



## Federal Marijuana Policy Primer

September, 2006\*

The following policy primer is intended to inform the Canadian public and our political representatives about the key issues related to marijuana legislation in Canada. This issue has been on the forefront of Canadian politics for over 30 years and is now understood by Canadians to be an issue of importance to our social and economic well-being, our health and our sovereignty. With an informed public and political leadership, we can replace the failed policy of cannabis prohibition with a policy that meets the needs of all Canadians.

### Overall Policy Recommendation

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- Create reasonable regulations for the possession, sale and production of cannabis and an accurate, scientific, reality-based education program about the safe and effective use of cannabis. Ensure those in medical need have legal access to high quality and affordable cannabis.

### Background Information

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#### *Acceptance of Cannabis Use:*

- Canadians want, and are ready for, a change in the country's marijuana laws. Recent polls demonstrate 83% of Canadian citizens want less stringent laws.<sup>1</sup> Previous polls show that over half the population want legalized cannabis, with significantly increased support in the health/medical context. Notably, the MacLean's 2006 poll concluded that acceptance for recreational use is at 63%, and an overwhelming 93% of Canadians support cannabis for medicinal purposes.<sup>2</sup>

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<sup>1</sup> Sun Leger Poll, [http://juror.ca/article\\_5.htm](http://juror.ca/article_5.htm)

<sup>2</sup> Maclean's Poll 2006: *What We Believe*

[http://www.macleans.ca/topstories/polls/article.jsp?content=20060701\\_130104\\_130104](http://www.macleans.ca/topstories/polls/article.jsp?content=20060701_130104_130104)

### *Cannabis Use in Canada:*

- Based on the last census, there are approximately 20 million Canadians between the ages of 18 and 64. There are approximately 2 million Canadians over age 18 who have used cannabis during the preceding 12 months.<sup>3</sup> Other statistics show a 25% lifetime prevalence.<sup>4</sup>
- Teen use rates indicate that education on safe use of cannabis would be useful, and that regulations should ensure that young people are not criminalized. According to the latest census, there are approximately 2.5 millions young persons aged 12 - 17 in Canada. If 40% have used cannabis in the preceding year and 30% in the past month, this means 1 million and 750,000 young users in each category respectively. Approximately 225,000 would make daily use of cannabis.<sup>5</sup>

### *Current Status of the Law:*

- The law prohibiting cannabis possession is of questionable constitutional validity.
- The Ontario Court of Appeals decision in *R. v. Parker* (2000), 146 C.C.C. (3d) 193 (Ont. C.A.) found that the law prohibiting cannabis possession (s. 4 of the Controlled Drug and Substance Act, or CDSA) was unconstitutional because it forced people to choose between their liberty and their health. The section 56 (of the CDSA) exemption scheme then in place was found to be unconstitutional since it gave discretionary power to the Minister of Health. The law as it applied to cannabis was declared unconstitutional and the declaration of invalidity was suspended for a period of one year.<sup>6</sup>
- Health Canada's Medical Marijuana Access Regulations (MMAR) were established in response to the *Parker* decision. It is still a question in the courts whether the MMAR could 'save' s. 4 re. Cannabis, or whether the law must be re-enacted.<sup>7 8</sup>
- Even if the MMAR were judged sufficient to 'save' the cannabis laws without reenacting s. 4, several other medical cannabis court cases have called into question the validity of the MMAR. It remains an open question whether the MMAR provides a constitutionally adequate means for

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<sup>3</sup> *Cannabis: Our Position for a Canadian Public Policy*, Report of the Senate Special Committee on Illegal Drugs <http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/ille-e/rep-e/repfinalvol1part2-e.htm#Chapter%206>

<sup>4</sup> Addiction Research Foundation: *Cannabis, Health and Public Policy* [http://sano.camh.net/announce/n\\_a9801h.htm](http://sano.camh.net/announce/n_a9801h.htm)

<sup>5</sup> Report of the Senate Special Committee on Illegal Drugs *Cannabis: Our Position for Canadian Public Policy* <http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/ille-e/rep-e/repfinalvol1part2-e.htm#Chapter%206>

<sup>6</sup> *R. v. Parker* [2000] O.J. No. 2787 (Ont. C.A.); <http://www.johnconroy.com/parker2.html>

