



DRUG LAW

**ONTARIO COURT
(GENERAL DIVISION)
(Southwest Region)**

BETWEEN:

HER MAJESTY THE QUEEN

respondent

and

CHRISTOPHER CLAY and JORDAN KENT PRENTICE

Applicants

Heard at London: April 28, 29, and 30, and May 5, 6, 7, 12, 13, 14, 15, 20 and 22, 1997.

McCART J.: (Delivered orally August 14, 1997)

The accused were jointly charged that on or about the 17th day of May, 1995 at the City of London did unlawfully traffic in a narcotic, namely cannabis sativa, contrary to s.4(1) of the *Narcotic Control Act* and further, that on or about the 17th day of May, 1995 at the City of London did unlawfully possess a narcotic, namely cannabis sativa, for the purpose of trafficking contrary to s.4(2) of the *Narcotic Control Act*. In addition, Clay alone was charged that on the same date he did unlawfully traffic in a narcotic, namely cannabis sativa; that he did unlawfully possess a narcotic, namely cannabis sativa for the purpose of trafficking; and did unlawfully cultivate marijuana contrary to s.6(1) of the *Narcotic Control Act*.

Further, on or about May 18, 1995 the accused Clay along with Zachary Bassett and Patricia Prescott were charged with (simple) possession of a narcotic: to wit, cannabis sativa.

I made a ruling that these three did not have status or standing to challenge the provisions relating to that offence as it was not before me but in Provincial Court where they had elected to be tried by a Provincial Court Judge. Prior to May 14, 1997 counsel for Clay had expressed a clear intention to re-elect to be tried before me in the Superior Court. However, this reelection did not occur until subsequent to the Controlled Drugs and Substances Act coming into force and which provided that the charge of simple possession was within the exclusive jurisdiction of the Provincial Court where the amount involved was not more than 30 grams of marijuana. Clay had been charged with possession of 6.1 grams. On the authorities cited to me by Mr. Young, but with some reluctance, I am prepared to accept Mr. Clay's re-election and the matter can be dealt with when I give judgment on the constitutional issues.

At the outset of the trial I heard evidence pertaining to the substantive charges facing Clay and Prentice, set out above in paragraph 1, with respect to which I made no ruling pending a determination of the constitutional challenge launched by Mr. Clay who has applied for an order granting a stay of proceedings on the basis that the offences with which he and Prentice are charged violate s.7 of the *Charter of Rights and Freedoms*. Section 7 provides that:

Everyone has the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

In other words, has there been a deprivation of one or more of these rights, and if so, was the deprivation contrary to the principles of fundamental

justice? I think it is clear that the onus is on the applicants; *Cunningham v. Canada* (1993), 80 C.C.C. (3d) 492 at 496. (S.C.C.).

The constitutional issues which were raised are as follows:

1. Whether it is a violation of the principles of fundamental justice for Parliament to prohibit, upon threat of criminal sanction, conduct which is relatively harmless;
2. Whether it is a violation of the principles of fundamental justice for Parliament to maintain an existing criminal sanction in the face of calls for reform from the majority of Canadians and from a Commission of Inquiry established by Parliament to examine and assess the various claims which have been made respecting the social and medical harms associated with the consumption of *cannabis sativa*;
3. Whether it is a violation of the principles of fundamental justice for Parliament to provide for a term of imprisonment as a sentence for conduct which results in little or no harm to society;
4. Whether Parliament has constitutional authority under s.91 of the *British North America Act* to prohibit activity which results in little or no harm to society;
5. Whether it is a violation of the principles of fundamental justice for Parliament to interfere with an individual's right to make autonomous decisions with respect to that individual's bodily integrity in the absence of compelling reasons for the interference;
6. Whether the principles of fundamental justice include a right to privacy with respect to the recreational, medical or sacramental consumption of an intoxicating substance in the privacy of one's home;
7. Whether the inclusion of *cannabis sativa* in the Schedule of the *Narcotic*

Control Act as a narcotic is an arbitrary classification which violates principles of fundamental justice. Under the new *Controlled Drugs and Substances Act*, marijuana is no longer classified with the so-called hard drugs and some of the penalties have been eased; this can no longer be an issue.

8. Whether inclusion of cannabis sativa in the Schedule of the *Narcotic Control Act* violates the principles of fundamental justice on the basis of overbreadth in that no meaningful exemptions are provided which allow for cannabis sativa to be used for legitimate medical purposes, and in that no meaningful and operative distinction is drawn in the legislation between conduct relating to or facilitating personal consumption of cannabis sativa and conduct which forms part and parcel of the commercial trade in this psychoactive substance.

With respect to the constitutional issues, the relief sought by the accused is:

1. An order declaring that the offences of possession, possession for the purpose, trafficking and cultivation are unconstitutional and of no force and effect as applied to the psychoactive substance, *cannabis sativa*; or
2. An order declaring that the offence of possession of a narcotic is unconstitutional and of no force and effect as applied to the psychoactive substance, *cannabis sativa*, and that the offences of trafficking, possession for the purpose and cultivation be read down so that these offences only apply to acts which form part and parcel of the commercial trade in cannabis sativa and not to acts of distribution which only relate to or facilitate personal consumption; or
3. An order declaring that no term of imprisonment can be applied to conduct relating to the consumption and personal possession of *cannabis sativa* or to conduct which facilitate the consumption and personal possession of cannabis

sativa, or

4. An order suspending the operation of the prohibitions contained in the *Narcotic Control Act* as they relate to *cannabis sativa* until such time as Parliament has a sound scientific basis for criminalizing conduct relating to the consumption and personal possession of *cannabis sativa*, or, at least until such time as Parliament conducts sound scientific studies as directed and recommended by the Standing Senate Committee on Legal and Constitutional Affairs.
5. An order granting a stay or proceedings with respect to any offence which this Honourable Court declares is violative of the *Charter of Rights and Freedoms* and/or *The British North America Act*.

The applicants further submitted that the sought after declaration of constitutional invalidity should issue for the following reasons.

- a) It is a violation of the principles of fundamental justice to criminalize conduct which does not create harm to society that rises above a minimum threshold warranting the imposition of a criminal sanction;
- b) It is a violation of the principles of fundamental justice to create an arbitrary and irrational legislative classification in which *cannabis sativa* is subject to the same legislative regime as the "harder" drugs including the opiate and coca derivatives;
- c) It is a violation of the principles of fundamental justice to create an over broad legislation which unnecessarily and unjustifiably overshoots the purported objectives of the legislation. In this case, the constitutional overbreadth of the legislation is found in the fact that *cannabis sativa* is not legally available for legitimate medical use. In addition, constitutional overbreadth is found in the fact that the Parliament has not drawn a meaningful and operative distinction between conduct relating to personal and private consumption (and acts which facilitate personal consumption) and conduct which forms part and parcel of the illicit black market trade;
- d) The criminalization of conduct relating to the personal and private consumption of *cannabis sativa* violates the constitutional right to privacy which has been recognized as a constituent element of the principles of fundamental justice;

e) The criminalization of conduct relating to the personal and private consumption of *cannabis sativa*, and the criminalization of small-scale trafficking and small-scale cultivation which is in no way related to the black market drug trade, is *ultra vires* Parliament of Canada in that it is not a valid exercise of the criminal law power contained in s.91(27) of the *British North America Act*, nor does it fall within the residual power of "Peace, Order and Good Government".

Aside from the constitutional issues, the accused Clay submitted that the Crown failed to prove beyond a reasonable doubt that the accused was in possession of, trafficked in or cultivated a "narcotic". He submitted that the certificate of analysis which identified the plant substance as *cannabis (marijuana)* did not sufficiently identify a prohibited narcotic. He submitted that the failure of the certificate of analysis to specify the level of THC found in the plant substance renders the certificate deficient in properly identifying a prohibited narcotic. I have carefully considered both the written and oral submissions of counsel and I am of the view that *Perka et al v. The Queen* (1984), 14 C.C.C. (3d) 385 is a complete answer to the defence submissions. The Supreme Court of Canada per Dickson J. held at p. 411:

Where, as here, the Legislature has deliberately chosen a specific scientific or technical term to represent an equally specific and particular class of things, it would do violence of Parliament's intent to give a new meaning to that term whenever the taxonomic consensus among members of the relevant scientific fraternity shifted. It is clear that Parliament intended in 1961, by the phrase *cannabis sativa L* to prohibit all cannabis. The fact that some possibly a majority of botanists would now give that phrase a less expansive reading in the light of studies not undertaken until the early 1970's, does not alter that intention.

