Still Illegal After All These Years

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By John W. Conroy

Even though the medical attributes of marijuana are well documented, government foot dragging persists

On July 31st last year, the Ontario Court of Appeal, in a case involving Terry Parker, ruled that our marijuana laws are unconstitutional to the extent that they did not provide for access by medical patients requiring cannabis for their health or at least if there health is threatened in a serious way. The court also ruled that the existing exemption process was unconstitutional because it gave the minister of health an absolute discretion to grant or withhold such an exemption from the law without any criteria for so doing.

The court gave the federal government until July 31st of this year to remedy the situation.

Ottawa did not appeal this decision and is currently developing a new regulatory approach for the use of marijuana for medical purposes.

Marijuana (cannabis sativa) has been demonstrated to be safe and effective in the treatment of numerous medical conditions. Muscle spasms and tremor, pain, migraine headache, nausea and vomiting, and loss of appetite are all conditions for which marijuana has been shown to be effective, in maladies ranging from multiple sclerosis to AIDS wasting syndrome to epilepsy and chemotherapy treatments for cancer.

Marijuana also reduces intra-ocular pressure, and is effective in slowing the progression of glaucoma.

The possession and use of marijuana became illegal in Canada in 1923 when the federal cabinet added it to the schedule under the Opium and Drug Act of 1911. This was largely as a result of the climate of "irrational fear" whipped up by the writings of crusading Edmonton magistrate Emily Murphy. Her writings were primarily based on misinformation from U.S. chiefs of police and were written under the name of Janey Canuck and serialized in MacLeans magazine.

She also wrote a racist and sensationalist book called The Black Candle. Judge Murphy, to her credit, was also one of the famous five that brought women the vote in Canada, but to her further discredit, was also a proponent of eugenics.

Throughout this time the legislation, which became known as the Narcotic Control Act, unlike the U.S. laws, allowed "physicians" to "administer, prescribe, give sell, or furnish a narcotic" to a patient for a condition for which the person was receiving professional

treatment.

This provision in Section 53 of the Narcotic Control Regulations has survived and continues to be the law today under the new Controlled Drugs and Substances Act. All drugs covered by the Act are now called "controlled drugs" instead of "narcotics."

However, because there is no legal source of supply, the federal government, which controls the ability to licence growers and dealers of controlled drugs, frowns on doctors who do so, as does the British Columbia College of Physicians and Surgeons. Fortunately there are a few doctors who are prepared to do what the law authorizes them to do. In a British Columbia Medical Association newsletter it was suggested that a letter of authorization" of sorts be used, instead of actually prescribing. Regretfully, most doctors are too timid when it comes to standing up to their government, unless it involves their pay cheque.

Besides, marijuana is not in that blue book supplied by the pharmaceutical industry that gives them all those free samples of real hard drugs with real bad side effects. What do they need marijuana for when they have all those heavier drugs?

Similarly a provision was also carried forward into the new Act that allowed the minister of health to exempt certain persons from the law for a medical or scientific purpose" or a purpose that is "otherwise in the public interest." While not originally intended for this purpose, this provision in Section 56 of the Act has become the section under which the minister of health has now exempted 140 people over the last 18 months. Typically an exemptee is authorized to grow several plants for his or her own use. They are not authorized to obtain it elsewhere.

Many are too ill or lack experience in growing and are therefore forced to go to the black market and risk obtaining marijuana contaminated with metals and molds, not to mention pesticides liberally applied by those only interested in cranking out their next crop for a profit and not for health care. Last year, the federal government put out a request for proposals to grow cannabis for certain planned clinical trials and to possibly supply the exemptees."

Recently it announced that it had picked Prairie Plant Systems of Saskatoon to fulfill this five-year contract by growing it in a heavily-secured bunker in Manitoba. Of course the heavy security is necessary because there are all those people out there "dying" to get their hands on this government grade mild sedative as if they couldn't get enough of the good stuff from the black market or better yet a "Compassion Club." What about the Compassion Clubs that have sprung up around the country to fill the void while awaiting the governments U.S.-induced snails pace of compassion? No marijuana will be legally available through the first government-licenced grower/dealer for another year. These clubs, modeled on their counterparts in the U.S., and particularly those in California, have a number of illicit growers on contract to grow medical grade marijuana only for the club, which is subject to verification and testing for contaminants.

The club obtains the marijuana from the growers, often through middlemen who perform quality and quantity controls, and supplies it to club members who must have either a prescription or letter from their doctors, with rare exceptions. It is usually supplied at less than market cost even though it is grown primarily organically and is therefore more expensive to produce. The B.C. Compassion Club Society in Vancouver is a registered non-profit society with approximately 1,400 member patients at this time. The Vancouver Island Compassion Club has approximately 130 members.

Many other clubs exist throughout the province and elsewhere.

These clubs operate like hospices providing a wide range of holistic therapeutic services to members for their conditions besides providing a source of supply to fill prescriptions and letters for those that need it now and can't wait for the government's slow and controlled "compassion." The police and governments at all levels have turned a deliberate blind eye to the public service these clubs provide, from a prosecution stand point and in fact have clearly condoned them. Nevertheless the minister of health has made a point of studiously ignoring them and their expertise, not to mention their invaluable research data base, in the process leading up to the change in the law.

