

# OPTING OUT OF PRIVATE CANNABIS RETAIL

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## Introduction

This paper seeks to determine whether Windsor should opt out of private cannabis retail under s. 41(1) of the *Cannabis Licence Act*.<sup>1</sup> To assist in this determination, this paper will first turn to the federal and provincial legislative framework for cannabis legalization. Second, it will examine the *Pueblo County Cannabis Impact Study* (“the Study”) completed by the University of Colorado. It is one of the most comprehensive studies to date, authored by twenty-four (24) PHDs, and over thirty (30) total contributors.<sup>2</sup> The Study outlines the economic impacts, social impacts, and health impacts of legalizing cannabis for recreational use. Viewed through the lens of Canada’s unique legislative framework, and in consideration of the economic benefits to cannabis legalization, weighed against the social and health impacts, this paper will show why Windsor should not opt out of private cannabis retail.

## Part 1: The Legal Framework

### *Federal Legislation*

The Federal Liberal Government enacted the *Cannabis Act*, S.C. 2018, c. 16 on June 21, 2018 (“*Fed Cannabis Act*”). Prime Minister Trudeau asserts that the purpose of the *Fed Cannabis Act* was to “reduce the role of criminal organizations in the marijuana market and limiting the availability of the drug to youth.”<sup>3</sup> The *Fed Cannabis Act* creates the regulations surrounding the promotion (s. 16), packaging and labelling (s. 25), sale and distribution (s. 31), and licensing of growers and suppliers (s. 61) of cannabis and cannabis related products. Under s. 69(1), a person

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<sup>1</sup> *Cannabis Licence Act*, 2018 S.O. 2018, c. 12, Sched. 2 (“*Cannabis Licence Act*”)

<sup>2</sup> Baca, Judy, et. al. (2017). *Pueblo County Cannabis Impact Study* (ICR Technical Report 2017-1). Retrieved from University of Colorado Website:

[https://mountainscholar.org/bitstream/handle/10217/192586/ICR\\_TechReport2017-1.pdf?sequence=1&isAllowed=y](https://mountainscholar.org/bitstream/handle/10217/192586/ICR_TechReport2017-1.pdf?sequence=1&isAllowed=y)

<sup>3</sup> Leblanc, Daniel. (2017 April 13). Canada’s marijuana legalization plan designed to reduce criminal role in market. *The Globe and Mail*. Retrieved from <https://www.theglobeandmail.com/news/politics/liberals-table-marijuana-bill-that-includes-crackdown-on-impaired-drivers/article34696586/>

“may possess, sell or distribute cannabis **if the person is authorized to sell cannabis under a provincial Act.**” Pursuant to subsection 3, Provincial retailers can only sell cannabis that is produced by a federally authorized grower, and must “reduce the risk of cannabis being diverted into an illicit market.” Regulation and licensing of cannabis growers and suppliers therefore falls under the jurisdiction of the federal government, but under s. 69(1) each Province is free to enact its own legislation to outline the sale of cannabis to consumers.<sup>4</sup> The framework was designed to be consistent with the constitutional division of powers under ss. 91(27) (Criminal Law) and 92(13) (Property and Civil Rights) of the *Constitution Act, 1867*.<sup>5</sup>

### ***Provincial Legislation***

Provinces across Canada have split between authorizing private retail sales of cannabis (Saskatchewan, Manitoba, and Alberta) and restricting the sale of cannabis to Crown corporations (New Brunswick, British Columbia, and Quebec). Shortly after the *Fed Cannabis Act* was passed, Kathleen Wynne’s Government passed the *Cannabis Act*, S.O. 2018, c. 26, Sched. 1 (“*Prov Cannabis Act*”), which restricted the sale of cannabis to a government owned retailer named the Ontario Cannabis Store (“OCS”).<sup>6</sup>

However, after the provincial election Doug Ford’s Government passed the *Cannabis Licence Act* in October 2018.<sup>7</sup> The *Cannabis Licence Act* repealed and amended portions of the *Prov Cannabis Act* and created a regulatory framework for the private sales of cannabis products in Ontario. Section 6(1) of the *Prov Cannabis Act* was amended to authorize the sale of cannabis “by an authorized retailer”, and the Alcohol and Gaming Commission of Ontario (“AGCO”) was

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<sup>4</sup> *Cannabis Act*, S.C. 2018, c. 16, Part 3, s. 61, and s. 69(1) (“*Fed Cannabis Act*”).

<sup>5</sup> *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.).

<sup>6</sup> *Cannabis Act*, 2017 S.O. 2017 c. 26, Sched. 1, s. 6(1).

<sup>7</sup> *Cannabis Licence Act*, 2018, S.O. 2018, c. 12, Sched. 2 (“*Prov Cannabis Act*”).

named the licensor and regulator of private cannabis retail in Ontario. The *Cannabis Licence Act* also creates a Licence Appeal Tribunal, whose purpose is to review licensing and regulatory decisions rendered by the AGCO.

Under this framework, a private retailer applies to the AGCO to obtain a Retail Operator Licence.<sup>8</sup> Upon obtaining a licence, the retailer can then request a Retail Store Authorization, naming a specific location where the Operator will locate the store.<sup>9</sup> Once an Operator has submitted a request for a Retail Store Authorization, the AGCO is required to give “public notice” of an application for a retail store authorization by (a) displaying the notice at the physical location; (b) posting a notice on the AGCO website; and (c) “any other manner the [AGCO] considers appropriate.”<sup>10</sup> However, the AGCO must also include “a request for the municipality [...] to make written submissions” within fifteen (15) days regarding whether the retail store authorization “is in the public interest, having regard to the needs and wishes of the residents.”<sup>11</sup> After the fifteen (15) day notice period, the AGCO can either approve or deny the retail store authorization. There is no further explanation as to what factors the AGCO will consider when determining whether the location of the store is “in the public interest.”

The *Prov Cannabis Act* and the *Cannabis Licence Act* also strip municipalities of their normal statutory powers to enact by-laws under the *Municipal Act, 2001*, S.O. 2001, c. 25. Under s. 42(1) of the *Cannabis Licence Act*, municipalities cannot pass business licensing by-laws regarding the sale or governance of retail stores. Section 42(2) of the *Cannabis Licence Act* explicitly overrides provisions of the *Planning Act*, R.S.O. 1990, c. P.13 and prohibits

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<sup>8</sup> *Ibid* at ss. 3 & 4.

<sup>9</sup> *Ibid*.

<sup>10</sup> *Ibid* at s. 4(7).