During the course of the trial, on May 14, 1997 the *Narcotic Control Act* was repealed and was replaced by the *Controlled Drugs and Substances Act*. It is interesting to note that *sativa L* no longer appears in the Schedule to that Act. Accordingly, I find no merit in the argument of the accused and find that the Crown has proved the charge beyond a reasonable doubt.

At this point it might be useful to outline the historical background what led up to the inclusion of cannabis sativa as a prohibitive substance. In the course of these reasons I use the terms cannabis, cannabis sativa and marijuana interchangeably.

The first narcotic prohibition legislation was the 1911 *Opium and Drug Act* and which contained no reference to marijuana. It was not until 1923 that marijuana was added to the schedule of prohibited drugs. Curiously, there was no discussion or debate in the House of Commons about its inclusion other than the bald statement, "There is a new drug in the Schedule". There was no correspondence in the Narcotic Control Division files about the addition of the new drug. One might ask why it was included because until 1937 there were no convictions for possession of marijuana and for the ensuing 20 years the annual conviction rate fluctuated between 0 and 12. There were no significant numbers of recorded offences until the late 1960's. From that time on, there has been an escalation in prosecutions for not only possession of marijuana but for trafficking.

Although there was no evidence of a problem of marijuana use in Canada in 1923, its inclusion in the *Opium and Drug Act* may have been influenced by the writings of Emily Murphy, a crusading Edmonton, Alberta magistrate. In 1920 she published a series of sensational and racist articles in McLean's Magazine on the horrible effects of drug use and the deliberate debauching of the young by evil, often alien, traffickers. The articles were later expanded into a book, *The Black Candle*, published in 1922. Her views on marijuana were derived mainly from correspondence with U.S. enforcement officials. She quotes, for example, the Chief of Los Angeles Police Department:

Persons using this narcotic [marihuana], 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 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 If this drug is indulged in to any great extent, it ends in the untimely death of its addict.

There was absolutely no truth to any of those wild and outlandish claims. It was in this climate of irrational fear that the criminal sanctions against marijuana were enacted.

Next, it may also be useful to outline the direction in which other jurisdictions are going. In particular, I will refer to the situations that presently prevail in the Netherlands, Germany, Spain, Italy, some of the United States, and Australia. Of all of the major western countries outside of North America, only France and New Zealand have taken no measures to ease the impact of cannabis laws. The national governments of Canada and the United States appear to be somewhat out of step with most of the rest of the western world.

The Netherlands

In 1976 the *Opium Act* in the Netherlands was amended to draw a clear distinction between so-called hard drugs on the one hand and cannabis products on the other. Since that time there has been a policy of non-enforcement of the law as it relates to marijuana use and possession, although possession continues to be a criminal offence. In fact, marijuana and hashish can be openly purchased in hundreds of licensed cafes throughout the country. Studies have shown that since 1976 the consumption of marijuana and hashish has not significantly increased.

The consumption of marijuana in The Netherlands is substantially lower than that in the United States. Current use by high school students in The

Netherlands is much lower than use in the United States (5.4% vs. 29% respectively).

Germany

In Germany, public prosecutors have been given discretion to dismiss minor cases of drug possession unconditionally or on condition that a fine be paid or that community service be completed. Prosecutors have used this discretionary power to dismiss minor drug cases in which the offender purchased or was in possession of drugs for personal use. Each of the German states has developed its own guidelines as to when it would be permissible to dismiss a drug case.

Spain

In Spain, a 1995 amendment to the Penal Code stipulates that a criminal offence for drug possession is only established upon proof of a subjective intent to traffic or facilitate drug use by others. Possession of any illicit drug for personal use is no longer subject to any criminal or administrative sanction.

Italy

In Italy, there has been a movement towards replacing the criminal sanctions for drug use and possession with an administrative sanction. Essentially, the Italian drug laws put the drug user beyond the reach of the criminal law by creating drug law exemptions for possession, purchase and import of drugs for personal use while still keeping the drug user under administrative controls.

The United States of America

In Alaska it is not against the law to possess marijuana in the privacy of one's residence, but it is still illegal to possession marijuana anywhere else in the State. However, Alaska appears to be moving towards overturning decriminalization.

In Alaska, Maine, Minnesota, Mississippi, Nebraska and Oregon, possession of small amounts of marijuana is treated as a "civil violation" rather than a crime, much like minor traffic offences. In California, New York and North Carolina, possession of small amounts is deemed a misdemeanour; in Ohio it is a "minor misdemeanour" and in Colorado it is a "petty offence".

I wish to refer to two American decisions. *Ravin v. State of Alaska*, 537 Pacific Reporter, 2d series 494, to which I was referred by the applicants, does not assist them. The Alaska court held that possession of marijuana by adults at home for personal use is constitutionally protected. The court based its ruling on a new provision of the state constitution that explicitly guarantees a right of privacy. Without that constitutional provision, no such right would exist.

The respondent referred me to the decision of *NORML v. Griffin Bell et al.*, 488 F. Supp. 123 (1980), a decision of the United States District Court of the District of Columbia. This case stands essentially for the proposition that the prohibition of the private possession and use of marijuana does not violate the constitutional right of privacy in one's home, since smoking marijuana does not qualify as a fundamental right. Reference may also be had to *NORML v. Gain et al.*, 161 Cal. Rpt. 181 (1979).

Thus, it can be seen that nowhere in the United States has the simple possession of marijuana been legalized, although, as noted above, in many of the states the consequences of simple possession have been eased to a greater or lesser extent.

Australia

In 1987, in South Australia, and in 1992, in the Australian Capital Territory, "expiation" schemes were introduced which effectively de facto decriminalized the use and possession of cannabis. Under these schemes, the police have the option of issuing an expiation notice to anyone caught with a specified amount of cannabis instead of charging the individual with a criminal offence. The expiation notice allows the offender to pay a small fine and avoid being saddled with a criminal record. Small-scale cannabis possession, cultivation or use remain criminal offences: but they are no longer penalized as though they were. In South Australia, the designated amount allowing for the issuance of an expiation notice in lieu of a criminal charge is 100 grams of cannabis or 20 grams of cannabis resin. In addition, an expiation notice can be used for someone cultivating up to 10 cannabis plants. In the Australian Capital Territory, an expiation notice can be issued for 25 grams of cannabis or up to 5 plants being cultivated.

In most of the so-called "decriminalization" areas, the possession of marijuana remains against the law, although the penalties have been eased. However, in no western country has cultivation, trafficking or possession for the purpose of trafficking been decriminalized, nor have the penalties been reduced.

I wish to turn now to some statistical evidence which was introduced by various of the witnesses and which I accept as valid. I heard from a most impressive number of experts, among whom there was a general consensus about effects of the consumption of marijuana. From an analysis of their evidence I am able to reach the following conclusions:

1. Consumption of marijuana is relatively harmless compared to the so-called hard drugs and including tobacco and alcohol;

2. There exists no hard evidence demonstrating any irreversible organic or mental damage from the consumption of marijuana;
3. That cannabis does cause alteration of mental functions and as such, it would not be prudent to drive a car while intoxicated;
4. There is no hard evidence that cannabis consumption induces psychoses;
5. Cannabis is not an addictive substance;
6. Marijuana is not criminogenic in that there is no evidence of a causal relationship between cannabis use and criminality;
7. That the consumption of marijuana probably does not lead to "hard drug" use for the vast majority of marijuana consumers, although there appears to be a statistical relationship between the use of marijuana and a variety of other psychoactive drugs;
8. Marijuana does not make people more aggressive or violent;
9. There have been no recorded deaths from the consumption of marijuana;
10. There is no evidence that marijuana causes amotivational syndrome;
11. Less than 1% of marijuana consumers are daily users;
12. Consumption in so-called "de-criminalized states" does not increase out of proportion to states where there is no de-criminalization.
13. Health related costs of cannabis use are negligible when compared to the costs attributable to tobacco and alcohol consumption.

