

**The Enforcement
Of Marijuana Possession Offences
in British Columbia:

A Blueprint for Change**

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Executive Summary:

This report looks at past and current enforcement practices in the province of British Columbia, in relation to the offence of possession of cannabis, currently prohibited by section 4 (1) of The Controlled Drugs and Substances Act.

The report notes that when possession of cannabis was first criminalized in Canada in 1923, there was virtually no knowledge of the drug and no significant pattern of use – criminalization was “a solution in search of a problem”. While penalties for cannabis use and distribution increased markedly between 1923 and 1961, the presence of the drug was scarcely noticeable, producing only a handful of convictions annually. But the cultural changes of the late 1960s gave rise to widespread use by youth in most western nation-states, a phenomenon that has continued for almost 50 years.

Study of current enforcement practices in British Columbia has revealed that charges for possession have more than doubled in the province between 2005 and 2011, despite the fact that only 14 per cent of provincial residents now favour the imposition of a criminal conviction for this kind of conduct -- and despite the finding that a majority favour taxation and regulation of the drug.

A detailed investigation of the processing of marijuana possession incidents reveals that most of the more than 16,000 offences reported by the police involve some form of public use, or use in relation to a motor vehicle. There is, however, no way of determining or understanding what then leads police to recommend charges in about 20 per cent (3,700 of these incidents), and what leads to convictions in about 7 per cent of these cases annually (about 1,100 convictions). It seems clear that the inclinations and attitudes of individual officers and departments play a role, as does the police force responsible for enforcement. Vancouver Police Department, for example, rarely charges individuals for possession of cannabis as a singular offence, but the RCMP, who are responsible for the overwhelming majority of charges in the province, believe that a two-fold increase between 2005 and 2011 is appropriate.

The cost of enforcing the criminal prohibition against cannabis possession in B.C is difficult to estimate, but after a conservative analysis of the extent of cases reported by police and the current costs of enforcement in police and court resources, it seems likely that enforcement of possession alone costs the province in the range of \$10 million annually.

This cost is difficult to justify, as a mounting toll of criminal convictions continues to impose significant employment limitations and travel restrictions upon convicted users. Further, it is well known that cannabis use represents a relatively trivial risk to public health, in contrast to other more widely used mind-active legal drugs. As a consequence, our current policies serve to undermine collective respect for both law

and law enforcement. Additionally, there is no sound evidence from other comparable jurisdictions to suggest that patterns of marijuana use will increase if the government of British Columbia, through the mechanism of an amendment to The Police Act, instructs all police organizations not to recommend charges of marijuana possession within the province. While many of the problems of the occasional violence associated with the illegality of the marijuana industry will remain if both production and distribution offences remain criminalized, the elimination of the threat of prosecution is an important first step, and one that is clearly within the mandate of the provincial government.

If the federal prohibition against marijuana possession is not enforced in British Columbia, there will still be issues requiring some level of regulation and policing. First, public use, like the public use of alcohol and tobacco, should be made subject to civil, regulatory controls similar in both form and intent to those found in the province's Liquor Control and Licensing Act and The Tobacco Control Act. Second, the current use of immediate roadside prohibitions, under section 215 of The Motor Vehicle Act, represents an appropriate response to those who are driving after recent use of cannabis. While the issues of a fair and practical definition of impairment, and the reasonable and probable grounds for making a decision regarding impairment, need discussion and elaboration, the approach taken by the Senate Special Committee in 2002 for cannabis use and driving seems appropriate – “to opt for the greatest possible caution”.

The History of Cannabis in Canada, 1923 to 2013

Marijuana was first criminalized in Canada in 1923, with the simple assertion in the Canadian House of Commons, “there is a new drug in the schedule”. There was no debate regarding the legislation. Most members of the House had no knowledge of cannabis and its properties, cannabis had not presented itself as a problem in Canadian society, and despite the legislation, there were no seizures of the drug for the next 13 years. In fact, until the late 1960s there was typically only a handful of convictions annually.¹

In hindsight, this seems a rather unusual context for the passage of legislation. As historian Catherine Carstairs has noted, this legislative initiative appears to have been motivated by international discussions at the Hague Opium conference of 1911 (a conference attended by Prime Minister Mackenzie King when he was Minister of Labour). The legislation can also be seen, retrospectively, as consistent with the later Geneva Convention of 1925, an international agreement that limited the use of Indian hemp to “medical and scientific” consumption. The 2002 Senate Special Committee on Illegal Drugs described the criminalization of cannabis in 1923 as “a

¹ See, for example, Neil Boyd, “The Origins of Canadian Narcotics Legislation: The Process of Criminalization in Historical Context”, 8 *Dalhousie Law Journal* 102-136, 1984; Senate Special Committee on Illegal Drugs, Cannabis: Our position for a Canadian public policy; Summary Report, Ottawa, Senate of Canada, 2002; Catherine Carstairs, Jailed for possession: Illegal Drug Use, Regulation and Power in Canada, 1920-1961, Toronto, University of Toronto Press, 2006.

solution without a problem”; Natassia Curiak has similarly described the statute as “pre-emptive legislation”.²

In the 1920s the highly respected magistrate and suffragette Emily Murphy wrote a series of articles in Maclean’s magazine, condemning the traffic in illegal drugs, and describing marijuana as a “new menace”. In her 1922 book, *The Black Candle*, she wrote of cannabis, quoting approvingly from the chief of police of Los Angeles, “Persons using this narcotic smoke the dried leaves of the plant, which has the effect of driving them completely insane. The addict loses all sense of moral responsibility. Addicts to this drug, while under its influence, are immune to pain, and could be severely injured without having any realization of their condition. While in this condition they become raving maniacs and are liable to kill or indulge in any form of violence to other persons, using the most savage methods of cruelty without, as said before, any sense of moral responsibility”.³

While these kinds of sentiments provoke laughter and an understandable derision on the contemporary Canadian stage, they were taken seriously during the 1920s. Murphy’s analysis of the drug problem in Canada was one of the catalysts for increasing penalties for all forms of illegal drug use and distribution. By the late

² Natassia Ciuriak, “High Time for Change: A Sound, Humane and Fiscally Responsible Marijuana Policy for Canada”, *Queen’s Policy Review*, Volume 1, Spring 2010.

³ Emily Murphy, *The Black Candle*, Toronto, Thomas Allen, 1922, 1973, at pp.332-333.

1920s opium, cocaine and marijuana were all legally described as “narcotics” in The Opium and Narcotic Drug Act, with penalties of up to seven years for importation and trafficking in any of these substances. Penalties were further increased to a maximum of fourteen years in 1954, and again in 1961, to the possibility of life imprisonment, with the passage of The Narcotic Control Act.

The Narcotic Control Act was, historically, the most severe and punitive response to cannabis use and distribution in Canada, and yet within a decade of its passage, cannabis use, arrests, and convictions had all increased dramatically. The initial government response to this phenomenon had been, as criminologist Patricia Erickson has noted, to “get tough”. About half of those convicted of possession were imprisoned, some for as long as two years. In 1967 there were a little more than 400 convictions for cannabis possession in Canada and 46 per cent of offenders were imprisoned; by 1969 a little more than one third of 2,300 convicted offenders were imprisoned. The get tough approach clearly wasn’t working. In 1977 there were almost 34,000 convictions annually and 4 per cent were now going to jail for their crime of consumption; there simply weren’t enough jail cells to house all the cannabis offenders, and no politicians were willing to commit to a doubling of the jail population, just to house a burgeoning population of cannabis consumers.⁴

Before turning our attention to the next 35 years and the present, it is instructive to consider what happened during the late 1960s and early 1970s. Why, in the face of

⁴ Patricia Erickson, Cannabis Criminals: The Social Effects of Punishment on Drug Users, Toronto, Addiction Research Foundation, 1980, see chapter 2.

such significant penalties, did so many young people in Canada, the United States and other western cultures, begin to use cannabis?

