



# Up in Smoke

## ***The Illusion of Legal Medical Marijuana***

*By Rielle Capler and Hilary Black*

**C**annabis prohibition in Canada has been under fire in our upper courtrooms and legislatures with much media attention this year. While the courts have forced movement on the cannabis laws, our government has resisted progress, buckling under the pressure of the US whose war-on-drugs agenda is ever-present in our debates and decisions.

Most Canadians believe cannabis should be accessible to those living with HIV/AIDS, but few

HIV- positive people can access it. Cannabis alleviates nausea, stimulates appetite, reduces both depression and anxiety, and diminishes pain. This power to control disabling symptoms and improve quality of life gives cannabis a reputation as an effective medicine for people living with HIV/AIDS, particularly those with Wasting Syndrome.

An impression of decriminalization, and stalling by Health Canada, pose to keep access to medical marijuana out of reach.

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## Creating the Impression of Decriminalization

Last Spring, Justice Minister Cauchon tabled Bill C-38, a cannabis Reform Bill, in response to the Canadian public's desire to ease up on pot laws. C-38 was spun as a "decriminalization bill" on the premise of replacing criminal records for possession under 15 grams, with fines of \$200-\$1000. The Bill calls for increased sentences for growers and distributors.

Such reforms would lead to a more entrenched black market, noted the activist community, and fail to address the harms of prohibition that could be greatly diminished with regulation. Bill C-38 would punish users, again, especially those who could not afford such hefty fines.

**Our government has resisted progress, buckling under the pressure of the US, whose war-on-drugs agenda is ever-present.**

Uproar ensued in the House of Commons upon learning that the Justice Department took the Bill to the United States for input before bringing it to Parliament. The US influence doubled the proposed fines and jail terms. This summer, Liberal backbenchers looking for stronger laws were caught asking the US to help defeat C-38 by threatening delays at the border. At opening of Parliament in September, one of those same backbenchers tabled Bill C-446, that calls for a US-style mandatory minimum imprisonment for cannabis growers.

These Bills require three readings each in parliament followed by royal assent from the Senate. The Senate's Special Committee on Illegal Drugs unanimously recommended full legalization of cannabis, noting in their thorough 800-page report that the plant is relatively harmless and has important medicinal applications. Libby Davies, who sat on the House of Commons Special Committee on Non-Medicinal Use of Drugs also called for full legalization in her minority report.

## Laws on Trial

While some politicians attempt to make cannabis laws more repressive, some judges are hammering away at the unjust laws. The Parker decision in 2000 stated that people should not have to give up their liberty to secure their health, and ordered the government to change the laws regarding cannabis possession and cultivation within one year.

Pot possession became legal in Ontario through the Rogin decision. The province's highest court declared the laws unconstitutional because they had not been changed as ordered by the court in the Parker decision. Lower courts in Nova Scotia, PEI and BC made similar overturns in court, setting precedent for other judges to make similar decisions. If

appealed by the government and upheld in higher court, possession of cannabis will be legal in those provinces as well.

## Health Canada's Sham Medical Cannabis Program

Instead of changing laws to make cannabis accessible for medical users as ordered by the Ontario Court of Appeal, Health Canada created a series of regulations known as the Medical Marijuana Access Regulations (MMAR).

The MMAR program issues licenses to legally possess and cultivate cannabis, or to have a caregiver grow it on one's behalf. To qualify for a license, a physician and, depending on the condition, one or two specialists must complete lengthy forms. These forms must be filled out annually to renew the licenses. Another part of the MMAR program is a \$5.75 million cultivation contract with Prairie Plant Systems in Flin Flon Manitoba to grow cannabis for research purposes.

Only 10 people were deemed eligible to receive cannabis from Health Canada. Most license holders, having lost faith in Health Canada's ability to produce a worthwhile supply, did not even apply. Indeed, a test by Canadians for Safe Access at a licensed laboratory found the Prairie Plant product to be of extremely low potency, containing high levels of heavy metals and arsenic, probably due to the chemical phosphate fertilizers used in the non-organic growing. The powdered buds, leaves and stems have been returned by several of the recipients who consider it disgusting and far from medicinal.

The Canadian Medical Association, the Colleges of Physicians and Surgeons, and the Canadian Medical Protective Association have advised doctors to boycott the MMAR program. They feel they were not sufficiently consulted in drafting of the regulations, that there are liability issues, and that they are not the appropriate gatekeepers for herbal medicine.

