The Annual Review of Interdisciplinary Justice Research
Volume 12, 2023

Edited by
Steven Kohm, Kevin Walby, Kelly Gorkoff, Katharina Maier, Alex Tepperman, Bronwyn Dobchuk-Land, and Amelia Curran
The University of Winnipeg
Centre for Interdisciplinary Justice Studies (CIJS)
ISSN 1925-2420 (Print)
ISSN 2816-4253 (Online)

IJR, 2023, Vol. 12, pp. 204-236

Consuming Cannabis: Decriminalization and the Limits of Liberal Law in Canada

Cameron Franzmann (University of Winnipeg)
and Kelly Gorkoff (University of Winnipeg)

Abstract

Through examining criminal record suspension, increased police powers, and the composition of the cannabis industry, we claim that decriminalization of cannabis in Canada as seen in the *Cannabis Act* of 2018 has not eradicated racialized impacts of law, but has instead set the framework to perpetuate and deepen racial inequality. By reviewing the history of drug laws in Canada and examining racialized enforcement, we claim that neither legalization nor decriminalization has undone the historical patterns of racial inequality. Instead, they represent a continued violence of law, racialized surveillance, and deepening of the colonial arrangement.

Key words: Cannabis, decriminalization, legalization, racialization, law

Jurisdictions across the globe are increasingly experimenting with alternative legal and policy frameworks that aim to reduce the harmful effects of the criminalization of drugs (Jenkins et al., 2021). In 2018, Canada codified legislation, the *Cannabis Act*, with the purpose of decriminalizing cannabis nationwide. Decriminalization is a policy strategy in which non-criminal penalties, such as fines, are available for designated activities such as possession of small quantities of a controlled substance (Jesseman & Payer, 2018). Often decriminalization accompanies a legal argument of constitutional rights, such as changes to sex work in Canada (see *R v. Bedford*, 2013). Essentially, decriminalization removes criminal penalties in law, but they can be replaced with: (i) new civil penalties such as fines or diversion programs that direct individuals away from criminal sanctions toward health and education programs (Greer et al., 2022); and (ii) new regu-

latory regimes for the purchase, use, growth, and sale of cannabis or other substances (Csete & Elliott 2021). These regimes are more likely to be thought of as legalization because they govern licencing, age limits for use, and the amount people can have in their possession. Although both legalization and decriminalization are generally heralded as emancipatory and a step toward undoing negative effects of criminalization (Maghsoudi et al., 2020), which include potentially undoing the racialized and class dimensions imbedded in law, questions around the limits of liberal laws and the impact of regulatory law remain largely unanswered and unexamined. The majority of studies examining impacts of decriminalization focus on subsequent patterns of drug use, clinical health metrics, and labour market participation as opposed to human rights and social exclusion (Scheim et al., 2020). There are few studies that examine how decriminalization upholds colonial and racialized aspects of liberal law. This paper posits some evidence that in the case of the *Cannabis Act*, decriminalization systemically upholds racial inequities of criminal law. We begin with a discussion of cannabis regulation and its political landscapes. We then examine the historical racialized aspects of drug laws in Canada upon which all subsequent regulations, including decriminalization and legalization, are built. This is followed by a discussion of three issues important to the new legislation: suspensions and expungements; policing under new legislation as it relates to Black and other youth of colour; and the racialized economy of cannabis sales. These issues are driven by questions about decriminalization and its ability to undo the systemic racialized, intersectional effects of criminal law, and is couched in the argument that a change in law does not automatically erase inequality produced by drug laws over decades. Drug laws, while purportedly affecting everyone on equal grounds, have and continue to disproportionately impact marginalized communities.

Regulating Drugs in Canada: A Brief Overview

Decriminalization often includes limiting police powers of arrest and a shift in regulation toward depenalization (reducing the use of criminal sanctions). The highly criminalized war on drugs (WOD) model that predominated the legal landscape as a way to deal with cannabis in Canada was simply not working as a method to reduce drug use

(Lee, 2018). Justin Trudeau's pro-legalization stance, which focused on keeping cannabis out of the hands of the youth and out of the organized crime markets, was a major selling point for his political campaigns during the 2015 federal election (Lee, 2018). Upon election, Trudeau appointed a panel to the Task Force on Cannabis Legalization and Regulation (TFCLR) to develop legislation that would later turn out to be the *Cannabis Act* (Lee, 2018). The final report of the TFCLR came on November 30, 2016, two years before the legislation. The report listed a total of nine objectives of the decriminalization of cannabis in Canada. These included: (1) protection of Canadian youth by keeping it out of their hands; (2) keeping the profits of the cannabis market away from the criminals/organized crime; (3) reducing the burden on police and the justice system that comes with simple possession charges (as they accounted for half of all police-reported drug charges in 2015 alone); (4) preventing Canadians from entering the justice system and receiving criminal records; (5) protecting public health and safety by strengthening laws and enforcement measures that deter and punish more serious cannabis offences; (6) ensuring Canadians are informed about harms of cannabis use through sustained and appropriate public health campaigns; (7) protecting public health by regulating the production, distribution, and sales to ensure quality and safety, restriction of access, and application of taxes to be directed to addiction treatment and support; (8) providing access to quality-controlled cannabis for medical purposes; and (9) enabling ongoing data collection, which includes gathering baseline data, to monitor the impact of the new framework (Health Canada, 2016).

The Act created a federal and provincial legal and regulatory framework for controlling the distribution, production, sale, and possession of cannabis in Canada. The most important changes allow an individual above the legal age limit to possess up to 30 grams (g) of legal cannabis, whether that be dried or equivalent in a non-dried form; an individual can also share up to the same amount with other adults Government of Canada 2021a). The purchase of cannabis must be from a provincially licensed retailer and in circumstances where that is not available, there are federally licensed producers online that can be accessed. The ability to grow cannabis in a home is allowed but there is a limit of four cannabis plants per residence, which must be

from a licensed seed/seedlings distributer and for personal use only. The federal government is responsible to set strict requirements for producers who grow and manufacture cannabis; the industry-wide rules and standards, therefore, are concerned with the distribution and manufacturing of the market (Government of Canada, 2021a). These responsibilities include the types of cannabis products that are available for sale, the packaging and labelling requirements for products, standardized serving sizes and potency, prohibitions on the use of certain ingredients, good production practices, tracking requirements of cannabis from seed to sale to keep it out of the illegal market, and restrictions on promotional activities. Provinces and territories have different responsibilities that are concerned with developing, implementing, maintaining, and enforcing the systems that oversee the distribution and sale of the cannabis. The provinces have the power to change the safety measures in place, but they are only able to increase and strengthen the restrictions. These would include increasing the minimum age in the province/territory, lowering the personal possession limit, creating additional rules for growing cannabis at home, such as lowering the number of plants allowed per residence and restricting where adults can consume cannabis (in public or in a vehicle, for example). The age limit is 19 in most provinces, save for Alberta (18) and Quebec (21). An extension of the ability to set rules in their jurisdiction would include how cannabis can be sold, where stores can be located and how they must operate, along with who is allowed to sell cannabis. There were two important modifications to the Act. First, Bill C-93 was meant to expedite criminal record suspensions and help to remove barriers people face from a cannabis-related criminal record by way of a record suspension. The second amendment, Bill C-46, saw the establishment of tougher penalties for cannabis-impaired driving and increasing the enforcement capabilities of police officers to reduce or prevent impaired driving.