The 1960s were a time of social conflict – protests against war, most notably in Vietnam, increases in alcohol consumption, a rapid escalation of rates of divorce, and slogans of the era that were suggestive of significant cultural change: make love, not war; tune in, turn on, and drop out.

But it was changing material technologies that gave rise to these slogans: the birth control pill that provided an unprecedented measure of sexual freedom, and more important for our purpose, the globalization of air travel, a phenomenon that allowed a generation of young people to explore different cultures, and by extension, different mind-active drugs. The line drawn between legal and illegal drugs in the early years of the 20th century was created by politics, culture, history and economics. It had nothing to do with the protection of public health, and nowhere was this more obvious than in the case of cannabis. Put differently, globalization of travel allowed those in western cultures to appreciate different forms of mind-active drug use. By the late 1970s, with tens of millions experientially informed consumers in North America, it was becoming difficult to claim, with any kind of moral legitimacy, that tobacco and alcohol were appropriate recreational drugs, while use of cannabis was an activity deserving of criminal censure.

In the years since the 1970s criminal convictions for cannabis possession have continued to mount, though imprisonment for possession has become a relatively rare event. In 1996 the Liberal government of Jean Chretien passed The Controlled Drugs and Substances Act, essentially an amalgam and revision of the Narcotic Control Act and a part of the Food and Drugs Act.⁵ Cannabis is no longer defined as a narcotic, but as a Schedule II drug. Those who are convicted of possession may be imprisoned for up to five years if the Crown prosecutor proceeds by indictment, and up to six months for a first offence, if the Crown prosecutor proceeds summarily (the much more commonly chosen option). This change in law has not resulted in any substantive change in police or judicial responses to possession of cannabis. There have been promises of reform to cannabis law since 1977, and a number of authors have pointed to what has been termed a long “saga of promise, hesitation and retreat”.⁶

With the election of the Harper government in 2006, the possibility of change appears to have disappeared, however, as mandatory minimum terms for both cultivation and distribution have become a legislative reality. At the same time, convictions for possession of cannabis have increased, independent of any observed

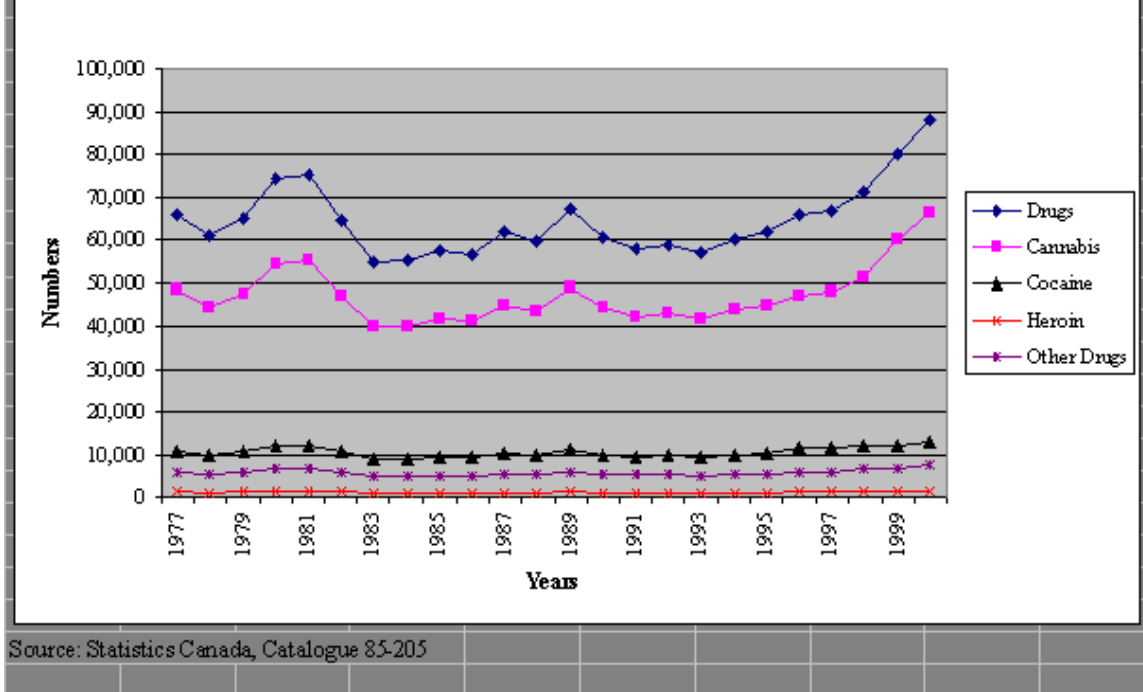
⁵ The Controlled Drugs and Substance Act, Statutes of Canada, 1996, chapter 19.

⁶ See, for example, Benedikt Fischer et al., “Cannabis Law Reform in Canada: Is the “Saga of Promise, Hesitation and Retreat” Coming to an End?”, 45 (3) Canadian Journal of Criminology and Criminal Justice 2003, pp.265-297. See, more recently, Elaine Hyshka “The Saga Continues: Canadian Legislative Attempts to Reform Cannabis Law in the Twenty-First Century, 51 (1) Canadian Journal of Criminology and Criminal Justice, 2009, pp. 73-91.

changes in patterns of cannabis possession or use, and without any change in the law in relation to possession.

The following chart, prepared by Statistics Canada, and noted in the report of the Senate Special Committee On Illegal Drugs, 2002, is relatively self-explanatory. From 1977 to 2000 the annual number of drug offences reported by police in Canada increased from about 65,000 annually to 90,000 annually; approximately 75 per cent of these 90,000 offences related to cannabis. As the chart below demonstrates, changes in the rate of reported drug offences in Canada are essentially driven by changes in the rate of reported cannabis offences in Canada. Further, and more important for our purposes, almost 70 per cent of all reported cannabis offences are possession offences, revealing that more than 50 per cent of all drug offences reported by police are for possession alone.

**Figure 1: Incidents Declared by Police
by Most Serious Offenses Related to Drugs
Canada 1977-2000**



Current Enforcement Practices: Canada and British Columbia

Since 2000 the number of cannabis offences reported by police in Canada has increased, first falling from 65,000 annually in 2000 to about 60,000 in 2005, but then increasing to about 78,000 in 2011, the most recent year for which we have police data.⁷

⁷ See Shannon Brennan, “Police-reported crime statistics in Canada, 2011”, *Juristat*, Ottawa, Statistics Canada, 2012, <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11692-eng.htm>.

The following table from Statistics Canada -- a snapshot of all reported drug offences in 2007, by drug and by province --- reveals that British Columbia has the highest rate of cannabis offences reported by police, at almost 400 offences annually per 100,000 citizens; only the Yukon, Nunavut and the Northwest Territories have higher rates of reported offences.



Statistics Canada
www.statcan.gc.ca

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Table 6
Police-reported drug offences, by type of drug, by province and territory, 2007

Province and territory	Total drugs		Cannabis		Cocaine		Heroin		Other drugs ¹	
	number	rate ²	number	rate ²	number	rate ²	number	rate ²	number	rate ²
Newfoundland and Labrador	857	169.3	624	123.3	142	28.0	1	0.2	90	17.8
Prince Edward Island	197	142.1	114	82.2	45	32.5	2	1.4	36	26.0
Nova Scotia	2,506	268.3	1,803	193.0	352	37.7	0	0.0	351	37.6
New Brunswick	1,874	249.9	1,276	170.2	256	34.1	6	0.8	334	44.5
Quebec	20,357	264.3	14,194	184.3	2,275	29.5	60	0.8	3,828	49.7
Ontario	31,018	242.3	18,653	145.7	7,493	58.5	171	1.3	4,701	36.7
Manitoba	2,466	207.8	1,409	118.7	780	65.7	2	0.2	275	23.2
Saskatchewan	2,851	286.0	1,962	196.8	508	51.0	5	0.5	376	37.7
Alberta	9,092	261.7	4,876	140.4	3,272	94.2	17	0.5	927	26.7
British Columbia	28,632	653.7	17,034	388.9	7,505	171.3	533	12.2	3,560	81.3
Yukon	209	674.4	121	390.5	66	213.0	0	0.0	22	71.0
Northwest Territories	456	1,069.5	304	713.0	115	269.7	0	0.0	37	86.8
Nunavut	160	514.3	140	450.0	10	32.1	0	0.0	10	32.1
Canada	100,675	305.3	62,510	189.6	22,819	69.2	797	2.4	14,547	44.1

1. Other drugs include all other illicit drugs not otherwise stated, e.g. crystal meth, ecstasy, "date rape" drugs, LSD, barbiturates, chemical precursors, etc.
2. Rates are calculated per 100,000 population. Population estimates are from Statistics Canada, Demography Division.
Source: Statistics Canada, Canadian Centre for Justice Statistics, Aggregate Uniform Crime Reporting Survey.

