis while operating a motorized vehicle, only some are subject to roadside testing through oral fluid screening devices.

Witnesses and legislators had mixed feelings about this deviation. Nicole Jeffery, on behalf of the Registered Nurses' Association of Ontario, claimed "we support the zero-tolerance approach to prohibiting driving after alcohol and/or drug use for novice drivers with a graduated license, drivers aged 21 years and under, and commercial drivers" (Ontario, 2017d, p. 568). Progressive Conservative MPP Michael Harris implored the Ontario government to adopt a stricter impaired driving model that would be more in line with alcohol. In doing so, he made reference to Colorado's experience and New Brunswick's contemporaneous bill: "It was just two months ago that we heard a Colorado police chief, Greenwood Village Police Chief John Jackson, tell us that legalization in the rocky mountain state drove impaired driving to skyrocket" (Ontario, 2017f, p. 7022). Harris subsequently praised New Brunswick's legislation for "clearly indicat[ing] measures to ensure *all* drivers suspected of drug impairment take the screening," whereas Ontario's only contained "testing for young, novice and commercial drivers." Harris referenced "the concerns of MADD [Mothers Against Drunk Driving] Canada," and he put forth an amendment that copied "the wording in New Brunswick" to ensure "that our provincial legislation would have clearly called for police to utilize oral screening for *any* driver they suspect of drug impairment (Ontario, 2017f, p. 7023, emphases added). While this amendment also constitutes an example of learning from policy failure in Colorado, it was not incorporated into the final legislation and thus cannot be considered in my analysis.

Table 3: Mechanisms of Diffusion for Ontario's Settings

Coercion	Learning
<p>(1) Punishment: Criminal sanctions</p> <p>(2) Personal Possession: Up to 30 grams of dried cannabis</p> <p>(4) Impaired Driving Regulations: Strict regulation with severe criminal penalties (federal)</p> <p>(5) Production Regulations: Set by federal law</p> <p>(8) Personal Cultivation: Can grow up to four plants for household</p> <p>(9) Advertising: Set by federal law</p> <p>(11) Education: Federal funding only</p>	<p>(1) Punishment: Non-criminal punishments, especially large fines</p> <p>(3) Place of Use: Private residences</p> <p>(4) Impaired Driving Regulations: Zero tolerance for certain drivers</p> <p>(6) Distribution: Decided by Crown corporation</p> <p>(7) Retail: Government monopoly</p> <p>(10) Minimum Age: 19 years</p> <p>(12) Workplace Safety: Minimal discretion given to employers</p>

Ontario's minimum age of purchase (#10), set at 19 years instead of the federally mandated 18-year minimum, also shows replication. Attorney General Yasir Naqvi noted, "A minimum age of 19 finds a balance between...priorities and also aligns with Ontario's minimum age for alcohol and tobacco use, which people already know and understand" (Ontario, 2017f, p. 7009). Naqvi cited extensive consultations with public health and law enforcement experts, who concluded that increasing the minimum age too high would act as a barrier when trying to eliminate the illegal market (p. 7009). Finally, the precise settings regarding workplace safety (#12) gave minimal discretion to employers. Bill 174 sets out specific employer obligations regarding the use of cannabis at a workplace, particularly "enclosed workplaces" (Ontario, 2017h, pp. 5-6, sections 12-14). Ontario's precautionary approach for workplaces seeks "to protect the health and well-being of everyone in Ontario, especially children and youth... and draws on lessons learned from the existing laws for consuming alcohol and the province's *Smoke-Free Ontario Act*" (Ontario, 2017a).

The diffusion of Ontario's precise policy settings demonstrated both coercion and learning, with punishment (1) and impaired driving (4) diffusing through both of these mechanisms. Beyond these settings, there were ten others that exhibited diffusion via coercion or learning. Personal possession (2), production regulations (5), personal cultivation (8), advertising (9), and education (11) all diffused only through coercion, while place of use (3), distribution (6), retail (7), minimum age (10), and workplace safety (12) all diffused only through learning.

Precise Policy Settings in New Brunswick

As Table 4 shows, when it comes to policy settings, New Brunswick has many similarities with the other provinces, though there are a few differences. Notably, New Brunswick law states that cannabis for personal possession must be stored in a locked container (#2) and that plants grown for personal cultivation must be contained within a locked enclosure (#8); the law also has more strict rules for impaired driving than the other three provinces examined here, by applying zero tolerance to all drivers (#4). Unlike Ontario, New Brunswick introduces significant provincial funding for education (#11) in addition to federal funds and provides considerable discretion for employers for workplace safety policy (#12). Like Ontario, the mechanisms by which policy diffusion occurred vary depending on the setting.

Coercion in New Brunswick's Precise Settings

As with Ontario, the federal government still plays a coercive role for the diffusion of many of these precise settings through Bill C-45 and Bill C-46. There are federal criminal sanctions for punishment (#1), including for impaired driving (#4); personal possession and cultivation rules limiting individuals to 30 grams of dried cannabis (#2) and up to four plants per household (#8); production (#5) and advertising regulations (#9); and federal money for education (#11). There was evidence that New Brunswick policymakers felt

such coercive measures were sufficient: for example, its 2017 Report of the New Brunswick Working Group on the Legalization of Cannabis (hereinafter “Working Group”) praised Bill C-45 for ensuring that the advertising and promotion of cannabis (#9) was limited, could not appeal to youth, and could not contain any misleading information (p. 2). Yet with respect to several precise settings, including those already addressed in Bill C-45, New Brunswick added restrictiveness, sometimes explicitly from other jurisdictions through policy learning.

Learning in New Brunswick’s Precise Settings

The New Brunswick government shows how provinces can increase policy restrictiveness within the parameters set by the federal law. This increase in restrictiveness was primarily due to learning from perceived policy failure in Colorado and Washington and as such, New Brunswick almost uniformly learned from those states’ policy failures rather than successes. For example, although New Brunswick was forced by the federal government to maintain a 30-gram possession limit (#2), New Brunswick has added its own precise setting, which requires that the cannabis be stored in a locked container or room within an individual’s residence. New Brunswick clearly engaged in policy learning from Washington and Colorado; its Working Group specifically noted that these states had seen an increase in youth emergency room visits due to children accidentally consuming cannabis, an example of an unintended policy failure in these jurisdictions (New Brunswick, 2017g, p. 4). Regarding place of use (#3), New Brunswick restricted cannabis consumption to private residences. The Working Group noted that legalization had brought a significant increase in overall use of cannabis in Colorado and Washington, and as a result advised to reduce visible normalization (p. 4). Finance Minister Cathy Rogers reiterated New Brunswick’s reliance on learning from these American states at committee: “we have paid attention to jurisdictions that have gone before us, such as Colorado and Washington” (New Brunswick, 2017j, p. 33).

Table 4: Precise Policy Settings (New Brunswick)

	Enforcing Public Safety and Protection	Establishing a Safe and Responsible Supply Chain	Minimizing Harms of Use
Precise Policy Settings (Provincial)	(1) Punishment: Criminal sanctions, and severe provincial sanctions for illegal cannabis offences with <i>less</i> emphasis on large monetary fines	(5) Production Regulations: Set by federal law	(9) Advertising: Set by federal law

	<p>(2) Personal Possession: Up to 30 grams of dried cannabis <i>(Must be stored in a locked container)</i></p>	<p>(6) Distribution: Decided by Crown corporation</p>	<p>(10) Minimum Age: 19 years</p>
	<p>(3) Place of Use: Private residences, with landlord restrictions</p>	<p>(7) Retail: Government monopoly for retail and online sales</p>	<p>(11) Education: <i>Significant provincial funding</i> in addition with federal funding</p>
	<p>(4) Impaired Driving Regulations: Strict regulation with severe criminal penalties (federal), zero tolerance for <i>all</i> drivers (provincial)</p>	<p>(8) Personal Cultivation: Can grow up to four plants per household <i>(plants must be grown within a locked enclosure)</i></p>	<p>(12) Workplace Safety: <i>Considerable</i> discretion given to employers</p>

As noted above, New Brunswick’s zero tolerance policy for *all* impaired drivers (#4) was more restrictive than all of the other provinces examined. Learning from policy failure appeared to influence New Brunswick’s choices: its Working Group noted that in post-legalization Colorado, cannabis-related traffic accidents accounted for twenty percent of all accidents compared to ten percent five years earlier (New Brunswick, 2017g, p. 4). As a result, New Brunswick instituted a number of additional non-criminal penalties for drug-impaired drivers, including short-term roadside suspensions, license suspensions, vehicle impoundment, mandatory re-education courses, and license reinstatement fees (New Brunswick, 2017e). The New Brunswick government has also added a precise setting for personal cultivation (#8), with its law stating that any plants grown in a private residence must be inaccessible to youth via a locked room or enclosure. The government cited the experiences of Colorado and Washington, as the Working Group explained deterring youth from accidental consumption was an important lesson learned from policy failure in these jurisdictions (New Brunswick, 2017g, pp. 4, 8). In each of these instances, New Brunswick supplemented federal criminal penalties or guidelines with increased restrictiveness—showing that the federal government set a floor for restrictiveness, but not a ceiling.