<sup>7</sup> *Regina v. Masse*, [http://www.provincialcourt.bc.ca/judgments/pc/2003/03/p03\\_0328.htm](http://www.provincialcourt.bc.ca/judgments/pc/2003/03/p03_0328.htm)

<sup>8</sup> *Stavert* <http://cannabislink.ca/legal/stavert.htm>

Canadians to access medical cannabis. The last court case offered specific remedies to the program which have not been implemented.<sup>9</sup> This arguably renders the prohibition on possession of cannabis unconstitutional and of no force and effect. These propositions are currently being tested in the lower courts.

#### *Public Perception of the Law:*

- Sentencing is all over the board in the country. Recent court cases show judges do not feel cultivation should be a criminal offense, and that the appropriate form of punishment be a monetary fine (to match the monetary gain of breaking the law), rather than a jail sentence (which would signify danger to society).<sup>10</sup>
- Many Canadians believe that cannabis is generally legal for medicinal purposes, and also believe it is decriminalized for possession of small amounts. The average Canadian cannot be expected to know what the law actually is.
- Canadians want to vote for candidates who will commit to ending cannabis prohibition.<sup>11 12 13</sup>

#### *Supreme Court Constitutional Challenge:*

- In 2003 the prohibition laws were challenged in the supreme court of Canada— while 3 judges agreed the laws were unconstitutional, the majority decided that it was up to parliament to change the legislation.<sup>14</sup> The Supreme Court, however, accepted certain critical facts found in the lower courts, including that:
  - the occasional to moderate use of marijuana by a healthy adult is not ordinarily harmful to health, even if used over a long period of time;

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<sup>9</sup> *Hitzig v. Canada*, (2003-10-07) ONCA C39532;C39738;C39740 <http://www.johnconroy.com/Hitzig03-10-07.pdf>

<sup>10</sup> *Inconsistent sentences for pot-growing offences unfair: Some B.C. judges impose jail terms, while others hand down fines*, Ian Mulgrew Vancouver Sun, Wednesday, August 23, 2006 [http://www.cannabisculture.com/forums/showflat.php?Cat=&Board=current&Number=1284491&Forum=All\\_Forum&Words=ian%20mulgrew&Match=Entire%20Phrase&Searchpage=0&Limit=25&Old=2weeks&Main=1284491&Search=true#Post1284491](http://www.cannabisculture.com/forums/showflat.php?Cat=&Board=current&Number=1284491&Forum=All_Forum&Words=ian%20mulgrew&Match=Entire%20Phrase&Searchpage=0&Limit=25&Old=2weeks&Main=1284491&Search=true#Post1284491)

<sup>11</sup> Canadian Cannabis Coalition Press Release: *Canadians to Vote for an End to Cannabis Prohibition in Upcoming Federal Election* <http://cannabiscoalition.ca/html/index.php?name=Content&pa=showpage&pid=29>

<sup>12</sup> Canadian Cannabis Coalition Press Release: *Bill C10 is Worst-Case Scenario of Marijuana Prohibition - Canadians will Register Disapproval in Upcoming Federal election* <http://cannabiscoalition.ca/html/index.php?name=Content&pa=showpage&pid=8>

<sup>13</sup> Canadian Cannabis Coalition Press Release: *Canadian Cannabis Coalition Says "NO" to Harper* <http://cannabiscoalition.ca/html/index.php?name=Content&pa=showpage&pid=30>

<sup>14</sup> *R. v. Malmo-Levine; R. v. Caine*, [2003] 3 S.C.R. 571, 2003 SCC 74 <http://www.canlii.org/ca/cas/scc/2003/2003scc74.html>

- marijuana is not addictive;
- assuming current rates of consumption remain stable, the health related costs of marijuana use are very, very small in comparison with those costs associated with tobacco and alcohol consumption;
- (...) apart from [risks to others where an intoxicated individual drives, flies aircraft, or operates complex machinery], there is no evidence to suggest that harm of any kind will befall individual members of society as a result of any actions by individual marijuana users.
- prohibition of cannabis causes harm to society, such as disrespect for the law, lack of open communication between young people and their parents, the risk that cannabis users will be exposed to more dangerous drugs sold in black market situations, the inability to conduct serious research into the effects of cannabis and the enormous amount of money devoted to enforcing prohibition.