Harmful Effects of Marijuana and the Need for More Research

Having said all of this, there was also general consensus among the experts who testified that the consumption of marijuana is not completely harmless. While marijuana may not cause schizophrenia, it may trigger it. Bronchial pulmonary damage is at risk of occurring with heavy use. However, to be fair, there is also general agreement among the experts who testified that moderate use of marijuana causes no physical or psychological harm. Field studies in Greece, Costa Rico and Jamaica generally supported the idea that marijuana was a relatively safe drug - not totally free from potential harm, but unlikely to create serious harm for most individual users or society.

The LeDain Commission found at least four major grounds for social concern: the probably harmful effect of cannabis on the maturing process in adolescence; the implications for safe driving arising from impairment of cognitive functions and psycho motor abilities, from the additive interaction of cannabis and alcohol and from the difficulties of recognizing or detecting cannabis intoxication; the possibility, suggested by reports in other countries and clinical observations on this continent, that the long term, heavy use of cannabis may result in a significant amount of mental deterioration and disorder; and the role played by cannabis in the development and spread of multi-drug use by stimulating a desire for drug experience and lowering inhibitions about drug experimentation. This report went on to state that it did not yet know enough about cannabis to speak with assurance as to what constitutes moderate as opposed to excessive use.

The Report of the National Task Force on Cannabis, Canberra, Australia, was delivered on September 30, 1994. This Task Force concluded in general, that the findings on the health and psychological effects of cannabis suggest that cannabis use is not as dangerous as its opponents might believe, but that its use is not completely without risk, as some of its proponents would argue. As it is

most commonly used, occasionally, cannabis presents only minor or subtle risks to the health of the individual. The potential for problems increases with regular heavy use. While the research findings on some potential risks remain equivocal, there is clearly sufficient evidence to conclude that cannabis use should be discouraged, particularly among youth.

Sometime prior to the Canberra Report, the Royal Commission into the non-medical use of drugs in South Australia was released. This Commission concluded that marijuana is not an addictive drug and "is comparatively harmless in moderate doses, although there are effects on skills such as those required for driving, and its effects may be greater if it is taken in combination with other drugs. It is almost certainly harmful to some extent in high doses. The summary of the scientific and medical evidence does not entirely resolve the policy questions, since further value judgments have to be made."

Finally, I would refer to a commentary by Dr. Harold Kalant on three reports which appeared in 1982 respecting the potential health damaging consequences of chronic cannabis use. The one report is that of an expert group appointed by the Advisory Council on the misuse of drugs in the United Kingdom. The second is that resulting from a scientific meeting sponsored jointly by the Addiction Research Foundation of Ontario and the World Health Organization. The third is that of a committee set up by the Institute of Medicine, National Academy of Sciences, of the United States of America. There was general agreement by the three groups after a review of essentially the same body of evidence. In brief, the verdict in each case has been that the available evidence is not nearly complete enough to permit an identification of the full range and frequency of occurrence of adverse effects from cannabis use, but that the practice can certainly not be considered harmless and innocent.

I can only conclude from a review of these reports and the other viva voce evidence which I heard that the jury is still out respecting the actual and potential harm from the consumption of marijuana. It is clear that further research should be carried out. While it is generally agreed that marijuana used in moderation is not a stepping stone to hard drugs, in that it does not usually lead to consumption of the so-called hard drugs, nevertheless approximately 1 in 7 or 8 marijuana users do graduate to cocaine and/or heroin.

There have been a number of studies commissioned with respect to potential harms and benefits of marijuana consumption. I have attached as an addendum to these reasons a digest of the reports prepared for the benefit of the court by the accused Christopher Clay which I accept as accurate, as far as they go.

Neither of the Applicants have alleged that they need to possess marijuana for medical purposes and any finding that I might make about the availability of marijuana for medical use would have to be of some benefit to the applicants or they would not have standing to ask for it. I agree and find that the right to possess marijuana for medical purposes is irrelevant to a consideration of the constitutionality issues. Having said that, it might be useful to outline what is generally agreed to be the therapeutic value of marijuana and I quote in part from Ex. B from the affidavit of Dr. John P. Morgan, Professor of Pharmacology, of the State of New York, who testified during the course of the trial. He had this to say:

A number of studies have shown that marijuana is effective in reducing nausea and vomiting. Lowering intra-ocular pressure associated with glaucoma, and decreasing muscle spasm and spasticity. People undergoing cancer chemotherapy have found smoked marijuana to be an effective anti-nauseant - often more effective than available pharmaceutical medications. Marijuana is also smoked by thousands of Aids patients to treat the nausea and vomiting associated with both the disease and AZT drug therapy. Because it stimulates appetite, marijuana also counters HIV-related wasting allowing Aids patients to gain weight and prolong their lives.

In 1986, a synthetic THC capsule (Marinol) was marketed in the United States and labelled for use as a anti-emetic. Despite some utility, this product has serious drawbacks, including its cost. For example, a patient taking three 5 milligram capsules a day would spend over \$5,000 to use Marinol for one year. In comparison to the natural, smokable product, Marinol also has some pharmacological shortcomings. Because THC delivered in oral capsules enters the bloodstream slowly, it yields lower serum concentrations per dose. It more frequently yields unpleasant psycho-active effects. In patients suffering from nausea, the swallowing of capsules may itself promote vomiting. In short, the smoking of crude marijuana is more efficient in delivering THC and, in some cases, it may be more effective.

As an aside, Parliament may wish to take a serious look at easing the restrictions that apply to the use of marijuana for the medical uses as outlined above as well as for alleviating some of the symptoms associated with multiple sclerosis, such as pain and muscle spasm. There appears to be no merit to the widespread claim that marijuana has no therapeutic value whatsoever. In any event, as I understand it, Marinol is not available in Canada.

With respect to the LeDain Commission Report in which there was not consensus, the majority (3) of Commissioners recommended repeal of the prohibition against simple possession. One Commissioner recommended complete removal of cannabis from the Narcotic Control Act and that its sale and use be placed under controls similar to those governing the sale and use of alcohol. However, this Commissioner stated at the outset of her conclusions;

With legalization, there is a strong possibility that the number of regular users will increase and that the effects of cannabis intoxication will be observed in a greater number of people. It is also expected that a certain number of cannabis users would go onto other hallucinogens and would make greater use of barbiturates, tranquilizers and alcohol, as well.

The 5th Commissioner said this:

I must dissent from the recommendation of the majority of my colleagues and recommend that the prohibition on the possession of cannabis be maintained, for the time being at least. Possession of cannabis should be punishable, upon summary conviction, by a fine of

\$25 for the first offence and by a fine of \$100 for any subsequent offence.

This recommendation is not too dissimilar from the present law under the *Controlled Drugs and Substances Act*.

Cultivation, Trafficking and Possession for the Purpose of Trafficking as they Relate to Marijuana

Counsel for the applicants appear to have abandoned their constitutional challenge to all but possession of marijuana and cultivation and trafficking which only relate to or facilitate personal consumption. If there has not been abandonment, it seems to be they have virtually conceded that they cannot succeed. In his submissions Mr. Young claimed that Parliament had overshot the mark, in failing to draw a meaningful distinction between small scale trafficking and acts which form part and parcel of the illicit black market trade. Again, in the applicants' memorandum of argument paragraph 34 on pp. 27 and 28 this submission is made:

It is respectively submitted that the failure to draw a meaningful and operative distinction with the Narcotic Control Act between private "vice" and the business of encouraging, promoting and profiting from the activity for commercial purposes is inconsistent with the modern legislative approach to consensual crime and does not serve a valid legal objective, By widening the net this broadly, the offences contained in the Narcotic Control Act go well beyond serving a valid state objective (i.e. combatting the social evils of the black market drug trade) and serve to promote a form of "legal moralism" which has been frowned upon by the Supreme Court of Canada.

Furthermore, in his submissions Mr. Young agreed that Parliament has a right to intervene in the commercial trade and the black market trade in marijuana.

It may be instructive to note that, with one exception, none of the witnesses who testified recommend legalizing the cultivation, trafficking and possession for the purpose of trafficking. The one exception, Mme. Marie Bertrand who was a member of the LeDain Commission recommended the removal of

cannabis from the *Narcotic Control Act*. She further recommended that the sale and use of cannabis be placed under controls similar to those governing the sale and use of alcohol, including legal prohibition of unauthorized distribution. Thus, even she was opposed to the unrestricted cultivation, trafficking and possession for the purpose of trafficking.