Unlike Ontario, New Brunswick decided to allocate provincial funding for cannabis education (#11), supplementing federal money. Its *Cannabis Education and Awareness Fund Act* creates an advisory board to set future guidelines and advocate for projects to be financed annually. It is sponsored through provincial cannabis suppliers and the Crown corporation for retail and distribution, which have committed to contribute two percent of gross sales to fund provincial education and research (New Brunswick, 2017f). The Working Group indicated that this approach “learned from Colorado and Washington” including the need to “ensure additional funding for health-related programs,” which

particularly target “programs that build youth resilience and nurture positive child development” (New Brunswick, 2017g, p. 9). Similarly, during debates on the *Cannabis Education and Awareness Fund Act*, official opposition MLAs noted how legislators in Colorado advised to launch an education and awareness program prior to legalization taking place, further exemplifying the presence of learning in New Brunswick’s precise policy settings (New Brunswick, 2018b, p. 50). This example of learning is also the only instance where New Brunswick’s diffusion was due to examining success rather than failure in Colorado and Washington.

New Brunswick also engaged in policy replication by learning from its own analogous policy fields of alcohol and tobacco (Wesley, 2018). New Brunswick restricted cannabis use (#3) to private residences, but its rules for public consumption were also explicitly designed to mirror the provincial *Smoke Free Act*. Section 19 of Bill 16 states “no person shall smoke cannabis or medical cannabis in a place where smoking is prohibited under the *Smoke-free Places Act*” (New Brunswick, 2018a, p. 8) Replication was also clear with respect to New Brunswick’s distribution (#6) and retail (#7) strategy. The province will institute a model very similar to Ontario’s, insofar as a Crown corporation—New Brunswick (NB) Liquor—will operate recreational cannabis retail functions in stand-alone stores, much as it does with alcohol. NB Liquor is responsible for establishing business rules, terms and conditions mandated to oversee, conduct and manage the retail and distribution of recreational cannabis (New Brunswick, 2017b). Finance Minister Cathy Rogers reiterated the reliance on policy replication during a committee, “we think (NB Liquor) is the best delivery model for us to have as government, with good oversight, control, management, and input. We are working closely with ANBL (NB Liquor), which has experience in this area” (New Brunswick, 2017h, p. 51).

In the case of distribution (#6) and retail (#7), there was evidence of learning from other jurisdictions (Colorado and Washington) and replicating one’s own policies in other fields (alcohol). New Brunswick Finance Minister Cathy Rogers noted that the province relied on “Advice we have heard from other jurisdictions that have legalized cannabis, like Colorado and Washington,” which was “to start with tight government oversight... NB Liquor has experience in the retail market and we believe their knowledge and expertise will provide a smooth transition into this new market” (New Brunswick, 2017b). Health Minister Benoît Bourque emphasized public safety when arguing that New Brunswick was taking the “prudent, safe approach” in replicating its alcohol retail and distribution policy: “the Crown corporations model that we have... is the best way to start. We have seen in other jurisdictions that there are risks involved in extending it too widely... [including] increases in emergency room visits” (New Brunswick, 2017d).

Table 5: Mechanisms of Diffusion for New Brunswick's Settings

Coercion	Learning
<p>(1) Punishment: Criminal sanctions</p> <p>(2) Personal Possession: Up to 30 grams of dried cannabis</p> <p>(4) Impaired Driving Regulations: Strict regulation with severe criminal penalties (federal)</p> <p>(5) Production Regulations: Set by federal law</p> <p>(8) Personal Cultivation: Can grow up to four plants per household</p> <p>(9) Advertising: Set by federal law</p> <p>(11) Education: Federal funding</p>	<p>(2) Personal Possession: Must be locked in stored container</p> <p>(3) Place of Use: Private residences</p> <p>(4) Impaired Driving Regulations: Zero tolerance for all drivers, additional restrictive regulations</p> <p>(6) Distribution: Decided by Crown corporation</p> <p>(7) Retail: Government monopoly</p> <p>(8) Personal Cultivation: Must be grown within locked enclosure</p> <p>(10) Minimum Age: 19 years</p> <p>(11) Education: Provincial funding as well</p> <p>(12) Workplace Safety: Considerable discretion given to employers</p>

There was also evidence of replication with New Brunswick's minimum purchasing age (#10). Like Ontario, New Brunswick's Working Group recommended that the province adopt a 19-year-old age limit to "balance public health and public safety, and to harmonize with the legal ages for alcohol and tobacco" (2017h, p. 7). New Brunswick's report relied on evidence presented by medical organizations, which had shown that an age limit too high fails to eradicate the illegal market, whereas too low poses risks to public health and safety (New Brunswick, 2017g, p. 7). Finally, New Brunswick's workplace regulations (#12) reflect existing policy, rather than creating wholesale change following cannabis legalization. The Working Group indicated that employers already have discretion to ensure employees are not impaired or consuming impairing substances at work based on existing case law, and that this pattern would continue with cannabis (2017h, p. 8).

New Brunswick's precise policy settings demonstrated diffusion through coercion and learning with personal possession (2), impaired driving (4), personal cultivation (8), and education (11) diffusing through both of these mechanisms. Beyond these settings, there were three others that exhibited diffusion only through coercion—punishment (1), production regulations (5), advertising (9)—and five that exhibited diffusion only through learning—place of use (3), distribution (6), retail (7), minimum age (10), workplace safety (12).

Precise Policy Settings in Alberta

Alberta’s policy settings have many similarities with the other provinces, but there are several variations. Most notably, Alberta’s legal age to purchase and possess cannabis (#10) is set at 18 years—the lowest it can legally be in accordance with federal law. Alberta’s retail model (#7) is also much different than in Ontario and New Brunswick, as it allows for the participation of private retailers in the marketplace. Moreover, Alberta’s policy concerning place of use (#3) varies from Ontario’s and New Brunswick’s. Unlike those provinces—where consumption is limited to private residences—Alberta’s legislation allows cannabis to be consumed anywhere tobacco is not prohibited. However, like Ontario, Alberta has not increased restrictiveness around personal possession (#2) or personal cultivation (#8), adopting the federal 30-gram limit and allowing each household to grow a maximum of four plants. Provincial sanctions (#1) in Alberta place much more of an emphasis on large monetary fines for illegal cannabis offences, which is more similar to Ontario than New Brunswick. Alberta applies a zero-tolerance approach only to certain drivers (as in Ontario), which means New Brunswick’s zero tolerance approach to all drivers makes its impaired driving laws the toughest (#4). Like New Brunswick, Alberta has significant provincial funding for education (#11) in addition to federal funds and allows employers considerable discretion for workplace safety policy (#12). Although Alberta’s policy has similarities from the legislation in both Ontario and New Brunswick, it still encompasses its own unique aspects. As in the previous two provinces, the mechanisms by which policy diffusion occurred vary depending on the setting.

Table 6: Precise Policy Settings (Alberta)

	Overarching Goals		
	Enforcing Public Safety and Protection	Establishing a Safe and Responsible Supply Chain	Minimizing Harms of Use
Precise Policy Settings (Provincial)	(1) Punishment: Criminal sanctions, and severe provincial sanctions for illegal cannabis offences with an emphasis on <i>large</i> monetary fines	(5) Production Regulations: Set by federal law	(9) Advertising: Set by federal law
	(2) Personal Possession: Up to 30 grams of dried cannabis	(6) Distribution: Decided by Crown corporation	(10) Minimum Age: 18 years

	<p>(3) Place of Use: Wherever <i>tobacco is not prohibited</i>, with landlord restrictions</p>	<p>(7) Retail: Government monopoly for online sales only with <i>private retailers</i></p>	<p>(11) Education: <i>Significant provincial funding</i> in addition with federal funding</p>
	<p>(4) Impaired Driving Regulations: Strict regulation with severe criminal penalties (federal), and zero tolerance for <i>certain</i> drivers (provincial)</p>	<p>(8) Personal Cultivation: Can grow up to four plants per household</p>	<p>(12) Workplace Safety: <i>Considerable</i> discretion given to employers</p>

Coercion in Alberta's Precise Settings

Like Ontario and New Brunswick, coercion from the federal government's Bill C-45 and Bill C-46 still has a significant impact for the diffusion of many precise settings in Alberta. Federal criminal sanctions exist for punishment (#1), including those for impaired driving (#4) with Alberta's Ministry of Transportation deciding to align the provincial administrative sanctions with the proposed *Criminal Code* amendments in Bill C-46 (Alberta, 2017g, p. 2118). Bill C-45 also outlines personal possession rules that restrict individuals to carrying more than 30 grams of dried cannabis in public (#2) and cultivating more than four plants per household (#8). Other coercive measures included production regulations (#5), advertising parameters (#9), a purchasing age (#10) consistent with the minimum threshold set out in Bill C-45 (18 years) and federal money for education (#11). Unlike Ontario and New Brunswick, Alberta policymakers did not believe they should increase the restrictiveness on many federally coercive measures. Instead, they designed provincial regulations for some precise settings to replicate other policy areas that also face coercive federal measures such as tobacco advertising and criminal penalties for alcohol-impaired driving. In many of these precise settings, Alberta limited restrictiveness, engaging in replication of its alcohol and tobacco policies. United Conservative MLA Angela Pitt explained that the rules around advertising and promotion of cannabis (#9) are "similar to the implementation of tobacco" (Alberta, 2017d, p. 2022). Like Ontario and New Brunswick, policy learning was prevalent within Alberta, yet in this province, learning from analogous policy fields was more prominent than learning from other jurisdictions.