Research on the impacts of the legislation, and achieving the nine goals, is beginning to take shape. The legislative goal of taking the business away from organized crime appears to have been achieved more and more as each year passes. The National Cannabis Survey found that while in 2010, 47% of respondents got at least some of their cannabis from a legal source, that number is now 68% (Owusu-Bempah, 2022). In 2020, 35% of respondents reported getting their

cannabis from an illegal source, which was down from 51% in 2018 (Owusu-Bempah, 2022). For the first time ever in the third quarter of 2020, the value of transactions for the legal market outstripped that of the illegal market (Owusu-Bempah, 2022). The number of arrests due to simple possession charges have, obviously, dropped drastically from the onset of the enactment of the *Cannabis Act*, along with reductions in arrests for cannabis trafficking, production, and cultivation (Owusu-Bempah, 2022).

Despite these positives arising from the *Cannabis Act,* much more needs to be understood especially as it relates to sociolegal elements of the function of law and the actions of law enforcement. These reductions are significant with regard to policing the WOD, particularly because the majority of those arrests were for cannabis (Hudak 2020). However, there is little evidence that decriminalization has reversed proactive drug-policing practices and if legalizing cannabis has produced an antidote to the WOD. As Owusu-Bempah (2022) argues, numbers alone do not offer evidence of how to undo law that is, at its core, racialized. Heeding Stevens et al.'s (2019) call to explain the unintended impacts of depenalization, diversion, and decriminalization, and the recognition that these processes are sensitive to pre-existing contexts and mechanisms in which they are applied, utilizing some aspects of critical legal theory and critical race theory, we examine three areas of concern and the potential continued importance of race in elements of the *Cannabis Act* as well as its amendments.

Racialized Nature of Canadian Drug Legislation

Wohlbold and Moore (2019) suggest that Canadian drug criminalization policies have a racialized effect that targets various marginalized communities. These effects are further amplified when the intersectional impacts of race, gender, age, and socioeconomic position are taken into account, with poor, young, Black women being severely impacted by criminalizing regimes (Garcia-Hallet et al., 2022). We see this in legislation as well as its enforcement. Legislatively speaking, a history of the enactment of drug laws in Canada reveals its racialized base. From the anti-Asian sentiment that fueled Canada's first anti-drug law in 1908 (the *Opium Act*) to the anti-Black rhetoric that was espoused by moral legislators like Emily Murphy, Canada's drug laws were firmly rooted in racialized discourses about the "oth-

er" (Owusu-Bempah & Luscombe, 2021). Beyond othering, Monture (2014) and Maynard (2017) argue all liberal law is violent and drug laws in particular played a key role in establishing what Fanon (1961/2004) called "the colonial arrangement." As Alan Hunt (1986) argued about lawmaking, the mediation that takes place between conflicting interests in the law can, at best, create a response to social conflict that will achieve nothing other than results reflecting the unequal distributions of power and resources all while doing so in the name of a set of universal values (Hunt, 1986, p. 5). Delgado and Stefancic (2007) argue that policies and law seeking liberal equality address only the most flagrant forms of racism. They ground this assertion in two of critical race theory's claims: first, the claim that that white supremacy is embedded in liberal legal systems; and second, the claim that the ordinariness of racism makes it incredibly hard to detect and address (DeCuir & Dixson, 2004). What is missed is the invisible and systemic forms of inequality based on age, gender, race, and income. Law that claims to purport equality of treatment neglects the lived realities of people's lives where inequality is a daily occurrence. This includes forms of gendered, racial, and income inequities where marginalization is written into social systems such as immigration, social assistance, education, and healthcare, to name but a few.

This critical perspective of law can be used to make sense of three issues discussed below: Canadian criminalization of opium and its relation to Chinese immigrant labourers; the criminalization of Khat and its relation to Somalian immigrants; and criminalizing Indigenous peoples' use of alcohol.

Criminalization of Opium

One of Canada's first drug laws was the *Opium Act* of 1908, which essentially criminalized the lifestyle of Chinese labourers by outlawing the smoking of opium, a substance popularly consumed by Chinese men, as opposed to outlawing the consumption of elixirs and other medicines commonly used by white Canadians (Wohlbold & Moore, 2019, p. 30). Prime Minister Mackenzie King supported the report titled "The Need for Suppression of the Opium Traffic in Canada" that outlined the detriments associated with smoking opium. The report also advocated for the protection of law-abiding Christians from the evils of the drug (Boyd & Carter, 2014, p. 40). Shortly after,

the *Opium Act* was presented to parliament. The purpose of this legislation was to regulate opium in its smoking form. Methods of consumption associated with white people were deliberately left out of the legislation to allow for continued use without penalties. As Wohlbold and Moore (2019) put it, the Act was designed "to carve out White spaces exempt from more punitive approaches" (p. 31). Chinese opium users remained the central focus of Canadian legislators until the mid-1930s, with morphine and heroin users taking centre stage in the 1940s and 1950s.

Criminalization of Khat

Another racialized basis of legislative control of drugs in Canada is Khat. Khat is listed as a Schedule IV drug under the Controlled Drugs and Substances Act (CDSA). Schedule I drugs are listed as the most harmful, but all schedules are accompanied by criminal and regulatory penalty (CDSA, 1996). The criminalization of Khat in 1997 occurred following an influx of immigration by Somalian people to Toronto due to a civil war in their home country (Gordon, 2006). They were forced to live in extremely poor neighbourhoods and had a low employment rate, which left 63% of Somalis below the poverty line (Gordon, 2006). Khat is a plant indigenous to East Africa and is used by Somalians but not usually white Canadians, making it a newer drug on the Canadian landscape at the time. Gordon (2006) argues that this resulted in the 'othering' of Somalians and racializing their use of Khat. Gordon suggests this played a role in the criminalization of Khat as Health Canada deemed the substance "unserious" (2006, p. 72). Justification for its criminalization included withdrawal symptoms such as depression and lethargy, which also occur in legal drugs such as nicotine and alcohol and are far more addictive than Khat (Gordon, 2006). As such, it is fair to argue that criminalizing Khat was less about the drug itself, and more about controlling the Somali community (Boyd 1998; Tanovich 2004; Gordon 2006). Gordon goes so far as to claim that via the criminalization of Khat and the accompanying brute law enforcement, Canada prevented Somalians from accomplishing their goal of finding an identity in a foreign nation (Gordon, 2006).

Criminalization of Indigenous Alcohol Use

Marshall (2015) argues that Indigenous peoples have experienced a substantial number of legislative drug-related harms and because of that, drug-use problems have come to be understood as intrinsic to the "Indigenous Other" (p. 9). An 1886 provision from the *Indian Act* (1876) was Canada's first official prohibition of a substance. The *Indian Act* prevented Indigenous peoples from buying and possessing alcohol. While alcohol was not generally seen as a harmful drug, it led to the arrest and imprisonment of thousands of Indigenous people. This began a lengthy history of a racialized prohibition and criminalization of substances (Boyd & Carter, 2014, p. 38). Marshall (2015) argues that the stigma associated with this process resulted in a muted and non-empathetic social response to Indigenous drug and alcohol use, reproducing Indigenous inequality. This was just the beginning of what would turn out to be a legal system that fosters racism and blatantly creates laws with the goal of protecting and defending the vision of Canada as a white, Christian nation.

These three examples of lawmaking have a clear racial base. They show how race is important in both the drafting and intention of the laws as well as in their effect. They further reveal the role of lawmaking in upholding the power of whiteness and highlight the role law plays in the development and solidification of Canada as a white settler nation. These examples pre-date the introduction of the *Canadian Charter of Rights and Freedoms*, which was meant to ensure the rights of Canadians equally, with the hopes of undoing racial practices of law. However, as both Hunt (1986) and DeCuir and Dixson (2004) argue, the effects of these laws are not undone in liberal times characterized by the idea of equal rights. In fact, the effects of these laws (such as the social, cultural, and legal marginalization of Black people affected by the criminalization of Khat; or the lasting cultural connection between Indigenous peoples and alcohol) persist long after laws themselves have changed (see Delgado & Stefancic, 2007). We now turn to a history of criminalizing cannabis and a discussion of its enforcement, examining these laws for both the intentions and impacts of race-based law.