When, however, we compare reported rates of use in B.C. with other provinces in Canada, the differences are much less dramatic. While 86 per cent of Canadians

outside of B.C. indicate that they have either never used or have not used cannabis within the last year, a relatively comparable percentage of British Columbians – 82 per cent - report a similar lack of prevalence. At the other end of the scale, if we compare the percentages of those who have used cannabis within the last week in B.C. with the rest of Canada, the numbers are, respectively, 7 and 6 per cent.⁸

These data suggest a different pattern of enforcement in relation to cannabis in B.C., perhaps because, as survey respondents note, it is “very easy” to obtain access to cannabis in the province, and because there is both more social acceptance of use and more interest in changing the current state of law enforcement. The culture of much of British Columbia is generally more tolerant of cannabis, leading to more open displays of consumption, and at least in some jurisdictions, this could be producing a higher rate of charges, both relative to other provinces and to other municipalities within our province.

The table that follows document drug crimes reported to police in British Columbia from 2002 to 2011; it is important to note that these numbers do not represent all interactions that police have with citizens in relation to marijuana. Many offences observed by police are not reported at all; the decision to detain an individual, confiscate cannabis, and write a report is a discretionary decision of the individual officer. It’s also important to note that only a small percentage of the possession

⁸ Tim Stockwell et al., “Cannabis Use in British Columbia: patterns of use, perceptions and public opinion as assessed in the 2004 Canadian Addiction Survey”, Centre for Addictions Research of B.C., September 2006.

charges reported by police will lead to charges against an individual, a point that will be clear from later tables.

British Columbia Crime Trends, 2002 - 2011



Drug Offences

CONTROLLED DRUGS AND SUBSTANCES ACT (CDSA)

Number of Offences	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Cannabis: Possession	11,553	12,168	13,108	12,234	11,952	13,470	13,758	13,284	15,721	16,578
Cannabis: Trafficking	1,685	1,988	2,136	1,640	1,318	1,262	1,163	1,179	1,297	1,267
Cannabis: Importation/Exportation	86	77	68	92	66	90	58	23	24	30
Cannabis: Production	3,208	3,369	2,767	2,292	1,848	2,117	1,544	1,775	2,084	1,537
Cannabis	16,532	17,602	18,079	16,258	15,184	16,939	16,523	16,261	19,126	19,412
Cocaine: Possession	1,954	2,336	3,440	3,741	4,682	4,428	3,992	2,891	2,642	2,476
Cocaine: Trafficking	1,844	2,416	2,570	2,768	2,806	3,039	2,833	2,064	2,165	1,986
Cocaine: Importation/Exportation	38	44	38	39	30	39	39	44	50	42
Cocaine: Production	-	-	-	-	-	2	4	3	1	0
Cocaine	3,836	4,796	6,048	6,548	7,518	7,508	6,868	5,002	4,858	4,504
Heroin: Possession	293	258	369	387	515	378	389	347	316	368
Heroin: Trafficking	192	139	173	196	173	151	110	111	131	157
Heroin: Importation/Exportation	9	20	11	12	10	6	10	12	13	6
Heroin: Production	-	-	-	-	-	-	1	-	-	-
Heroin	494	417	553	595	698	535	510	470	460	531
Other Drugs: Possession	792	1,124	1,422	1,654	1,564	2,689	2,400	1,583	1,831	1,910
Other Drugs: Trafficking	411	424	423	541	463	510	559	533	536	560
Other Drugs: Importation/Exportation	536	248	379	282	203	235	142	62	74	65
Other Drugs: Production	-	-	-	-	-	56	30	37	43	45
Precursor/Equipment (crystal meth or ecstasy) ¹⁶	-	-	-	-	-	-	-	-	-	12
Other Drugs¹⁷	1,739	1,796	2,224	2,477	2,230	3,490	3,131	2,215	2,484	2,592
TOTAL CDSA DRUG OFFENCES	22,601	24,611	26,904	25,878	25,630	28,472	27,032	23,948	26,928	27,039

As the table above indicates, the number of possession charges reported by police in B.C. has increased from about 11,500 in 2002 to more than 16,500 in 2011. The table also reveals that 85 per cent of all reported cannabis offences in 2011 are possession offences – and that the percentage of cannabis possession offences reported, relative to all cannabis offences – has increased over the past decade.

The next table provides a portrait of the number of cannabis offences cleared by police in British Columbia from 2002 to 2011. Statistics Canada defines a crime as cleared “when a police investigation has lead to the identification of an accused person against whom charges can be laid”.⁹

British Columbia Crime Trends, 2002 - 2011



CONTROLLED DRUGS AND SUBSTANCES ACT (CDSA)

Number of Offences Cleared	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Cannabis: Possession	9,025	9,368	9,729	9,054	8,983	9,613	9,311	10,238	12,474	13,095
Cannabis: Trafficking	1,213	1,433	1,298	960	819	857	805	782	974	795
Cannabis: Importation/Exportation	8	30	19	24	42	49	30	4	6	5
Cannabis: Production	1,333	1,353	1,173	904	666	646	514	553	654	466
Cannabis	11,579	12,184	12,219	10,942	10,510	11,165	10,660	11,577	14,108	14,361
Cocaine: Possession	1,441	1,723	2,534	2,692	3,636	3,343	3,033	2,193	2,027	1,824
Cocaine: Trafficking	1,347	1,823	1,878	1,994	2,140	2,420	2,158	1,608	1,632	1,469
Cocaine: Importation/Exportation	11	37	19	20	28	23	12	18	11	7
Cocaine: Production	-	-	-	-	-	2	2	1	0	0
Cocaine	2,799	3,583	4,431	4,706	5,804	5,788	5,205	3,820	3,670	3,300
Heroin: Possession	220	188	254	287	409	301	303	281	250	260
Heroin: Trafficking	162	150	144	165	154	132	88	103	113	121
Heroin: Importation/Exportation	2	11	5	5	5	3	10	3	3	0
Heroin: Production	-	-	-	-	-	-	1	-	-	-
Heroin	384	349	403	457	568	436	402	387	366	381
Other Drugs: Possession	523	744	945	1,103	1,035	1,124	1,066	1,082	1,273	1,314
Other Drugs: Trafficking	312	275	294	351	283	278	272	288	309	277
Other Drugs: Importation/Exportation	145	25	46	142	82	123	73	12	18	32
Other Drugs: Production	-	-	-	-	-	14	12	11	16	12
Precursor/Equipment (crystal meth or ecstasy) ¹⁶	-	-	-	-	-	-	-	-	-	1
Other Drugs¹⁷	980	1,044	1,285	1,596	1,400	1,539	1,423	1,393	1,616	1,636
TOTAL CDSA DRUG OFFENCES	15,742	17,160	18,338	17,701	18,282	18,928	17,690	17,177	19,760	19,678

The table above demonstrates that possession offences are much more likely to be cleared by police than either trafficking or production (cultivation) offences. While just under 80 per cent of all cannabis possession offences reported by police are

⁹ Marta Burczycka, “Police Resources in Canada, 2011, Canadian Centre for Justice Statistics, Statistics Canada, 2011, <http://www.statcan.gc.ca/pub/85-225-x/2011000/part-partie1-eng.htm>.

cleared, there is only a 62 per cent clearance rate for cannabis trafficking offences, and only a 30 per cent clearance rate for all cannabis production (cultivation). The brunt of the prohibition against cannabis in British Columbia falls on the user: 91 per cent of all cleared cannabis offences are possession offences.