Learning in Alberta's Precise Settings

While policy replication was a dominant mechanism of diffusion in Alberta, learning from other jurisdictions still occurred. Like New Brunswick, evidence from Alberta demonstrated that learning occurred primarily from examining policy *failures* instead of policy successes. For example, an online press release from the Alberta government indicated Justice Minister and Solicitor General Kathleen Ganley travelled to Colorado "to meet with officials to discuss best practices and lessons learned from the legalization of

cannabis in their state” (Alberta, 2016). During question period, United Conservative MLA Ronald Orr noted that Washington had failed to eliminate the black market and actually saw an increase in seized cannabis plants (Alberta, 2017f, p. 2101). It is no surprise that afterwards, Ganley proposed an amendment to increase the maximum punishment (#1) for violating the *Gaming and Liquor Act* from a \$200,000 to \$1 million fine, which was successfully passed (Alberta, 2018a). Although Alberta officials travelled to Colorado, there is little evidence that learning from this jurisdiction was as prominent as in Ontario and New Brunswick. Learning from the successes of other jurisdictions that have legalized recreational cannabis was restricted to just one setting, punishment (#1).¹⁰ The only added mention of learning from other jurisdictions came from opposition United Conservative MLA Ric McIver when he put forward an amendment to the proposed impaired driving policy (#4). Interestingly, McIver did not mention any American jurisdictions and instead referenced Quebec. He repeatedly praised the Quebec Health Minister for his zero-tolerance approach to impaired driving and suggested that Alberta mirror Quebec’s legislation (Alberta, 2017e, p 2034). However, this amendment was not incorporated in the final legislation.

Policy replication was the primary type of learning that occurred in Alberta. Nearly every precise setting—including those learned from other jurisdictions—diffused through policy replication. Regarding punishment (#1), an integrated amendment put forward by Minister of Justice and Solicitor General Kathleen Ganley, which created “an offence to enable enforcement against an owner or operator of a premises who allows smoking or vaping of cannabis where it is prohibited, similar to existing rules for alcohol and tobacco” (Alberta, 2018a). Where individuals can consume cannabis (#3) also mirrors existing tobacco policy, as legislators believe both substances present risk from exposure to second hand smoke. Alberta’s Bill 26 thus bans “the smoking and vaping of cannabis in any place where a person is prohibited from smoking tobacco under the *Tobacco and Smoking Reduction Act*” (Alberta, 2017d, p. 2021). Like Ontario and New Brunswick, Alberta’s policy allows landlord agreements or condo bylaws to set rules for consumption. Administrative sanctions for alcohol-impaired driving (#4) such as vehicle seizures and license suspensions have also been extended to cannabis. Alberta only has a zero-tolerance impairment law for young drivers, and unlike Ontario do not extend these laws to commercial drivers. Although some opposition MLAs argued the merit of a zero-tolerance policy for all drivers, Alberta has decided to adopt the same provincial sanctions that apply to alcohol for cannabis. Novice drivers—meaning anyone under the Graduated Driver Licensing (GDL) program—cannot have any amount of cannabis in their bloodstream according to the legislation (Alberta, 2018e).

As in Ontario and New Brunswick, Alberta’s distribution model (#6) replicates the current policy in place for alcohol. An online press release indicated that the Alberta

¹⁰ Washington has since increased punishment (#1) by implementing a \$10,000 monetary fine for the sale of less than 40 grams of cannabis with subsequent offenses resulting in up to double penalties (“Washington Marijuana Laws,” 2019).

Gaming and Liquor Commission (AGLC) would be the sole distributor of sealed cannabis products from licensed producers (Alberta, 2018b, p. 2). During a committee hearing, opposition United Conservative MLA Nathan Cooper praised the Alberta legislation for exclusively using the AGLC in distribution, citing the success the province has had with this framework in the regulation of alcohol (Alberta, 2017f, p. 2091). The AGLC will also oversee the retail (#7) aspect of cannabis, which allows for licensed private retailers to sell cannabis in stand-alone stores. This model replicates the current framework for alcohol as officials “want to enable the AGLC to bring that wealth of experience to our system for cannabis.” However, the Alberta government will have a monopoly for the online sale of cannabis, which unlike liquor cannot be sold privately online. The government is strictly regulating the private retail market with province-wide rules enforced by the AGLC, as this body “has been a trusted regulator of Alberta’s private retail model for alcohol for more than two decades” (Alberta, 2017d, p. 2021).

Table 7: Mechanisms of Diffusion for Alberta's Settings

Coercion	Learning
<p>(1) Punishment: Criminal sanctions</p> <p>(2) Personal Possession: Up to 30 grams of dried cannabis</p> <p>(4) Impaired Driving Regulations: Strict regulation with severe criminal penalties (federal)</p> <p>(5) Production Regulations: Set by federal law</p> <p>(8) Personal Cultivation: Can grow up to four plants per household</p> <p>(9) Advertising: Set by federal law</p> <p>(10) Minimum Age: 18 years</p> <p>(11) Education: Federal funding only</p>	<p>(1) Punishment: Non-criminal punishments, especially large fines</p> <p>(3) Place of Use: Wherever tobacco is not prohibited</p> <p>(4) Impaired Driving Regulations: Zero tolerance for certain drivers</p> <p>(6) Distribution: Decided by Crown corporation</p> <p>(7) Retail: Government monopoly for online sales with private retailers</p> <p>(10) Minimum Age: 18 years</p> <p>(11) Education: Provincial funding as well</p> <p>(12) Workplace Safety: Considerable discretion given to employers</p>

Policy learning through replication also occurred with the minimum age (#10) to purchase and possess cannabis. New Democratic MLA Nicole Goehring indicated that the “government set the age of consumption at 18 because it aligns with our age of majority for alcohol and tobacco.” Like Ontario and New Brunswick, the decision was also based on the need to eliminate the black market as a significant proportion of cannabis users are between the ages of 18 and 21 years old. Again, imposing too high of a threshold would simply drive all of these now “underage users” to the illicit market (Alberta, 2017g, p. 2124). Nonetheless, Alberta officials maintained that like alcohol, cannabis use at a young age still causes negative health effects and a large percentage of educational awareness

should be dedicated to ensuring individuals know “how cannabis is going to impact their bodies” (Alberta, 2017b, p. 1963). There is thus evidence of policy replication for educational awareness (#11) as New Democratic MLA David Shepherd indicated that the province has already been successful in teaching young people the damage that can be caused by alcohol and tobacco and “think we can do the same in terms of cannabis use” (Alberta, 2017d, p. 2025). Lastly, and like New Brunswick, workplace regulations (#12) reflect current policies for alcohol as an online press release indicated that employers have the discretion to “develop clear policies of what is considered impairment in the workplace” (Alberta, 2018d)

The considerable replication of existing policy is especially notable given Alberta’s unique political past. From 1971-2015, Alberta was governed by Progressive Conservatives, after which the NDP formed government for the first time in Alberta history. Thus, an NDP government was replicating existing policy on alcohol and tobacco that had been passed exclusively by governments consisting of Progressive Conservatives. This further demonstrates how partisan ideology did not seem to be a tangible factor affecting policy design in the provinces. Overall, Alberta’s precise policy settings exhibited diffusion through coercion and learning with punishment (1), impaired driving (4), minimum age (10), and education (11) diffusing through both of these mechanisms. Beyond these settings, there were four others that diffused only via coercion (personal possession (2), production regulations (5), personal cultivation (8), advertising (9)), and four that exhibited diffusion only via learning (place of use (3), distribution (6), retail (7), workplace safety (12)).

Precise Policy Settings in British Columbia:

British Columbia’s policy settings have many similarities to the other provinces’, though there are some key differences. For example, British Columbia’s personal possession (#2) law adds a new setting that was absent in the other provincial policies. While individuals are allowed to possess 30 grams of dried cannabis in public, British Columbia has more restrictive rules for possession in non-public places such as households, where the limit is 1,000 grams.¹¹ The retail model (#7) in this province is also unique from the others. BC has adopted a hybrid framework encompassing the coexistence of government-run and private brick-and-mortar retail stores, with the government still having a monopoly for online sales. British Columbia’s personal cultivation policy (#8) also adds a precise setting that differs from the other provinces. The law allows for the cultivation of up to four plants per household—so long as the home is not used as a day-care—but plants cannot be visible from public spaces off the property.