<sup>11</sup> *Ibid* at s. 4(9).

municipalities from “distinguishing where cannabis can or cannot be sold.” Any existing by-laws already passed regulating cannabis retail locations “is of no effect.”<sup>12</sup>

Thus, the *Prov Cannabis Act* and the *Cannabis Licence Act* effectively strip municipalities of their normal regulatory, licensing, and by-law powers under the *Municipal Act* and the *Planning Act* as it relates to the retail sale of cannabis. The Ford Government has centralized all legal, licencing, and regulatory functions with the AGCO but nonetheless provides disgruntled municipalities the ability to “opt-out” of privatized sales. Municipalities have until January 22, 2019 to pass a resolution opting out of privatized cannabis retail stores.<sup>13</sup> Opting out will immediately cancel any outstanding Retail Store Authorization applications within that municipality.<sup>14</sup> However, municipalities may opt back in to privatized sales at any time but doing so is final and municipalities cannot then opt out again.<sup>15</sup> It should also be noted that the AGCO is still drafting the regulations, which are being released sporadically. The most recent regulations were released on December 13, 2018.<sup>16</sup> There are undoubtedly further regulations set to be released prior to private cannabis retail starting in April 2019.

### ***Revenue Sharing***

The highly centralized nature of Ontario’s framework results in effectively all tax and other sources of revenue flowing to the Provincial – rather than municipal - government. Nonetheless, the Ford Government has announced it will share revenues with municipalities in two ways. First, it would share \$40 Million that Ontario will receive from the federal government for the excise

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<sup>12</sup> *Ibid* at s. 42(3).

<sup>13</sup> *Ibid* at s. 41(1).

<sup>14</sup> *Ibid* at s. 41(5).

<sup>15</sup> *Ibid* at s. 21(3).

<sup>16</sup> *Cannabis Licence Act Regulations*, O.Reg. 468/18.

tax.<sup>17</sup> This will be apportioned on a per-household basis.<sup>18</sup> Second, the Provincial government will split all revenues it receives from Cannabis sales with municipalities on a 50/50 and per-household basis provided that the revenues exceed \$100 Million in the first two (2) years (the “50/50 Split”).<sup>19</sup> For example, if the Provincial government collects \$200 Million in revenue, it will keep \$100 Million and distribute the remaining \$100 Million across all municipalities on a per-household basis.<sup>20</sup> Funds received under to 50/50 Split “must be used to address the costs that directly relate to the legalization of recreational cannabis.”<sup>21</sup> However, if a municipality opts out of private cannabis retail, it will not be entitled to receive any revenue from the 50/50 Split. Because cannabis legalization is in its infancy, it is impossible to know in concrete terms how much Windsor will be entitled to receive in the 50/50 Split – and therefore how much it would lose if it opted out. This paper seeks to provide a baseline figure by turning to the Study and identifying the economic impact of cannabis legalization in Pueblo County, an area roughly the size of Windsor in terms of population. Sales figures from Colorado will then be extrapolated and adjusted for differences in population to assist in understanding the potential lost revenue should Windsor decide to opt out.

## **Part 2: Economic Impacts of Legal Cannabis**

### ***Positive Economic Impacts of Cannabis Legalization***

The Study differentiates between direct and indirect economic benefits. Direct benefits include the profit retained by the business that makes the sale, whereas indirect benefits were found

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<sup>17</sup> Reid, Craig. *Briefing: Municipal Governments in the Ontario Recreational Cannabis Framework*. Association of Municipalities of Ontario. October 3, 2018. Retrieved Online: [https://www.amo.on.ca/AMO-PDFs/Reports/2018/Briefing-Municipal-Governments-in-the-Ontario-\(1\).aspx](https://www.amo.on.ca/AMO-PDFs/Reports/2018/Briefing-Municipal-Governments-in-the-Ontario-(1).aspx)

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.* See also: Heads of Council Letter from the Ministry of Finance dated November 20, 2018. Retrieved online at: <https://www.fin.gov.on.ca/en/budget/oclif/mletter.html>

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

in a “roll-over” effect.<sup>22</sup> The Study concluded that “the economic impact of cannabis industries is considered to be one of the more robust in Colorado, due to the indirect, secondary impacts on the economy.”<sup>23</sup>

In determining the secondary impact, the Study applied an economic multiplier, which is typically applied to the gross sale of a product or service and expressed in a dollar amount. Essentially, the economic multiplier looks at how many jobs are supported for every one hundred jobs in the industry and is often referred to as a “roll-over effect.” That is, a multiplier implies how many times a given dollar spent in an economy “turns-over” or otherwise results in other local transactions. For example, a multiplier of 1.88 indicates 188 jobs are supported for every 100 jobs in the sector, or \$188 of economic activity occurs for every \$100 generated in the sector.<sup>24</sup> Of course, economic impact multipliers vary by industry, and are complex and difficult to determine. In the Study, authors Wakefield and Hassan turned to related industries and economic multipliers applied in other studies (manufacturing = 2.91; health services = 1.18; retail = 0.88).<sup>25</sup> Ultimately, the authors decided to apply a \$2.29 economic impact multiplier and concluded that Pueblo County received a net positive economic impact of \$35,630,404 from the cultivation, distribution, and sale of cannabis within Pueblo County. This net benefit was after deduction of additional costs resulting from cannabis legalization, discussed below.

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<sup>22</sup> *Ibid* at page 129.

<sup>23</sup> *Ibid*.

<sup>24</sup> *Ibid* at page 130.

<sup>25</sup> *Ibid*.



### *Costs to Pueblo County Arising from Cannabis Legalization*

While there are indirect economic benefits and taxation revenue associated with legal cannabis, there are also costs. The Study noted two broad categories of additional costs: (1) direct costs of retail cannabis and (2) indirect, secondary costs.<sup>26</sup>

With respect to direct costs of retail cannabis, the study looked at the additional costs of governmental oversight and law enforcement. The Study found that total annual law enforcement costs in Pueblo County related to cannabis related callings, including code enforcement and response to citizen calls was estimated to be \$203,632.00.<sup>27</sup> Pueblo County did not allocate additional funding for Police services, resulting in the additional hours being covered through overtime pay, which is significantly more expensive.<sup>28</sup> However, it is vital to note that the additional costs for law enforcement did not distinguish between legal or illegal sources of cannabis: “Since [the Police Department] does not differentiate between black market, medical, or adult use retail cannabis, it is difficult to determine the exact impact of only adult use **retail cannabis.**”<sup>29</sup> Consequently, the increased costs associated with cannabis legalization cannot be tied only to private cannabis retail but may nonetheless result from other legal or illegal sources of cannabis. In any event, Pueblo County saw cost increases in law enforcement post-legalization of cannabis, even if it could not be associated with private retail.

With respect to indirect secondary costs, the Study turned to look at the Pueblo Soup Kitchen, welfare assistance, a nonprofit organization dealing providing services to the homeless, increases in medical services costs, impact on drug education in schools, insurance costs, any lost

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<sup>26</sup> *Ibid* at page 144.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid* at page 148.