The final table in this sequence is one that documents drug charges laid in the province of British Columbia from 2002 to 2011. The most common of all drug charges is cannabis possession, accounting for about 75 per cent of all cannabis charges and 45 per cent of all drug charges. Perhaps more surprising, in an era in which public opinion polls document increasing support for both the decriminalization of cannabis possession and the taxation and regulation of cannabis, is the doubling of cannabis possession charges in the province between 2005 and 2011, from a little under 1,750 annually to more than 3,750 annually.¹⁰

¹⁰ For example, see Elaine O'Connor, "Poll: BC residents want marijuana legalized", Vancouver Province, November 5, 2012. The story reports on an Angus Reid poll, indicating that 75 per cent of British Columbians want to see marijuana taxed and regulated, sold to adults in a manner similar to alcohol and tobacco. Only 14 per cent of respondents thought that possession of small amounts of marijuana should lead to a criminal record.



British Columbia Crime Trends, 2002 - 2011

CONTROLLED DRUGS AND SUBSTANCES ACT (CDSA)

Persons Charged	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Cannabis: Possession	2,004	1,609	1,854	1,737	1,981	2,471	2,782	3,246	3,626	3,774
Cannabis: Trafficking	1,577	1,868	1,601	1,153	982	1,044	980	905	1,151	913
Cannabis: Importation/Exportation	13	57	30	6	30	8	11	1	1	4
Cannabis: Production	1,288	1,163	1,079	825	602	604	506	452	598	342
Cannabis	4,882	4,697	4,564	3,721	3,595	4,127	4,279	4,604	5,376	5,033
Cocaine: Possession	704	714	912	1,012	1,718	1,597	1,549	961	867	817
Cocaine: Trafficking	1,571	2,252	2,163	2,368	2,530	2,977	2,589	1,793	1,700	1,533
Cocaine: Importation/Exportation	9	59	48	10	38	45	6	32	16	6
Cocaine: Production	-	-	-	-	-	7	1	0	0	0
Cocaine	2,284	3,025	3,123	3,390	4,286	4,626	4,145	2,786	2,583	2,356
Heroin: Possession	110	72	86	108	190	157	145	109	105	103
Heroin: Trafficking	217	191	188	229	227	167	96	114	119	130
Heroin: Importation/Exportation	3	24	6	4	4	2	11	4	2	0
Heroin: Production	-	-	-	-	-	-	2	-	-	-
Heroin	330	287	280	341	421	326	254	227	226	233
Other Drugs: Possession	214	238	270	322	414	496	457	411	499	515
Other Drugs: Trafficking	320	283	283	331	305	303	289	277	298	280
Other Drugs: Importation/Exportation	54	48	59	33	23	17	14	11	15	29
Other Drugs: Production	-	-	-	-	-	24	19	14	21	19
Precursor/Equipment (crystal meth or ecstasy) ¹⁶	-	-	-	-	-	-	-	-	-	1
Other Drugs¹⁷	588	569	612	686	742	840	779	713	833	844
TOTAL CDSA DRUG OFFENCES	8,084	8,578	8,579	8,138	9,044	9,919	9,457	8,330	9,018	8,466

What happens when these possession charges land in the criminal courts in British Columbia? At this point our data sources are much more restricted. Fortunately, however, we can look to the CourBC dataset, which provides information on the disposition of all adult criminal cases involving charges for possession of a controlled substance in B.C. provincial courts. Unfortunately, however, the database does not distinguish by drug; cannabis is lumped together with all other illegal drugs.

But because cannabis possession offences amount to 75 per cent of all possession offences, we can draw some fairly sound inferences about what happens to cannabis

possession cases in our courts. In the 2010-2011 fiscal year there were 3,497 completed criminal charges for possession of a controlled substance, distributed across 2,524 cases and 2,412 accused persons. A little more than 43 per cent of the charges (1,506) resulted in a stay of proceedings, 34 per cent (1,198) resulted in a finding of guilt, 2 per cent (74) in an acquittal, dismissal or withdrawal, and 21 per cent (719) in other kinds of consequences, typically a proceeding on a new information, or transfer in or out of the province.

From this we can reasonably conclude that the most common result for a cannabis possession charge is either a stay of proceedings, or a conviction. Conversations with prosecutors and defence counsel suggest that a stay of proceedings is often entered on a cannabis possession charge when the accused is facing other more serious charges and is either found guilty or pleads guilty to these other charges. For example, data received from the city of Vancouver reveals that while there were 86 charges of illegal drug possession recommended by Vancouver police in 2010, there were only six charges recommended where marijuana possession was the only offence. The Vancouver Police Department noted, “We feel that it is important to note in this debate that the VPD does not place a high investigative or enforcement priority on people for cannabis possession only. In fact, where charges are recommended, in the vast majority of cases the cannabis possession charge is one of usually several more serious offences involved in the same incident”.¹¹

¹¹ Email and data received from Jennie Gill, Strategic Research and Policy Advisor, Vancouver Police Department, October 18, 2012.

This view of the enforcement of cannabis possession is supported by documentation on the website of the Vancouver Police Department. The Vancouver Police Department notes, “A person’s behaviour or the context of the psychoactive substance abuse, rather than the actual unlawful possession of the substance, should be the primary factor in determining whether to lay a charge. Targeted behaviours are those that interfere in the lawful use and enjoyment of a given facility or location, whether private or public, or contribute to street disorder, and cause fear among citizens and the community at large. While some police officers locally or nationally may disagree, the VPD has to apply enforcement in a manner that is supportable by the public, Crown Counsel and the local judiciary”.¹²

This view of enforcement is in marked contrast to that expressed by the RCMP in British Columbia. Superintendent Brian Cantera, Officer in Charge of Drug Enforcement in the province, made the following written comment, when asked about the doubling of cannabis possession charges in B.C. between 2005 and 2010, “I believe the short answer is better work by policing the problem. Despite the views of some, most Canadians do not want this drug around, as they recognize the dangers of it. The public does not want another substance to add to the carnage on

¹² See <https://vancouver.ca/police/assets/pdf/reports-policies/vpd-policy-drug.pdf>, at page 5.

highways and other community problems. Policing is reflective of what the public does not want”.¹³

There is clearly a striking difference in approaches to enforcement of marijuana possession offences in the province of British Columbia. While recommended charges for marijuana possession offences have declined in the city of Vancouver between 2005 and 2010, charges have increased in other jurisdictions of the province, typically those policed by the RCMP. For example, the number of cannabis possession charges per 100,000 population in Vancouver in 2011 was 30.3 per 100,000, while in Richmond the figure was 79.1 and in North Vancouver, more than 90 per 100,000. There were even greater discrepancies across the province, quite unrelated to the extent of use in a given community. Tofino has 588 charges per 100,000 citizens and Nelson almost 300 per 100,000.¹⁴

If we turn our attention to street level enforcement of the criminal prohibition of cannabis possession, these discrepancies become more clear. The table on the following page provides information regarding interviews with individuals who have had interactions with police in relation to marijuana possession. These individuals made contact with the researcher or a representative of the researcher, after responding to either postings on websites frequented by cannabis users or to

¹³ Email From Brian Cantera, Supt., Officer in Charge, RCMP Drug Enforcement Branch, E Division, September 6, 2012.

¹⁴ See Zoe McKnight, “Busted: Search our database to discover how many pot busts occurred in your city last year”, Vancouver Sun, November 9, 2012.

posters placed in cannabis dispensaries; anonymity was guaranteed, in accordance with the terms set out by Research Ethics, Simon Fraser University. The purpose of this selective sampling was to receive a sufficient response from active cannabis users regarding the interactions that they have had with police in relation to cannabis possession, primarily within the past decade.