¹¹ Other provinces do not specify the amount of cannabis you can have in non-public places such as private residences. Theoretically, someone in Ontario could possess 1,000-*kilograms* of cannabis in their residence whereas someone in BC may only have 1,000 *grams*. The only other province that restricts the amount of cannabis you can have in non-public places—i.e. private residences—is Quebec, which allows only 150 *grams* (Quebec, 2018).

Place of use (#3) legislation in BC is much more similar to Alberta's policy than Ontario's or New Brunswick's. Consumption is not limited to private residences, as BC's Bill 30 allows cannabis to be consumed anywhere tobacco is not prohibited. Like in Ontario and Alberta, provincial sanctions (#1) in BC place a much greater emphasis on large monetary fines than in New Brunswick. Nevertheless, New Brunswick still boasts the toughest impaired driving laws (#4), as British Columbia's zero-tolerance policy only applies to certain drivers. Furthermore, British Columbia, like New Brunswick and Alberta, has significant provincial funding (in addition to federal funds) for education (#11) and gives employers considerable discretion to design workplace safety regulations (#12). Overall, British Columbia's legislation resembles some policies of the other provinces but contains unique policy settings, particularly concerning cannabis possession and cultivation in households. The mechanisms by which policy diffusion occurred change depending on the precise setting, as was the case in the other provinces.

Table 8: Precise Policy Settings (British Columbia)

	Overarching Goals		
	Enforcing Public Safety and Protection	Establishing a Safe and Responsible Supply Chain	Minimizing Harms of Use
Precise Policy Settings (Provincial)	(1) Punishment: Criminal sanctions, and severe provincial sanctions for illegal cannabis offences with an emphasis on <i>large</i> monetary fines	(5) Production Regulations: Set by federal law	(9) Advertising: Set by federal law
	(2) Personal Possession: Up to 30 grams of dried cannabis (<i>possession limit of 1000 grams in non-public places, i.e. home</i>)	(6) Distribution: Decided by Crown corporation	(10) Minimum Age: 19 years
	(3) Place of Use: Wherever <i>tobacco is not prohibited</i> , with landlord restrictions	(7) Retail: Government-run online and retail stores <i>with private retailers</i>	(11) Education: <i>Significant provincial funding</i> in addition with federal funding
	(4) Impaired Driving Regulations: Strict regulation with severe criminal penalties (federal), and zero tolerance for <i>certain</i>	(8) Personal Cultivation: Can grow up to four plants per household (<i>plants cannot be visible</i>)	(12) Workplace Safety: <i>Considerable</i> discretion given to employers

	drivers (provincial)	<i>from public spaces. Banned in homes used as day-cares)</i>	
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Coercion in British Columbia's Precise Settings

Like the other provinces, coercion from federal government legislation had a significant influence on the diffusion of many precise settings in BC. With regards to punishment (#1), the same federal sanctions exist as in Ontario, New Brunswick and Alberta, including *Criminal Code* offences for impaired driving (#4). British Columbia will adopt some of the characteristics of Bill C-45 in terms of personal possession (#2) and cultivation (#8) policies, embracing the 30-gram per person and four plants per household thresholds. However, with both of these instruments, BC (unlike the other examined provinces) has implemented additional settings that did not diffuse by coercion or any other mechanism. As previously mentioned, along with the federal 30-gram personal possession limit, there is also a 1,000-gram possession limit for non-public places such as private residences. Moreover, those who wish to cultivate their own cannabis must ensure plants are not visible from public spaces off the property and that the home is not being used as a day-care.

Minister of Forests, Lands, Natural Resource Operations and Rural Development Doug Donaldson and Minister of Public Safety and Solicitor General Mike Farnworth reiterated the coerciveness within measures such as production (#5) and advertising (#9) regulations. During question period, Donaldson stated "B.C. has no role in the issue and concerns around recreational cannabis production in the province (British Columbia, 2018k, p. 3460). Similarly, Farnworth noted, "the federal government will be setting the laws around packaging and advertising" (British Columbia, 2018h, p. 4791). Like New Brunswick and Alberta, British Columbia is working alongside the federal government concerning educational resources (#11) and is launching provincial public awareness campaigns prior to legalization. However, some settings in this province also diffused by a mechanism other than coercion, with BC comparably experiencing learning in two forms: learning from other jurisdictions and learning through replication of alcohol and tobacco policy.

Learning in British Columbia's Precise Settings

In British Columbia, policy learning was a primary mechanism of diffusion for precise settings. Like Alberta, learning from other jurisdictions did occur, but this mechanism of diffusion was primarily observed through replication of analogous policy fields. When learning from other jurisdictions did occur, British Columbia primarily observed American jurisdictions, in particular Washington State. Premier John Horgan and Minister of Public Safety and Solicitor General Mike Farnworth visited Washington to meet with various stakeholders in order to get a "good understanding" of what has taken place in the jurisdiction. Farnworth indicated that one of the central takeaways from the

jurisdiction was to ensure the creation of a tight regulatory framework that prioritized elimination of the black-market. Therefore, when it came to punishment (#1), BC embraced the need to eliminate illicit markets. Bill 30 outlines provincial cannabis offences that “result in a fine ranging from \$2,000 to \$100,000, imprisonment of three to 12 months, or both” (British Columbia, 2018e). Education (#11) was another policy priority that was stressed during the visit to Washington. Farnworth explained that the “message came through loud and clear” from these other jurisdictions and that the government has “been very clear on that issue, around *the need* for education” (British Columbia, 2018h, p. 4794, emphasis added). He also noted, “there are significant issues around education that have to be addressed... *that needs to be [our] first priority*” (British Columbia, 2017b, p. 706, emphasis added). It should come as no surprise then that multiple online press releases quote government officials—specifically Farnworth—stating the province’s commitment to implementing public awareness and education campaigns related to the health impacts of cannabis use (British Columbia, 2018a; British Columbia, 2018b).

Learning from other jurisdictions did not extend beyond punishment (#1) and education (#11). More prominent in BC was another type of learning—replication of alcohol and tobacco policy. In this sense, BC simultaneously engaged in both types of learning: learning from other jurisdictions to then learn (or replicate) from analogous policy fields. Public Safety Minister and Solicitor General Mike Farnworth indicated, “that was very much the message that we heard—when we were down in Washington and Oregon—that you have your regulations up front and... clear” (British Columbia, 2017b, p. 704). By replicating alcohol and tobacco policies, the government can introduce cannabis regulations that British Columbians are already familiar with, such as the minimum purchasing age for any of these substances (19 years). Replication of alcohol and tobacco laws thus provides the greatest likelihood that cannabis policies are “up front and clear” to BC residents. While Farnworth also publicly stated that he was concerned with the federal legalization deadline—insofar as it may stifle policy innovation—the above evidence suggests that BC’s use of replication was not driven solely by the restrictive timeline.

While some learning occurred, most precise settings diffused through policy replication. The most obvious replication occurred within British Columbia’s minimum purchasing and possession age (#10). Like the other provinces, this setting aligned with the 19-year-old provincial drinking age, the age of majority and the age to legally purchase tobacco (British Columbia, 2018g, p. 4679). Although policy replication was the primary type of learning that occurred in British Columbia, full replication was not the case in all instances. For example, selling cannabis to minors carries non-criminal provincial sanctions (#1) including monetary fines, in addition to federal *Criminal Code* penalties. However unlike alcohol, provincial fines for “bootlegging” cannabis are much more severe and can reach up to \$50,000 alongside jail terms of up to six months (British Columbia, 2018f). Similar provincial offences concerning alcohol only reach fines of up to \$575 and do not carry any jail time (British Columbia, 2012). In this case, it is clear only partial policy replication occurred. Nonetheless, in other policy areas like place of use (#3), full replication ensued. Bill 30 forbids smoking or vaporizing cannabis anywhere tobacco

consumption is prohibited with the added restriction of banning consumption inside vehicles (as is the case for alcohol) (British Columbia, 2018e). Furthermore, British Columbia's Bill 30 allows landlord agreements to set rules for consumption, similar to what is currently in place for tobacco. Other replication of alcohol policy is also evident in British Columbia's impaired driving (#4) legislation. Like Ontario and Alberta, British Columbia introduces a zero-tolerance policy for youth drivers (those in the graduated licensing program), which bars them from having any presence of THC, the psychoactive ingredient in cannabis, in their bloodstream. Public Safety Minister and Solicitor General Mike Farnworth reiterated that impaired drivers identified by way of federally authorized screening equipment, "would be subject to an immediate roadside licence suspension, a fine and driver penalty points... the same is in place now for any presence of alcohol in these drivers" (British Columbia, 2018i, p. 4422).