<sup>29</sup> *Ibid.*

employment resulting from failed drug screenings, and any lost business investment resulting from legalization.<sup>30</sup> The indirect costs totalled approximately \$22,228,012.<sup>31</sup> The bulk of these costs are associated with increased homelessness and related social services. In 2013 (one-year pre-legalization) the total number of homeless in Pueblo County was 2,444. In 2014 (one-year post-legalization) there were 3,767 unduplicated homeless individuals. By 2016 (three years post-legalization), that number rose to 7,800.<sup>32</sup> The dramatic increase in homeless is alarming but must be put into context. The Study notes that Pueblo County saw an “explosion” of transient out of state individuals and families relocating to Pueblo.<sup>33</sup> “Some of them may have come because of the availability of cannabis, while others may have been attracted to the expectation of finding employment in the cannabis industry.” Others may have been attracted to the lower cost of living.<sup>34</sup>

Anecdotal evidence from dozens of interviews with police officers, healthcare professionals, and child protection service case workers around Pueblo County all pointed to an influx of transient population post-legalization. Moreover, approximately 800 of the 7,800 homeless in 2016 self reported cannabis as the reason they were in Pueblo County. Consequently, the Study used 800 as the number to approximate the cost to Pueblo taxpayers of homeless related to legal adult use cannabis.<sup>35</sup> The cost was estimated at \$28,894 per homeless individual, which included social services, emergency health care, legal issues, food, shelter, law enforcement, and medical and psychiatric care, resulting in a total cost of \$23,115,200.<sup>36</sup> Thus, of \$23,228,012 total estimated costs related to cannabis legalization, \$23,115,200 relates to an increase of

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<sup>30</sup> *Ibid* at pages 151-153.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

homelessness, anecdotally attributable to out-of-state individuals relocating to Pueblo county. Ultimately, the Economic Impact portion of the Study concludes that there is a net economic benefit of \$35,630,404 for the legalization of cannabis related to its cultivation, distribution, and retail sale.<sup>37</sup>

### ***Extrapolating the Economic Impact Data to Windsor***

There are three significant points of distinction between the Study and the economic impact that could reasonably be expected to occur in Windsor. First, unlike Pueblo County, Windsor's revenue from cannabis sales will derive solely from its portion of the 50/50 Split with Provincial tax and sales revenues under the legal framework. Second, the economic impact multiplier used in the Study cannot reasonably be used to indicate the economic impact of private cannabis retail in Windsor since the Study considered local cultivation, distribution, and sales of cannabis. Conversely, the economic impact in Windsor will be exclusive to retail sales of cannabis, as the cultivation and distribution of cannabis product will not occur locally. Lastly, the difference in legal frameworks between the two jurisdictions likely will not result in the same increase in homelessness in Windsor and its commensurate cost and drain on local social services.

#### *1) Windsor's Share of 50/50 Split Revenue*

Since cannabis legalization and sale occurred on October 17, 2018 data is not currently available to determine what revenue the Ontario government will receive, and therefore how much municipalities may receive under the 50/50 Split, so the data must be extrapolated from other jurisdictions. Washington State legalized recreational cannabis in 2015 and has a population of

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<sup>37</sup> *Ibid.*

approximately 7,406,000 (or 53% of Ontario's population).<sup>38</sup> Washington State charges a 37% harmonized tax on cannabis products. Gross annual sales were not reported in Washington State, but it did collect approximate \$319 Million in revenues from cannabis sales in 2017 alone.<sup>39</sup> Colorado legalized cannabis sales in 2013 and has a population of approximately 5,607,000 (or roughly 40% of Ontario's population).<sup>40</sup> Colorado does report gross annual sales, which were \$683,523,739 in the first year of legalization. Two years after legalization, that amount more than doubled to \$1,307,203,437. By end of fiscal year 2017 (4 years post-legalization), gross annual sales exceeded \$1.5bn.<sup>41</sup>

The data from Colorado is preferable, since it reports gross sales rather than taxation revenue. As noted in **Appendix 1**, Ontario collects revenue from cannabis sales in three ways: (1) 11.4% tax on all sales; (2) revenue from online sales of cannabis direct to consumers through the OCS online store; and (3) revenue from OCS distribution to private retail.<sup>42</sup> Consequently, the *minimum* revenue Ontario will receive is 11.4% tax on gross sales of cannabis, and this amount will be supplemented by whatever portion of gross sales are completed by the OCS either directly to consumers through its online store (ocs.ca) or through distribution to private retailers (see **Appendix 1**).

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<sup>38</sup> Washington State Liquor and Cannabis Board. *Annual Report* (Fiscal Year 2018). Retrieved Online: [https://lcb.wa.gov/sites/default/files/publications/annual\\_report/2017-annual-report-final2-web.pdf](https://lcb.wa.gov/sites/default/files/publications/annual_report/2017-annual-report-final2-web.pdf)

<sup>39</sup> *Ibid* at page 17.

<sup>40</sup> Colorado Department of Revenue. *Marijuana Sales Reports* (Fiscal Years 2014 – 2018). Retrieved Online: <https://www.colorado.gov/pacific/revenue/colorado-marijuana-sales-reports>

<sup>41</sup> *Ibid*.

<sup>42</sup> Department of Finance Canada. *Cannabis Excise Duty Rates in Provinces and Territories* (Last modified 2018-09-17). Retrieved online from: [https://www.fin.gc.ca/n18/data/18-084\\_2-eng.asp](https://www.fin.gc.ca/n18/data/18-084_2-eng.asp)

To extrapolate the data, the correlation factor is calculated between population and sales revenue and applied to Ontario. To determine the value of the missing variable (Ontario Sales Revenue), a fraction comparison is used. In this case the equation is:

$$\frac{683,523,739 \text{ (Gross Cannabis Sales Colorado)}}{5,607,000 \text{ (Population of Colorado)}}^{43} = \frac{X \text{ (Gross Cannabis Sales Ontario)}}{14,190,000 \text{ (Population of Ontario)}}^{44}$$

Thus, the first year of gross cannabis sales in Ontario, adjusting for population, would be \$1,729,838,034 or a factor of 2.53 of gross cannabis sales in Colorado. The calculation was repeated for the remaining years and compiled in **Appendix 2**. Assuming sale of cannabis in Ontario follows similar patterns of sale in Colorado, at a tax rate of 11.4% Ontario’s revenue from taxation alone for the first full fiscal year of legalization would be a baseline of approximately \$197,141,916 (see **Appendix 2**). Under Ontario’s 50/50 Split scheme, the Provincial government will retain \$98,570,958, and the remaining \$98,570,958 will be distributed to Ontario municipalities on a per-household basis. Since Windsor represents approximately 2.57% of all households in Ontario,<sup>45</sup> it would be entitled to receive 2.57% of \$98,570,958, or approximately \$2,533,273 in the first full fiscal year of legalization. Over the following four (4) years this amount will increase to \$5,589,531, or an aggregate of \$16,659,966 over four (4) years (see **Appendix 3**).

