

Regional Municipality of York Police Services Board

Report of the Executive Director

Board Position - Decriminalization of Marihuana

July 23, 2003

Recommendations

- (1) That the Board adopt the position that it opposes the decriminalization of marihuana in Canada; and
- (2) That the Board advise the Ontario and Federal Governments, the Ontario Association of Police Services Boards and the Canadian Association of Police Boards of its position.

Background

At its April 30, 2003 meeting, the Board received a report on Cannabis (Marihuana) Use in York Region prepared by the Health and Emergency Medical Services Committee and adopted by Regional Council on April 17, 2003.

The Board requested that the Executive Director, in conjunction with the Chief of Police, prepare a report to reflect its position with respect to the decriminalization of marihuana.

In preparing this report, the Executive Director consulted with Chief of Police Armand P. La Barge, and reviewed background papers issued by the policing community, and the Federal Government, including Health Canada.

House of Commons Special Committee Report

On December 13, 2002, the House of Commons Special Committee on Non-Medical Use of Drugs put forward a number of recommendations in support of a national drug strategy. One recommendation called for the government to establish a 'comprehensive strategy for decriminalizing the possession and cultivation of not more than 30 grams of cannabis for personal use.' Federal Justice Minister Martin Cauchon announced that he would proceed with legislation to decriminalize marihuana. Solicitor General Wayne Easter indicated his support for Minister Cauchon's position. *Report to Regional Council.*

The Drug

Cannabis refers to the flowering or fruiting tops of the cannabis plant, *Cannabis sativa* (Latin for cultivated hemp). The term cannabis is commonly used as a generic name for a variety of preparations including marihuana, hashish and hash oil. Delta-9-tetrahydrocannabinol (YHC) is the major psychoactive ingredient in cannabis products which acts upon specific receptors in the brain. Cannabis products are usually smoked or orally ingested (food or tea). *Interim Report of the Special Committee on Non-Medical Use of Drugs, December 2002, House of Commons, Canada, p. 19*

The Legislation

The *Controlled Drugs and Substances Act* provides for offences that include the production (cultivation or manufacture), importation, exportation, possession, trafficking and possession for the purposes (of exportation or trafficking) of a long list of psychoactive substances.

Cannabis is currently regulated under the *Controlled Drugs and Substances Act*. In July 2001, the legislation was amended to permit the medical use of marihuana.

Cannabis Reform Bill

According to Health Canada, rising rates of marihuana use and decreasing support for incarceration as a penalty for cannabis possession underscore the need to modernize current laws. Under the proposals included in Bill 38, cannabis possession and production would remain illegal in Canada under the *Controlled Drugs and Substances Act*. What will change is the approach to enforcement.

The *Cannabis Reform Bill* includes measures that:

- Replace the current criminal court process and resulting criminal penalties with alternative penalties for **possession of 15 grams or less of marihuana or one gram or less of cannabis resin** (hashish);
- Provide police the discretion to give a ticket or issue a summons to appear in criminal **court** for **possession of more than 15 grams and up to 30 grams of marihuana**;
- Provide for greater alternative penalties when aggravating factors are present, including possession while committing an indictable offence, while operating a motor vehicle or while on or near school grounds; and
- Create **new offences providing tougher penalties for illegal growers**. The larger the operation, the greater the penalty, with a maximum 14

years in prison for anyone found with more than 50 marihuana plants. This is double the current maximum penalty of seven years. *Health Canada web site.*

The *Cannabis Reform Bill* received first Reading on May 27, 2003.

The Courts

On January 2, 2003, Mr. Justice Phillips, Ontario Court of Justice, held that it was not an offence in law to possess less than 30 grams of cannabis marihuana, and that section 4 (1) of the *Controlled Drugs and Substances Act* (CDSA) had been of no force or effect since July 31, 2001. His finding was based on the July 2000 decision of the Ontario Court of Appeal in *R. v. Parker*.

In *R. v. Parker*, the Ontario Court of Appeal declared the prohibition against possession of cannabis marihuana in section 4 (1) to be of no force and effect because it failed to provide a constitutionally required exemption for the medical use of cannabis. The declaration was suspended for one year (i.e. until July 31, 2001) to allow Parliament an opportunity to provide an exemption for medical use.

The government did enact regulations to provide for the exemption for medical use, but did not re-enact section 4 (1) of the CDSA. *Justice Phillips found that Parliament was required to re-enact section 4 (1) of the CDSA, if it wished to continue to prohibit the possession of cannabis marihuana.*

In his May 16, 2003 decision, Justice Rogin of the Ontario Superior Court of Justice, confirmed the lower court decision based essentially on the reasons cited by Justice Phillips.

The Department of Justice is appealing this Judgement to the Ontario Court of Appeal. *CACP Position Paper*

Reaction from the Policing Community

Opposition to the decriminalization of marihuana has been loud and strong from the law enforcement community in Ontario, Canada, and the United States.

Public Safety and Security Minister Bob Runciman expressed disbelief that the decriminalization of marihuana was more important to the Federal Government than the national sex offender registry that would help protect the safety of innocent children.