Like the other provinces, British Columbia's distribution (#6) settings replicate the current model in place for alcohol. During second reading of *The Cannabis Distribution Act* (Bill 31), Public Safety Minister and Solicitor General Mike Farnworth stated that this piece of legislation "establishes the province as the exclusive wholesale distributor of non-medical cannabis in B.C.," which has been "a model that has worked very well for liquor." Farnworth further explained that the province "will leverage the expertise and resources of the Liquor Distribution Branch, which has a long track record of effective management of distribution and sale of a controlled substance" (British Columbia, 2018g, p. 4691). Learning through the expertise and resources of the Liquor Distribution Branch also extended to British Columbia's retail (#7) strategy. The province will allow government-run retail stores in addition to private retailers, which is also currently the model used for alcohol. However, unlike alcohol policy, the government will have a monopoly for online cannabis sales (British Columbia, 2018e). Public Safety Minister and Solicitor General Mike Farnworth describes BC's retail model as "a hybrid public-private retail system... similar to what we have in place for liquor" (British Columbia, 2018g, p. 4691).

Table 9: Mechanisms of Diffusion for British Columbia's Settings

Coercion	Learning
<p>(1) Punishment: Criminal sanctions</p> <p>(2) Personal Possession: Up to 30 grams of dried cannabis (<i>possession limit of 1000 grams in non-public places, i.e. home</i>) *</p> <p>(4) Impaired Driving Regulations: Strict regulation with severe criminal penalties (federal)</p> <p>(5) Production Regulations: Set by federal law</p>	<p>(1) Punishment: Non-criminal punishments, especially large fines</p> <p>(3) Place of Use: Wherever tobacco is not prohibited</p> <p>(4) Impaired Driving Regulations: Zero tolerance for certain drivers</p> <p>(6) Distribution: Decided by Crown corporation</p> <p>(7) Retail: Government-run online and retail stores <i>with private retailers</i></p>

<p>(8) Personal Cultivation: Can grow up to four plants per household (<i>plants must not be visible from public spaces off the property / banned in homes used as day-cares</i>) *</p> <p>(9) Advertising: Set by federal law</p> <p>(11) Education: Federal funding</p>	<p>(10) Minimum Age: 19 years</p> <p>(11) Education: Provincial funding as well</p> <p>(12) Workplace Safety: Considerable discretion given to employers</p>
<p>* <i>Unique setting with no evidence of any mechanisms of diffusion</i></p>	

In British Columbia, replication even extends to the operating rules governing public and private retail stores, as an online press release notes that the logistical procedures “will be similar to those currently in place for liquor” (British Columbia, 2018b). British Columbia’s hybrid retail system is unique amongst all Canadian provinces with no other jurisdiction allowing both government and private brick-and-mortar stores. Lastly, the provincial workplace safety (#12) regulations reflect current policies in place for alcohol. A press release published by Work Safe BC indicated that employers have the discretion to “develop policies and procedures” that address any type of impairment in the workplace (British Columbia, 2018c).

British Columbia’s precise policy settings exhibited diffusion through coercion and learning with punishment (1), impaired driving (4), and education (11) diffusing through both of these mechanisms. Beyond these settings, there were four others that diffused only via coercion—personal possession (2), production regulations (5), personal cultivation (8), advertising (9)—and five that exhibited diffusion only via learning—place of use (3), distribution (6), retail (7), minimum age (10), workplace safety (12). In terms of personal possession (#2) and cultivation (#8), BC has implemented additional precise settings that did not diffuse by coercion, learning or any other mechanism (see Table 9).¹²

Conclusion

This chapter examined the *precise settings* of recreational cannabis legislation within each provincial case study. The analysis demonstrates that diffusion occurred in all the provinces, and it did so primarily via coercion, learning from other jurisdictions, and replication of one’s own analogous policy fields. Learning from other jurisdictions focused primarily on Colorado and Washington and tended to focus on failures more than successes, while replications typically involved alcohol and tobacco policies. These factors led to many policy similarities, but also crucial differences. With regard to production regulations (#5), distribution (#7) and advertising (#9), every province had identical policy settings. Although this is primarily due to coercive measures in Bill C-45, there was some potential role for manoeuvrability that provinces did not use. For example, provinces could have theoretically added some precise settings that dealt with the *administration* of these

¹² Unlike the other case studies, BC was the only province to adopt these unique settings.

criminal laws, but chose not to. For instance, a province could have implemented a non-criminal monetary ticket for retail businesses that were operating outside of *federal* advertising regulations, as this policy setting deals with the *administration* of those (federal) criminal laws. There were also similarities among certain aspects of punishment (#1), personal possession (#2), place of use (#3) and personal cultivation (#8). However, with these instruments, some provinces decided to add measures that either increased restrictiveness (New Brunswick) or decreased restrictiveness (Alberta). A summary of the variation in the precise settings of provincial cannabis policies can be found in Table 10 and Table 11.

Overall, New Brunswick tended to be the most restrictive province in terms of its precise policy settings. For instance, this province employs additional restrictions for precise settings regarding personal possession (#2), impaired driving (#4) and personal cultivation (#8). Of the four provinces examined, New Brunswick was also only one of two (along from Ontario) to have a government monopoly for retail (#7) and online sales, which is seen as more restrictive than allowing for some aspect of market privatization. Moreover, New Brunswick increased restrictiveness concerning minimum age (#10), joining Ontario and BC in raising the threshold to 19 years, which aligns with the provincial age for alcohol. Generally, the two western provinces examined, particularly Alberta, tended to be the most permissive in terms of not adding additional restrictive policy settings. Both Alberta and BC have allowed for some type of retail (#7) market privatization and permitted place of use (#3) to extend beyond just private residences. Overall BC was less permissive than Alberta, which was the only province to utilize the federal minimum age (#10) of 18 years. BC also added supplementary restrictive measures to the precise settings concerning personal possession (#2) and self-cultivation (#8).

British Columbia's supplementary restrictive measures were unique from other provinces insofar as they explicitly dealt with public and non-public places. Possession limits (#2) of "1000 grams in non-public places" and rules ensuring personally grown plants are "not visible from public spaces off the property" were only observed in BC. These unique policy settings may be due to the presence of a "cannabis culture" within British Columbia. Perhaps policy failure has already occurred within BC's longstanding legal and illegal medicinal cannabis industry, and the provincial government has learned to explicitly differentiate between public and non-public policy settings. While there is no direct evidence of this correlation, it is reasonable to suspect that BC's "cannabis culture" somehow impacted subsequent policy development in the province. Ontario had the least unique policy characteristics among the case studies, having similarities with at least one other province's legislation in almost all of the precise settings. The only policy settings that were unique to Ontario concerned education (#11) and workplace safety (#12), by not having any additional education funding and giving minimal discretion to employers. Interestingly, these differences were not necessarily more or less restrictive as a whole (see Table 10 and Table 11).

The next chapter examines these patterns in greater detail, and explores the implications for the broader Canadian cannabis policy horizon. I also discuss what understanding the primary mechanisms of policy diffusion in each province means for our knowledge of Canadian federalism, and reflect on the integral role played by the federal Task Force in shaping both federal and provincial cannabis policy.

Table 10: Provincial Variation in Precise Policy Settings

<u>Punishment (#1)</u>		<u>Personal Possession (#2)</u>			<u>Place of Use (#3)</u>	
Federal criminal sanctions, and severe provincial sanctions for illegal cannabis offences	<i>Emphasis on large monetary fines</i>	Up to 30 grams of dried cannabis in public places	<i>Must be stored in a locked container or room</i>	<i>Possession limit of 1000 grams in non-public places, (i.e. home)</i>	Private residences, with landlord restrictions	<i>Wherever tobacco is not prohibited</i>
All provinces	ON AB BC	All provinces	NB	BC	All provinces	AB BC
<u>Impaired Driving Regulations (#4)</u>		<u>Production Regulations (#5)</u>			<u>Distribution (#6)</u>	
Strict regulation with severe criminal penalties (federal), and zero tolerance for <i>certain</i> drivers (provincial)	Strict regulation with severe criminal penalties (federal), zero tolerance for <i>all</i> drivers (provincial)	Set by federal law			Decided by Crown corporation	
ON AB BC	NB	All provinces			All provinces	

Table 11: Provincial Variation in Precise Policy Settings (Continued)

<u>Retail (#7)</u>			<u>Personal Cultivation (#8)</u>			<u>Advertising (#9)</u>	
Government monopoly for retail and online sales	Government monopoly for online sales <i>only</i> , with private retailers	Government -run online and retail stores, with private retailers	Can grow up to four plants for household	<i>Plants must be grown within a locked enclosure</i>	<i>Plants cannot be visible from public spaces off the property / banned in homes used as day-cares</i>	Set by federal law	
ON NB	AB	BC	All provinces	NB	BC	All provinces	
<u>Minimum Age (#10)</u>			<u>Education (#11)</u>			<u>Workplace Safety (#12)</u>	
19 years		18 years	Significant provincial funding <i>in addition to</i> federal funding	Federal funding <i>only</i>		<i>Considerable</i> discretion given to employers	<i>Minimal</i> discretion given to employers
ON NB BC	AB		NB AB BC	ON		NB AB BC	ON