Canada is one of 85 countries which have ratified the United Nations convention against illicit trafficking in narcotic drugs and psycho-tropic substances (1988). Article 3(2) of the convention provides:

Subject to its constitutional principles and the basic concepts of its legal system, each party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psycho-tropic substances for personal consumption contrary to the provisions of the 1961 convention, the 1961 convention as amended, or the 1971 convention.

However, Article 3 and 4(c) provides:

Notwithstanding the preceding paragraphs, in appropriate cases of a minor nature, the parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social re-integration, as well as, when the offender is a drug abusers, treatment and after care.

Principles of Fundamental Justice

As stated previously and to paraphrase s. 7 of the *Charter of Rights and Freedoms*, no one can be deprived of the right to life, liberty and security except in accordance with the principles of fundamental justice. In other words, (a) has there been a deprivation of one or more of these rights, and if so, (b) was the deprivation contrary to the principles of fundamental justice? The onus is on the applicant to establish these two things; *Cunningham v. Canada* (1993), 80 C.C.C. (3d) 492 at 496 (S.C.C.) (per McLachlin, J.). I am prepared to concede that the applicants, who are facing criminal charges with most serious consequences, have their liberty and security in grave peril. The question is whether the provisions of the *Narcotics Control Act* under which they are charged violate the principles of fundamental justice.

In attempting to arrive at what is meant by the term "principles of fundamental justice", I have gleaned the following from a review of some of the cases referred to me.

The principles of fundamental justice are concerned not only with the interests of the person who claims his liberty has been limited, but with the protection of society. Fundamental justice requires that a fair balance be struck between these interests both substantively and procedurally: *Cunningham v. Canada* (1993), 80 C.C.C. (3d) 492 at 499 per McLachlin J.

A mere common law rule does not suffice to constitute a principle of fundamental justice, rather, as the term implies, principles upon which there is some consensus that they are vital or fundamental to our societal notion of justice are required: *Rodriguez v. B. C. (A.G.)* (1993), 85 C.C.C. (3d) 15 at 65 per Sopinka J.

Where the deprivation of the right in question does little or nothing to enhance the state's interest (whatever it may be), it seems to me that a breach of fundamental justice will be made out as the individual's rights will have been deprived for no valid purpose: *Ibid* at p. 68.

It follows that before one can determine that a statutory provision is contrary to fundamental justice, the relationship between the provision and the state interest must be considered. One cannot conclude that a particular limit is arbitrary because (in the words of my colleague McLachlin J.) it bears no relation to or is inconsistent with the objective that lies behind the legislation without considering the state interest and the society concerns which it reflects: *Ibid* p.69.

Discerning the principles of fundamental justice with which deprivation of life, liberty or security of the person must accord, in order to withstand constitutional scrutiny, is not an easy task... principles upon which there is some consensus that they are vital or fundamental to our societal notion of justice is required. *Ibid* p. 65.

The principles of fundamental justice cannot be created for the occasion to reflect the court's dislike or distaste of a particular statute. While the principles of fundamental justice are concerned with more than process, reference must be made to principles which are "fundamental" in the sense that they have general acceptance among reasonable people. *Ibid* p. 78.

Unlike the situation with partial decriminalization of abortion, the decriminalization of attempted suicide cannot be said to represent a consensus by Parliament or by Canadians in general, that the autonomy interest of those wishing to kill themselves is paramount to the state interest in protecting the life of its citizens. *Ibid* p. 71.

Reviewing legislation for overbreadth as a principle of fundamental justice is simply an example of the balancing of the state interest against that of the individual: *R. v. Heywood* (1994), 94 C.C.C. (3d) 481 at 516, per Cory J.

Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others, no one is to be forced to act in a way

contrary to his beliefs or his conscience. *R. v. Big M. Drug Mart Ltd.* (1985), 1 S.C.R. 295 at 336-7 per Dickson, J. as he then was.

At this juncture it will be useful to indicate what Canadians think about the laws pertaining to the possession of marijuana. In 1977, a Gallop Poll reported that the majority of Canadians opposed the harsh criminalization of cannabis possession. In particular, 36 percent of Canadians wanted to see cannabis possession sanctioned by a fine at the maximum, whereas 23 percent thought it should not be a full criminal offence, and only 35 percent wanted the offence to be a full criminal offence. More recently, Health Canada released a public opinion poll in 1995 which found that 27 percent of Canadians believed that possession of marijuana should be legal, while 42.1 percent believe it should remain illegal but only be punished by a fine or a non-jail sentence. Therefore, in 1995, it is apparent that 70 percent of Canadians are opposed to the use of incarceration to combat marijuana use. On the other hand, a significant majority of Canadians do not believe that possession of marijuana should be legal.

I will now attempt to address the several issues raised by the applicants.

Fundamental Justice - The Harm Principle

With apparent reliance on the decision of the Supreme Court in Reference Re: s. 94 (2) of the *Motor Vehicle Act* (1985), 23 C.C.C. (3d) 289, it is the applicants' position that the illegal conduct causes actual harm before Parliament is entitled to legislate against that conduct. I could find no authority for that proposition and in any event I believe I have amply demonstrated that the consumption of marijuana does cause harm, albeit and perhaps not as much harm as was first believed. Reference may also be had to: *R. v. Hinchey* (1996), 111 C.C.C. (3d) 353; *R. v. Audet* (1996), 106 C.C.C. (3d) 481; *R. v. Butler* (1992), 70 C.C.C.

(3d) 129; and *Irwin Toy Ltd. v. Quebec (Attorney General)* (1989), 58 D.L.R. (4th) 577.

Fundamental Justice - Arbitrariness

I believe it is the applicant's submission that it is a violation of the principles of fundamental justice to create an arbitrary and legislative classification in which marijuana is subject to the same legislative regime as the harder drugs is answered by the passage of the Controlled Drugs and Substances Act. In this Act marijuana is listed in a separate schedule from the so-called hard drugs and the penalties for simple possession of small amounts of marijuana have been significantly reduced. Given the actual and potential harm which results from the consumption of marijuana, there can hardly be any argument that its prohibition is arbitrary or irrational.

Fundamental Justice - Overbreadth

The applicants submit that the prohibition on the use and distribution of marijuana is overbroad in that (a) no meaningful exemptions are provided for legitimate medical use and (b) the legislation fails to make any meaningful distinction between personal and private acts of consumption or distribution and acts which form part and parcel of the illicit drug trade. I have already dealt with (a), finding that the applicants have no standing in that neither of them have need to consume marijuana for therapeutic purposes. With respect to (b) I believe the simple answer is that in certain circumstances the consumption of marijuana is harmful in a variety of respects. Furthermore, as many of the studies have indicated, further research is necessary to determine the long-range effects of marijuana consumption.

Fundamental Justice - Personal Privacy and Autonomy

I quote from a recent decision of the Supreme Court of Canada as follows:

Freedom of the individual to do what he or she wishes must, in any organized society, be subjected to numerous constraints for the common good. The state undoubtedly has the right to impose many types of restraints on individual behaviour, and not all limitations will attract Charter scrutiny. On the other hand, liberty does not mean mere freedom from physical restraint. In a free and democratic society, the individual must be left room for personal autonomy to live his or her own life and to make decisions that are of fundamental personal importance. In *R. v. Morgentaler*, [1988] 1 S.C.R. 30, Wilson J. noted that the liberty interest was rooted in the fundamental concepts of human dignity, personal autonomy, privacy and choice in decisions going to the individual's fundamental being. She stated, at p. 166:

Thus, an aspect of the respect for human dignity on which the Charter is founded is the right to make fundamental personal decisions without interference from the state. This right is a critical component of the right to liberty. Liberty, as was noted in *Singh*, is a phrase capable of a broad range of meaning. In my view, this right properly construed, grants the individual a degree of autonomy in making decisions of fundamental personal importance.

While I was in dissent in that case, I agree with that statement.

B. (R.) v. Children's Aid, (1995) 1 S.C.R. 315 at 368-9 per Lamer, C.J.

In my view, the critical words in the above quotations are "fundamental personal importance", "fundamental concepts of human dignity", "personal autonomy", "privacy and choice in decisions going to the individual's fundamental being". The therapeutic value of marijuana aside, it was generally agreed among the experts that, in the words of Dr. Morgan, marijuana is primarily used for occasional recreation. One might legitimately ask whether this form of recreation qualifies as of "fundamental personal importance" such as to attract Charter attention. In this regard, I quote from the *Alaska* decision at p. 502:

Few would believe they have been deprived of something of critical importance if deprived of marijuana.