On June 18, 2003, the Ontario Association of Chiefs of Police issued a news release denouncing the government's inaction and an accompanying open

letter (attached) to the citizens of Ontario urging them to write to Prime Minister Jean Chrétien and Premier Ernie Eves to demand a speedy resolution to this critical public safety issue.

Blueline News Week (May 1, 2003) reported concerns expressed by David Murray, Special Assistant in the Office of National Drug Control Policy, United States, that Canada's and Vancouver's drug policies will likely force the United States to tighten border controls to slow drug trafficking.

Chief Armand P. La Barge has identified a number of public safety concerns with respect to the decriminalization of marijuana.

First and foremost, marijuana is a drug that can negatively influence judgement and behaviour. The impairment of judgement is particularly problematic when an individual chooses to drive a vehicle. According to Chief La Barge, driving under the influence of marijuana will become more prevalent if marijuana is decriminalized, and furthermore, police lack adequate tools and training to deal with the increase in individuals driving while under the influence of a narcotic. Furthermore, the social stigma associated with drinking and driving does not currently extend to those who smoke marijuana before or while driving. In the absence of a societal norm that discourages driving while impaired by marijuana, some people will engage in this practice to the ultimate detriment of themselves and others.

Mothers Against Drunk Driving (MADD) have called on Justice Minister Martin Cauchon to ensure Canadians' safety from drug-impaired driving. MADD opposes any decriminalization of drugs until the proper measures are put into place to effectively deal with drugs and driving.

Secondly, Chief La Barge is concerned about the confusing message that the decriminalization of marijuana is sending to young people. You can use marijuana, but you can't grow it, buy it or sell it. It's doublespeak at its best. Young people should have the opportunity to live and grow in as drug free a society as possible and without reliance on drugs like marijuana.

According to the March 2003 Report on Cannabis (Marijuana) Use in York Region, reference is made to students' use of the drug. Using 2001 data, it is projected that 9% of students from grade 7 to OAC use the drug daily, and 21% use it more than 40 times yearly. Furthermore, the School Boards have reported a dramatic increase in the suspension rate for students using and trafficking drugs in schools.

With respect to York Region residents over the age of 18, it is projected that over 3,000 individuals in York Region meet dependence criteria (i.e. report uncontrolled use and sustained daily use or recent, unsuccessful attempts to reduce use.)

According to Department of Justice data, 21,000 people were charged with simple possession of cannabis in 1999, 11% more than in 1995.

In a cooperative effort, the Canadian Association of Chiefs of Police and the Canadian Police Association, supported by the Canadian Association of Police Boards, the Canadian Centre on Substance Abuse and the Canadian Medical Association, among others, have called for the creation of a National Drug Strategy to reduce drug use in Canada.

Thirdly, Chief La Barge has stated unequivocally that the decriminalization of marihuana can only aid the cause of organized crime as evidenced by the epidemic of marihuana grow operations in York Region. Between 2000 and 2002, the number of warrants issued increased 654% (26 to 170) and there was a 643% increase in charges laid by the York Regional Police (6 to 746). In 2002, York Regional Police executed 170 search warrants and seized \$51 million worth of marihuana.

During this same three-year period, Ontario had the greatest number of grow house operations seized in Canada, and today, Canada has surpassed Mexico as a source country for marihuana and chemical drugs to the United States.

Ultimately, it's a question of supply and demand. The decriminalization of marihuana increases demand for the drug produced in marihuana grow operations run by organized crime. Ultimately, the presence of organized crime brings violence, and the erosion of community safety.

The increasing demand for marihuana increases the demand on police services, already stretched to meet public expectations on many fronts.

Canadian Bar Association Position

In its May 27, 2003 Media Release (attached), the Canadian Bar Association noted that it has supported *the decriminalization of simple possession of cannabis for an adult's own use and the non-profit transfer of small amounts of the drug between adults since 1978*. Furthermore, the Association argues that incarcerating cannabis users neither reduces crime nor drug use.

Health Canada

Health Canada provides leadership and national coordination for Canada's Drug Strategy – a federally coordinated initiative to reduce the harm associated with the use of narcotics and controlled substances and the abuse of alcohol and prescription drugs. According to Health Canada, the Government of Canada is committed to a National Drug Strategy that aims to:

- decrease the prevalence of harmful drug use;

- decrease the number of young Canadians who experiment with drugs;
- decrease the incidence of communicable diseases related to substance abuse;
- increase the use of alternative justice measures like drug treatment courts;
- decrease the illicit drug supply and address new and emerging drug trends; and
- decrease avoidable health, social and economic costs.

In addition, Canada's Drug Strategy is designed to address the growing problem of large-scale marijuana grow operations and the export of illegal drugs across the Canada-United States border.

Board Position

It is the position of the Regional Municipality of York Police Services Board that any legislation or policy initiative by the federal government to decriminalize marijuana in Canada will succeed in undermining the primary aims of Canada's Drug Strategy.

Therefore, in view of the numerous law enforcement and public safety concerns associated with drug use, the Regional Municipality of York Police Services Board opposes any legislation which results in the decriminalization of marijuana in Canada.

The Board urges the federal government to deal with the situation created by the courts forthwith, so that Police Services are not compromised in carrying out their law enforcement duties.

Connie Phillipson
Executive Director