Caution should be given to these figures. They are premised on three important assumptions. First, that the population growth rate in Colorado and Ontario were the same from 2014 – 2018. Second, the figures are expressed in United States Dollars, and were not converted to Canadian Dollars. Third, it assumes that sales figures would be comparable between Colorado and Ontario. Thus, the extrapolations do not account for variances in price, product, quantities,

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<sup>43</sup> United States Census Bureau. *Quick Facts Colorado*. Retrieved Online: <https://www.census.gov/quickfacts/co>

<sup>44</sup> Statistics Canada. *Population, Municipalities in Canada with at least 200,000 inhabitants*. Retrieved Online: <https://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016001/98-200-x2016001-eng.cfm>

<sup>45</sup> *Ibid.*

lack of supply, or other notable differences between cannabis sales in the two jurisdictions. However, because these figures reflect merely the effective tax rate of 11.40% and does not take account the revenues from direct sales to consumers from the OCS website or revenue from OCS sales to private retailers, the figures in **Appendices 1, 2, and 3** represent a baseline and could reasonably be much higher.

While far from perfect, the extrapolation is useful for two purposes. First, it seems clear that the \$100Million revenue threshold to trigger the 50/50 Split will be met within the first full fiscal year. Second, the market for cannabis retail is substantial and Windsor's share of revenue from the 50/50 split with the Province will clearly be expressed in the millions - and not thousands – of dollars. If Windsor opts-out of privatized retail sales it will not be entitled to receive any funds under the 50/50 Split scheme.

## *2) Windsor's Economic Impact of Private Cannabis Retail*

In addition to revenue from the 50/50 Split scheme, it is important to also consider the indirect economic impact should Windsor allow private retail cannabis. It is impossible to do a straight comparison between Pueblo County and Windsor when determining the economic impact of cannabis retail due to the differences in legal frameworks for the cultivation, distribution, and retail sale of cannabis. In the Study, the cultivation, distribution, and retail sale all occurred locally within Pueblo County, which is why the authors applied an economic benefit multiplier of \$2.29 for the cannabis industry as a whole. Conversely, as noted in Part 1 above, the legal framework for cannabis sale in Ontario requires growers to be federally licenced and regulated, and none exist locally in Windsor. Moreover, distribution is regulated by the OCS, which is not local. Consequently, the only economic benefit to Windsor would be the retail sale of cannabis. The economic multiplier must therefore be adjusted to reflect the discrepancy between the Study of

Pueblo County (which includes local cultivation and distribution) and Windsor (which does not have local cultivation and distribution). Thus, the economic impact multiplier that would more appropriately express Windsor’s impact for privatized cannabis sales is that used by researchers when conducting economic impact assessments of new retail (\$0.88).

The Study is useful in identifying gross sales of cannabis of Pueblo County, which can then be applied to the economic impact multiplier used for retail (\$0.88) to determine what the indirect economic impact of privatized cannabis sales in a municipality roughly the size of Windsor will be. In 2016 Pueblo County had gross annual sales of \$25,045,483 (USD).<sup>46</sup> Assuming Windsor generated similar gross sales activity, the indirect economic benefit of private cannabis retail in Windsor would be estimated at \$22,040,025 (\$25,045,483 x 0.88 multiplier; expressed in USD).

Thus, the total projected economic benefit from private cannabis retail in Windsor is \$24,573,298 in the first year, which is comprised of the 50/50 Split revenues and indirect economic impact. This amount would likely increase to an aggregate of \$38,699,991 over four years (see appendices 1, 2, and 3). However, there are also additional costs that Windsor should consider.

### *3) Windsor’s Rate of Homeless is notably lower, likely yielding different cost results*

It should be noted that rates of homelessness in Pueblo County even before cannabis legalization seem to be disproportionately high compared to rates in Windsor and Essex County. A “Point in Time” report by the Homeless Coalition of Windsor Essex County presented in July 2018 suggests there were a minimum of 199 homeless individuals on any given night.<sup>47</sup> While this number represents a “point-in-time” report and the minimum number, it is nonetheless

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<sup>46</sup> *Ibid* at page 143.

<sup>47</sup> OrgCode Consulting, Inc. (2018). *2018 Homelessness Point in Time Count & Registry Week*. Retrieved from the Homeless Coalition of Windsor Essex County’s Website: <https://www.homelesshub.ca/sites/default/files/attachments/PiT%202018%20Final%20Report.pdf>

substantially lower than the 2,444 reported in Pueblo County pre-legalization. Using the Study's finding that the approximate cost to Pueblo County of a homeless individual is around \$28,894, even if Windsor's rate of homelessness doubled from cannabis retail, the minimum cost would be closer to the range of \$5.5 Million (compared to \$22 Million in Pueblo). Given that Windsor's rate of homelessness is a fraction of that in Pueblo County, it seems unlikely that Windsor would experience the same level of costs associated with cannabis legalization that were found in Pueblo County. Moreover, the differences in legal frameworks between Colorado and Ontario would not result in the same "out-of-state migration" of transient individuals relying on social services. This point will be discussed in further detail under Part 5 below.

***Conclusion: Economic Impact***

Windsor can expect two sources of revenue for cannabis retail under the current legislative scheme: (1) The 50/50 Split, which is extrapolated to be approximately \$2,533,273 in year 1 post-legalization, rising to \$5,589,531 by year 4; and (2) indirect economic benefits of \$22,040,025 derived from an economic multiplier of 0.88, the recognized standard for retail. The gross projected benefit from direct revenue and indirect economic impact would therefore be approximately \$27,629,556 in year one.

The costs associated with cannabis retail are: (1) a minimum of approximately \$5.5 Million for increased homelessness and the social services associated including increases to emergency care and mental health treatment; and (2) \$203,632 for additional policing costs associated with cannabis legalization, for a total of approximately \$5,703,632. Thus, the net economic benefit for cannabis retail in Windsor is extrapolated and estimated to be \$21,925,924 in year 1.



### **Part 3: Social Impacts of Legal Cannabis**

The Study also turned to the social impacts of legal cannabis and measured the impact in Pueblo County on (1) poverty and homelessness; (2) middle school and high school student use of cannabis; (3) crime rates; and (4) the effect on the Child Protection Services (CPS).