We particularly wanted to understand how often and under what circumstances individuals were stopped by police, whether marijuana was confiscated, whether charges were laid, and whether there were convictions for possession. We were trying to see what kinds of patterns exist in the province in relation to the enforcement of the cannabis possession prohibition. As the table reveals, we were not able to obtain all relevant information regarding these 53 cases, in part because emails were not always responded to, and follow-ups were not always possible.

Interactions with Police Regarding Cannabis Possession: A Range of Outcomes

Participant ID	Interaction Number	Gender	Age	Year	Location	Police Force	Circumstances	Reason For Use	Confiscation	Charges Laid	Conviction	Amount seized
V.L.	1	Male	25	1968	Cloverdale	RCMP	At border	Social and Medical		Yes	Yes	Pipe bowl
V.L.	2	Male	26	1971	Dawson Creek	RCMP	At home	Social and Medical		Yes	No	Pipe bowl
H.G.	1	Male		1971	Fort Nelson	RCMP				Yes		
O.R.	1	Female	19	1979						Yes	Yes	
J.E.	1	Male		1986	Whistler	RCMP	In public	Social	Yes	Yes	Yes	1 joint
F.T.	1	Male		1989					Yes	Yes	Yes	0.7 grams
V.L.	3	Male	45	1990	Dawson Creek	RCMP	At home	Social and Medical	Yes	No	No	Few roaches and couple of buds
P.G.	1	Male		1991	Alberta	RCMP			Yes	Yes		Less than 1 gram
K.B.	1	Male	17	1993	Surrey	RCMP	Vehicle	Social	No	No	No	None
K.B.	2	Male	17	1993	Surrey	RCMP	In public	Social	Yes	No	No	
K.B.	3	Male	18	1994	Vancouver	Municipal	In public	Social	Yes	Yes	Yes	1 joint
V.L.	4	Male	50	1995	Vancouver	Municipal	Vehicle	Social and Medical	Yes	Yes	No	Bag of pot
P.C.	1	Male		1996				Medical		Yes	Yes	2.8 grams
E.G.	1	Male		1998	Fort Nelson	RCMP				Yes	Yes	
L.Z.	1	Male		2002			At home	Social	Yes	Yes	Yes	300+ plants
F.P.	1	Female		2002	Sunshine Coast	RCMP	At home		No	No	No	1 plant
Y.S.	1	Female	40	2003			Vehicle	Work at Dispensary	No	No	No	None (Smoked earlier)
M.N.	1	Male		2003			At home	Medical	Yes	Yes	No	21 plants
T.R.	1	Male		2005	Tofino	RCMP				No	No	
C.I.	1	Male		2007	Nanaimo	RCMP	In public	Medical	Yes	Yes	No	1 week's worth of medication
R.W.	1	Female		2008			Vehicle			No	No	
G.H.	1	Male	18	2009	Port Moody	Municipal	In public	Social	Yes	No	No	Bag of pot
V.L.	5	Male	65	2010	Dawson Creek	RCMP	At work	Social and Medical	No	No	No	None
G.H.	2	Male	19	2010	Coquitlam	RCMP	At park	Social	Yes	No	No	
G.H.	3	Male	19	2010	Coquitlam	RCMP	Vehicle	Social	No	No	No	None
S.J.	1	Male	35	2010	Lower Mainland		Vehicle	Social and Medical	Yes	No	No	3-4 grams
I.C.	1	Male		2010	Burnaby	RCMP	In public	Social	Yes	No	No	1/2 gram
H.G.	1			2010			Vehicle	Social	Yes	Yes		1 joint
V.L.	6	Male	66	2011	Dawson Creek	RCMP	At work	Social and Medical	Yes	Yes	No	1/4 gram hash and small amount of bud
Y.S.	2	Female	50	2011	Maple Ridge	RCMP	Vehicle	Work at Dispensary	No	No	No	2 grams
K.F.	1	Male		2011	Maple Ridge	RCMP	Vehicle	Social	No	No	No	
P.L.	1	Male	20	2011	Vancouver	Municipal	In public	Social	No	No	No	1 joint
S.J.	2	Male	37	2012	Penticton	RCMP	At home	Social and Medical	Yes	Yes	No	Seeds, plants, and product
V.C.	1	Male		2012			In public	Social		No	No	1 joint
H.F.	1			2012	Sparwood	RCMP	At home	Social	Yes	No	No	4 grams
L.A.	1			2012	Vancouver - UBC	RCMP	In public	Medical	Yes			Pipe bowl
S.J.	1	Male		2012	Penticton	RCMP	At home	Medical	Yes	Yes		
R.J.	1	Male	20	2012	New Westminster	Municipal	In Custody			Yes		5 grams
P.G.	1	Male			Kamloops	RCMP						
N.J.	1	Female			Nanaimo	RCMP	In public	Social		No	No	
N.U.	1	Male			Manitoba		Vehicle	Social		No	No	
N.U.	2	Male					At airport		No	No	No	None
O.A.	1	Male					Vehicle	Social	Yes	No	No	1 ounce
D.H.	1	Male						Social	Yes	Yes	No	2 joints
L.G.	1	Male			Kelowna	RCMP	In public	Social	Yes	No	No	1 bong
T.R.	2	Male			Tofino	RCMP	Vehicle			No	No	
C.G.	1	Male			Port Hardy	RCMP		Medical		Yes		
S.V.	1	Male						Medical		Yes	Yes	80 grams
B.E.	1	Male	17							Yes	Yes	
G.F.	1	Male					In public	Social	Yes	No	No	3 grams
N.J.	2	Female			Victoria	RCMP	Vehicle	Social	Yes			1 ounce and a pipe
A.D.	1	Male			North Vancouver	RCMP	In public	Social		No	No	1 joint

But the picture that emerges is one of enforcement without any consistency in purpose, apart from the apparent reality is that possession of a substantial amount of cannabis (80 grams or more) is more likely to lead to conviction than is possession of smaller amounts. Since 2002, charges have been forthcoming in only a minority of incidents, cannabis has not always been confiscated, and conviction for possession is uncommon. This is consistent with the data provided the provincial government in relation to reported offences, cleared offences and charges. Additionally, it appears that the different enforcement strategies of the RCMP and Vancouver City Police are reflected in the data. Although many of the individuals interviewed actually lived in the city of Vancouver, their interactions with police in relation to cannabis often occurred outside this jurisdiction.

Conclusions Regarding Current Enforcement Practices: The Criminalization of Public Use

The problem with the current pattern of enforcement is that there is no consistent logic applied in relation to the decision to detain and report, to confiscate, to charge, or to convict. It may be helpful to think of the problem that we face as one of a funnel that works in a highly arbitrary manner, selecting cannabis users who will be detained, and ultimately charged and convicted. While it does seem clear that most police-citizen interactions, particularly during the past decade, have occurred in relation to either public use or use related to a motor vehicle, the decision with

respect to who will be charged in such circumstances - and why - appears to be relatively arbitrary.

We could begin with the 16, 578 cannabis possession offences reported by police in 2011 – and yet we cannot really fairly begin with this number. We know that it represents a very small fraction of the total number of cannabis possession offences committed by the public in our province in that year. Data cited earlier noted that 18 per cent of British Columbians report use of cannabis within the past year – more than 750,000 individuals.¹⁵

Those whose use is most likely (but far from routinely) reported by police are those who consume in public or quasi-public settings, or in relation to a vehicle, most often young men. But how do we move from 16,578 reports by police to 3,774 charges and about 1,200 convictions? It has become clear that police discretion, both in terms of jurisdiction, and in terms of the individual officer, dictates the outcome. Those who use the drug in private are not likely to be policed at all, in large measure because there is no interest in using costly police resources for such a trivial matter. Police resources typically only become triggered when use spills into the public realm. In these instances it is not possession of marijuana that is problematic, but conduct analogous to drinking alcohol or smoking tobacco in public. The difference is, of course, that civil remedies exist for responding to drinking alcohol or smoking tobacco in inappropriate settings. The marijuana user

¹⁵ See note 8, above.

is treated differently, risking the possibility of a criminal conviction and the travel and employment disabilities that flow from such a label.

