

File No. 94505-01

C A N A D A  
IN THE PROVINCIAL COURT OF BRITISH COLUMBIA  
(BEFORE THE HONOURABLE JUDGE T.D. DEVITT)

SURREY, B.C.

1999 DECEMBER 03

REGINA  
V  
NICOLE LOUISE GIONET

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PROCEEDINGS AT  
SENTENCE

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**APPEARANCES:**

J.A. THOMPSON  
J. CONROY

for the Crown  
for the Defence

K. BLOXOM  
S. STYRNA

Court recorder  
Transcriber

**FIRST COPY**

## Proceedings

- 1 MR. THOMPSON: The other matter I have this morning is  
2 Mr. Conroy's matter, that's Gionet.
- 3 THE COURT: Yes.
- 4 MR. CONROY: Good morning, Your Honour. Ms. Gionet is  
5 present.
- 6 MR. THOMPSON: My understanding is Mr. Patterson has  
7 provided Your Honour with a brief of authorities  
8 or some information on this matter, and he has  
9 asked me to convey to Your Honour that we're  
10 taking no position on sentencing.
- 11 THE COURT: Well, that ought to shorten things then,  
12 Mr. Conroy.
- 13 MR. CONROY: I think so, Your Honour. I think we  
14 already entered the plea and did all of that.
- 15 THE COURT: That was my recollection, but maybe the  
16 Clerk can confirm that.
- 17 MR. CONROY: That's correct, a plea to simple  
18 possession. Just have a seat then, Ms. Gionet.
- 19 THE COURT: I understand, having looked at the  
20 materials, that she claims that the basis of  
21 possession here is for medicinal purposes.
- 22 MR. CONROY: That's right.
- 23 THE COURT: She suffers from -- and I can't pronounce  
24 the --
- 25 MR. CONROY: Fibromyalgia.
- 26 THE COURT: Thank you. Which is extremely painful and  
27 because she's in constant pain, she uses the  
28 marihuana to relieve that pain. Is that the  
29 essence?
- 30 MR. CONROY: And she uses it by not smoking it.
- 31 THE COURT: Yes.
- 32 MR. CONROY: By eating it, by making cookies, things of  
33 that kind, because she can't smoke, and she's  
34 found that only one particular strain works for  
35 her.
- 36 THE COURT: Yes.
- 37 MR. CONROY: And the recent evidence -- I know my  
38 friend in his materials excerpted something from  
39 the Institute of Medicine Report, which is the  
40 latest U.S. investigation.
- 41 THE COURT: Well, I don't know how to deal with all  
42 that quite frankly, because you've got conflicting  
43 -- you know, I'm not a scientist. I can't weigh  
44 up the --
- 45 MR. CONROY: Well, in terms of my friend's materials,  
46 my position in terms of where it conflicts with  
47 what's in Kang, I simply say let's not forget that

## Proceedings

- 1 the evidence in the Kang that we rely upon is the  
2 evidence from the government's witness, Dr.  
3 Collant (phonetic). A lot of the stuff in my  
4 friend's materials, in my submission --
- 5 THE COURT: Why don't you tell me what you're seeking,  
6 Mr. Conroy?
- 7 MR. CONROY: Well, I'm seeking an absolute or a  
8 conditional discharge. There is -- you have in  
9 front of you the --
- 10 THE COURT: I think you're pushing against an open  
11 door. Now, what --
- 12 MR. CONROY: I can give you three examples of cases  
13 similar to this in which conditional discharges  
14 were granted. In Slazowski (phonetic), it was one  
15 year, conditional discharge, keep the peace and be  
16 of good behaviour was the only condition.
- 17 In a recent decision of Judge Howard, a  
18 medical grow again, a case called Davis, a hundred  
19 and two plants, Judge Howard on September 15th  
20 gave a six month conditional discharge, the only  
21 condition being to keep the peace and be of good  
22 behaviour. Slazowski was a glaucoma case. Davis  
23 was a similar case to this. It was something  
24 called -- I have a harder time pronouncing --
- 25 THE COURT: Well, what social value is there in a  
26 conditional discharge?
- 27 MR. CONROY: Well, my view is --
- 28 THE COURT: If it's just keeping the peace?
- 29 MR. CONROY: In my submission, this is an appropriate  
30 case for an absolute discharge. She is now and  
31 continues to be under the treatment of a  
32 physician, and is now using morphine which is a  
33 much heavier drug in terms of the problem. He's a  
34 member of the compassion club and so when she --  
35 when they do have the strain that assists her,  
36 she's able to get it through them, and the  
37 authorities are accepting that if she has a letter  
38 from her doctor that that's acceptable, and so  
39 that's the regime that she has been following.
- 40 She had to sell her house and downscale to a  
41 much smaller place, and she's just getting by as  
42 best she can. So I would ask that you consider an  
43 absolute discharge in the circumstances of this  
44 particular case, because in my submission it's  
45 very, very clear that that was her sole purpose,  
46 was for her own medical use.
- 47 THE COURT: How much are we talking about?