First, with respect to the impact on poverty and homelessness, the Study found “no evidence that poverty has either increased or decreased in Pueblo as a result of cannabis legalization.”<sup>48</sup> As noted above, there was anecdotal evidence from 800 self-reported homeless individuals that they came to Pueblo County because of legal cannabis retail, but overall that amount accounted for approximately 15% of the overall increase in homelessness.<sup>49</sup> The Study concludes, “there is evidence that homelessness in Pueblo has increased recently. Apart from anecdotal reports, we did not find definitive evidence that links increased homelessness to legal cannabis (We do use some anecdotal information to assist with projections on costs incurred by increased homelessness attributable to cannabis, as a way to provide a cost estimate, in the section on economic impacts.).”<sup>50</sup>

Second, with respect to student use of cannabis, there was “no statistical difference between students in 2013 (pre-legalization) and 2015 (post-legalization) except students in communities that did not permit recreational cannabis dispensaries thought cannabis use was more wrong in 2015 than in 2013.”<sup>51</sup> However, in those areas where private cannabis retail was restricted, and students correspondingly thought cannabis use was more wrong post-legalization, the schools provided prevention education specific to marijuana use. The Study also found that prevention

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<sup>48</sup> *Pueblo County Cannabis Impact Study*, supra note 2 at page 28.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid* at page 42.

education specific to marijuana use was inconsistent across areas of Pueblo County: “the survey of regional school administrators found that nearly half of the middle and high schools surveyed did not provide any marijuana prevention education.”<sup>52</sup> The Study goes on to conclude, “our study indicates that the legalization of recreational cannabis use and dispensaries has not greatly affected high school student use and perception towards cannabis.”<sup>53</sup>

Third, with respect to crime rates, the researchers wanted to identify the relationship between crime and the legalization of recreational marijuana in the city and county of Pueblo. Overall, the Study found that “crime has increased in the City, but it has done so on trend with expected averages given the increase in population and decrease in police personnel.”<sup>54</sup> The largest increases in crime have been property crime incidents (particularly motor-vehicle theft) and dangerous drug seizures (particularly heroin). However, “the legalization of recreational marijuana has put more perceived pressure on patrol officers who associate it with an influx in the transient population, which they then associate with the increase in property and other drug crimes.”<sup>55</sup> Police Officers described that the increase in transient population was likely attributable to Colorado’s uniqueness in its cannabis legalization compared to its neighbouring states and federal law.<sup>56</sup>

Fourth, with respect to strains on Child Protection Services (“CPS”), there was a considerable increase of 35% more referrals to CPS for abuse or neglect post-legalization – an increase substantially higher than the growth in population (which was 3.8%).<sup>57</sup> However, the Study notes that CPS did not differentiate between referrals based on type of drug(s) involved.

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<sup>52</sup> *Ibid* at page 52.

<sup>53</sup> *Ibid*.

<sup>54</sup> *Ibid* at page 77.

<sup>55</sup> *Ibid*.

<sup>56</sup> *Ibid*.

<sup>57</sup> *Ibid* at page 78.

Consequently, “it is impossible to determine if the increase in referrals and removals from the home occurred because of the impact of legal cannabis.”<sup>58</sup> However, anecdotal evidence derived from interviews with caseworkers does seem to paint a picture of legal cannabis having an impact. “On the one hand, caregivers appear to be more open and honest about their use of cannabis, but also less likely to comply with court orders to stop using due to the legal status of cannabis in Colorado.”<sup>59</sup> Yet interviews with case workers noted an issue with “the number of people arriving in Pueblo from out-of-state.”<sup>60</sup> “These families may not always be reflected in the population of homeless persons, as they may have obtained housing, no matter how inadequate, and then come to the attention of [CPS] due to inability to properly care for the children in the home.”<sup>61</sup> It goes on to note, “the case workers interviewed expressed frustration with families arriving without household goods, no job offer, lack of social supports, and lack of information about the Pueblo community.”<sup>62</sup> Ultimately, while there was an increase in child abuse or neglect in the years post-legalization, it is impossible to know whether it is causally related to cannabis legalization, although anecdotal reports from front-line workers suggest it is.

#### **Part 4: Health Impacts of Legal Cannabis**

The Study then turned to the health impacts of cannabis legalization and made two significant findings regarding: (1) increased use among pregnant women; (2) higher rates of drug screening for marijuana in the hospital emergency department.

First, with respect to pregnant women, there was a “statistically significant increase of cannabis use” among pregnant women post-legalization, although this increase was primarily

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<sup>58</sup> *Ibid* at page 106.

<sup>59</sup> *Ibid* at page 108.

<sup>60</sup> *Ibid*.

<sup>61</sup> *Ibid*.

<sup>62</sup> *Ibid*.

found amongst inpatient programs rather than outpatient programs.<sup>63</sup> “[...] [F]or the women seeking healthcare in the inpatient setting, initial calculations using relative risk did reveal that after legalization of marijuana the increase in THC [tetrahydrocannabinol] positive drug screens was at least 11.3% relative to the levels of THC positive drug screens prior to legalization.”<sup>64</sup> Thus, there is clear statistical evidence that legalization of cannabis results in increased use among pregnant women. The effects of this increase on neonatal care and foetus health is beyond the purview of this paper, although there is likely a yet unquantified and unidentified cost associated with this increase.

Second, with respect to higher rates of drug screening in hospital emergency departments, there is a significant impact.<sup>65</sup> There is unmistakable evidence that the emergency department in Pueblo experienced a significant increase in THC urine drug screens somewhere between 10.8% and 28.3%.<sup>66</sup> This impact seemed to be consistent across gender, reported residence, ethnicity, and race.<sup>67</sup> Again, the effects of this increase on patient health is beyond the purview of this paper, but health care professionals anecdotally report significant risks as the volatility of THC or other cannabinoids with different forms of medication and medical procedures is relatively unknown to the medical community.<sup>68</sup>

## **Part 5: Analysis - Should Windsor Opt-Out of Private Cannabis Retail?**

Windsor should not opt-out of private cannabis retail for three reasons: (1) the legal framework in Canada and Ontario is dramatically different, which will likely lower the social,

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<sup>63</sup> *Ibid* at page 80.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid* at page 88.

<sup>66</sup> *Ibid* at page 90.

<sup>67</sup> *Ibid* at page 92.

<sup>68</sup> *Ibid.*

health, and economic impacts in Windsor compared to those seen in the “legal island” of Colorado and Pueblo County; and (2) Given the differences in legal frameworks, opting out will do little to insulate Windsor from the social and health impacts of nation-wide legalization of cannabis, but will certainly disenfranchise Windsor from the 50/50 Split and indirect economic benefits of cannabis retail that could be utilized to address those impacts.

***(1) Differences in legal frameworks results in different impacts and costs***

If there is one theme underlying all aspects of the Study it is anecdotal evidence across all social services that Colorado is a “legal island” that has seen an influx of a transient and pernicious population post cannabis legalization. Dozens of police officers, health care workers, and child care workers who were all interviewed by researchers equate increases of crime, emergency room visits, and heightened reports of child abuse or neglect with the arrival of a significant number of out-of-state individuals moving into Pueblo County. Taken in the context of Colorado’s unique legal position comparable to Ontario, this inter-state migration and commensurate costs likely would not occur in Windsor. Moreover, there appears to be anecdotal evidence from front line workers in Windsor that transient individuals are already migrating into the City, which clearly is unrelated to private cannabis retail.