Criminalizing Cannabis

Around a decade after the criminalization of opium, Emily Murphy, the first woman magistrate in Canada, published a series of articles about drugs and trafficking for the purpose of pressuring Canada into enacting stricter drug laws (Wohlbold & Moore, 2019, p. 32). Wohlbold and Moore (2019) argue that her main goal was to protect the Christian and Anglo-Saxon nation from the "other" and the drugs associated with them. She took this same approach when speaking about cannabis, claiming it had the potential to drive people to complete lunacy. She further claimed that substance abusers are maniacs that will use savage methods to kill or hurt others with no sense of moral responsibility, and that the drug itself was a threat to the national identity of (white) Canada (Wohlbold & Moore, 2019, p. 33). These claims used non-whiteness to create a social drug scare (Boyd & Carter, 2014; Wohldbold & Moore, 2019). Murphy's work led to cannabis being added to the list of drugs on the *Opium and Narcotic Drug Act* in 1923 (Wohlbold & Moore, 2019, p. 33). A full ten years passed before the first arrest for cannabis possession was even reported. Police carried out the first seizure of cannabis in 1932, and the first cannabis arrest in 1947, leading to questions about the intention of the criminalization (Giffen et al., 1991; Bryan, 1979; Khenti, 2014). Drawing on Becker (1955), Hathaway (2009) asks if cannabis criminalization created a cannabis problem that didn't previously exist. He also claims that although there were few arrests, the aim and effect of the law were raced and classed (Hathaway, 2009).

In 1961, Canada enacted the *Narcotic Control Act* (NCA), some of the strictest and harshest drug laws of any Western country. Simple possession charges in the NCA allowed the Crown to pursue either a summary or an indictable charge (Kos-Rabcewicz-Zubkowski, 1975, p. 12). The maximum penalty for a first-time summary offence was a fine of $1000, six months in prison, or both, and for a subsequent offence it was $1000 and one-year imprisonment (Kos-Rabcewicz-Zubkowski, 1975). Had the Crown decided to pursue an indictable offence, upon conviction the offender would have been sentenced to seven years' imprisonment (Kos-Rabcewicz-Zubkowski, 1975). The NCA backed the socially constructed ideas of the criminogenic nature of using, producing, and selling drugs (Boyd & Carter, 2014). Canada

also signed the International Single Convention on Narcotic Drugs with the ultimate objective of eliminating illegal production and non-medical use of various drugs, including cannabis, in the same year (Boyd & Carter, 2014). Throughout the 1960s, cannabis became law enforcement's new illicit drug of concern as the police cracked down on it in Canada with increasing frequency and repressiveness, a shift that quickly culminated in the arrests of thousands of Canadians each year (Boyd, 1991; Fischer et al., 2003).

Following neighbours to the south, then-Prime Minister Brian Mulroney declared a war on drugs in 1986, and 10 years later Canada received its most harsh anti-drug law yet: the *Controlled Drugs and Substances Act* (CDSA). The CDSA established a legislative framework regulating the possession, import, export, production, assembly, distribution, sale, transport, provision, sending, and delivery of controlled substances and precursors that can be used in the manufacture of illegal drugs (Government of Canada, 2018). Each drug in Canada is classified under a specific schedule from I to VIII, and each schedule helps in determining the range of sentencing for that drug — schedule I encompassing the most serious drugs and VIII the least serious, with the sentence for each being in accordance with their schedule (Weisberg Law, 2020). The CDSA's intended focus was meant to be less on users and more on traffickers and organized crime (Boyd & Carter, 2014). To enhance law enforcement efforts, legislation was enacted in Canada in 1988 and 1989 banning the sale of drug paraphernalia and strengthening police powers to seize the assets of arrested drug offenders (Owusu-Bempah & Luscombe 2021; Erickson, 1992). The legislation also allowed for sweeping new police powers of arrest and search and seizure, as well as tough new maximum sentences for drug offences.

In 1992, enhanced law enforcement at both federal and provincial levels received $400 million in funding; in contrast, financial support for treatment services was about $88 million (Owusu-Bempah & Luscombe 2021; Single et al., 1996). Reflecting on this legislative change, Erickson (1999) wrote: "Canada's allegiance to criminalization was affirmed" (p. 276). Although the CDSA was labeled a "health bill," Dias (2003) claims that it had a punitive focus, arguing that it was more like criminal law than health legislation, and exem-

plified Canada's strict prohibition approach to drugs. Examples of this punitiveness include harsh maximum penalties and extended police powers and resources for arrest and prosecution (Macrae, 2003). From the 1970s onward, cannabis possession became the most common drug possession offense enforced across the country (Dauvergne, 2009). By the late 1990s, there were over 600,000 Canadians with a criminal record for cannabis possession as a result (Dias, 2003). If the CDSA was indeed focused on health, one would think there would have been fewer arrests.

Despite several health and safety concerns about drug use and the legislative access for medical marijuana in 2001, the majority Conservative government of Steven Harper doubled down in 2007 with the National Anti-Drug Strategy. This strategy further emphasized law enforcement of drugs over treatment and prevention. This strategy, alongside Bill C-10 (the *Safe Streets and Communities Act*), introduced mandatory minimum sentences for cannabis and other drug-related offences. As the direct result, Bill C-10 intensified legal consequences for minor drug offences and further criminalized non-habitual drug use, among other things (Owusu-Bempah & Luscombe, 2021).

This trajectory of lawmaking paired with the expansion of police powers produces a separate but mutually reinforcing symbiotic relationship. For example, bringing new police powers into being and/or funding broadened police capacities creates opportunities for already racist legislation to produce racist outcomes in arrest and imprisonment.

Racialized Enforcement of Cannabis

Laws criminalizing cannabis possession for personal use have had a disproportionate negative impact on Black, Indigenous, and people of colour (BIPOC) in Canada and these groups are substantially over-represented in cannabis possession arrests in Canada (Maynard, 2017; Khenti, 2014; Mosher, 2001; Browne, 2018; Samuels-Wortley, 2019; Glaser, 2015; Owusu-Bempah, 2017). It is also significant to note the intersectional effects of drug enforcement. Black and Indigenous women are not only significantly over-represented among incarcerated women but are also over-represented in charges for certain

drug offences, including but not limited to trafficking of cannabis, cocaine, and opiates (Turcotte, 2020; Maynard, 2017; Hunt, 2016; Comack, 2014). Although Owusu-Bempah and Luscombe (2021) claim that Canadian academics have been unable to empirically assess the extent that cannabis arrests are racialized across the country, there is significant evidence of over-representation of Black and Indigenous people in the Canadian criminal justice system, as well as the over-incarceration of Black and Indigenous women (Goldenberg et al., 2022).