Put differently, we now live in a time in which only a small minority of the public in British Columbia (14 per cent) believe that a criminal conviction for marijuana possession is a sensible or logical response to the user. To build respect for law enforcement it would seem both rational and fair to change our practices so they are in accordance with the prevailing majority's perception of what should – or should not -- constitute a criminal offence. The problems of public use and use in relation to a motor vehicle remain, of course, and these issues will be dealt with in the final section of this report.

C. What is the Cost of B.C.'s Enforcement of Marijuana Possession Offences?

How much did BC spend in 2011 to detain, seize, arrest, charge, prosecute and convict cannabis possession offences? How much has been spent over the past 10 years? If current trends continue, what will be the cost over the next decade?

In order to answer these questions, we have looked to the most comprehensive and reliable data available on the costs of drug law enforcement in Canada and in British Columbia, and to data regarding enforcement in BC, notably, as discussed above, in

relation to the annual number of offences of possession of cannabis reported within the province, and the number of persons charged annually with this offence.

With these data in place, I have made two assumptions, so as not to over-estimate the costs of such enforcement: (1) that the police resources required for enforcing the prohibition of possession of cannabis are, per offence, about 1/10 of the resources required for the other offences of trafficking, importation and production, and (2) that the court resources required for possession offences constitute, per charge, about 1/5 of the resources for prosecution of the offences of trafficking, importation and production. I have also made the assumption that no correctional resources are required for those convicted of possession of marijuana, even though some number of individuals do spend time in jail for a cannabis possession conviction.

Analysis:

There have, historically, been a number of attempts to quantify the costs of enforcement of the prohibition against cannabis possession. In 1979 the Health Protection Branch of Canada's Department of National Health and Welfare suggested that a reasonable figure was to be found somewhere between \$60 and \$100 million annually.¹⁶

¹⁶ Department of National Health and Welfare, Cannabis Control Policy: A Discussion Paper, Ottawa, 1979.

More recently, in 1998, Single suggested that the costs of law enforcement in Canada for all illegal drugs, as of 1992, was approximately \$400 million, with a little over \$56 million of this amount spent in the province of British Columbia.¹⁷ In 2001 the Auditor-General reported that \$450 million was spent annually in Canada on drug law enforcement. And in July of 2012 John Geddes, reporting in *Maclean's*, noted that almost \$500 million was budgeted for anti-drug programs, with the overwhelming majority of funds committed to enforcement.¹⁸

The upshot of these studies is that (a) it seems reasonable to assume that the drug enforcement budget for Canada is approximately \$450 million annually, and (b) that the share taken by B.C. is approximately \$62 million (conservatively updating Single's 1992 figures to 2013).

The next question is, accordingly, what percentage of the current annual budget of \$62 million is spent on enforcement of the offence of marijuana possession? Single's 1998 work divided B.C.'s \$56 million (the 1992 figure) into three categories: police costs (approximately 50 per cent), court-related costs (approximately 25 per cent), and corrections costs (approximately 25 per cent). As the correctional costs in relation to marijuana possession are very small, I will, again conservatively, simply

¹⁷ Eric Single, "The Economic Costs of Illicit Drugs and Drug Enforcement, Policy Options, October 1998, pp.3-6.

¹⁸ John Geddes, "Harper's anti-drug strategy get a little less compassionate", Macleans, July 25, 2012.

discount the full amount. In other words, we are now looking only at police and court-related costs (approximately 75 per cent of \$62 million) of \$46.5 million.

We can now turn to available data regarding policing of cannabis possession in BC and charges related to cannabis possession in BC. The chart produced by the BC government indicates that a total of 27,039 drug offences were reported by police in BC in 2011, and 16,578 of these offences were cannabis possession offences. In other words, 61 per cent of all drug offences reported by police were cannabis possession offences. If we were to assume that police costs were uniformly distributed across the relevant categories (across specific drugs and across different types of charges), we would conclude that the current annual costs of police enforcement for cannabis possession are 61 per cent of \$31 million, or \$18.9 million. For a number of key reasons, however, this figure would not be accurate. More police resources are understandably devoted to the detection and investigation of trafficking, importation and production of illegal drugs, than to the possession of cannabis. Additionally, however, while officers who focus specifically on drug control would devote very little of their time to policing marijuana possession, the same could not be said for the much larger number of police officers who are simply enforcing criminal law on the streets of their communities. These officers would be more likely to police cannabis possession than any other drug offence.

If we look at the data and these issues through this lens, we see that 21,332 of the total of 27,038 drug offences in BC in 2011 were possession offences, or

approximately 79 per cent of all drug offences -- and 79 per cent of all possession offences were for cannabis possession. If we assume that police resources expended against trafficking, production and importation are ten times as great as police resources expended against possession offences, this suggests that the \$31 million spent last year on drug enforcement would be allocated in the following manner: 79 (possession) + 21 X 10 = 210 (all other offences) = 289. The percentage allocated to possession offences would, accordingly, be 79/289, or 27 per cent of \$31 million = \$8.7 million, with the remaining 22.3 million spent on enforcement of trafficking, importation and production. On this basis, as cannabis accounts for 79 per cent of all possession offences, the annual amount spent enforcing cannabis possession in BC today is best estimated as \$6.9 million.

When we turn our attention to court and court-related costs in BC, we are working with an annual estimate of \$15.5 million. In 2011 there were 8,466 individuals charged with drug offences in the provinces; 3,774 of these individuals were charged with marijuana possession, a total of 45 per cent of all drug charges, as the chart below indicates.

Although there is undoubtedly more court time spent in dealing with charges related to trafficking, importation and production than with possession, approximately 90 per cent of all completed criminal charges result in guilty pleas, rather than trials, suggesting that the differential in court resources for possession offences, relative to others, while pronounced in a few large trials, would not be

dramatically different in most cases. But, again, if we take the conservative route and assume in this instance that court resources for production, trafficking and importation are five times greater than for possession, we can draw the following conclusions: total number of possession charges = 5,209 and total of all other charges = 3,257. This would mean that the base for our calculation is $5,209 + 3,257 \times 5 = 16,285$; the ratio of $5,209/16,285 = 32$ per cent of total court related expenses. As the marijuana possession charge represents 72 per cent of all possession charges, it follows that the current costs associated with marijuana possession charges amount to 72 per cent of 32 per cent of the total costs of \$15.5 million annually, or \$3.6 million annually.

In sum, then, the annual police and court-related costs of enforcing marijuana possession in BC can be reasonably and conservatively estimated to be $\$6.9 + \$3.6 = \$10.5$ million annually. Between 2002 and 2011 this figure amounts to a total of more than \$105 million, with a continuing increase from 2002 to the present, given the increasing number of charges of possession, and the increase in offences reported by police. Further, if the increases in charges and reported offences continue in 2012 and beyond, we can expect that the costs of the past decade will not only continue, but continue to increase. To be more precise, if we use the formulas set out above and assume that reports and charges of marijuana possession will increase by the same proportions as they did from 2005 to 2011, the cost of enforcing the prohibition against marijuana possession in B.C. will increase from \$10.5 million annually to \$18.8 million annually by 2018.

D. Problems with Enforcement of Cannabis Possession Offences in B.C.: Arbitrariness, Stigma and a Lack of Utility

Arbitrariness:

The discussion to date in this report has demonstrated that there is a selective and costly enforcement of cannabis possession offences in British Columbia; the imposition of the law operates without any apparent logic that might justify the selection of the small number of users who are charged and/or convicted annually.