There are striking differences between the legal frameworks in Colorado and Ontario. For one, American and Canadian criminal law falls under different jurisdictional powers. Under s. 91 of the *Constitution Act, 1867* criminal law is clearly demarcated as a federal power in Canada.<sup>69</sup> Conversely, American federalism engrained in Article II of the US Constitution empowers the

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<sup>69</sup> Section 91 of the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.).

individual states to impose criminal sanctions.<sup>70</sup> Thus, criminal law in the US as it relates to cannabis consumption is as varied as the fifty (50) states and further complicated by federal law.

Under federal statute 21 USC 812 (*Controlled Substances Act*), marijuana is considered a Schedule 1 drug, and is in the same classification as ecstasy, LSD, heroin, and other psychoactive narcotics. Yet in 2013 Colorado passed an amendment to its State Constitution to allow the personal consumption and possession of marijuana, and it was subsequently decriminalized under its state criminal code.<sup>71</sup> This creates a clear dichotomy between State and Federal law regarding the possession and consumption of cannabis. Moreover, Colorado is surrounded by New Mexico, Texas, Oklahoma, Kansas, Nebraska, Wyoming, Utah, and Arizona, none of whom have legalized cannabis for recreational use (see **Appendix 4**). This places Colorado in a unique legal position, making it a “legal island” of cannabis legalization within the Union and surrounding States.

This position is reflected in anecdotal conversations with twenty policy officers in Pueblo County, who described Colorado as an “island”: “Most expressed frustration with the idea that ‘Colorado is an island,’ surrounded by states that do not allow recreational marijuana. [...] The fact that no other states surrounding Colorado have also legalized recreational cannabis leads the officers to experience frustration when people come from out of state but don’t familiarize themselves with marijuana laws.”<sup>72</sup> As noted above, similar findings were reported by CPS caseworkers: “In January 2014 when retail marijuana was available, [Pueblo County] began to see an **explosion in out of state individuals and families relocating specifically to Pueblo** and coming to [...] request shelter and services.” Of those surveyed, 800 homeless in Pueblo County self-identified legal cannabis as the reason they came to Pueblo County. Moreover, Pueblo County

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<sup>70</sup> *U.S. Constitution*. Article II, ss. 8 – 10.

<sup>71</sup> *Colorado Constitution of 1876*, Article XVIII s. 16.

<sup>72</sup> *Pueblo County Cannabis Impact Study*, supra note 2 at page 74.

is located in the southern portion of the State, and therefore has a significantly warmer climate than the northern portions of the state. Almost all of the identified social impacts (increased homelessness; increased child abuse and neglect; and increased reports of crime) and associated costs were anecdotally tied to this “explosion of out of state individuals” by front-line workers. This seems to suggest the migration and resulting social impacts, spike in homelessness, and commensurate costs is likely the result of Colorado’s unique cannabis laws relative to jurisdictions around it.

Moreover, some anecdotal evidence from Windsor officials seems to suggest a “migration” of transient individuals to Windsor is already underway despite current Provincial restriction on cannabis retail and for reasons totally unrelated to cannabis legalization.<sup>73</sup> For example, Kelly Goz, Windsor’s coordinator of housing administration and development suggest that Windsor has seen a large influx of homelessness and transient individuals have come to Windsor “because they think Windsor is an affordable place to live.”<sup>74</sup>

The legislative framework in Canada includes the national legalization of cannabis, and universal Provincial implementation of cannabis retail. Thus, the legal framework in Canada and Ontario is strikingly different from the “legal island” of Pueblo County in conflict with U.S. Federal law and those jurisdictions around it. It is therefore unlikely Windsor will experience the same influx of transient and pernicious individuals compared to Pueblo County or, if Windsor does experience a “migration” it is likely tied to reasons beyond private retail of cannabis such as Windsor’s perceived affordability. If a migration of transient individuals resulting in higher rates

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<sup>73</sup> Cross, Brian (2018, October 1). City’s affordable reputation may be attracting a homeless migration. *Windsor Star*. Retrieved online: <https://windsorstar.com/news/local-news/citys-affordable-reputation-may-be-attracting-a-homeless-migration>

<sup>74</sup> *Ibid.*

of homelessness is already occurring in Windsor, the added costs of the increase in homelessness and strain on social services (which was identified as the single largest economic cost) will likely occur regardless of whether Windsor embraces private cannabis retail.

Given the differences in legal frameworks between Ontario and Colorado, much of the added costs for homelessness and corresponding social programs seen in Pueblo County likely will not occur in Windsor or, if such a migration is already occurring, it is unrelated to local cannabis retail.

***(2) Opting Out is unlikely to insulate Windsor from the social, economic, and health impacts of cannabis legalization, but will deprive it of needed revenue to address those impacts***

In considering the economic, social, and health impacts of cannabis legalization, there is little evidence to suggest Windsor will be insulated from the negative aspects of those impacts and added costs if it opts out of private cannabis retail. Cannabis legalization occurred at the federal level, and cannabis retail will still exist at the provincial level and likely will exist in at least one municipality near Windsor.

The Study supports this position. Student use of cannabis was unchanged regardless of whether the community permitted cannabis retail. Increases in Crime rates were unrelated to cannabis legalization. While there was an increase in CPS referrals for abuse or neglect, it is impossible to know whether that is a result of cannabis legalization. Health impacts such as increased use among pregnant women and higher rates of drug screening in emergency room departments were found to be a result of cannabis legalization, not local cannabis retail. The Study only confirms that social and health impacts will occur post-legalization, and did not differentiate between cannabis purchased at retail, online, or through illicit sources.



Thus, given that cannabis is already available through the OCS website, available through other online and local illicit sources, and likely would be available from a neighbouring municipality in April 2019, there is little reason to believe that opting out of private retail would insulate Windsor from the social, health, or economic impacts identified in the Study. Nonetheless, opting out would result in Windsor being denied its proportionate share of the 50/50 Split (extrapolated and estimated to be \$2,533,273 in the first year), as well as the indirect economic benefits for cannabis retail (extrapolated and estimated to be \$22,040,025 in the first year). In other words, if Windsor opts out of private cannabis retail, it would experience all the pains and costs of cannabis legalization without any of the benefits to address those added costs.

In conclusion, Windsor should not opt out of private retail cannabis because the Canadian legal framework for national legalization of cannabis will not likely result in the high costs associated with homelessness and social services reported in Pueblo County. That same legal framework will likely result in all the costs, social, and health impacts affecting Windsor regardless of whether it decides to opt-out of cannabis retail. But by opting out, Windsor will deprive itself of millions of dollars in revenue from the 50/50 Split and the loss of million of dollars of indirect economic benefits, which could be used to offset the negative aspects of cannabis legalization. In other words, Windsor has very little to lose, but much to gain from cannabis retail.