Khenti (2014) argues that Black communities in Canada have been the target of intensive policing since the inception of the WOD in the 1980s, especially in the province of Ontario where most Black people reside. Although the intention of the legislation was to combat trafficking, most charges were at the level of possession (Mosher, 2011). They argue that as police focus on highly racialized areas and vulnerable communities with concentrated poverty, high unemployment, and greater numbers of low-income Black men, the Canadian state is arguably exacerbating precarious social determinants and impinging on the future prospects of Canada's Black population (Khenti, 2014). This is intensified for Black and Indigenous women of colour (BIWOC), who face intersecting discrimination. Combined with race-based disparities within micro- and macro-level social forces and systems, there are also gender-based disparities that expose marginalized women and girls to disproportionate policing at the intersection of race and gender (Garcia-Hallet et al., 2022). Disproportionate levels of remands, arrests, and incarceration have all been recorded and continued three decades into the WOD (Rankin et al., 2002). An internal police study in Montreal, Quebec found that between 2001 and 2006, 30% to 40% of young Black males were stopped and questioned by police, compared to approximately 6% of white males (Gordon, 2010). Within Canada men and women in Black communities have been over-surveilled by police (Maynard, 2017). Indigenous and Black people have historically been much more likely to encounter police officers and have felt that these encounters are targeted interactions, often through aggressive stop-and-search procedures (Wortley et al., 2021). For instance, a significantly documented method to police Black communities is "carding" — a police-automated system that keeps information on individuals that

they stop on the street, whether it be for criminal matters or not (Maynard, 2017). Through Access to Information and Privacy requests, the *Toronto Star* reported that between 2008 and 2011, 1.125 million cards were filled out and entered into the system, and of those about one-quarter were Black, mostly Black youth, who were carded at a rate 3.4 times higher than that of their population percentage in the city of Toronto (Maynard, 2017). Concerns with the use of carding lead to its decrease by 75% in 2013. However, the proportion of Black people being carded rose after 2013 (Maynard, 2017). Another study of carding in Toronto found that 25% of all street checks between 2008 and 2013 involved Black people, while their population percentage in Toronto was 8.08% (Wortley et al., 2021). The same study found that Black people were stopped at a rate of 3.25 times higher than white people (Wortley et al., 2021). Scholars have compared this extreme surveillance of racialized communities to South Africa's apartheid-era pass laws, when Black people's movements were under heavy surveillance and could not travel outside of designated zones (Maynard, 2017).

Gordon (2006) claims that Black people in Toronto were arrested and charged for possession offences under the CDSA at an extremely disproportionate rate — 25% of the charges for simple possession despite making up 8% of the population. Black people were also far more likely to be stopped and charged for cannabis and related charges, like trafficking, which had risen 80% between 1992 and 2002, all while the majority of charges were being directed at working-class individuals and youth of colour (Gordon, 2006). Tanovich (2004) presents some major findings from the Report of the Commission on Systemic Racism in the Criminal Justice System. In that report, the Commission found a massive over-representation of Black people in the Ontario criminal justice system and that this over-representation was directly linked to the WOD (Tanovich, 2004). The relationship between race and differential sentencing amongst drug cases was statistically significant and the Commission recommended that the Ontario Court of Appeal reconsider its sentencing principles in drug cases, as their findings indicated that alleged neutral factors were in fact having an adverse effect on the Black people accused (Tanovich, 2004). In the Hamilton and Mason cases, both women who were convicted of drug trafficking (they acted as 'drug mules'), the sen-

tencing judge argued that systemic racism and gender bias were key factors in women's decisions to smuggle drugs and that this should mitigate the sentences (Abbate, 2004).

In a 2015 study of police agencies in five Canadian cities, Owusu-Bempah and Luscombe (2021) found that Black Canadian and Indigenous people are more likely to be arrested for cannabis possession than white people. They found this pattern was true in all five cities they studied except Halifax, where only Black people were over-represented in arrests.

For Indigenous people, the starkest disparities were in Vancouver and Regina. Indigenous people in Vancouver were 6.3 times more likely to be arrested for cannabis possession than would be predicted by their representation in the general population. For Black people, the most significant disparities were in Halifax, where Black people were 4.1 times more likely to be arrested for cannabis possession than would be predicted by their representation in the general population. The over- representation of Black and Indigenous people in cannabis possession arrests stands in stark contrast to the experience of White people, who were equally or under-represented in arrests in each of the cities examined compared to their representation in the general population. (Owusu-Bempah & Luscombe, 2021, p. 5–6)

It is clear that racial disparities in drug arrests exist in the Canadian context, and can be attributed to racialized and gendered policing practices. These racial disparities in arrests exist despite evidence of relatively similar rates of self-reported cannabis use across racial groups in the Canadian context (Hamilton et al., 2018). As Khenti (2014) and Maynard (2017) show, given the over-representation of marginalized groups in the criminal justice system, the phenomena of drug arrests is arguably due to over-policing of communities of colour. Khenti (2014) further argues how Black men have been identified as the main enemy and how drug-control efforts have served to diminish the health, well-being, and self-image of Black men via discriminatory and inequitable treatment before the law.

These concerns have prompted questions around undoing these gendered and race-based impacts of criminal legislation. Advocates of racial justice have focused on cannabis legalization and asked if de-

criminalization can undo racialized effects of legislation and its enforcement (see Hudak, 2020; ACLU, 2013, 2020; Geller & Fagan, 2010). We now turn to a discussion of the *Cannabis Act* and its amendments as it relates to race.

New Legislation, Same Patterns

Changes to cannabis laws in Canada were framed primarily as a health issue, and although racial inequities in drug arrests and incarceration motivated changes to drug laws in other countries (Hudak, 2020), undoing racial inequality does not appear to be a driving force in adopting the *Cannabis Act* in Canada. Despite this, there lingered the possibility that this new cannabis legislation was an opportunity to rectify the injustices experienced by BIPOC Canadians under old cannabis law (Maghsoudi et al., 2022). Owusu-Bempah and Luscombe (2021) suggest that Canadian cannabis legalization lacks measures to redress the racialized harms caused by the WOD because the full extent of these harms remains largely unknown. They claim that broader collection and dissemination of disaggregated criminal justice data is needed in the Canadian context in order to inform criminal justice and social policy. As evidenced above, we claim there is adequate information about a baseline of racialized impact of drug laws and that there is a need to examine the impacts of decriminalization on racialized communities. Below, we propose to assess if cannabis legalization can redress racialized harms by examining three areas of concern: (i) suspensions and expungements; (ii) changing police powers; and (iii) the racialized economy of cannabis sales. Through these examples we argue that the new legislation appears to expand regulatory law that further constructs situations that disproportionately criminalize BIPOC populations. In the areas of expungements and record suspensions, changing police powers associated with policing youth and impaired driving, and the cannabis economic market, there is evidence of continued racialized practices under decriminalization. We argue that these issues stem from systemic racism that has been embedded into Canada's drug laws for centuries and are apparent in this new piece of legislation, furthering Monture's (2017) claim that Canadian law is not a solution undoing effects of colonial law on Indigenous peoples and Gordon's (2006) claim that law perpetuates, not resolves, racialization.

Suspensions and Expungements

The expungement of criminal records for cannabis-related activities that are no longer criminalized is a key indicator of the impact of the *Cannabis Act*. The difference between a record suspension and an expungement is that a record suspension does not clear an individual from their record, it merely sets it aside, therefore, the record still exists (Public Safety, 2020). An expungement, on the other hand, is a complete wipe of the charges from the record, meaning they no longer exist (Public Safety, 2020).

The estimates vary but there are more than 500,000 Canadians with a criminal record attributed to cannabis (Kates & Hrick, 2018; Cannabis Amnesty n.d.; Jabakhanji 2021). At the onset of the *Cannabis Act*, there was no legislation in place that would absolve people of their previous cannabis-related criminal record (Cain, 2021). Bill C-93 was passed to address this and is meant to remove the process barriers for people who want to apply to have a record suspended. Individuals can apply even if they have outstanding fines or a victim surcharge that is related to their possession conviction, so long as they have completed the rest of their sentence. The other stipulation is that to be granted a suspension the individual must only have a simple possession conviction and nothing else relating to cannabis, as it will render them ineligible. The Bill waives the $631 application fee and expedites the process by eliminating the 10-year wait period on simple possession cannabis charges. However, individuals looking to apply for a suspension will still have to pay a fee to obtain required documents such as supporting documents from their jurisdictional police force.

According to the Cannabis Amnesty advocacy group, in a large portion of these cases, marginalized groups are disadvantaged by these changes for two reasons. First, although the fee is waived, there are still prohibitive costs involved, which limits who is able to apply. Secondly, due to over-policing, racialized groups are more often charged with multiple offences alongside a simple cannabis possession charge. The racialized nature of over-policing and over-charging eliminates many BIPOC Canadians from pursuing a suspension.