*Senate Report:*

- In 2002, the Special Senate Committee on Illegal Drugs' thorough investigation concluded that cannabis should be legalized and regulated.<sup>15</sup>
  - The hypocrisy of alcohol- a much more harmful substance, and caffeine – a more comparable substance, being legal brings disrespect for the law.
  - The prohibition laws are historically based on racism.
  - prohibitionist reasoning is based in false 'reefer madness' propaganda – e.g. the “gateway theory”.
  - Harms of use are negligible – most harms are based on prohibition itself, not the plant.

*House of Commons Report and Bills:*

- Thirty years ago, the Le Dain Commission found that cannabis (use, production, distribution) should not be criminally prohibited.<sup>16</sup>
- Under the last Liberal government, several punishment amendment bills (the media mistakenly called these “decriminalization” bills) were brought forward based on the House of Commons committee recommendations. The bills proposed fines for possession of small amounts of cannabis, and

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<sup>15</sup> Senate Report

[http://www.parl.gc.ca/common/Committee\\_SenRep.asp?Language=E&Parl=37&Ses=1&comm\\_id=85](http://www.parl.gc.ca/common/Committee_SenRep.asp?Language=E&Parl=37&Ses=1&comm_id=85)

<sup>16</sup> *The Report of the Canadian Government Commission of Inquiry into the Non-Medical Use of Drugs - 1972* <http://www.druglibrary.org/schaffer/Library/studies/ledain/ldctoc.html>

increased jail sentences for cultivation.<sup>17</sup> These bills did not pass all readings in parliament, but chances are if they had, the Senate, which called this type of policy 'the worst possible case scenario', would not have passed them.

- Canadian cannabis advocacy groups also are opposed to previous liberal government's cannabis policy. They believe these policies will undermine the safety and security of Canadians and that instead of alleviating the harms of prohibition, would cause a "net-widening effect", ultimately punishing an increased number of Canadians and lead to an entrenched illegal market.<sup>18 19 20 21</sup>

#### *Economic Considerations:*

- Incredible resources are being wasted on the war against marijuana. The financial and personnel investment in marijuana offenses, at all points in the criminal justice system, diverts funds away from other crime types, thereby representing a questionable policy choice.<sup>22</sup>
- The Fraser Institute Report recommends regulation and taxation, suggesting that (a) the current prohibition amounts to a "gift of revenue" to organized crime; and (b) that tax revenues could reach several billion dollars per year.<sup>23 24 25</sup>

#### *Health Considerations:*

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<sup>17</sup> House of Commons Special Committee on Non-Medical Use of Drugs

<http://www.mapinc.org/drugnews/v02/n2248/a13.html>

<sup>18</sup> Canadian Cannabis Coalition Press Release: *Decriminalization Of Cannabis Undermines The Safety And Security of Canadians* <http://cannabiscoalition.ca/html/index.php?name=Content&pa=showpage&pid=11>

<sup>19</sup> Canadian Cannabis Coalition Press Release: *Bill C-38, the so-called "decriminalization" bill and Bill C-248* <http://cannabiscoalition.ca/html/index.php?name=Content&pa=showpage&pid=10>

<sup>20</sup> Canadian Cannabis Coalition Press Release: *Bill C10 is Worst-Case Scenario of Marijuana Prohibition - Canadians will Register Disapproval in Upcoming Federal Election*

<http://cannabiscoalition.ca/html/index.php?name=Content&pa=showpage&pid=8>

<sup>21</sup> Canadians for Safe Access Press Release: *"Canadians for Safe Access" Decry New Cannabis Reform Bill as Adding to the Harms of Prohibition* <http://safeaccess.ca/pr/csapr1.htm>

<sup>22</sup> *The War on Marijuana: A transformation of the war on drugs in the 1990's*, Ryan S. King and Marc Mauer, Harm Reduction Journal Feb, 2006, 3:6, <http://www.harmreductionjournal.com/content/pdf/1477-7517-3-6.pdf>

<sup>23</sup> Fraser Institute News Release: *BC's Marijuana Crop Worth Over \$7 Billion Annually* <http://www.fraserinstitute.ca/shared/readmore.asp?sNav=nr&id=608>

<sup>24</sup> *Marijuana Growth in British Columbia*, Stephen T. Easton, Public Policy Sources, Number 74 May, 2004.