### ***Final Notes to Address Local Concerns***

There are obvious limitations to this paper, and reasonable minds can clearly differ on whether opting out is in the best interest of Windsorites. The data is not meant to represent an exact figure of what Windsor stands to lose from opting out but does provide a reference point from which to evaluate the lost revenues from an opt-out decision. Clearly a decision to opt out will cost Windsor millions – and not thousands – of dollars.

There is certainly an argument to be made for the “wait and see approach.” Proponents such as the Windsor Essex Health Unit argue Windsor should opt out because there is uncertainty and chaos surrounding the regulations.<sup>75</sup> Mayor Dilkens has also suggested Windsor should “take a pause” and “see how it rolls out in other municipalities.”<sup>76</sup> They suggest that Windsor should opt out under s. 41(1) of the *Cannabis Licence Act* by January 22, 2018, then “wait and see” how the things go and wait for the regulations to be finalized. If favourable, Windsor could opt back-in using s. 41(3). There are two reasons why this paper did not adopt this position.

First, there is no indication the municipality would be entitled to receive a pro rata share of the 50/50 Split if opting in mid-way through a fiscal year of retail cannabis. Windsor should expect to forego any funding for the first fiscal year, and any subsequent year(s) if it opts in mid-way through that year. Again, this would likely result in a loss of millions of dollars to address the added costs from the social and health impacts arising from cannabis legalization. Second, on December 13, 2018 the Ministry of Finance announced it was already doing a “phased approach” to retail licensing due to “severe shortages of cannabis supply.”<sup>77</sup> The AGCO will only issue 25 licences on a “lottery system,” but the lottery will be tailored to ensure “an appropriate distribution of stores in each region of the province.”<sup>78</sup> Consequently, it is not reasonable to expect that Windsor could simply opt back in at its leisure to start obtaining the economic benefits and revenue sharing under the 50/50 split because a retail licence may not subsequently be issued in this region

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<sup>75</sup> Mahoney, Joe (2018, October 19). Windsor-Essex health unit recommends opting out of private retail pot. *CBC News*. Retrieved online: <https://www.cbc.ca/news/canada/windsor/windsor-essex-health-county-pot-shop-1.4870979>

<sup>76</sup> Wilhelm, Trevor (2018, December 12). Windsor mayor wants city to opt out of allowing private cannabis stores. *Windsor Star*. Retrieved online: <https://windsorstar.com/news/local-news/windsor-mayor-wants-city-to-opt-out-of-allowing-private-cannabis-stores>

<sup>77</sup> Statement of the Ministry of Finance (2018, December 13). *Ontario Takes a Phased Approach to Cannabis Retail Licensing Due to National Supply Shortages*. Retrieved online: <https://news.ontario.ca/mof/en/2018/12/ontario-takes-a-phased-approach-to-cannabis-retail-licensing-due-to-national-supply-shortages.html>

<sup>78</sup> *Ibid.*

after the lottery occurs. It is plausible that only one retail cannabis licence will be issued in this region, and if Windsor opts out there is no reason to believe it could obtain a licence down the road. Thus, Windsor could be stuck with the added costs and impacts of legalization with no additional revenue to address them even after council subsequently decides to opt back in. In other words, the licences are a limited resource, and a decision to opt out guarantees Windsor will not obtain access to that limited resource in the foreseeable future.

Mayor Dilkens has also cited his disapproval that s. 42 of *Cannabis Licence Act* explicitly overriding sections of the *Municipal Act* and the *Planning Act* thus dismantling Windsor's ability to regulate the locations of cannabis retail within the city.<sup>79</sup> He has expressed frustration that private cannabis retail could open within 150 metres of a school.<sup>80</sup> While this criticism is fair, the Study indicates that student cannabis use did not increase post legalization in jurisdictions that focused on preventative education. Windsor would be better to opt in, and use the additional revenue received from the 50/50 split to implement youth preventative education programs focusing on cannabis use and risks. Moreover, municipalities are not voiceless – they may still make submissions under s. 4 of the *Cannabis Licence Act* to show that it is not “in the public interest, **having regard to the needs and wishes of the residents**” to grant a Retail Store Authorization near a school. In any event, Windsor City Council should be aware that a decision to opt out may be irreversible if cannabis supply issues are not adequately addressed by the federal government, and that such a decision will cost the city many millions of dollars in lost revenue and lost secondary economic impact.

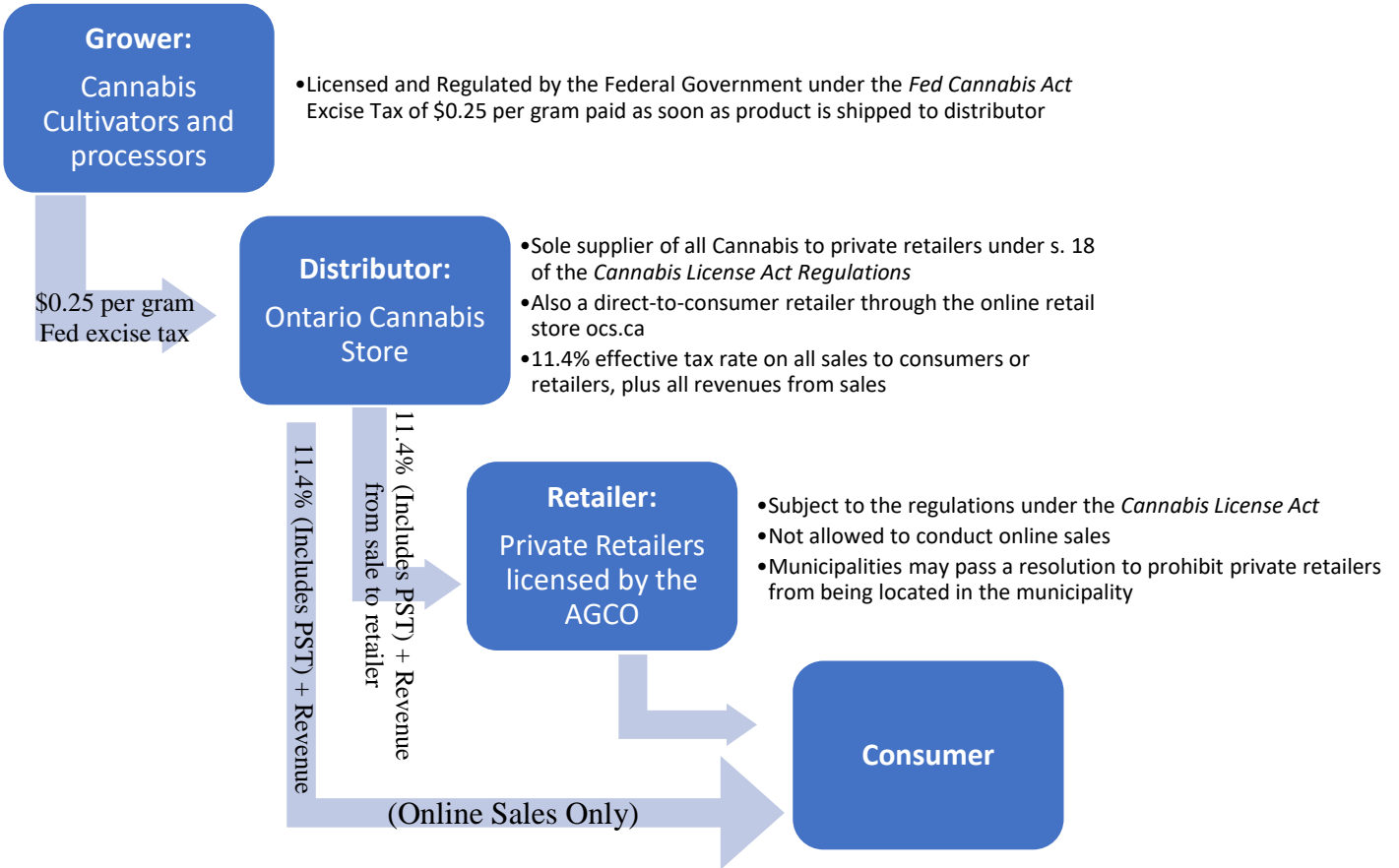
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<sup>79</sup> Wilhelm, Trevor (2018, December 12). Windsor mayor wants city to opt out of allowing private cannabis stores. *Windsor Star*. Retrieved online: <https://windsorstar.com/news/local-news/windsor-mayor-wants-city-to-opt-out-of-allowing-private-cannabis-stores>