Again, in the *Bell* decision at p. 133:

Private possession of marijuana....cannot be deemed fundamental.

Finally, in *Cunningham v. Canada*, supra, I quote from the judgment of McLachlin J. at p. 498 where she says:

The Charter does not protect against insignificant or 'trivial' limitations of rights.

On the basis of my findings, there can be no doubt that the *Narcotic Control Act* addresses a concern which is national in scope and in my view it falls within the competence of the Parliament of Canada as affecting the peace, order and good government of Canada.

Reference may also be had to *R. v. Cholette*, a decision of the Supreme Court of British Columbia (Dorgan, J.) released March 23, 1993 and *R. v. Hamon*, a decision of the Quebec Court of Appeal, (1993), 85 C.C.C. (3d) 490. In both of these cases the prohibition against the cultivation and possession of marijuana was held not to infringe s. 7 of the *Canadian Charter of Rights and Freedoms*. I adopt the reasoning in both of these cases. For whatever significance it may have, in *R. v. Hamon*, leave to appeal to the Supreme Court of Canada was refused on January 27, 1994. While I have not referred specifically to all of the submissions and the case law, I have considered everything that was put before me and referred to only what I felt was necessary to reach my decision and explain my reasons.

All of the so-called decriminalized initiatives in the Netherlands, etc. were legislative initiatives, not court imposed. The changes requested by the applicants regarding simple possession and small-scale cultivation would constitute a completely different approach to the question and would in my view amount to an unwarranted intrusion into the legislative domain. Any changes to the *Narcotic*

Control Act should be made by Parliament. The following quote from *NORML v. Bell et al.*, supra, may be instructive:

Congressional action must be upheld as long as a rational basis still exists for the classification. The continuing questions about marijuana and its effects make the classification rational.

Furthermore, judicial deference is appropriate when difficult social, political and medical issues are involved. Courts should not step in when legislators have made policy choices among conflicting alternatives. That this court might resolve the issues differently is immaterial. "When Congress undertakes to act in areas fraught with medical and scientific uncertainties, legislative options must be especially broad and courts should be cautious not to rewrite legislation, even assuming, arguendo, that judges with more direct exposure to the problem might make wiser choices." *Marshall v. United States*, 414 U.S. 417, 427, 94 S.Ct. 700, 706, 38 L.Ed. (2d) 618 (1974).

Thus, this court should not substitute its judgment for the reasonable determination made by Congress to include marijuana under the C.S.A.

C.S.A. stands for *Controlled Substances Act*. In *R. v. Heywood*, supra, Cory J. says much the same thing at p. 524.

In further response to the submission that I should correct what is perceived by some to be an injustice, i.e. decriminalization of the possession of marijuana, because the Government has taken no action in this regard, I wish to quote from the judgment of McLung, J.A. in *Vriend v. Alberta* (1996), 132 D.L.R. (4th) 595 at 606:

When considering the assumption of legislative initiatives:

...the court must be conscious of its proper role in the constitutional makeup of our form of democratic government and not seek to make fundamental changes to long-standing policy on the basis of general constitutional principles and its own view of the wisdom of legislation. On the other hand, the court has not only the power but the duty to deal with this question if it appears that the Charter has been violated... The principles of fundamental justice leave a great deal of scope for personal judgment and the court must be careful that they do not become principles which are of fundamental justice in the eye of the beholder *only*.

Rodriguez v. British Columbia (Attorney-General) (1993), 107 D.L.R. (4th) 342 at p. 392, 85 C.C.C. (3d) 15, [1993] 3 S.C.R. 519 (per Sopinka J.) While he was addressing the limits of "fundamental justice" as employed in s. 7 of the Charter, Sopinka J.'s curial alert, which I have quoted, should not be artificially distinguished. It applies with equal, if not more, force when legisceptical Canadian judges decide to strike down constitutionally assembled laws in favour of their own, substituting their vision of the ideal statute in place of that which has been democratically endorsed by the electors;

and again at p. 607:

While any legislative product touching governmental activity is, of course, now subject to Charter scrutiny under its ss. 32 and 52 [*Constitution Act, 1982*], the practice of judicially upgrading that product should be strictly disciplined. This is because of the spectre of constitutionally hyperactive judges in the future pronouncing all of our emerging rights laws and according to their own values; judicial appetites, too, grow with the eating. Equally undesirable is the prospect of Canada's legislators, painfully aware of later electoral rejection for backing the wrong political horses, further acquiescing in the growing (and painless) expedient of shipping awkward political questions to the judiciary for decision, thus reserving to themselves the privilege of possible later disclaimer.

I commend a reading of the entire judgment which, in a brilliant manner, delineates the relative roles of the legislature and the judiciary in relation to our Constitution.

Conclusions

As I stated previously, the two questions required to be answered are (a) do the accused or either of them stand at risk of being deprived of their right to life, liberty and security, and, (b) if so, is that deprivation contrary to the principles of fundamental justice? Accepting that answer to (a) is yes, then clearly, for the reasons I have stated, the answer to (b) must be no. In other words, with respect to marijuana, the prohibition against the possession, possession for the purpose of trafficking, trafficking and cultivation do not infringe s. 7 of the *Constitution*.

The overwhelming weight of the evidence which I heard supports legislative controls over any scheme which might ease or remove the criminal

sanctions for simple possession of marijuana. As I have already stated, with one exception, nowhere in the western world has trafficking, possession for the purpose of trafficking and cultivation been decriminalized, nor has there been any recommendation (save for one) that this should take place. As I have already pointed out, easing of restrictions on the possession and use of marijuana is within the domain of the legislative branch of government. I do not believe there is any dispute that this court has power only to declare that the *Narcotics Control Act* as it pertains to marijuana is either constitutional or it is not.

With the passage of the *Controlled Drugs and Substances Act*, the consequences of being convicted for possession of a small amount of marijuana has greatly eased. Furthermore, s. 717 of the *Criminal Code* now provides for "alternative measures" other than judicial proceedings. Thus, Parliament is moving away from the harshness of the penalties for possession of marijuana and perhaps, some day, they may adopt some of the measures which exist, for example, in Australia and which I do not believe would meet with much objection from an informed public.

Having found that the *Narcotics Control Act* as it pertains to marijuana does not infringe s. 7 of the *Constitution*, I am prepared to hear further evidence and/or submissions pertaining to the substantive charges.

DELIVERED ORALLY: August 14, 1997

Justice J.F. McCart

R. v. CLAY and PRENTICE

ADDENDUM TO THE JUDGEMENT OF McCART J.

DATED AUGUST 14, 1997

CANNABIS COMMISSION REPORTS

A summary of the potential harms & benefits

Prepared by Chris Clay, May 17, 1997

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Report of the Indian Hemp Drugs Commission (India, 1893-1894)

- The excessive consumers then must be regarded as bearing but a small proportion to the moderate - certainly not more than 5 per cent, or 1 to 20. (p.130)
- Cannabis indica must be looked upon as one of the most important drugs of Indian Materia Medica. (p.175)
- But long-continued smoking, whether of ganja or of any other substance, doubtless results in the deposition of finely divided carbonaceous matter in the lung tissues, and the presence of other irritating substances in the smoke ultimately causes local irritation of the bronchial mucous membrane, leading to increased secretion, and resulting in the condition which is described as chronic bronchitis in ganja smokers. (p.177)