There is also an arbitrariness in the critical context of public health. The justification for the criminalization of cannabis possession is typically that of protection of the physical and mental health of potential users. But such a claim necessarily confronts a compelling counter-claim. For most users, and in most circumstances, alcohol and tobacco present the consumer with greater mental and physical health risks than cannabis. For example Fischer and Kendall, writing in Addiction about recent attempts to classify legal and illegal drugs, make the following observation, “If we assume that public health and welfare should be guiding principles for good and desirable psychoactive substance control policy we would, for example, not expect to see the third most commonly used drug (cannabis) to be scheduled and regulated alongside drugs such as heroin and cocaine, while alcohol and tobacco are not only legally available but are openly traded in Canadian society and cause thousands of

deaths and injuries each year. In comparison, cannabis consumption has zero directly attributable mortality and relatively little major associated morbidity in the majority of users”.¹⁹

The difficulty that we face is that our current sanctions are the product of history and culture and not the product of informed discussion and debate regarding relevant harms; the early discussion of the history of cannabis prohibition makes this point quite clearly. We can point to other historical examples of this kind of cultural blindness outside of the realm of cannabis prohibition: the criminalization of homosexuality, for example, finally yielding to acceptance of a diversity of sexual preferences. Unfortunately, the government of British Columbia contributes to a continuing arbitrariness by enforcing the criminal prohibition of cannabis possession.

Stigma:

Perhaps the most significant harms that flow from the criminalization of possession are the travel and employment disabilities that flow from a criminal conviction. The Canadian Bar Association, British Columbia Branch, notes that the acquisition of a criminal record for cannabis possession may prevent a person from travelling to other countries, from getting certain jobs, and from being bonded (a condition of

¹⁹ Benedikt Fischer and Perry Kendall, “Commentaries on Caulkins et al. (2011): Nutt et al.’s Harm Scales for Drugs – Room for Improvement But Better Policy Based on Science with Limitations than no Science At All”, Addiction, November 1, 2011, at 1891.

some kinds of employment). The Bar Association notes, “The legal issues for this crime can be complex and a conviction can seriously harm you. If you are charged with this crime, you should talk to a lawyer”.²⁰

A Heinous Crime? Enforcement of Cannabis Possession as Overreaching

As noted earlier in this report, a recent poll reports that only 14 per cent of British Columbians believe that individuals should be criminally convicted of cannabis possession. Put differently, the criminal law is a powerful sword, to be used against individuals in our province who have committed heinous acts, and in so doing, have harmed the collective. For example, we quite understandably take the position that property crimes of theft and fraud, or assaults against individuals, are potentially deserving of criminal conviction.

With cannabis possession, however, the justification for labeling an individual as criminal has largely disappeared; it is an approach that is supported by only a small minority. In these circumstances a government that continues to endorse criminal enforcement serves to diminish both respect for the law and legal process, and respect for police, those to whom we have given the task of law enforcement.

²⁰ The Canadian Bar Association, British Columbia Branch, Possession of Marijuana, http://www.cba.org/bc/public_media/criminal/201.aspx.

Will Marijuana Use Increase? What Will Happen When There is No Criminal Enforcement of the Possession Offence?

There may be reluctance among those in government to place a moratorium on the enforcement of the criminal prohibition against possession of cannabis. We do, however, have relevant data regarding the impacts of decriminalization of the possession offence. The 2002 report of the Senate Special Committee on Illegal Drugs canvassed public policies in relation to cannabis across a range of relevant jurisdictions: The Netherlands, the United Kingdom, Sweden, Switzerland, Australia and the United States. Perhaps the most helpful summary statement of the relationship between rates of cannabis consumption in a given nation state, and the legislative policies of that state is that provided by French researchers Martineau and Gomart, “the relationship between the figures measuring cannabis use levels and the legislative model in effect in a country is not obvious or systematic”.²¹

Perhaps most surprising, and to some likely counter-intuitive, an easier access to cannabis by adults is not correlated with higher rates of use. As many authors have noted, after systematic observation of data relating to use, the prevalence of cannabis consumption is no greater in the Netherlands, with its sale through coffee

²¹ H. Martineau and E. Gomart, *Politiques et experimentations sur les drogues aux Pays-Bas. Rapport de synthese*, Paris, OFDT, 2000, page 44.

shops, than it is in the United States, with criminalization of possession in many jurisdictions.²²

What is arguably of even greater relevance are studies that have looked at this issue globally, comparing not only the Netherlands with the U.S., but looking at experiences within the U.S., Australia, and across a range of other western nation states. McCoun and Reuter, after an extensive review of the impact of removing the prohibition against cannabis possession, make the following observation, “The available evidence suggests that removal of the prohibition against possession itself (decriminalization) does not increase cannabis use. In addition to the Dutch experience from 1976 to 1983, we have similar findings from analysis of weaker decriminalizations (with fines retained for the offence of simple possession of small quantities in 12 U.S. states and South Australia and the Australian Capital Territory. The fact that Italy and Spain, which have decriminalized possession for all psychoactive drugs, have marijuana use rates comparable to those of neighbouring countries provides further support. This prohibition inflicts harms directly and is costly. ...it is difficult to see what society gains”.²³

²² See, for example, Robert MacCoun and Peter Reuter, “Interpreting Dutch cannabis policy: Reasoning by analogy in the legalization debate”, *Science*, 278 (1997) pp.47-52; Craig Reinarmann et al., “The limited relevance of drug policy: Cannabis in Amsterdam and in San Francisco, *American Journal of Public Health*, 94 (2004), pp.836-842.

²³ Robert MacCoun and Peter Reuter, “Evaluating alternative cannabis regimes”, 178 *British Journal of Psychiatry* 2001, pp.123-128.

In sum, there is no compelling reason to believe that cannabis use will increase, if British Columbia exercises its constitutional power in relation to both policing and the administration of justice within the province (and eliminates enforcement of the prohibition against possession of cannabis).

Beyond Cannabis Possession: The Problem with Prohibition

Although this report is focussed on the problems associated with the enforcement of the prohibition against the possession of cannabis, it should be noted that elimination of the possession offence itself is only a first (but important) step on a road to some system of taxation and regulation of use by consenting adults in private settings. The problems that arise with the decriminalization of possession and the continuation of prosecutions for production and distribution are those that flow from an unregulated market focussed on a product sought by millions of consumers. In this circumstance the producers and distributors have to regulate the trade for themselves, leading (as was the case during alcohol prohibition) to significant levels of violence – gang enforcement, retaliation, armed robbery of grow-ops, and, quite literally, hundreds of violent deaths in Canada over the last few decades. Section 2 of The Sensible BC Policing Act indicates that the purpose of the Act is not only to re-direct police resources in the province away from criminal enforcement of marijuana possession, but also to “initiate a provincial commission to study how the government of British Columbia can properly tax and regulate cannabis once it is removed from the federal Controlled Drugs and Substances Act,

(and to call on) the Government of Canada to allow the province to regulate cannabis, using lessons learned from alcohol and tobacco”.²⁴

E: The Problems That Will Remain Without Enforcement of Cannabis Possession: How to Control Public Use and Driving Under the Influence

The elimination of enforcement for cannabis possession will, nonetheless, leave us with some behaviours that are in need of regulation. Our analysis of recent citizen-police interactions in relation to cannabis possession has determined that public use has been a critical part of the circumstances leading to a police report and the possibility of a criminal charge and conviction.

Controlling Public Use of Cannabis

There are good reasons for the province of British Columbia to restrict the public use of cannabis, just as there are good reasons for the province to restrict the public use of alcohol and tobacco. Both cannabis and alcohol are mind-active drugs that produce different kinds of intoxication; the non-criminal regulation of consumption ensures that the private use of these substances does not intrude upon the activities of the general public; this regulation also sets an important public health and social

²⁴ See The Sensible Policing Act, Sensible BC, Appendix A.

order agenda, establishing that there are appropriate time, place and age restrictions on the use of intoxicants. Tobacco is not an intoxicant in the way that alcohol and cannabis are, but its use is analogous to cannabis use in the sense that smoking (whether tobacco or cannabis) is an inherently intrusive activity, imposing second hand smoke upon other individuals in the vicinity of the user. How do we currently control the public use of alcohol and tobacco in British Columbia? Would these measures be appropriate for control of the public use of cannabis?