<sup>80</sup> *Ibid.*

# Appendix 1

## Ontario Privatized Sales Framework with Rates of Taxation



## Appendix 2

Taxation Revenue for Effective Rate of 11.4% Adjusting for Population (Expressed in USD)

Year Post-Legalization	Gross Sales (Colorado)	Multiplier for difference in population (2.53)	Tax Rate	Tax Revenue for Population 60% larger than Colorado
Year 1	\$683,523,739	\$1,729,838,034	11.40%	\$197,141,916
Year 2	\$995,591,255	\$2,519,607,502	11.40%	\$287,235,255
Year 3	\$1,307,203,473	\$3,308,224,797	11.40%	\$377,137,627
Year 4	\$1,507,702,219	\$3,815,640,006	11.40%	\$434,982,961

## Appendix 3

Amount Payable to Windsor Under 50/50 Split Assuming Tax Revenues in Appendix 2  
(Expressed in USD)

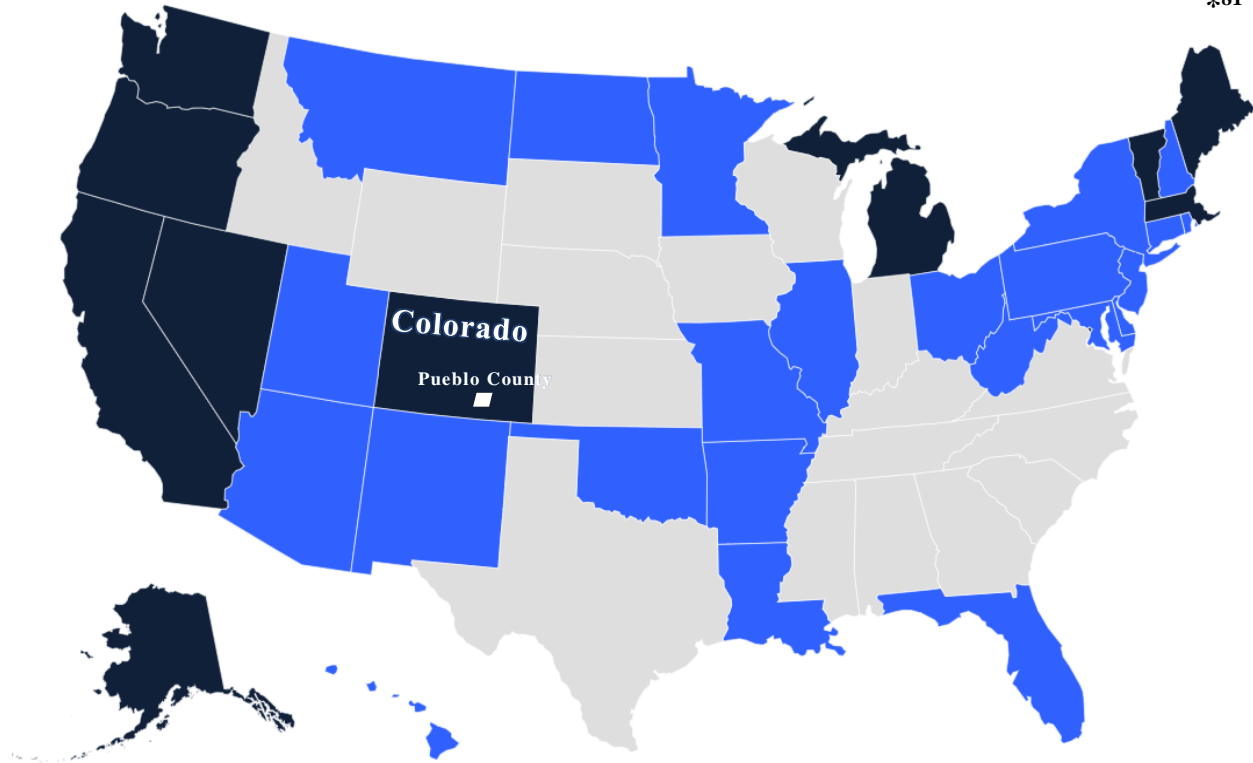
Year Post-Legalization	Total Tax Revenue	Provincial Take under 50/50 Split	Total Amount Distributed to Ontario Municipalities on Per-Household Basis	<b>Amount Distributed to Windsor as 2.57% of all households in Ontario</b>
Year 1	\$197,141,916	\$98,570,958	\$98,570,958	<b>\$2,533,273</b>
Year 2	\$287,235,255	\$143,617,627	\$143,617,627	<b>\$3,690,973</b>
Year 3	\$377,137,627	\$188,568,813	\$188,568,813	<b>\$4,846,218</b>
Year 4	\$434,982,961	\$217,491,480	\$217,491,480	<b>\$5,589,531</b>
Total After 4 Years:	\$1,296,497,759	\$648,248,879	\$648,248,879	<b>\$16,659,996</b>

## Appendix 4

States that allow marijuana for medical and recreational use.

■ Medical ■ Recreational and medical

\*81



Note: Data does not include CBD/Low THC programs. Data current as of Nov. 20, 2018.

Source: National Conference of State Legislatures

<sup>81</sup> Wu, Hiachuan (2018, November 20). MAP: See the states where marijuana is legal. *NBC News*. Retrieved Online: <https://www.nbcnews.com/news/us-news/map-see-if-marijuana-legal-your-state-n938426>