- The vast majority assert that in some one or other their forms [cannabis] may produce at least temporarily beneficial effects. Many even of those who regard the use of the drugs as on the whole baneful admit such temporary benefits. (p.181)
- The drugs are said to be cheering in their effects, and to be prized by many on this account. (p.182)
- [T]here are very few witnesses who even profess to have any experience of evil effects resulting from moderate consumption. (p.183)
- The truth seems to be that while, no doubt, these drugs are more commonly consumed merely as stimulants than from any clearly defined idea of their beneficial results, yet they are popularly believed to have (if moderately used) some such beneficial results as have been described above. Moderate consumers believe this, and would feel a sense of deprivation if they were unable to obtain what they regard as a beneficial stimulant This deprivation would be more felt among the poorer classes than among the wealthier, whose tastes lead them to more expensive luxuries. (p.183)
- The experience of our jails seems clearly to confirm the general opinion that the opium habit takes a much stronger hold than the ganja habit, and that no injurious physical effects follow the compulsory cessation of the latter. (p.185)
- In the absence of all physiological evidence of tissue changes being produced by these drugs, as they are produced by alcohol, it must be presumed, until the contrary appear, that the moderate use does not cause injury in any but the most exceptional cases. (p.202)
- The medical evidence which has thus been analyzed very clearly indicates in the opinion of the Commission that when the basis of the opinions as to the alleged evil effects of the moderate use of the drugs is subjected to careful examination, the grounds on which the allegations are founded prove to be in the highest degree defective. (p.223)
- The most striking feature of the medical evidence is perhaps the large number of practitioners of long experience who have seen no evidence of any connection between hemp drugs and disease. (p.223)
- As in long-continued and excessive cigarette smoking considerable bronchial irritation and chronic catarrhal laryngitis may be induced, so, too, may a similar condition be caused by excessive ganja or charas smoking. (p.223)
- Altogether it is clear that the moderate consumer is as a rule perfectly inoffensive. There appear to be quite adequate grounds for accepting the statement of those who assert that as a rule he "cannot be distinguished from the total abstainer." (p.255)
- [A] majority of eight to one hold that moderate consumption of these drugs has no connection with crime in general or with crimes of any particular character. A majority of nearly four to one hold the same view in regard to excessive consumption. ... [T]he general opinion is that hemp drugs have per se no necessary connections with crime. (p.256)
- There seems, therefore, good reason for believing that the connection between hemp drugs and ordinary crime is very slight indeed. (p.257)
- It has been clearly established that the occasional use of hemp in moderate doses may be beneficial; but this use may be regarded as medicinal in character. ... In regard to the physical effects, the Commission have come to the conclusion that the moderate use of hemp drugs is practically attended by no evil results at all. ... Speaking generally, the Commission are of the opinion that the moderate use of hemp drugs appears to cause no appreciable physical injury of any kind. (p.263)

- In respect to the alleged mental effects of the drugs, the Commission have come to the conclusion that the moderate use of hemp drugs produces no injurious effects on the mind. (p.264)
- In regard to the moral effects of the drugs, the Commission are of the opinion that their moderate use produces no moral injury whatever. There is no adequate ground for believing that it injuriously affects the character of the consumer. (p.264)
- Viewing the subject generally, it may be added that the moderate use of these drugs is the rule, and that the excessive use is comparatively exceptional. The moderate use practically produces no ill effects. (p.264)

**The Marihuana Problem in the City of New York (The "LaGuardia Report")
(U.S.A., 1944)**

Reprinted in "The Marihuana Papers", Edited by David Solomon

- The confirmed marihuana smoker ... appears to be quite conscious of the quantity he requires to reach the effect called "high." Once the desired effect is obtained he cannot be persuaded to consume more. He knows when he has had enough. The smoker determines for himself the point of being "high," and is ever-conscious of preventing himself from becoming "too high." (p.250)
- We have been unable to confirm the opinion expressed by some investigators that marihuana smoking is the first step in the use of such drugs as cocaine, morphine, and heroin. The instances are extremely rare where the habit of marihuana smoking is associated with addiction to these other narcotics. (p.250)
- During our investigation many law enforcement officers, representing various federal, state and local police bureaus, were interviewed and asked for a confidential expression of opinion on the general question of crime and marihuana. In most instances they unhesitatingly stated that there is no proof that major crimes are associated with the practice of smoking marihuana. (p.251)
- The practice of smoking marihuana does not lead to addiction in the medical sense of the word. (p.259)
- The use of marihuana does not lead to morphine or heroin or cocaine addiction and no effort is made to create a market for these narcotics by stimulating the practice of marihuana smoking. (p.260)
- The publicity concerning the catastrophic effects of marihuana smoking in New York City is unfounded. (p.260)
- [I]t is noteworthy that in none of the descriptions is there found an expression of antagonism or antisocial behavior which led to acts of violence or what would be called criminal conduct. (p.262)
- Indulgence in marihuana does not appear to result in mental deterioration. (p.312)
- It is important to note that neither the ingestion of marihuana nor the smoking of marihuana cigarettes affects the basic outlook of the individual except in a very few instances and to a very slight degree. In general the subjects who are withdrawn and introversive stay that way, those who are outgoing remain so, and so on. Where changes occur the shift is so slight as

- to be negligible. In other words reactions which are natively alien to the individual cannot be induced by the ingestion or smoking of the drug. (p.334)
- Under the influence of marihuana the basic personality structure of the individual does not change but some of the more superficial aspects of his behavior show alteration. (p.335)
 - Furthermore, those who have been smoking marihuana for a period of years showed no mental or physical deterioration which may be attributed to the drug. (p.358)
 - From limited observations on addicts undergoing morphine withdrawal and on certain types of psychopathic disturbances, the impression was gained that marihuana had beneficial effects, but much more extensive and controlled study is required for definite conclusions to be drawn concerning therapeutic usage.(p.359)
 - The typical effects of marihuana on man are ascribed to actions on the central nervous system. In dogs, the characteristic effect is ataxia. ... In rabbits a characteristic effect of marihuana extracts is corneal areflexia. (p.359)

The President's Commission on Law Enforcement and Administration of Justice Task Force Report: Narcotics and Drug Abuse (U.S.A., 1967)

- Its effects are rather complicated, combining both stimulation and depression. Much of its effects depends on the personality of the user. ... Tolerance is very slight if it develops at all. Physical dependence does not develop. (p.3)
- Marihuana is equated in law with the opiates, but the abuse characteristics of the two have almost nothing in common. The opiates produce physical dependence. Marihuana does not. A withdrawal sickness appears when use of the opiates is discontinued. No such symptoms are associated with marihuana. The desired dose of opiates tends to increase over time, but this is not true of marihuana. Both can lead to psychic dependence, but so can almost any substance that alters the state of consciousness. (p.13)
- It might, but certainly will not necessarily or inevitably, lead to aggressive behavior or crime. The response will depend more on the individual than the drug. This hypothesis is consistent with the evidence that marihuana does not alter the basic personality structure. (p.13)
- The charge that marihuana "leads" to the use of addicting drugs needs to be critically examined. There is evidence that a majority of the heroin users who come to the attention of public authorities have, in fact, had some prior experience with marijuana. But this does not mean that one leads to the other in the sense that marihuana has an intrinsic quality that creates a heroin liability. There are too many marihuana users who do not graduate to heroin, and too many heroin addicts with no known prior marihuana use, to support such a theory. (p.13)
- In the United States neither cannabis psychoses nor cannabis dependency has been described. (p.24)
- With regard to crime, other than the violation of law occurring by virtue of acquiring and possessing marihuana, there is no reliable evidence that marihuana "causes" crime. (pp.24-25)

- With regard to traffic accidents, data is lacking. ... Effects are no doubt related to dosage but no studies on varied dosage using driving tasks have been done. (p.25)

Cannabis: Report by the Advisory Committee on Drug Dependence (England, 1968)

- Because of the relatively rapid onset when the drug is smoked, experienced smokers can adjust their dosage to achieve the effect that they seek. (p.6)
- The taking of cannabis does not normally result in any characteristic physical effects except that of redness of the eyes. (p.6)
- The effects of cannabis use in moderate amounts are predominantly psychological. They begin with a sense of excitement or tension, sometimes with apprehension or hilarity, followed as a rule by a sense of heightened awareness: colours, sounds and social intercourse appear more intense and meaningful. A sense of well-being is then usual. (p.6)
- Having reviewed all the material available to us we find ourselves in agreement with the conclusion reached by the Indian Hemp Drugs Commission appointed by the Government of India (1893 - 1894) and the New York Mayor's Committee on Marihuana (1944), that the long-term consumption of cannabis in moderate doses has no harmful effects. (pp.6-7)
- Witnesses knowledgeable about patterns of use told us that although some people smoked every day without interference to work or social life, the typical user probably took the drug once or twice a week, aiming at a "high" of 2 or 3 hours. (p.11)
- Several medical witnesses speculated that it had appeared to be beneficial for young patients during depression and also to have helped ex-addicts to abstain from heroin. (p.11)
- It was generally agreed that it was dangerous to drive a motor vehicle under the influence of cannabis not so much because driving ability was over-estimated (as with alcohol) as because of possible distortion of perception of depth and perspective. (p.11)
- Most observers discount any pharmacological action disposing the cannabis-smoker to resort to other drugs, and look for other explanations. Some have suggested that in order to obtain their supplies cannabis-users must inevitably resort to the criminal underworld where opiates are also available. (p.12)
- It can clearly be argued on the world picture that cannabis use does not lead to heroin addiction. (p.13)
- Published statements on links between cannabis and crime tend to confuse the consequences of enforcing legal restrictions on non-conforming drug users with alleged criminogenic effects of cannabis-smoking itself. Since possession of cannabis is generally prohibited, the user found in possession automatically acquires a criminal record. To obtain his supply, an illicit source must also be involved. (p.13)
- In the United Kingdom the taking of cannabis has not so far been regarded, even by the severest critics, as a direct cause of serious crime. (p.14)
- Unlike the "hard" drugs, such as heroin, cannabis does not produce tolerance. Consuming the same, sometimes even a smaller, amount of cannabis continues to produce the original effect. Unlike heroin, cannabis does not

cause physical dependence and withdrawal effects do not occur when its use is discontinued. (p.14)