Additionally, an overarching concern remains — suspensions are not the same as expungements, which truly rid people of their criminal records. The federal government claims that record suspensions were the best recourse for action as "expungements are intended for extraordinary circumstances where the criminalization of an activity was historically unjust, such as where a law violated the Charter" (Public Safety, 2020). This means that criminal records for cannabis possession continue to impact the lives of racialized Canadians and impede the ability to live a full and meaningful life with proper housing and employment (Harris, 2020). Given the over-representation of BIWOC among those convicted of cannabis possession in Canada, this effect is heightened. Garcia-Hallett et al. (2022) call this carceral trauma, defined as the experience of multiple forms of vulnerability and intersecting 'matrixes of domination.' Pager (2003) found that a criminal record hinders an individual's ability to get a job, which is compounded for people of colour. Pager (2003) found that employment callbacks for Black people with criminal records is only 5%. Given the racialized nature of possession charges discussed above, it is clear that the effects of Bill C-93 will continue to impact racialized groups disproportionately and include differential impacts for women, youth, and the poor. Further, the Canadian Bar Association (CBA) noted that records have a great stigmatizing effect and the onus on the individual to prove to the government that their record only contains a possession offence goes against the purpose of removing cannabis stigma (CBA, 2019). For those who do get a record suspended, law enforcement still has access to these records and they are used in profiling suspects.

Despite these record suspensions supposedly being a decriminalizing process, the effects of criminalization linger, especially for people of colour. Ignoring the race implications continues a process of legal violence against those who have previously committed what is now a legal act.

Changing Police Powers

It is important to note that cannabis legalization does not mean the end of drug law enforcement. In Colorado, legalization increased the arrest of Black and Latinx people (Colorado Department of Public Safety, 2019). Under the *Cannabis Act*, there is renewed attention to

and intensified regulation of cannabis-impaired driving, trafficking to underage users (which carries up to 14 years in prison), and underage possession (Owusu-Bempah & Luscombe, 2021). Although drug possession charges have dropped dramatically over the past two decades, they are still enforced across the country. In 2019, there were over 23,000 drug possession violations in Canada (Moreau et al., 2020). Greer et al. (2022), in a qualitative study interviewing British Columbia police officers, found considerable differences in officers' experiences and views toward drug crimes, as well as large numbers of inconsistencies, inequities, and harms that may arise from relying on a model of depenalization. They concluded that shifts in policing and the sociolegal context, including an emphasis on decriminalization and depenalization, may not reflect the views among all Canadian police officers. They further found that prosecutorial outcomes seemed to influence police discretion more than officers' own volition or policing directives.

The literature has demonstrated that police stop people of colour more often than white people (Ritchie, 2016). As Ritchie argues, the greater the police power, the greater the reach of police. If police already over-police BIPOC people, this is more likely to increase rather than decrease with changes in enforcement protocols. Often, police stop people under the excuse of traffic violations when they are actually in the search of illegal drugs (Khenti, 2014). A study by Wortley, Owusu-Bempah, and Lin in 2007 demonstrates the already unequal enforcement in traffic stops. A representative sample of 1500 white, Black, and Chinese Torontonians found that 35.7% of Black respondents (this increased to 43.5% for Black males) had been stopped by police in the last two years, compared to around 23% for white and Asian individuals (Wortley et al., 2021). Black people were also much more likely to experience multiple stops, as 22.4% of respondents (29% for Black males) encountered two or more stops compared to 8.5% of white and 9.8% of Chinese respondents (Wortley et al., 2021). These statistics may only worsen as now the police can pull over an individual for suspicious driving and then administer a breathalyzer test in the hopes that they are positive. Therefore, despite having no inclination of any criminal behaviour other than driving-related suspicion, the officer can infringe on this individual's liberty and arbitrarily detain them for a breathalyzer test. Therefore, it

appears that decriminalizing elements of cannabis consumption and distribution has extended the enforcement of laws into other realms of behaviour. We ask if enforcement of these laws in the name of 'protection of the population' is justified when in reality, this enforcement further incriminates segments of the population resulting in unconstitutional effects. Given the existing significant carceral over-representation of Black and Indigenous men, and especially of women, these laws lay the foundation for its continuance.

The *Cannabis Act* created new regulations for this very purpose, and they take a very strong deterrent/criminalizing approach with a 14-year max sentence if caught selling to minors. When compared to the penalties for selling alcohol and tobacco to minors (a fine of up to $10,000 and a year in prison), this seems excessive. Wohlbold and Moore (2019) suggest this distinction in penalty relates to the historical criminalization of cannabis versus that of tobacco and alcohol, where cannabis was historically deemed to be morally unworthy and a threat to national identity. As such, we content that the *Cannabis Act* has reworded its views on how to preserve the white youth of Canada by taking a carceral approach to those who would sell to youth. It is also important to note that cannabis sellers have historically been racialized people (Wohlbold & Moore, 2019).

The *Cannabis Act* makes the claim that the changes that are 'liberal' or equal for all, but we argue the increased restrictions and regulations in related areas (such as driving under the influence or selling without a licence) empowers further enforcement and unequal treatment of marginalized communities. Our argument aligns with Wortley, Owusu-Bempah, and Lin (2021) and Maynard (2017) who suggest policing strategies that involve increased enforcement and surveillance on marginalized communities constitutes racial profiling. As such, the liberal effects of law do not materialize. Codifying the ability for police to ask for a breathalyzer test without the need for raised suspicion is problematic, and people of colour are unjustly detained and questioned on roadside stops. This resembles Dias' critique of the CDSA, claiming the proposed focus on creating a health-oriented bill instead extended police powers and resources for arrest and prosecution. We contend this is replicated in the *Cannabis Act*.

If the previously established law saw a multitude of racial profiling instances because of its allowance of a certain degree of police discretion, then further increasing their discretionary power will inevitably only reproduce the same outcomes but on a larger scale. Research is needed on the mechanisms and contexts that can potentially shape the reform outcomes across various iterations of decriminalization and depenalization (Stevens et al., 2019). A nuanced understanding of how officers translate drug laws within the sociolegal context can inform effective drug law reforms that achieve their stated aims. It can also provide evidence that despite the idea of law reform, law continues to perpetuate inequality.

The Racialized Economy of Cannabis Sales

The market of cannabis in Canada is now very lucrative. There is reason to ask if new regulatory laws from the *Cannabis Act* reproduce racialized economic inequalities by, for example, keeping individuals from participating in the newly formed cannabis market. A limitation of the *Cannabis Act* is that it will not issue licenses to sell and produce cannabis to any individual who has a prior conviction or has been an associate of someone who has contravened the CDSA or the *Food and Drugs Act* in the past 10 years (Wohlbold & Moore, 2019). This definition under the Act is extremely prohibitive as provinces set rules in their jurisdiction on how cannabis can be sold, where stores can be located, and how they must operate, along with who is allowed to sell cannabis (Wohlbold & Moore, 2019; Government of Canada, 2021a&b). This allows for a great deal of discretion in issuing licenses (Wohlbold & Moore, 2019; Government of Canada, 2021a&b). This outright eliminates those with criminal records, and with the over-representation of racialized groups in the criminal justice system (specifically Black and Indigenous women) and the inability to expunge records, by default many racialized people are disadvantaged.

A study conducted at the University of Toronto analyzed the diversity of the cannabis market and found racialized inequality across ownership and participation in the legal cannabis market (Maghsoudi et al., 2020). Researchers found that 84% of cannabis industry leaders are white, while the remaining 16% were non-white, with the majority (6%) being South Asian (Maghsoudi et al., 2020). This market struc-

ture will only increase the racial hierarchy and class separation, as a lot of the market space will be taken up by those already at the top, further enforcing and increasing the issue of anti-BIPOC racism (Wohlbold & Moore, 2019). This is a clear indication of the racialized nature of cannabis decriminalization.