Chapter Five: Discussion and Conclusion

Introduction

This study sought to explore the reason why some aspects of provincial cannabis policy diffused but others did not, and to determine which mechanisms facilitated the diffusion of particular policy features. The above analysis demonstrates that diffusion certainly occurred in all the provinces, and it did so primarily via coercion, learning from other jurisdictions, and replication of one's own analogous policies. These three mechanisms led to considerable policy similarities: federal coercion over goals, instruments, and even many precise settings limited provincial manoeuvrability in terms of policy innovation; learning from other jurisdictions focused solely on Colorado and Washington, and tended to draw up failures rather than promoting successes; and replications typically involved alcohol and tobacco policies heavily conditioned by existing federal legislation in the *Tobacco Act* and the *Importation of Intoxicating Liquors Act*. Alcohol and tobacco policy in Canada share many similarities with recreational cannabis policy insofar as federal and provincial legislation has largely embraced a public health approach (Kirst et al., 2015). This is especially true regarding federal packaging regulations for cannabis products, as they resemble the federally required health warning labels that appear on all tobacco products (Stanbrook and Hebert, 2010). Below, I discuss each of these three mechanisms of diffusion – coercion, learning, and replication – in turn, and conclude by emphasizing this study's contributions and the directions for future research.

Mechanisms of Diffusion: Coercion, Learning, and Replication

In terms of *coercion*, the federal government's role cannot be understated. Every overarching goal and policy instrument diffused through coercion. Yet what is most interesting in terms of coercion of cannabis policy is the role played by the federal Task Force. This Task Force's recommendations were not legally binding and yet its goals and instruments diffused directly to the federal legislation, and even to many instruments and settings of provincial policy. This observation demonstrates the staying power of the Task Force, and that it too—not just the legislation—exhibited coercion. This finding, however, was not a foregone conclusion: previous independent Task Forces or Royal Commissions have not always impacted legislation in such a manner. For instance, the 1996 Royal Commission on Aboriginal Peoples and the 2002 Royal Commission on the Future of Health Care have had minimal effects on Canada's policy structure in these areas. In contrast, the 1993 Royal Commission on New Reproductive Technologies had an immense influence on the 2004 *Assisted Human Reproduction Act*. One explanation for why the Task Force on Cannabis Legalization and Regulation had its impact is that, like the Royal Commission on New Reproductive Technologies (and unlike the Commissions on Aboriginal Peoples and Health Care), its mandate was to propose and largely create a wholly new policy field rather than adapt existing ones (see Snow, 2018, p. 46). The Task Force's policy

recommendations allowed for quick turnaround time among legislatures, thus making its proposals especially palatable to the federal (and ultimately provincial) government(s).

Similarly, this analysis demonstrates that the overall framework for cannabis legalization was driven exclusively at the federal level. While cannabis legalization was framed as a collaborative endeavour, the federal government leaned heavily on its jurisdiction over criminal law to force provincial governments into policy specifics. Even more noteworthy is the fact that this legislative change was brought on exclusively by the federal government, as Justin Trudeau made recreational cannabis legalization a policy priority. This was not a policy process characterized by an amorphous federal outline that allowed wildly different frameworks: the fact *every* policy goal, *every* policy instrument, 7 of the 12 policy settings in Ontario, New Brunswick and BC and 8 of the 12 settings in Alberta diffused via coercion suggests, at least at the outset, far more provincial similarities than differences will exist across Canada, even beyond Ontario, New Brunswick, Alberta and British Columbia. Every policy goal also contained an instrument that was affected by federal criminal law power. More specifically, the coercive diffusion of 7 of the 12 policy instruments (punishment (#1), personal possession (#2), impaired driving (#4), production regulations (#5), personal cultivation (#8), advertising (#9) and minimum age (#10)) can be attributable to federal criminal law power. Indeed, the *possibility* for considerable provincial variation only exists with respect to precise settings for place of use (#3), impaired driving regulations (#4), distribution (#6), retail (#7), and minimum age (#10) (and even the latter cannot be below 18 years).

Where there was no coercion, precise settings tended to diffuse via *learning*. Yet the preceding analysis demonstrates that we should conceptualize learning as consisting of two forms: learning from other jurisdictions, and learning from other policy areas within one's own jurisdiction (what Wesley (2018) calls "replication"). My analysis reveals that Ontario, New Brunswick, Alberta and BC all relied heavily on each of these; they learned from the same jurisdictions (Colorado and Washington) and from their own similar tobacco and alcohol policies, although New Brunswick tended to rely on extra-jurisdictional learning more than the rest of the provinces. This latter point is surprising, as policymakers in both Alberta and BC actually travelled to these American states to gather information. Yet based on the evidence, New Brunswick learned more from these jurisdictions than the Western provinces.

Another point worth noting is that most learning that occurred did so on the basis of the failures of Colorado and Washington, rather than their successes. This pattern was especially true within Alberta and New Brunswick, where policymakers were more likely to emphasize failures from Colorado and Washington. In particular, Albertan legislators decided to heavily increase monetary penalties based on Washington's inadequate eradication of the illicit market. Apart from increasing the severity of impaired driving laws to learn from Colorado's increased traffic deaths, legislators in Ontario and BC rarely spoke of policy failures in either Colorado or Washington. The fact that both states—which operate in a framework where the American federal government has not liberalized

cannabis laws—were nearly uniformly seen as policy *failures* may speak to the time constraints the provinces faced. Most importantly, all of the cited instances of policy failure in Colorado and Washington were the result of unintended consequences. This finding further demonstrates that recreational cannabis law is a legislative field with a high potential for policy myopia and the federal government’s mandated timeline may have only exasperated these myopic tendencies (see below).

While policy diffused in all the provinces through coercion, learning, and replication, neither imitation nor competition—two common mechanisms identified in the literature (Shipan and Volden, 2008; Berry and Berry, 2018)—were present as a mechanism of diffusion. While I did not expect imitation or competition to be the primary mechanisms of diffusion, I did not expect them to be absent entirely. In one sense, complete *imitation* was unlikely, insofar as cannabis is legalized in so few jurisdictions worldwide, and the two American jurisdictions from which most learning occurred (Colorado and Washington) operate in a context where cannabis is still federally prohibited. Moreover, the fact that there was no policy imitation made “independently of any evaluation of the character of the policy or its effectiveness” (Berry and Berry, 2018, p. 257), suggests that the provinces were thoughtfully examining the experiences of Colorado and Washington, rather than taking the easy route of simply copying them.

Another surprising finding was the lack of learning from jurisdictions other than Colorado and Washington. California’s Proposition 64 was deemed by legislators as the “environmental gold standard” of cannabis policy, yet there was no evidence of learning from this state (Silvaggio, 2018). Even odder is the federal and provincial governments’ reluctance to learn from Uruguay, as this nation remains the only other country (apart from Canada) to fully legalize cannabis and could have theoretically provided beneficial insight at the national level. Perhaps the lack of additional learning is a result of the timeline imposed by Ottawa onto the provinces. Indeed, in each province the federal timeline proved to be burdensome for policymakers. As Alberta Minister of Transportation Brian Mason reiterated, “The federal government has, to be very honest, made it somewhat difficult with the timelines that they’ve put in place” (Alberta, 2017b, p. 1965). Linguistic considerations in translating Spanish-speaking Uruguay’s policy experience could also have been a factor, as could the fact that Uruguay’s marijuana retail component only began in 2017 (Arsenault, 2018).

More surprising was the lack of *competition* as a reason for diffusion. Cannabis legalization promises to bring immense economic opportunities for private industry, and a considerable revenue stream for provincial governments (Reith, 2017). This provided an opportunity for provinces to identify ways in which their policy could maximize provincial revenues, whether through liberalized frameworks to encourage entrepreneurship or through greater taxes to increase revenue. However, even in the provinces where retail was privatized, there was no evidence that competitiveness was an express rationale. The evidence suggests Alberta and BC adopted their retail models mainly through replication of their current alcohol policy, rather than for explicitly revenue-generating or

entrepreneurial-inducing purposes. My analysis suggests the federal government's coercive policy goals and settings diminished the incentives for provinces to legislate for a competitive advantage.