- An increasing number of people, mainly young, in all classes of society are experimenting with this drug, and substantial numbers use it regularly for social pleasure. There is no evidence that this activity is causing violent crime or aggressive anti-social behavior, or is producing in otherwise normal people conditions of dependence or psychosis, requiring medical treatment. (p.16)
- [I]n terms of physical harmfulness, cannabis is very much less dangerous than the opiates, amphetamines and barbiturates, and also less dangerous than alcohol. (p.17)

Marihuana: A Signal of Misunderstanding, Report of the National Commission on Marihuana and Drug Abuse (The "Shafer Commission") (U.S.A., 1972)

- No conclusive evidence exists of any physical damage, disturbances of bodily processes or proven human fatalities attributable solely to even very high doses of marihuana. (pp.56 - 56)
- These few consistently observed transient effects on bodily function seem to suggest that marihuana is a rather unexciting compound of negligible immediate toxicity at the doses usually consumed in this country. (p.57)
- Performance of simple or familiar tasks is at most minimally impaired, while poor performance is demonstrated on complex, unfamiliar tasks. Experienced marihuana users commonly demonstrate significantly less decrement in performance than drug-naïve individuals. (p.57)
- When the nature of the drug-taking situation and the characteristics of the individual are optimal, the user is apt to describe his experience as one of relaxation, sensitivity, friendliness, carefreeness, thoughtfulness, happiness, peacefulness, and fun. For most marihuana users who continue to use the drug, the experience is overwhelmingly pleasurable. (p.58)
- The incidence of psychiatric hospitalizations for acute psychoses and of use of drugs other than alcohol is not significantly higher than among the non-using population. (p.64)
- Another controversial form of social-mental deterioration allegedly related to very long-term very heavy cannabis use is the "amotivational syndrome." ... Intensive studies of the Greek and Jamaican populations of heavy long-term cannabis users appear to dispute the sole causality of cannabis in this syndrome. (p.64)
- Looking only at the effects on the individual, there is little proven danger of physical or psychological harm from the experimental or intermittent use of the natural preparations of cannabis, including the resinous mixtures commonly used in this country. (p.65)
- The experimenter and the intermittent users develop little or no psychological dependence on the drug. No organ injury is demonstrable. (p.66)
- Rather than inducing violent or aggressive behavior through its purported effects of lowering inhibitions, weakening impulse control and heightening aggressive tendencies, marihuana was usually found to inhibit the expression of aggressive impulses. (p.72)

- No evidence exists that marihuana use will cause or lead to the commission of violent or aggressive behavior by the large majority of psychologically and socially mature individuals in the general population. (p.73)
- The Commission's National Survey revealed that 48% of adults believe that some people have died from marihuana use. A careful search of the literature and testimony of the nation's health officials has not revealed a single human fatality in the United States to have resulted solely from ingestion of marihuana. (p.83)
- In all its studies, the Commission found no evidence of chromosome damage or teratogenic or mutagenic effects due to cannabis at doses commonly used by man. However, since fetal damage cannot be ruled out, the use of marihuana like that of many other drugs, is not advisable during pregnancy. (p.84)
- From a public health point of view, the immediate effects of marihuana intoxication on the individual's organs or bodily functions are of little significance. (p.85)
- Minimal abnormalities in pulmonary function have been observed in some cases of heavy and very heavy smokers of potent marihuana preparations (ganja or hashish). (p.85)
- No objective evidence of specific pathology in brain tissue has been documented. This contrasts sharply with the well-established brain damage of chronic alcoholism. (p.85)
- No outstanding abnormalities in psychological tests, psychiatric interviews or coping patterns have been conclusively documented in studies of cannabis users in other countries of the world. Further research into this important area is necessary. (p.85)
- Whichever interpretation one accepts, the fact is apparent that the chronic, heavy use of marihuana may jeopardize social and economic adjustments of the adolescent. (p.87)
- Marihuana clearly is not in the same chemical category as heroin insofar as its physiologic and psychological effects are concerned. In a word, cannabis does not lead to physical dependence. (p.87)
- Indeed, if any drug is associated with the use of other drugs, including marihuana, it is tobacco, followed closely by alcohol. ... The fact should be emphasized that the overwhelming majority of marihuana users do not progress to other drugs. (p.87)
- [T]he largest number of marihuana users in the United States today are experimenters or intermittent users, and 2% of those who have ever used it are presently heavy users. (p.88)
- We believe that experimental or intermittent use of this drug carries minimal risk to the public health, and should not be given overzealous attention in terms of a public health response. (p.91)
- In short, aside from his use of marihuana, the adult recreational user is not generally viewed as a significant social problem. (p.93)
- Scientific evidence has clearly demonstrated that marihuana is not a narcotic drug, and the law should properly reflect this fact. (p.177)

Cannabis: A Report of the Commission of Inquiry into the Non-Medical Use of Drugs (The "Ledain Commission") (Canada, 1972)

- Cannabis has been widely used in many cultures for its medicinal properties. Cannabinoids have been used in the past and are presently employed in some countries (or are currently under clinical investigation) for their alleged anxiety-reducing, mood-elevating, appetite-stimulating, anti-convulsant, diuretic, blood pressure-reducing, analgesic (pain-reducing), sedative and anaesthetic properties. ...Cannabis has also been used to reduce insomnia, to treat coughs, tetanus, burns, earache, and migraine headache, to ease opiate narcotic and alcohol withdrawal, and as an aid in obstetrics and psychotherapy. (p.32)
- In all, it would seem likely that under some conditions, cannabis might have adverse effects on driving, and that any such effects would vary as a function of dose and a variety of other factors. (p.60)
- [T]here is no evidence from available experiments for the notion that social cannabis use produces a disastrous loss of judgement or psychomotor control. Our research suggests that until further data are available, driving while under the influence of cannabis should be avoided. (p.64)
- [S]urveys of hospital admissions and resident patients in North America have uncovered an almost insignificant number of patients with primary cannabis problems. Even university counselling and health services have a dearth of systematic records of serious cannabis difficulties. (p.101)
- Major governmental inquiries around the world for three-quarters of a century have come to generally similar conclusions regarding the lack of a causal relationship between cannabis use and major crime. There is no scientific evidence that cannabis use, itself, is significantly responsible for the commission of other forms of criminal behaviour. (p.110)
- Cannabis has exceptionally low lethal toxicity. Few, if any, human deaths have been caused directly by cannabis overdose. (p.113)
- Respiratory and bronchial disorders will probably result from heavy chronic smoking of many crude substances and cannabis seems to be no exception. (p.118)
- There is little indication ... that that physical dependence on cannabis is a likely phenomenon under natural conditions. (p.123)
- On the whole, the physical and mental effects of cannabis, at the levels of use presently attained in North America, would appear to be much less serious than those which may result from excessive use of alcohol. (p.267)
- We are in general agreement that the regular use of cannabis by adolescents has, in all probability, a harmful effect on the maturing process, and that this should be the chief focus of our social concern. (p.268)
- There is no evidence that the use of cannabis has been a significant cause of automobile accidents, but at moderate doses it produces significant impairment of capacities required for driving. (p.269)
- The evidence of "personality change" of the kind referred to as the "amotivational syndrome" resulting from the chronic, heavy use of cannabis is inconclusive. ... It is difficult to distinguish between adverse effect on capacity and mere change in attitude. ... Some observers have spoken of apathy and a loss of goals, an absorption in the present with little or no thought for the future. All of these symptoms might be equally associated with a profound change of values and outlook which many might regard as salutary. (p.270)
- The theory that cannabis leads to heroin because the vast majority of heroin users are found to have used cannabis has to be dismissed on the ground of faulty logic: the vast majority of heroin users may have used cannabis, but the vast majority of cannabis users do not use heroin. (p.272)