The issue of the isolated market space has been addressed by various Indigenous leaders who state that they have been purposefully left out of the initial *Cannabis Act* and want the federal government to amend it (Barrera, 2019). Specifically, Indigenous communities were not figured into the jurisdictional equation, leaving the distribution and retail sale in the hands of the provincial and federal government (Barerra, 2019). Federal and provincial governments consider their own respective cannabis regulations as laws of general application, meaning they apply to all within those jurisdictions, including First Nations. Many First Nations do not agree with this interpretation (Brown, 2021). As an example, the Chief of Long Plains First Nation is being sued by the Province of Manitoba for operating a dispensary (*Indigenous Bloom*) without a license (CBC, 2021). *Indigenous Bloom* had functioned previously as a provincially approved dispensary, Meta Cannabis Supply, in 2018 and was operational for two years until its license ran out in 2020 (CBC, 2021). Long Plains First Nation states they are not subject to provincial regulation, because they are a First Nation. Following the licence suspension, Long Plain First Nation released an announcement saying their leadership had adopted their own Long Plain First Nation Cannabis Law pursuant to section 35 of the *Constitution Act*, the *First Nations Land Management Act*, and the *United Nations Declaration on the Rights of Indigenous Peoples*. They claim that this Cannabis Law is an expression of the Long Plain First Nation's inherent right to self-determination, which includes the right to exclusively govern cannabis-related activities on reserve (Brown, 2021). The current store continues to sell cannabis that is approved by Health Canada, therefore rendering the argument and claim of safety issues redundant, resulting in unnecessary harassment from the province (CBC, 2021). First Nations argue that they have the right to manage cannabis distribution and sales in their communities, without oversight from federal and provincial governments.

Discussion

Using the theoretical perspective outlined by Hunt indicating the role of liberal law in maintaining an unequal distribution of power and its role in subordination and domination, alongside critical race theory's claims that law itself is a mechanism by which BIPOC are systemically maintained in marginalized positions, we claim that decriminalization of cannabis perpetuates law's racialized impact. A legal system built upon anti-Black, anti-Indigenous, anti-women, and anti-poor forms of discrimination perpetuates, reproduces, and extends those values in other areas. Simple possession of cannabis may now be legal, but the criminalization of marginalized groups persists within the realms of expungements and suspensions, continued unequal enforcement of laws, and the reproduction of dominant economic relations that derive from regulatory law.

When the Canadian government opted for a suspension of criminal records in lieu of a complete expungement, they entrenched the deep-rooted issues of racial inequality existing and reproduced in law enforcement and sentencing. This includes the disproportionate number of Black and Indigenous men and women criminalized by the justice system. The *Cannabis Act* and Bill C-93 using a record suspension rather than an expungement entrenches racialized communities who already have a long history of cumbersome criminal records. Record suspensions ignore the historical and future damage to racialized communities of a criminal record for simple possession (Tanovich, 2006).

The increased power to law enforcement enables further enforcement and unequal treatment of marginalized communities. Racialized surveillance of marginalized communities continues as a part of police practice. Codifying into law the ability for police to ask for a breathalyzer test without the need for raised suspicion is specifically problematic for racialized communities, as people of colour are already unjustly detained and questioned on roadside stops. Similar to Dias's (2003) claim that the CDSA had a punitive focus and was more like criminal law than health policy, the *Cannabis Act*'s extended police powers and resources for arrest and prosecution leads us to question its racialized punitive effects. The increased discretion and punishments from this Act do not appear to be protecting youth but increas-

ing the police surveillance of racialized groups, which leads to further opportunities to arrest and criminalize.

Finally, in Canada, Indigenous peoples have been systematically excluded from participation in the capitalist economy (at the same time as they have been systematically dispossessed of their capacities to sustain non-capitalist economies). The *Indian Act*, various provincial resource extraction restrictions, and the enforcement and removal of land-based resources from Indigenous peoples has effectively eliminated the ability to accumulate wealth. The *Cannabis Act*, alongside provincial jurisdictional licencing legislation that does not recognize First Nations' power over their own land, further continues colonizing practices found in other legislation. This clearly demonstrates the continued power of colonial law. The racialized makeup of the cannabis market appears to benefit white elites, in that they accumulate a vast amount of wealth, and continues the dispossession of resources from the hands of Indigenous groups.

The decriminalization aspect of the *Cannabis Act* may claim to create an equal society, but in reality the legislation just reverts some of the previous issues like unequal enforcement and the inequitable market into new areas. These three concerns about the *Cannabis Act* and decriminalization are important as they point out the continued racial disparities found in law. We note that the nature of racial disparities discussed here are limited. They do not include an in-depth look at the various specificities of gender oppression and the specific impacts on BIPOC. We encourage future work to take up these detailed analyses and further examine the arguments made here.

The racialized outcomes of the *Cannabis Act* in Canada are not mere artifacts of the legislation itself. They represent the historical and contemporary violent nature of law and its continued racialized and gendered systemic effects. Record suspension, increased policing powers, and exclusion from profit in the cannabis market show how oppression is built into law in subtle ways (Monture, 2014).

Conclusion

The structural oppression of racialized colonial law has persisted throughout Canadian history and found its way into the different forms of drug legislation. While early legislation was explicitly rac-

ist, laws that followed reproduced similar effects when enacted. After examining elements of the *Cannabis Act*, it is clear that there are communities that will continue to suffer the consequences of using a drug that is no longer a crime to use. Decriminalization appears to continue the racialized dimensions of criminalization exemplified in various iterations of drug prohibition from the *Opium Act* to NCA and CDSA. The *Cannabis Act* created new opportunities for police to continue their excessive enforcement in driving offences and the ability to maintain BIPOC racial stereotypes that intersect with class and gender, and that have been apparent in Canada's justice system history. The brand new marketplace of cannabis was racially stratified from the beginning, as it favoured licensing people with business experience and wealth, which systematically excluded people with prior records or previous experience in the illegal market. Despite the possibility of decriminalization reducing law's unequal effects, the *Cannabis Act* continues to lay conditions of inequality. We attribute this to Hunt's explanation that law is motivated by broader political objectives, including racialized practices, and law itself is not capable of solving the issues that it addresses. Instead, he argues that law reproduces the existing reality and experiences that humans face, including subordination and domination (Hunt, 1986).

References

Abbate, G (2004). Appeal court hands down harsher terms for drug mules. *Globe and Mail*. August 4.

ACLU - American Civil Liberties Union, A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform (New York: ACLU, June 2020), https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf.

ACLU -American Civil Liberties Union, The War on Marijuana in Black and White (New York: ACLU, June 2013), https://www.aclu.org/report/report-war-marijuana-black-andwhite?redirect=criminal-law-reform/war-marijuana-black-and-white.

Barrera, J. (2019, September 29). Next Federal Government needs to amend Cannabis Act, say first nation chiefs *CBC news*. CBCnews. Retrieved 2022, from https://www.cbc.ca/news/indigenous/cannabis-first-nations-laws-1.5299972.

Becker, H.S. (1955). Marihuana use and social control. *Social Problems, 3*, 35–44.

Boyd, S. C., & Carter, C. I. (2014). A Brief Sociohistory of Drug Scares, Racialization, Nation Building, and Policy. In *Killer Weed* (pp. 37–56). University of Toronto Press.

Boyd, N. (1991). *High society: Legal and illegal drugs in Canada*. Toronto: Key Porter.

Boyd, N. (1998). Rethinking our Policy on Cannabis. *Policy Options, 19*, 31–33.

Bryan, M. C. (1979). Cannabis in Canada: A decade of indecision. *Contemporary Drug Problems, 8*, 169–192.