<http://72.14.209.104/search?q=cache:EZGph7NlqzQJ:www.prohibitioncosts.org/decrim.pdf+fraser+report+on+marijuana&hl=en&gl=ca&ct=clnk&cd=3>

<sup>25</sup> PDF of Fraser Institute Report: <http://www.prohibitioncosts.org/decrim.pdf>

- Reasons cited to keep cannabis prohibited include alleged harms. Much of this is based on ignorance of current research and reefer madness propaganda.
- Overall, research had found cannabis to be essentially benign, but with significant medical and therapeutic benefits.<sup>26</sup>
- Some concerns are related to potentially vulnerable groups, such as those brought up by the Supreme Court (heavy users, pregnant women, and people with mental illnesses).
- Recent research demonstrates that cannabis smoking does not cause cancer (and in fact may be preventative).<sup>27</sup> Other research finds cannabis to be helpful for morning sickness (and there is no evidence that it causes developmental problems for the child).<sup>28</sup> The World Health Organization (WHO) report on cannabis was suppressed after it concluded that "there is very little evidence that cannabis is harmful in the long term." The WHO found no mental decline, no emphysema, and no addiction as a result of cannabis use.<sup>29</sup>
- Some studies have shown cannabis can be helpful for certain mental health conditions, and others show it to be harmful – in particular there is concern around schizophrenia. Experience has shown that the helpfulness or harmfulness is related to the particular strain of cannabis being used. There are many different strains of cannabis, and in a regulated market it would be much easier for people to have access to known strains, as well as to be educated about strain selection.<sup>30</sup>
- Concerns around vulnerable groups, as well as health concerns around quality and strain selection can be addressed through regulation and education. In the current black market environment, no controls exist.

#### *Medicinal Use:*

- Currently only about 1500 Canadians have licenses to possess cannabis for medicinal purposes. This is a small fraction of the total medicinal cannabis using population. That means that the vast majority of Canadians who use cannabis medicinally are risking their liberty.

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<sup>26</sup> BC Compassion Club Society research resources <http://www.thecompassionclub.org/medical/research>

<sup>27</sup> *Study Finds No Cancer, Marijuana Connection*, Washington Post, May 26, 2006

<http://www.mapinc.org/drugnews/v06/n672/a07.html?20763>

<sup>28</sup> *Survey of medicinal cannabis use among childbearing women: Patterns of use in pregnancy and retroactive self-assessment of its efficacy against 'morning sickness'* (Westfall, Janssen, Lucas, Capler 2006) Complimentary Therapies in Clinical Practice <http://bcccs.yvr.thelevel.com/resources/cannabis-nausea%202006%5B1%5D.pdf>

<sup>29</sup> *Cannabis 'safer than alcohol and tobacco'*, BBC News, Thursday, February 19, 1998

<http://news.bbc.co.uk/1/hi/sci/tech/58013.stm>

<sup>30</sup> BC Compassion Club Society information on safe and effective use of Cannabis <http://www.thecompassionclub.org/medical/safe>



- The prohibition laws affect medical use of cannabis by restricting research, and by compromising autonomy of the patient and the patient/doctor relationship.
- The MMAR pander to prohibition rather than creating an effective and rational program that addresses the needs of critically and chronically ill Canadians who could benefit from this medicine.<sup>31</sup>
- Medical cannabis consumer advocacy groups are concerned about MMAR program as well as the quality and safety of the program's cannabis. These concerns have been ignored by the current and previous Ministers of Health. The current sole contractor for government cannabis has threatened legal action against a consumer advocacy group.<sup>32 33</sup>
- The Senate Report recognized the deficiencies of the MMAR and called for measures to be taken to support and encourage the development of alternative practices, such as the establishment of compassion clubs. The Senate also called upon Health Canada to undertake a clinical study in cooperation with Canadian compassion clubs.<sup>34</sup>
- The Canadian AIDS Society, in comprehensive report released in 2006, called on the government to legalize compassion clubs and to conduct an audit of the federal medical cannabis program.<sup>35</sup>
- Community-based medical cannabis dispensaries (i.e. compassion clubs) across the country supply high quality cannabis to over 10,000 critically and chronically ill Canadians.<sup>36</sup> Many of these dispensaries are non-profit societies, providing much-needed services, patient advocacy, and research at no cost to Canadian taxpayers. Although communities, law enforcement and criminal courts across Canada have shown their support and tolerance for compassion clubs that self-regulate to ensure their services are strictly for medical purposes, compassion clubs do not currently enjoy the full protection of the law.<sup>37</sup>