Unintended Consequences, Time, Federalism and the Potential for Policy Myopia

As Canada moves forward with this policy experiment, it is worth noting that the long-term consequences of cannabis legalization are largely unknown. Colorado and Washington have only legalized cannabis for fewer than five years and Uruguay remains alone in liberalizing cannabis laws at the national level before Canada. Nonetheless, Uruguay only began its state-run marijuana retail component in 2017 and will have limited data available given the short timeframe (Arsenault, 2018). Cannabis legalization is thus a policy field with high potential for policy myopia, defined as “the inability to clearly see the horizon of the future policy environment in which impacts of the policy will develop” (Nair and Howlett, 2017, p. 104). Yet such myopia may have been unavoidable due to the federal government's mandated time horizon. Time enables policymakers to evaluate risks “in order to ensure that a policy deals with an issue effectively and as intended” (Nair and Howlett, 2017, p. 112). In every province, policymakers and legislators of all stripes repeatedly claimed that the federal government's anticipated timeline for the implementation of Bill C-45 was much too short. Contrary to what Wesley (2018) argues, my analysis demonstrates that this short timeline increased uncertainty and effectively forced provincial governments to more actively engage in learning through replication, and through learning from purported failures (rather than successes) of American jurisdictions.¹³

While “replicatory” and “jurisdictional” learning is beneficial, Nair and Howlett (2017) express that an overreliance on it will produce policy myopia and eventual policy failure (p. 111). An example of such myopia following legalization may encompass the economic principle of supply and demand. According to Anindya Sen (2018), “at current levels, legal supply will only meet roughly 50-65% of total demand... especially during the first half of the year following legalization,” due to the federal government's sluggish rate of licensing producers. Traditional reliance on policy learning thus may be ineffective in this instance, as a regulated cannabis market is an unparalleled legislative endeavour and estimating levels of legal supply and demand is a situation of high uncertainty. If subsequent policy development—restricted by a short timeline—produces ineffective

¹³ One of Wesley's (2018) principle arguments is that provincial and territorial governments are “turning inward” for policy innovation, mainly engaging “in a process of internal policy replication” (p. 1). While my findings also support this claim, our conclusions diverged. Wesley believes the tight timelines imposed by the federal government had little correlation with the prevalent use of policy replication—as compared to other ideological, partisan, cultural, and economic considerations. The incongruence of my finding with Wesley's study, which drew primarily from interviews with government officials responsible for cannabis implementation, does demonstrate some uncertainty around this point. However, it might also show that government officials and legislators from all parties had different conceptions of the greatest influence on their jurisdictions' policy.

legislation that inhibits retailers (whether public or private) to meet consumer demand, policy failure is likely to occur as consumers will not transition to the legal market, ultimately failing to accomplish one of the main goals of Canada’s recreational cannabis laws, namely, the elimination of the black market.

Although recreational cannabis legalization is still in its embryonic stages since the onset of this research, evidence suggests that supply and demand issues are already a major concern for licenced producers, public/private retailers and ultimately, consumers. A post-legalization news article cited Rosalie Wyonch—a policy analyst at the CD Howe Institute—who claimed, “[t]here is not enough legal marijuana to supply all of recreational demand in Canada... the shortages are happening faster than I would have expected” (Cecco, 2018). David Clement (2018) of *The Globe and Mail* reiterated these concerns stating “federal, provincial and municipal legislators have made many mistakes when it comes to cannabis regulations. These mistakes have hindered consumers when it comes to price, supply and access.” Clement (2018) also notes “community opt-outs and limited storefronts have created a toxic policy mixture that has ensured the black market thrives,” Quebec government stores are closing on specific days to conserve limited supply, while Alberta has halted on issuing retail licences. Indeed, it seems that policy failure may be on the horizon if governments do not address these initial supply chain and access issues. As one of the central goals of legalization was to eliminate the black market, it is alarming that a recent IPSOS poll indicated that one third of cannabis buyers in Canada are still using illegal dealers (Gerster, 2018; Owrap, 2018).

The federal government has inadvertently incentivized replication by limiting provincial legislators’ time to produce policy, consequently increasing the likelihood of policy failure. As Nair and Howlett (2017) suggest, in situations of high uncertainty, a “traditional reliance” on policy learning “may be ineffective” (p. 111). The structure of Canadian federalism, particularly constitutional authority over the criminal law power, are especially important for anticipating such failure. Provinces can enact laws to govern the *administration* of federal criminal legislation within their province. However, as Canada is a federal nation with a unitary court system, any provincial policy governing a criminal law’s administration is susceptible to a constitutional challenge. The Supreme Court of Canada may rule that one province’s law governing federal criminal legislation is unconstitutional and as such, it will be declared of no force or effect in that province. However, because the challenged law was only enacted in a specific province—and not nationally across Canada—the policy will be of no force or effect *only* in that province. A similar law in another province will only be *de facto* unconstitutional, as the Supreme Court may not have yet ruled that particular provincial policy unconstitutional.¹⁴

Thus, there could arise an instance where an unconstitutional provincial administrative law (governing federal criminal legislation) is struck down in one province

¹⁴ In law and government, *de facto* refers to a state of affairs that exists in reality, even if not officially recognized by legislation.

but a similar—if not identical—law is still enacted in another. One such example concerns impaired driving. While some aspects of drug-impaired driving are under federal criminal jurisdiction (outlined in Bill C-46), New Brunswick’s amended *Motor Vehicle Act*—governing the administration of Bill C-46—authorizes police to request all drivers suspected of cannabis impairment for a roadside oral fluid sample. By contrast, in Ontario, Alberta and BC, police can only request such a sample from novice drivers (and in Ontario, commercial drivers)—all other motorists are subject only to a standard field sobriety test from a drug recognition expert. The provincial variation within drug-impaired driving laws substantially increases the potential for policy failure, as implementation problems will likely arise from constitutional discrepancies.

Learning directly from alcohol-impaired driving policy in a time-constrained environment will likely produce *Charter* challenges, particularly in an area like cannabis-impaired driving, where limited scientific consensus exists (Cosh, 2017; Grbic, Goddard, and Ryder, 2017).¹⁵ Of course, any successful *Charter* appeal by a litigant of a provincial administrative law (governing criminal justice legislation) to the Supreme Court of Canada would result in that law becoming of no force or effect only in that province, but would mean that similar provincial laws are by implication *de facto* unconstitutional as well. Therefore, if a provincial government has dedicated resources to implement a particular law (i.e. oral fluid screening devices in New Brunswick), there is a potential that a constitutional dispute may render an expensive instrument (\$6000 per screening device) unusable under the future policy horizon (Loewen, 2018). Policy failure, as defined by Bovens and t’Hart (1996) can be measured “where failures are declared on the basis of metrics—cost benefit analysis (CBA), the comparison of objectives and outcomes, and so on” (as cited in Dunlop, 2017, p. 6). Thus, any provincial police departments that have purchased oral fluid screening devices under the presumption of constitutional congruity may eventually fall victim to policy failure insofar that a CBA reveals a negative outcome due to the inability to use the purchased screening devices again. Essentially, if a Supreme Court ruling renders oral fluid screening device usage by officers unconstitutional in one province, any police department across Canada will now be subject to a potential constitutional dispute and may not be able to continue to use them. Such an occurrence could spark a policy response by the federal government whereby the use of oral fluid screening devices becomes outlawed, regardless of how much money was spent on their purchase. I argue that these processes could constitute policy failure as they occupy valuable and limited public resources. In the end, this point may be part of a larger ontological debate, as policy failure is “something that is framed and made rather than existing in its own right” (Bovens and t’Hart, 2016; Edelman, 1964; Zittoun, 2015, as cited

¹⁵ Unlike drunk driving, which has a scientific consensus about levels of impairment—namely a blood alcohol content (BAC) being greater than 0.08% or 0.08 grams of alcohol in every 100 millilitres of blood—research on cannabis impairment has not reached the same level of certainty. Regardless of the limited scientific consensus, the federal government has established that any individual with between or over 2-5 nanograms of tetrahydrocannabinol (the main psychoactive constituent of cannabis) per millilitre of blood will be considered legally impaired.

in Dunlop, 2017, p. 4) Nonetheless, it is of utmost importance to lawmakers that these aspects of a short timeframe, federalism—within the context of Canada’s unitary court system—and the division of criminal law power be considered in all future cannabis policy development (especially within precise settings where provincial criminal law power is exercised).

Limitations and Future Research

This study is intended to be a legislative and academic resource in addition to contributing to a relatively new body of literature. However, there are several limitations inherent within this study. Fundamentally, only four out of the ten provinces have been analyzed. While this sample is sufficient for the purposes of this study, scholars may want to build upon this work by adding more provincial case studies to further examine mechanisms of policy diffusion. Future French-speaking scholars in particular will be able to glean much from studying Quebec, Canada’s second-largest province. Secondly, as with any research, there is a certain degree of subjectivity comprised within the methodologies. For example, other scholars may have organized the categorization of the overarching policy goals, instruments and precise settings in a different manner. However, by drawing these goals and instruments specifically from the federal Task Force, the subjectivity has been minimized. Finally, other scholars have noted how the mechanisms of policy diffusion are not mutually exclusive and often work in combination with one another (Berry and Berry, 2018). In this sense, the above identification of the mechanisms of diffusion could potentially differ from those used by other scholars. However, by using the categories described by Shipan and Volden (2008) and Berry and Berry (2018), and by excluding the most nebulous and indefinable mechanism (normative pressure) from my analysis, I am confident this study captures the variations between such mechanisms, and indeed contribute to the literature on which mechanisms can be most effectively analyzed by social scientists.