The MMAR were found unconstitutional in Ontario's Supreme Court, as they give only the illusion of access to medical cannabis, and are extremely difficult and burdensome to navigate. The scheme was rejected as an unacceptable substitute for legal reform. Health Canada was given 6 months to supply cannabis to license holders, with the court even suggesting licensing compassion clubs to do this. At the last possible moment before the July 9th deadline, Health Canada produced a temporary scheme to have Prairie Plant cannabis distributed by doctors. Once again, Health Canada neglected to ask approval of the doctors to play the role of medical marijuana dealer.

## Sabotage of HIV/AIDS Research

Although Health Canada insists that cannabis cannot be considered a medicine until it goes through the rigorous scientific testing usually reserved for pharmaceutical products, they canceled funding for the first clinical trials for HIV/AIDS in

Canada that were to evaluate the therapeutic effects of smoked cannabis.

The Community Research Initiative of Toronto (CRIT), who over the last three years planned and developed the study, were shocked. Participants were about to begin enrolling. CRIT, until recently the only AIDS organization in Canada dedicated solely to HIV/AIDS community-based research, was devastated, unable to continue its work.

Health Canada's affront to the HIV community and to compassion led to the resignation of Dr. Gregory Robinson, an AIDS patient and one of two patient representatives on the MMAR's Office of Medical Cannabis Access Stakeholder's Advisory Committee.

### **Prohibition Unconstitutional?**

Judicial courts are sending clear messages to the government that they want guiding decisions on medical marijuana laws' constitutionality. Such guidance will hopefully arise from a constitutional challenge presented to the Supreme Court of Canada that questions the criminal prohibition of cannabis possession and distribution.

### **Most license holders did not even apply, having lost faith in Health Canada.**

Activists David Malmo-Levine, Randy Caine and Chris Clay, with lawyers John Conroy, Paul Bernstein and the BC and Canadian Civil Liberties Associations appeared before the 9 Supreme Court Judges in May. They argued that all harmless people should be protected under our constitution. Since cannabis use and dealing are not inherently or significantly harmful, people who engage in such activities should be protected. The high court will likely announce its decision by the end of the year. A Supreme Court ruling striking down cannabis prohibition would trump all lower court decisions and all current laws and regulations.

### **Compassion Clubs**

With 5.75 million dollars spent on its cultivation program and 3.8 million on administrative costs, Health Canada has distributed licences to only 500 people and sub-standard cannabis to 10. At the same time, with no tax-payer money, compassion clubs across Canada have provided high quality medicinal cannabis to over 5000 people.

The BC Compassion Club Society (BCCCS) currently serves 2500 members. To become a member, the BCCCS requires a confirmation of diagnosis from a physician, naturopath or doctor of Traditional Chinese Medicine. The BCCCS agrees with the CMA that physicians should not control access to cannabis.

The BCCCS values people's autonomy to make decisions about their own health care. It considers cannabis as one of many medicinal herbs, one especially effective for symptom relief. In some diseases, cannabis staves off illness progression. Much of the healing seen at the BCCCS occurs when cannabis is used in combination with other natural medicines available at the Wellness Centre, where members have access to certified clinical herbalists, nutritionists, counselors and Drs. of Traditional Chinese Medicine.

### **The BC Compassion Club engages in civil disobedience each day its doors are open.**

Members of the BCCCS are oriented on the safe and effective use of cannabis, including dosage, strain selection, and methods of ingestion. They can select from varieties effective for specific symptoms such as nausea, appetite stimulation, energy, sleep and pain. The cannabis available is clean, high potency and mostly organic. Also available are cannabis baked goods and cannabis tinctures.

Poverty is a major issue for most people living with terminal, chronic and debilitating diseases. Many medical marijuana users struggle with the cost of their medicine. A donation program at BCCCS attempts to assist people living in poverty. It is imperative that the costs of this medicine be covered by Healthcare insurance as they are for other effective medicines.

It has been painful watching Health Canada drag their feet in response to the needs of the medical community and the demands of the courts. They have sabotaged their own research, created programs destined to fail, and neglected to fulfill their public promises. While the BCCCS actively campaigns for legal change and the development of reasonable regulations, it will not wait for government to standardize access to medicinal cannabis.

There is a dedicated community across the country determined to give those in need access to high quality medicinal cannabis, regardless of the risks. The BCCCS has been distributing cannabis to those in need for nearly seven years, engaging in civil disobedience each day its doors are open. We shall build progress one small step at a time.

For more information, visit [www.thecompassionclub.org](http://www.thecompassionclub.org) ☎

*Rielle Capler (MHA) works in Policy, Planning, Research and Communications at the BCCCS*

*Hilary Black is the founder of the BCCCS where she sits on the Board of Directors and works in Communications.*