Section 40 of B.C.'s Liquor Control and Licensing Act sets out the following in relation to consumption of alcohol in public.²⁵

40 (1) Except for liquor purchased and consumed in accordance with a licence that permits consumption in a public place, a person must not, in a public place, consume liquor or possess liquor in an open container.

(2) Despite subsection (1), but subject to terms and conditions approved by the general manager not inconsistent with this Act and the regulations, a public beach, public park or public campground, or part of it, may be designated by

(a) an order of the government of Canada or of British Columbia, or

(b) a bylaw of a municipality or regional district

having jurisdiction over it a place where liquor may be consumed.

²⁵ Liquor Control and Licensing Act, Revised Statutes of British Columbia, 1996, chapter 267.

Further, section 70 of the Act provides for seizure of alcohol, if possessed contrary to the terms of the legislation.

70 (1) If liquor is found by the general manager, an employee or a peace officer under circumstances that satisfy the general manager, employee or peace officer that the liquor is being possessed or kept contrary to this Act, the Liquor Distribution Act, or the regulations under either of them, the general manager, employee or peace officer may immediately seize and remove the liquor and packages containing it and

- (a) may retain the liquor and packages to be dealt with under this section, or
- (b) may immediately destroy the liquor and packages.

Section 2.3 of British Columbia's Tobacco Control Act sets out the following restriction. (Section 2.2 of the Act also prohibits any smoking on the grounds of all schools within the province).

2.3 (1) Subject to subsection (2), a person must not make tobacco, or hold lighted tobacco,

- (a) in any building, structure, vehicle or any other place that is fully or substantially enclosed and

- (i) is a place to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry,

- (ii) is a workplace, or

(b) within a prescribed distance from a doorway, window or air intake of a place described in paragraph (a).

The prohibitions against public use of alcohol under section 40 of B.C.'s Liquor Control and Licensing Act, and a corresponding right of seizure of the drug under section 70, could be usefully applied to the issue of public use of cannabis. Similarly, the Tobacco Control Act restrictions on tobacco use in and near public buildings and the blanket prohibition on use with respect to schools in the province, could also be applied to cannabis. These civil remedies appear to work well with both alcohol and tobacco, and there is no reason to believe that they could not be similarly applied to the problem of public use of cannabis.

Controlling Marijuana Use by Drivers

The problem of marijuana use by the driver of an automobile is arguably quite different from the problem of marijuana use itself. For example, while most British Columbians do not believe that the use of cannabis among consenting adults in private settings should be treated as a criminal offence, there is much less support for the notion that it is acceptable to drive a vehicle after using cannabis.

At the outset it is important to note that there are currently two statutes that address the problem of impaired driving in the province of British Columbia. Section

253 of the federal Criminal Code criminalizes the operation of a motor vehicle or vessel by a person who is impaired.

253. (1) Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,

(a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or

(b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.

(2) For greater certainty, the reference to impairment by alcohol or a drug in paragraph (1) (a) includes impairment by a combination of alcohol and a drug.

Section 215 of the Motor Vehicle Act sets out a 24 hour immediate roadside prohibition for individuals whose "ability to drive a motor vehicle is affected by a drug, other than alcohol".

215 (3) A peace officer may, at any time or place on a highway or industrial road, if the peace officer has reasonable and probable grounds to believe that a driver's ability to drive a motor vehicle is affected by a drug, other than alcohol,

- (a) request the driver to drive the motor vehicle, under the direction of the peace officer, to the nearest place off the travelled portion of the highway or industrial road,
- (b) serve the driver with a notice of driving prohibition, and
- (c) if the driver is in possession of a driver's licence, request the driver to surrender that licence.

It is critical to note that while a driver who is alleged to be impaired by alcohol has a right to a review of his or her driving prohibition under section 215.48 of the Motor Vehicle Act, no right of review exists for a driver who has been given an immediate roadside prohibition under section 215 (3). The only remedy available to a person in such a circumstance, outside of seeking judicial review in the courts, is that set out in section 215 (8) of the Act.

215 (8) If a driver, who is served with a notice of driving prohibition under subsection (3), satisfies a peace officer having charge of the matter that his or her ability to drive a motor vehicle is not affected by a drug, other than alcohol, the prohibition from driving is terminated.

The differential treatment of the driver who consumes alcohol and the driver who consumes cannabis raises some concerns, particularly in light of both online posting at the Drive Smart BC website, and a number of our interviews with individuals who have argued that they were not using cannabis prior to driving, but were

nonetheless given 24 hour suspensions.²⁶ These anecdotal accounts do suggest that a right of appeal to the Superintendent of Motor Vehicles in the province, similar to that provided for the alcohol impaired driver, would be an appropriate amendment.

The logic behind the immediate roadside prohibition was set out by the Minister, Rich Coleman, in speaking to second reading of Bill 66 in 2004, “There are two aspects of impaired driving. There are the Criminal Code provisions that are federal...We as a province, however, have some abilities on administrative penalties and suspensions and other areas where we think we can improve the entire aspect of how impaired driving is dealt with in our province”. The Minister went on to point to 44,000 24 hour suspensions in BC in the previous year, and only 7,000 criminal charges, “The first concern I had with the Attorney General is: how much time is it taking to process a criminal charge of impaired driving through the charge approval process?...what can we do to enhance the value of the 24 hour prohibition for drivers...?”²⁷

The intent of the amendment to the Motor Vehicle Act was, accordingly, to find a cost-effective way to respond swiftly and effectively to the problem of impaired driving in British Columbia. Amendments to the Act in 2010 increased the lengths of suspension for both those found to have blood alcohol levels of .05 and .10 and the

²⁶ See Drive Smart B.C., <http://www.drivesmartbc.ca/impaired-driving/qa-24-hour-prohibition-drug-use>.

²⁷ See Hansard, Debates of the Legislative Assembly of British Columbia, Bill 66, 5th Session, 37th Parliament, at 11562.

Act itself has become the subject of both considerable comment, for and against, and litigation.²⁸

It is beyond the scope of this paper to consider the relative strengths and weaknesses of these provisions within the Motor Vehicle Act, particularly in relation to alcohol. The question of whether marijuana impairs a person's ability to drive has been studied extensively. The Senate Committee Report of 2002 heard from several experts and considered a substantial body of material in relation to the issue. They concluded, "The Committee feels it is likely that cannabis makes users more cautious, partly because they are aware of their deficiencies and they compensate by reducing speed and taking fewer risks. However, because what we are dealing with is no longer the consequences on the users themselves, but the possible consequences of their behaviour on others, the Committee feels that it is important to opt for the greatest possible caution with respect to the issue of driving under the influence of cannabis".²⁹ The Senate Committee went on to suggest that cannabis, when consumed in the doses preferred by most users, has a negative impact on decision time and trajectory. They also noted that the effects of cannabis, when combined with alcohol, are more significant than for either alcohol alone or cannabis alone.

²⁸ See, for example, Ian Mulgrew, "Province's liability for tougher drunk-driving law 'staggering', Vancouver Sun, February 2, 2013.

²⁹ Report of the Senate Special Committee on Illegal Drugs, Cannabis: Our Position for a Canadian Public Policy, Chapter 8, Driving Under the Influence of Cannabis, Conclusions.

It is reasonable, then, through the mechanism of the Motor Vehicle Act, to adopt the cautionary approach of a 24 hour roadside suspension, in relation to the driver, who, on the basis of reasonable and probable grounds, appears to be under the influence of cannabis. This is an administrative, not a criminal, penalty and sends the important message that, to use the wording of the Senate Report of 2002, the greatest possible caution is appropriate in responding to those who drive under the influence of cannabis. While it is quite clear that excessive consumption of alcohol has a much more significant ability to impair driving than cannabis (at least for most users and in most circumstances), cannabis consumption is not without its risks.³⁰

³⁰ See, for example, Hindrik Robbe and James O'Hanlon, Marijuana, Alcohol and Actual Driving Performance, U.S. Department of Transportation, National Traffic Safety Administration, July 1999.