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<sup>31</sup> British Columbia's Compassion Club's testimony to the Senate Special Committee.

<http://bcccs.yvr.thelevel.com/resources/Senate%20testimony.pdf>

<sup>32</sup> Canadians for Safe Access - <http://safeaccess.ca/research/flinflon/index.htm>

<sup>33</sup> For more information about the MMAR program and responses to it:

<http://www.thecompassionclub.org/law/government>

<sup>34</sup> Senate Report: Chapter 9 *Use of marijuana for therapeutic Purposes*

<http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/ille-e/rep-e/repfinalvol1part5-e.htm#Chapter%209>

<sup>35</sup> *Cannabis as Therapy for People Living with HIV/AIDS: "Our Right, Our Choice"*

<http://www.cdnaids.ca/web/casmisc.nsf/pages/cas-gen-0112>

<sup>36</sup> Some of the more well-established compassion clubs in Canada include the BC Compassion Club Society (Vancouver), C.A.L.M (Toronto), Montreal Compassion Centre (Montreal) Toronto Compassion Centre (Toronto), Vancouver Island Compassion Society (Victoria), links to their website and others can be found here <http://www.thecompassionclub.org/law/resources>

<sup>37</sup> *Guidelines for the Community-Based Distribution of Medical Cannabis in Canada*  
<http://www.thecompassionclub.org/resources/guidelines%20for%20distribution.pdf>

### *International Treaties:*

- There are international treaties relevant to drug policy law reform. A thorough review of pertinent treaties demonstrates that none preclude Canada from implementing significant law reform.<sup>38</sup>

### *Education:*

- Current student drug educational programs, such as DARE, are based on reefer madness propaganda. Because this information is patently false regarding cannabis, students do not believe information about the harms of hard drugs. Students need accurate, scientific, reality-based information so they can make informed decisions about their use of drugs.<sup>39 40</sup>

## **Conclusion**

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The empirical evidence has long demonstrated the ineffectiveness of, and harm caused, by cannabis prohibition. Yet, despite recommendations dating back to 1971, Canada has not engaged in any cannabis policy reform. The public is ready for and supportive of progressive, science-based and compassionate policies. New research suggests that the medical uses of cannabis are widespread, yet prohibition blocks research and creates a difficult environment for sick Canadians. The time for change is now.

## **Other Resources**

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British Columbia Compassion Club Society - [www.thecompassionclub.org](http://www.thecompassionclub.org)

Canadian Foundation for Drug Policy - <http://www.cfdp.ca/>

CannabisLink.ca - <http://cannabislink.ca/>

Canadians for Safe Access - <http://safeaccess.ca/>

Cannabis Facts - [http://www.cannabisfacts.ca/conservative\\_support.html#politiciansDrug](http://www.cannabisfacts.ca/conservative_support.html#politiciansDrug)

Cannabis Health Magazine – <http://www.cannabishealth.com/issue%203-2/3-2-web.pdf>

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<sup>38</sup> The International Covenants "Prohibiting" Drug Activities <http://www.cfdp.ca/gilmour.html>

<sup>39</sup> Educators for Sensible Drug Policy <http://www.efsdp.org/>

<sup>40</sup> Students for Sensible Drug Policy, which now has chapters on Canadian University Campuses <http://www.ssdp.org/chapters/>



Educators for Sensible Drug Policy – <http://www.efsdp.org/>

eNDProhibition - <http://www.endprohibition.ca/index.php>

Law Enforcement Against Prohibition (L.E.A.P) - <http://www.leap.cc/>

NORML Canada - <http://www.normlcanada.org/>

War Facts - <http://www.drugwarfacts.org/marijuan.htm>