Beyond the mechanisms of diffusion, there were two aspects of cannabis legalization this study did not explore in detail, but which warrant further exploration by future scholars: the emphasis on the protection of youth, and the role of medicinal cannabis. In all the provinces, nearly every goal, instrument and setting analyzed was somehow connected to protecting young people, whether concerning impaired driving, consumption, age requirements, retail and distribution, or public education. The federal government discussed the protection of youth as an explicit goal in its Task Force, “keeping marijuana out of our kids’ hands” was a common refrain Prime Minister Trudeau adopted in public pronouncements, and Bill C-45 contains “protect[ing] the health of young persons by restricting their access to cannabis” and “protect[ing] young persons and others from inducements to use cannabis” as two of the many purposes of the act (Canada, 2018a, p. 6). It is likely that the focus on youth increased the provinces’ reliance on replication of alcohol and tobacco policy, as provincial and federal policy concerning these substances have often targeted youth consumption (Leatherdale, Hammond, and Ahmed, 2008). Furthermore, the proposed regulatory regimes for some provincial cannabis retail models prioritize the

same central principle as they do for alcohol, namely restricting physical availability of products beyond government outlets (Longo, 2017).

Likewise, this study excluded medicinal marijuana from the analysis because it remains entirely federal jurisdiction, and therefore did not diffuse to the provinces. While the precise settings of recreational cannabis policy have largely been left to the provinces, *medicinal* marijuana is still completely controlled by the federal government. This is especially curious because this occurs in a country where health and medicine are largely provincial jurisdiction. Paradoxically, the federal government has effectively ceded some policy settings regarding recreational use that could be characterized as “criminal” (and thus federal jurisdiction) to the provinces, while maintaining full control over the one aspect that is, by definition, medical (and thus provincial jurisdiction). Given provinces’ tendency to jealously guard their own jurisdiction over health, it would not be surprising to see provinces seek to exert control over the medicinal aspects of cannabis policy in the future, particularly once they have become more familiar with their nascent recreational cannabis policies.

Finally, this study examined provinces’ *initial* cannabis frameworks. But since the onset of this study, there were changes in some of the province’s precise settings regarding recreational cannabis policy. Ontario’s new model under the Ford Conservatives, announced in Fall 2018 and coming into force in April 2019, shows that the policy settings are subject to shifts in the partisan makeup of provincial governments, and that these amendments to existing frameworks are no longer constrained by the federal government’s October 2018 timeframe. As Hall (1993) indicates, this type of first-order change that has already taken place with Ontario’s new government is characteristic of normal policymaking. In contrast, second- and third-order change involving broad alterations of overarching goals and instruments is much less likely. This is primarily due to the fact that all of the goals and instruments already diffused through coercion from the federal government. It is telling that, in spite of the wide differences in policy priorities between the Wynne Liberals and the Ford Conservatives, Ontario’s policy was not able to affect changes to the overarching goals and policy instruments of cannabis policy, which remain set by the federal government. This aspect of Canadian federalism forces provinces to only enact legislation that concerns the law’s administration, which is regulated primarily through policy settings, rather than instruments or goals. Therefore, if any major transformation of policy goals was going to take place, it must occur at the national level, because when defining what constitutes criminality, the federal government has exclusive jurisdiction. While changes in provincial governments have resulted in alterations of precise settings, there is unlikely to be changes of overarching goals at the federal level, regardless of if there is a new governing party following the upcoming election. In spite of being a “tough-on-crime” party, Andrew Scheer’s federal Conservatives have indicated they will not recriminalize cannabis if they form government after the 2019 federal election (Smith, 2018).

This study can provide a starting point for researchers, as the literature on cannabis policy in the context of policy diffusion is understandably nascent. As legalized recreational cannabis is a novel subject— not just in Canada, but worldwide— Canada offers a living laboratory to provide direction for forthcoming scholarship. This study shows how qualitative research on policy diffusion can complement existing quantitative studies by allowing for a close examination of the detail—the goals, instruments, and settings—in comprehensive legislation. By using Hall’s social learning framework to help measure something that has been criticized for being difficult to measure, namely, policy diffusion, this project can guide future qualitative researchers who wish to measure policy diffusion at any level of specificity, involving any level of government and most importantly, in any policy field beyond cannabis legislation. An obvious next step for scholars is to move beyond these provinces and examine similarities and differences among the other six provinces, and the three territories. Moreover, by integrating Wesley’s (2018) contribution of “policy replication” into the diffusion literature and disaggregating it from learning from *other* jurisdictions, this project can point to factors that diffusion scholarship should explore beyond cannabis policy. In particular, future scholarship should apply a fuller account of Nair and Howlett’s (2017) framework on “policy myopia” to diffusion in time-constrained settings. My analysis suggests that, while the potential for policy failure remains a realistic possibility in any new endeavour, the short timeline and consequent reliance on provincial policy replication could lead to implementation failures.

Conclusion

This thesis sought to answer two questions: (1) which aspects of provincial cannabis policy—namely goals, instruments and settings—diffused from the federal government, and which did not? (2) Which mechanisms facilitated this diffusion, and why? By exploring legislative debates and government reports from Ontario, New Brunswick, Alberta, and British Columbia, I found that the federal government had an enormous influence on provincial policy, with diffusion occurring for every goal, instrument, and most policy settings in the four provinces. Policy diffused primarily through the mechanisms of coercion and learning, and not through imitation (unsurprisingly) or competition (more surprisingly).

By going into detail with each provincial framework, this project made several contributions. First, it used Peter Hall’s (1993) social learning framework to distinguish between the *goals*, *instruments*, and precise *settings* of cannabis policy in Canada and to better measure the way in which diffusion occurs. It also situated the diffusion literature within the literature on Canadian federalism, specifically highlighting the constitutional division of power between federal and provincial governments with respect to criminal law. After showing how the goals and instruments of cannabis legislation diffused from the federal government through coercion, Chapter Four examined where there was more variation: in the precise settings of New Brunswick, Ontario, Alberta and British Columbia’s cannabis policies. I found that diffusion occurred in all the provinces, and it did so primarily via coercion, learning from other jurisdictions, and learning (or replication) from one’s own

analogous policies. These three mechanisms of diffusion led to considerable policy similarities: federal coercion over goals, instruments, and even many precise settings limited provincial manoeuvrability in terms of policy innovation. Learning from other jurisdictions focused solely on Colorado and Washington and tended to draw lessons from failures rather than successes, while replication typically involved alcohol and tobacco policies.

This analysis contextualized a number of factors not yet explored in the literature on cannabis policy, most notably the integral role played by the federal Task Force in shaping both federal and provincial cannabis policy. The federal government had no legal obligation to follow its recommendation, yet its goals and instruments diffused directly to the federal legislation, and even to some aspects of provincial policy. Ultimately, I argue that the Task Force—not just the legislation—exhibited coercion over provincial policy. Beyond the mechanisms of policy diffusion, my research addressed what Wesley (2018) calls “policy replication” in cannabis legislation and the extent to which federally mandated provincial legislation could produce unanticipated outcomes, particularly within a short timeframe. Finally, I emphasized how many long-term consequences of cannabis legalization are largely unknown, which increased the potential for what Nair and Howlett (2017) called “policy myopia” becoming a source of policy failure, particularly given the overreliance on replication of existing alcohol and tobacco policies. Future scholars should pay special attention to the constitutional division of powers over criminal law and the influence of judicial review. Because Canada is a federal nation with a unitary apex court, provincial variation in certain aspects of cannabis policy—namely impaired driving—will likely to produce a *Charter* challenge that will alter the development of subsequent legislation. My research suggests that any other jurisdictions considering the development of recreational cannabis policy should be cautioned not to (1) impose a restrictive timeline and (2) overly rely on policy learning through replication of analogous legislative fields.

Finally, the research presented here can provide lessons not just for scholars, but also for stakeholders, policymakers, and the Canadian public more generally. By examining the mechanisms by which policies diffuse and identifying various levels of the components of recreational cannabis policy, stakeholders will be in a better position to adapt social, economic and health policy to fit legislative objectives. While normative debates exist among scholars about the utility of recreational cannabis legalization in Canada and abroad (see Bear, 2017; Lake and Kerr, 2017; Weiss, Howlett and Baler, 2017; Kalant, 2016; Goltz and Bogdanov, 2016; Queirolo, Boidi and Cruz, 2016), this empirical study can provide a factual basis to improve debate within civil society. This analysis can also provide important information to non-profit organizations, even those with competing objectives. By producing knowledge and informing the quality of discussion around this important area, this research proves valuable for social scientists, governments, and Canadian society more broadly.

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