- There has been little evidence in Canada to support an association of cannabis with crimes of violence. Nor is there any suggestion that cannabis users are obliged to engage to any significant extent in a career of petty crime to support their habit... (p.273)

Cannabis: A discussion paper by the Royal Commission into the Non-Medical Use of Drugs (South Australia, 1979)

- It is now clear that cannabis is not a narcotic. While this misclassification was not necessarily deliberate, since pharmacology was then a poorly developed science, it was a powerful factor in ensuring the enactment of prohibitions. (p.4)
- Despite earlier evidence, there is now very little doubt that with sufficient quantities and a regular and frequent dosage, tolerance does develop to cannabis. The dosage levels used on a regular basis by people in Greece, Costa Rica and Jamaica (where such use has been the subject of intensive controlled studies) are extremely high ... Despite these high doses (equivalent to 20 to 40 joints a day) the users showed no evidence of undue depression or adverse effects. Such a dose in a non-tolerant individual would be extremely unpleasant. (p.106)
- Physical dependence on a drug can be determined by a withdrawal syndrome if the drug is no longer available. Clinical reports of a withdrawal syndrome from cannabis are extremely rare, and the reported symptoms have been mild. (p.106)
- [T]here is certainly no over-riding compulsion to obtain the drug, regardless of the cost, as there is with narcotics. (p.107)
- There have been no documented cases of human fatality which can clearly be attributed to the acute effects of a single dose of cannabis. The concentration of THC in cannabis, for example, means that it would be extremely difficult -- if not impossible -- to take a lethal dose. (p.107)
- Pharmacologically, THC has a very wide margin of safety -- that is, there is a huge difference between the amount needed for a social high and the amount needed to produce death. In fact, even the amount necessary to produce hallucinations is at least five times greater than that required for a social high... By comparison, a dose of alcohol five times greater than that normally consumed for a social high may produce coma and death. (p.108)
- Unlike alcohol, cannabis is not accompanied by a hangover -- there is no 'morning after' effect other than a feeling of lethargy if one has smoked a large quantity. (p.111)
- The general effects of cannabis can be described as producing a state of well-being, relaxation and sedation. The effect usually includes an apparently stimulatory phase when euphoria and excitement are experienced and spontaneous laughter is common. Perceptual awareness is increased. Sudden mood changes can occur, and short-term memory and some cognitive processes are adversely affected. Of course, these effects may be desirable from the user's point of view. ... Both the psychological and physiological effects are short-lived. (p.115)
- To date the most promising avenue for the medical use of cannabis is in the treatment of glaucoma. (p.116)

- Several researchers have described the effects of THC on dilating the main respiratory tubes, thus suggesting its possible use for asthma patients. (p.116)
- Cannabis has a long history of use as an analgesic and in recent studies with experimental animals, THC has been shown to compare favourably with pethidine and morphine. (p.116)
- THC has been found to be effective in reducing the incidence of nausea and vomiting associated with the present methods of cancer treatment. A recent study suggested that the drug has a beneficial effect on the symptoms of depression, pain, nausea and vomiting and reduces loss of body weight -- all of which may reduce the suffering associated with terminal cancer. (p.116)
- A number of studies have been concerned with the effects of cannabis on those motor and mental skills considered important for driving a motor vehicle. The results indicate quite strongly that intoxication with cannabis may adversely affect ability to drive a car safely. (p.117)
- South (1978) suggests that drivers under the influence of cannabis can compensate for the drug's decremental effects by increased concentration and by driving in such a way as to take fewer risks. To what extent they can do this, however, is not clear. (pp. 118-119)
- The use of cannabis by narcotics addicts does not prove a causal relationship between the use of cannabis and the use of heroin. What it does show is that people who use one drug to excess may, and probably will, use other drugs, and often they will use these drugs to excess also. (p.121)
- The belief that cannabis causes crime emerged in the 1930's. ... It was strengthened by propaganda, new penal legislation relating to cannabis, and anecdotal reports of frenzied killings brought about by the drug. However, every government sponsored commission of inquiry which has investigated the relationship between cannabis and violent crimes has concluded that there is no such connection. (p.122)
- At present, it can be said that it is perfectly possible to use cannabis in low doses intermittently without any lasting effects on the brain, and that there is good evidence to suggest that chronic cannabis use is also possible without brain damage. Thus the risk of brain damage from cannabis use must be very small. (p.123)
- [T]he amotivational syndrome appears to be more of a result of observer bias than a real entity. ... Attempts to replicate the symptoms under controlled conditions have been unsuccessful. It certainly does not occur among chronic ganja smokers and careful studies of these groups have indicated that many poor peasants use the drug to improve their work capacity, and that they do indeed work more effectively while using the drug. (p.124)
- To date there is no evidence for an increased incidence in cannabis users of those diseases that would be associated with a deficit in the cellular immune mechanisms (e.g. viral infections or cancer). (p.126)

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- While concern has been expressed at the possibility of marijuana 'flashbacks' resulting from the gradual release of stored THC and other cannabinoids from fatty tissues into the bloodstream, the nature of the metabolism of

- cannabinoids suggests that such a phenomenon is very unlikely. Indeed, there is no evidence to suggest that the release of cannabinoids stored in fatty tissues can produce noticeable subjective psychoactive effects, or measurable impairment of psychomotor performance. (p.12)
- The acute toxicity of cannabis is very low, and there are no confirmed cases of deaths from cannabis overdose in the world literature. (p.13)
 - It is difficult to estimate the magnitude of risk of being involved in motor vehicle accidents due to cannabis intoxication. It is known that cannabis intoxicated persons drive more slowly and take fewer risks than alcohol intoxicated drivers. (p.13)
 - At present, there is no conclusive evidence that consumption of cannabis by humans causes major impairments in immune functioning. (p.14)
 - Chronic heavy cannabis smoking may cause symptoms of chronic bronchitis, such as coughing, sputum and wheezing. (p.14)
 - Concern has been raised by some case reports of cancers of the mouth, throat and airways of young adults with a history of chronic heavy cannabis smoking. Such studies are complicated by the presence of other risk factors in these subjects, such as concurrent alcohol and tobacco use. However, these reports highlight the need for further case-control studies of these cancers to provide more definitive evidence. (pp. 14 - 15)
 - It is uncertain whether its use during pregnancy causes a slightly increased risk of birth defects, but until this issue is clarified, women should be advised not to use cannabis during pregnancy. (p.15)
 - Although strong conclusions cannot be drawn, there is suggestive evidence from some older American studies indicating that chronic heavy cannabis use by adolescents may adversely affect their development. (p.15)
 - The evidence for the existence of an amotivational syndrome resulting from chronic heavy cannabis use is equivocal; it is probable that, if it does exist, it is a relatively rare occurrence, even among heavy, chronic cannabis users. (p.15)
 - A cannabis dependence syndrome probably occurs in some chronic heavy users of cannabis. Tolerance to some of the subjective and physiological effects has been demonstrated, and some heavy users probably experience mild withdrawal symptoms on abrupt cessation of use. (p.16)
 - Long term heavy cannabis use does not appear to produce severe impairment of cognitive function. (p.16)
 - There is no reliable evidence suggesting that chronic heavy cannabis use leads to gross structural changes in the brain. This is consistent with the evidence for only subtle cognitive effects from chronic cannabis use. (p.16)
 - THC has been shown to be an effective anti-emetic (anti-nausea) agent for some patients undergoing cancer chemotherapy. (p.17)
 - There is reasonable evidence for the efficacy of THC in the treatment of glaucoma, especially in cases which have proved resistant to existing anti-glaucoma agents. (p.17)
 - There is suggestive evidence for the value of various cannabinoids as anti-spasmodic and anti-convulsant agents. Further clinical research into these applications is warranted, as well as into the potential value of cannabinoids as analgesic and anti-asthma agents. (p.17)
 - There is need for further research into the effectiveness of cannabis and its derivatives in assisting patients with HIV/AIDS related conditions, and in particular, its value in counteracting weight loss associated with these conditions, improving mood and easing pain. (p.17)