Brown, D. (2021). *Manitoba suing to prevent unlicensed cannabis retailer from operating in province.* Stratcann – for the Cannabis Community. July 2021 https://stratcann.com/news/manitoba-suing-local-indigenous-bloom-to-prevent-them-from-operating-in-province/.

Browne, R. (2018). "Black and Indigenous people are overrepresented in Canada's weed arrests." *Vice News,* April 18. https://www.vice.com/en_ca/article/d35eyq/black-and-indigenous-people-are-over-represented-in-canadas-weed-arrests.

Cain, P. (2021, March 11). Fewer than 400 people pardoned under new system for erasing Old weed convictions. *CTVNews.* Retrieved 2022, from https://www.ctvnews.ca/canada/fewer-than-400-people-pardoned-under-new-system-for-erasing-old-weed-convictions-1.5341579.

CBA -Canadian Bar Association. (2019, July 2). *Bill C-93: Suspending records for cannabis possession the hard way.* The Canadian Bar Association. Retrieved 2022, from https://www.cba.org/Our-Work/cbainfluence/Submissions/2019/July/Bill-C-93.

CBC News (2021, July 4). Pot-shop lawsuit 'a big smokescreen,' says Long Plain First Nation chief. *CBC News*. CBC news. Retrieved 2022, from https://www.cbc.ca/news/canada/manitoba/pot-shop-lawsuit-a-big-smokescreen-says-long-plain-first-nation-chief-1.6089480.

Canadian Charter of Rights and Freedoms, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11.

Cannabis Amnesty (n.d.) *Campaign for cannabis amnesty*. Campaign For Cannabis Amnesty. Retrieved 2023, from https://cannabisamnesty.ca/legalizeus/.

Cannabis Facts. (2014). Top ten facts all Canadians need to know about cannabis. http://www.cannabisfacts.ca/.

CDSA -Controlled Drugs and Substances Act (S.C. 1996, c. 19).

Colorado Department of Public Safety. (2016). Marijuana legalization in Colorado: Early findings. *A Report Pursuant to Senate Bill 13-283*. Available: https://cdpsdocs.state.co.us/ors/docs/reports/2016-SB13-283-Rpt.pdf.

Comack, E. (2014). The Feminist Engagement with Criminology. In Balfour and Comack (eds) *Criminalizing Women, 2nd edition.* Fernwood Publishing, pp. 12-46.

Csete, J., & Elliott, R. (2021). Consumer protection In Drug policy: The human rights case for safe supply as an element of harm reduction. *International Journal of Drug Policy*, (91), Article102976. https://doi.org/10.1016/j.drugpo.2020.102976.

Dauvergne, M (2009). Trends in police-reported drug offences in Canada. *Juristat: Canadian Centre for Justice Statistics.* Vol 29, Issue 2. Ottawa.

DeCuir, J. T., & Dixson, A. D. (2004). *"So When It Comes Out, They Aren't That Surprised That It Is There": Using Critical Race Theory as a Tool of Analysis of Race and Racism in Education*. Research News and Comment.

Delgado, R., & Stefancic, J. (2007). Critical Race Theory and Criminal Justice. *Humanity & Society*, *31*, 133–145.

Dias, G. (2003). Canada's Drug Laws: Prohibition is Not the Answer. In *Perspectives on Canadian Drug Policy* (Vol. 1, pp. 9–25). essay, The John Howard Society of Canada.

Erickson, P.G. (1999). A persistent paradox: Drug Law and policy in Canada. *Canadian Journal of Criminology*, 41, 275-284.

Fanon, F. (2004). *The wretched of the Earth* (Trans. R. Philcox) (pp. 1-62). Grove. (Original work published 1961).

Fischer, B., Ala-Leppilampi, K., Single, Eric, & Robins, A. (2003). Cannabis law reform in Canada: Is the 'saga of promise, hesitation and retreat' coming to an end? Canadian *Journal of Criminology and Criminal Justice*, 45, 265–295.

Garcia-Hallet, J., Samuels-Wortley, K., Henry, T.K., and Boyles, A.S. (2022). Voices, Experiences, and Expertise of Black, Indigenous, and Women of Color (BIWOC) on the Carceral State. *Journal of Qualitative Criminal Justice and Criminology*, 11 (3), 251-267.

Geller, A., & Fagan, J. (2010). Pot as pretext: Marijuana, race, and the new disorder in New York City street policing. *Journal of Empirical Legal Studies*, 7 (4), 591–633.

Giffen, P. J., Boorman, S., & Endicott, S. (1991). *Panic and indifference: The politics of Canada's drug laws: A study in the sociology of law.* Ottawa, ON: Canadian Centre on Substance Abuse.

Glaser, J. (2015). *Suspect race: Causes and consequences of racial profiling.* New York, NY: Oxford University Press.

Goldenberg, S.M., Perry, C., Watt, S., Bingham, B., Braschel, M., and Shannon, K. (2022). Violence, policing, and systemic racism as structural barriers to substance use treatment amongst women sex workers who use drugs: findings of a community-based cohort in Vancouver, Canada (2010-2019). *Drug and Alcohol Dependence*, Vol 237(1).

Gordon, T. (2006). Neoliberalism, Racism and the War on Drugs in Canada. *Social Justice*, *33*(1), 59–78.

Government of Canada, CBSA. (2018, December 24). *Memorandum D19-9-2 -importation and exportation of cannabis, controlled substances and precursors*. Memorandum D19-9-2 -Importation and Exportation of Cannabis, Controlled Substances and Precursors. Retrieved 2022, from https://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-9-2-eng.html?wbdisable=true.

Government of Canada - Legislative Services Branch. (2022, April 4). *Consolidated federal laws of Canada, Cannabis Act*. Cannabis Act. Retrieved from https://laws-lois.justice.gc.ca/eng/acts/c-24.5/page-2.html.

Government of Canada, Department of Justice. (2021a). July 7. *Legislative background: Reforms to the transportation provisions of the Criminal Code (Bill C-46)*. Bill C-46 - Legislative Background: reforms to the Transportation Provisions of the Criminal Code (Bill C-46). Retrieved 2022, from https://www.justice.gc.ca/eng/cj-jp/sidl-rlcfa/c46/p3.html.

Government of Canada, Department of Justice. (2021b). (September 1). *Section 9 – arbitrary detention*. Charterpedia. Retrieved 2022, from https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art9.html.

Greer A, N. Zakimi, A, Butler, and S. Ferencz (2022). Simple possession as a 'tool': Drug law enforcement practices among police officers in the context of depenalization in British Columbia, Canada. *International Journal of Drug Policy*, 99, 103471.

Hamilton, H. A., Owusu-Bempah, A., Boak, A., & Mann, R. E. (2018). Ethnoracial differences in cannabis use among native-born and foreign-born high schools students in Ontario. *Journal of Ethnicity in Substance Abuse,* 17 (2), 123–134.

Harris, K. (2020, August 9). Just 257 pardons granted for pot possession in program's 1st year *CBC News*. CBCnews. Retrieved 2022, from https://www.cbc.ca/news/politics/cannabis-record-suspension-pardon-pot-1.5678144.

Hathaway, A. (2009). *The legal history and cultural experience of Cannabis*. The Legal History and Cultural Experience of Cannabis Retrieved 2022, from https://www.heretohelp.bc.ca/legal-history-and-cultural-experience-cannabis.

Health Canada (2016, November 30). *The Final Report of the Task Force on Cannabis Legalization and Regulation*. Canada.ca. Retrieved 2022, from https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/laws-regulations/task-force-cannabis-legalization-regulation/framework-legalization-regulation-cannabis-in-canada.html#es.

Hudak, J (2020). *Marijuana: A Short History.* Brookings Institutional Press.