## Proceedings

1 MR. CONROY: Here we're talking only twenty-eight  
2 plants, whereas in Davis it was a hundred and two,  
3 and Slazowski, I believe was over a hundred  
4 plants. Leap, which is the older Court of Appeal  
5 case that I believe is in the materials, as well,  
6 was seventy-five plants, so we're talking a lesser  
7 number of plants here than in all of the other  
8 cases where discharges have been granted for  
9 medical purposes.

10 Now, I can give you lots more detail if you  
11 wish in terms of what the latest is and what's  
12 going on in this area. The Minister is granting  
13 exemptions to people. There's about --

14 THE COURT: I understand the new one, that you get  
15 personal exemptions?

16 MR. CONROY: That's what seems to have developed after  
17 the Wakeford case. Wakeford tried to do the same  
18 as Parker. Parker had been granted the  
19 constitutional exemption in Ontario. Then the  
20 judge in Wakeford said, "Well, you have to apply  
21 for the exemption first before I can grant you a  
22 constitutional exemption and exempt you from the  
23 Minister." So Wakeford did and then they found  
24 out that this procedure really was non-existent in  
25 terms of granting the exemption. They had to sort  
26 of create it and so the Court -- it came back to  
27 the Court and Wakeford was granted a  
28 constitutional exemption, pending the exemption  
29 from the Minister which he then obtained.

30 Since then there's been -- I think the total  
31 now is about fourteen people in Canada who have  
32 exemptions, and there are as I understand it many  
33 others pending, that are being considered.

34 THE COURT: Is she seeking that?

35 MR. CONROY: She hasn't at this point.

36 THE ACCUSED: Yes.

37 MR. CONROY: Oh, have you now filed one? Okay. So she  
38 tells me she now has sent one in, so that  
39 hopefully that will ultimately be obtained.

40 The science at the moment is they've  
41 determined there's some sixty-six cannibanoids  
42 apparently in the marihuana and they can't --  
43 haven't figured out yet which cannibanoids work  
44 for which illnesses, but they've at least  
45 determined that it seems to be these cannibanoids  
46 that are the things that have the effect,  
47 depending upon the medical condition.

Sentence (Devitt, T.D., P.C.J.)

1 THE COURT: Thank you. Mr. Thompson, do you have  
2 anything?

3 MR. THOMPSON: No, Your Honour. As I say, we take no  
4 position on this matter.

5 THE COURT: All right. Stand up, Ms. Gionet. Is that  
6 the way you pronounce it?

7 THE ACCUSED: Gionet, but that's okay.

8 THE COURT: All right. Well, having regard to all of  
9 the circumstances, it is my view that in these  
10 particular circumstances, this is not against the  
11 public interest and it is certainly in your  
12 interest.

13 Following the principles of *R. v.*  
14 *Fallowfield*, I am going to grant you an absolute  
15 discharge.

16 I do not see any social benefit to making it  
17 conditional, particularly if the only condition is  
18 going to be to keep the peace. You do not strike  
19 me as a person that is not keeping the peace, so  
20 to make that a condition, I do not see any benefit  
21 to a conditional discharge, so I am going to grant  
22 you an absolute discharge.

23 MR. THOMPSON: Thank you, Your Honour. I will explain  
24 to her what the impact of that is and so on in  
25 relation to --

26 MR. CONROY: And Count 2?

27 MR. THOMPSON: That should be stayed, if it wasn't  
28 already. Thank you, Your Honour. Those are the  
29 matters I can deal with this morning.

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31 (PROCEEDINGS CONCLUDED)  
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