The most important cases on the medical issue have occurred in Ontario. Terry Parker has suffered from a severe form of epilepsy since he was a child. He has experienced serious life threatening seizures that have not been controlled by conventional medications and surgery.

He found that smoking marijuana substantially reduced the incidence of seizures and in fact would stop one that he felt coming on. His physicians have supported him in this use of cannabis since 1987. They determined that he could not take any higher doses of conventional medication because of the serious side effects.

He was subsequently charged with possession of cannabis and acquitted by the courts on the basis that his use was medically necessary. A Crown appeal was dismissed.

He started to grow his own to avoid the black market. In 1996 the police raided his home and seized 71 plants and charged him with cultivation maximum seven years in jail) and possession for the purpose of trafficking maximum life imprisonment). In 1997 they raided him again and found three more plants and charged him with simple possession. He decided to challenge the constitutionality of the law that forced him to choose between his liberty and his health.

Judge Sheppard of the Ontario Court of Justice, which is like our provincial court, agreed with him and stayed the charges.

He also gave him and others like him a constitutional exemption for personal medically approved use." The Crown appealed to the Ontario Court of Appeal.

Last July 31st, the Ontario Court of Appeal decided the Parker appeal.

It dismissed the Crown appeal and held that the law was indeed unconstitutional in so far as it precluded access to marijuana for medical purposes. The court declared the law prohibiting the possession of marijuana to be of no force and effect.

However, as mentioned above, it suspended the declaration of invalidity for one year to enable Parliament (or more accurately the executive government) an opportunity to make amendments to try and bring the law into compliance with the Charter. The federal government could have asked the Supreme Court of Canada for permission to appeal this decision.

It has chosen not to do so. Consequently, the government is working on these new medical marijuana regulations that must be in place by July 31st of this year. Madam Justice Acton of the Alberta Queens Bench followed the Parker decision this past December in ruling in Kreiger that the law prohibiting the cultivation of marijuana was unconstitutional because it did not recognize circumstances involving medical necessity.

That Court also gave the federal government twelve months to rewrite the law to provide for such cultivation for legitimate medical use.

Health Minister Alan Rock has said that this new regulatory framework will address such issues as the definition of medical necessity, the factors to be considered in granting or denying an authorization to use marijuana for medical purposes and a transparent exemption process. In Parker the court appended to its reasons a copy of the California Compassionate Use Act of 1996 as well as the most recent legislation from Hawaii. The Californian law, while declaring that its purpose is to ensure that "seriously ill" Californians have access to marijuana where recommended by their doctor for cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis and migraine, goes on to include "or any other illness for which marijuana provides relief." This would appear to leave the medical decision in the hands of the doctor where it belongs.

In addition the Act is intended to not only protect patients and doctors but also other primary caregivers to the patient. The Hawaiian law, on the other hand, requires the doctor to first diagnose the patient as having a

debilitating medical condition." This is defined as firstly as, "cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions." Secondly as "a chronic or debilitating disease or medical condition or its treatment that produces one or more of Cachexia or wasting syndrome, severe pain, severe nausea, seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohns disease." Thirdly as "any other medical condition approved by the department of health pursuant to administrative rules in response to a request from a physician or qualifying patient." This model takes control of the medical decision out of the hands of

the doctors and places it with government bureaucrats where it does not belong.

I'm betting that our minister of health, who will not be spared from U.S. federal government pressure on this issue, will try for the more restrictive type of regulations ensuring that control will remain with the government and not be left to the doctors and their patients.

Whatever the government comes up with it will have to comply with "the principles of fundamental justice" referred to in Section 7 of the Canadian Charter of Rights and Freedoms. It will not meet those principles if it takes away an individual's right to make decisions of fundamental personal importance which at least includes the right to make decisions as to what medication to take to alleviate the effects of an illness with life threatening consequences. As the court stated in Parker, regulations requiring doctor approval and setting out safeguards to prevent the marijuana from getting into the illicit market may well pass Charter muster.

However, the tricky area defining the qualifying illnesses and the residual power regarding specific illness that are not defined, will prove the most interesting. At least we know that an unfettered discretion in the minister or one of his subordinates will not do.

And all of this over a plant, known for centuries to have medicinal value and described by medical experts as a mild sedative with dependency aspects equivalent to coffee or tea. A non-toxic substance they describe as one of the safest therapeutically active substances known to man in its natural form. The lethal dose ratio (LD-50) for cannabis is estimated to be about 1:20,000 to 1:40,000 which means you have to consume 20,000 to 40,000 times as much marijuana as is contained in one marijuana cigarette to induce death. This means you would have to consume something like 1,500 pounds in 15 minutes to induce a lethal response.

There are no known fatalities from the substance and it is considered non-toxic.

By contrast, non-steroidal anti-inflammatories, which include Aspirin, apparently result in up to 100,000 hospitalizations and 10,000 deaths per year in the United States. The deaths attributed to Aspirin alone, are 1,000 to 2,000 each year.

In other words, if one applies the same criteria to marijuana as to manufactured drugs, marijuana would fall into the category of medications available without prescription over the counter.

In comparison, Echinacea, which is and continues to be widely available without prescription, is just beginning to go though clinical trials to determine if it has any therapeutic value at all. Meanwhile it is known to not be good for those with immune problems like those suffering from AIDS. So what about all the Chinese herbal medicines or those used for centuries by various other indigenous communities?

Maybe its "high" time we conduct some clinical trials on our politicians!

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