Hunt, A. (1986). The Theory of Critical Legal Studies, *Oxford Journal of Legal Studies*, *6* (1).

Hunt, S. (2016). *Representing Colonial Violence: Trafficking, Sex Work, and the Violence of Law. Atlantis,* 37 (21), 25-39.

Jabakhanji, S. (2021, October 18). 3 years after Weed Legalization, Ontario Man still can't enter U.S. due to 20-year-old pot charge. *CBC News*. Retrieved 2022, from https://www.cbc.ca/news/canada/toronto/weed-legalization-ontario-pardons-1.6212435.

Jenkins, E., S. Bernstein, D. MacPherson, and M. Tyndall (2021). Legal regulation as a human right and public health approach to currently prohibited substances. *International Journal on Drug Policy*. 2021 May;91:103153. doi:10.1016/j.drugpo.2021.103153. PMID: 340244 58.

Jesseman, R., & Payer, D. (2018, June). *Decriminalization: Options and evidence*. Canadian Centre on Substance Use and Addiction. Retrieved 2022, from https://www.ccsa.ca/sites/default/files/2019-04/CCSA-Decriminalization-Controlled-Substances-Policy-Brief-2018-en.pdf.

Kates, B., & Hrick, P. (2018, October 29). Opinion: Pardons don't go far enough. Convictions for cannabis possession must be expunged. *CBC news*. Retrieved 2022, from https://www.cbc.ca/news/opinion/cannabis-convictions-1.4876783.

Khenti, A. (2014). The Canadian war on drugs: Structural violence and unequal treatment of Black Canadians. *International Journal of Drug Policy*, 190–195.

Kos-Rabcewicz-Zubkowski, L. (1975). Drug Control Laws in Canada, *UIC Law Review*, 9(1) 99–114.

Lee, K. (2018, October 4). Q&A: Canada is about to legalize marijuana. how did that happen? Justin Trudeau, for starters. *Los Angeles Times*. Retrieved 2022, from https://www.latimes.com/world/la-fg-canada-marijuana-20181004-story.html.

Macrae, B. (2003). Drug Policy in Canada: Way if Necessary but Not Necessarily War. In *Perspectives on Canadian Drug Policy* (Vol. 1, pp. 43–75). The John Howard Society of Canada.

Maghsoudi, N., Rammohan, I., Bowra, A., Sniderman, R., Tanguay, J., Bouck, Z., Scheim, A., Were, D., & Owusu-Bempah, A. (2020). (rep.). *How Diverse is Canada's Legal Cannabis Industry?* Centre on Drug Policy Evaluation. Retrieved from https://cdpe.org/wp-content/uploads/dlm_uploads/2020/10/How-Diverse-is-Canada's-Legal-Cannabis-Industry_CDPE-UofT-Policy-Brief_Final.pdf.

Marshall, S. G. (2015). Canadian Drug Policy and the Reproduction of Indigenous Inequalities. *The International Indigenous Policy Journal*, 6 (1). DOI: https://doi.org/10.18584/iipj.2015.6.1.7.

Maynard, R (2017). *Arrested (in)Justice in Policing Black Lives: State Violence in Canada from Slavery to the Present*. Fernwood Press: Halifax, pp. 83-107.

Monture, P. (2014). Standing against Canadian Law: Naming Omissions of Race, Culture and Gender. In Comack (ed) *Locating Law*. Fernwood. Halifax, pp. 68-87.

Moreau, G., Jaffray, B. & Armstrong, A. (2020). Police Reported Crime Statistics 2019. *Juristat.*

Mosher, C. (2001). Predicting drug arrest rates: Conflict and social disorganization per- spectives. *Crime & Delinquency, 47* (1), 84–104

Murphy, Emily F. (1922). *The Black Candle*. Toronto: Allen.

Owusu-Bempah, A., Luscombe, A., & Finlay, B. (2019). Unequal justice: race and cannabis arrests in the post-legal landscape. In A. Potter, & D. Weinstock (Eds.), *Legalizing Marijuana in Canada: Policy challenges* (pp. 114–131). Kingston: McGill-Queen's University Press.

Owusu-Bempah, A., & Millar, P. (2010). Research note: Revisiting the collection of 'justice statistics by race' in Canada. *Canadian Journal of Law and Society*, 25 (1), 97–104.

Owusu-Bempah, A., Kanters, S., Druyts, E., Toor, K., Muldoon, K. A., Farquhar, J. W., & Mills, E. J. (2014). Years of life lost to incarceration: inequities between Aboriginal and non-Aboriginal Canadians. *BMC Public Health*, 14, 585–590.

Owusu-Bempah, A. & Luscombe, A. (2021). Race, Cannabis and the Canadian War on Drugs: An Examination of Cannabis Arrest Data by Race in Five Cities. *International Journal of Drug Policy* 91: 902937 https://doi.org/10.1016/j.drugpo.2020.102937.

Owusu-Bempah, A. (2022, January 15). Opinion: Canada's legalization of cannabis is a success story, despite a shaky first act. *The Globe and Mail.* Retrieved 2022, from https://www.theglobeandmail.com/opinion/article-canadas-legalization-of-cannabis-is-a-succe ss-story-despite-a-shaky/.

Owusu-Bempah, A. (2017). Race and policing in historical context: Dehumanization and the policing of Black people in the 21st century. *Theoretical Criminology*, 21 (1), 23–34.

Pager, D. (2003). The Mark of a Criminal Record. *American Journal of Sociology*, 108 (5), 937–975.

Public Safety Canada, (2020, January 1). *Applying for a Record Suspension? - Information you should know*. Retrieved 2022, from https://www.canada.ca/en/parole-board/corporate/publications-and-forms/applying-for-a-record-suspension-information-you-should-know.html.

Rankin, J., Quinn, J., Shephard, M., Simmie, S., & Duncanson, J. (2002). Singled out: An investigation into race and crime. *Toronto Star*, A1.

Ritchie, Andrea J. (2016). "Black Lives Over Broken Windows: Challenging the police paradigm rooted in right-wing 'folk wisdom'," *Public Eye Magazine*, July 6.

Samuels-Wortley, K. (2019). Youthful Discretion: Police selection bias in access to pre-charge diversion programs in Canada. *Race and Justice*, online-first doi:2153368719889093.

Scheim AI, Maghsoudi N, Marshall Z, Churchill, Ziegler and Werb (2020). Impact evaluations of drug decriminalisation and legal regulation on drug use, health and social harms: a systematic review. *BMJ* 10:e035148. doi:10.1136/bmjopen-2019-035148.

Stevens, A., Hughes, C. E., Hulme, S., & Cassidy, R. (2019). Depenalization, diversion and decriminalization: A realist review and programme theory of alternatives to criminalization for simple drug possession. *European Journal of Criminology.* Article 147737081988 7514.10.1177/1477370819887514.

Tanovich, D. M. (2004). Race, Sentencing and the "War on Drugs". *Criminal Reports (Articles)*, 1–9.

Turcotte, M. (February 2020). *Results from the 2016 Census: Education and labour market integration of Black youth in Canada.* Statistics Canada. https://www150.statcan.gc.ca/n1/pub/75-006-x/2020001/article/00002-eng.htm.

Weisberg Law. (2020, September 1). *Have you been charged with drug possession?* Retrieved 2022, from https://www.weisberg.ca/charged-drug-possession/.

Wohlbold, E., & Moore, D. (2019). Benevolent whiteness in Canadian drug regulation. In K. Koram (Ed.), *The War on Drugs and the Global Colour Line.* Pluto Press.

Wortley, S., Owusu-Bempah, A., & Lin, H. (2021). (rep.). *Race and Criminal Injustice: An examination of public perceptions of an experiences with the Ontario criminal justice system*. Canadian Association of Black Lawyers (CABL). Ryerson University Faculty of Law.