

CAMH Position:

The Legal Sanctions Related to Cannabis Possession/Use

April 2000

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The **Centre for Addiction and Mental Health (CAMH)** does not encourage or promote cannabis use. CAMH emphasizes that the most effective way of avoiding cannabis-related harms is through not using cannabis, and encourages people to seek treatment where its use has become a problem.

Cannabis is not a benign drug. Cannabis use, and in particular frequent and long-term cannabis use, has been associated with negative health and behavioural consequences, including respiratory damage, problems with physical coordination, difficulties with memory and cognition, pre- and post-natal development problems, psychiatric effects, hormone, immune and cardio-vascular system defects, as well as poor work and school performance. The consequences of use by youth and those with a mental disorder are of particular concern. However, most cannabis use is sporadic or experimental and hence not likely to be associated with serious negative consequences.

CAMH thus holds the position that the criminal justice system in general, and the *Controlled Drugs and Substances Act* (CDSA) specifically, under which cannabis possession is a criminal offense, has become an inappropriate control mechanism. This conclusion is based on the available scientific knowledge on the effects of cannabis use, the individual consequences of a criminal conviction, the costs of enforcement, and the limited effectiveness of the criminal control of cannabis use.

CAMH thus concurs with similar recent calls from many other expert stakeholders who believe that the control of cannabis possession for personal use should be removed from the realm of the CDSA and the criminal law/criminal justice system. While harmful health consequences exist with extensive cannabis use, CAMH believes that the decriminalization of cannabis possession will not lead to its increased use, based on supporting evidence from other jurisdictions that have introduced similar controls.

CAMH recommends that a more appropriate legal control framework for cannabis use be put into place that will result in a more effective and efficient control system, produce fewer negative social and individual consequences, and maintain public health and safety. CAMH recommends serious consideration of conversion of cannabis possession to a civil violation under the federal Contraventions Act.

CAMH further recommends that such an alternative framework be explored on a temporary and rigorously evaluated trial basis, and that an appropriate level of funding be provided/maintained for prevention and treatment programs to minimize the prevalence of cannabis use and its associated harms.

THE CASE

- In Canada, cannabis use or possession is controlled by criminal law under the Controlled Drugs and Substances Act (CDSA).
- The maximum sentence for first-time offenders is a \$1000. fine and 6 months in jail; double for repeat offenses.
- An estimated half a million Canadians carry a criminal record for this offense.
- A criminal record labels offenders as criminal, and imposes significant constraints on their ability to obtain employment, professional certification, and travel

- In 1997, there were approximately 33,000 arrests for cannabis possession offenses (just under half of all drug related arrests)
- The annual cost of illicit drug enforcement (involving policing, courts and corrections) amounts to over \$400 million a year. It is estimated that up to half of this amount relates to the enforcement of cannabis use/possession.
- Approximately 7% of Canadians over the age of 15 use cannabis each year, and roughly 1 in 4 has used it at some point in their lives.
- Between 23% and 44% of high school students reported use in the past year.
- Of Ontario health care system costs attributable to drugs in 1992:
 - 0.5% were attributable to cannabis
 - 2.0% to other illicit drugs
 - 28.4% to alcohol
 - 69.0% to tobacco.

SUPPORT FOR LEGISLATIVE CHANGE

It has been suggested that the harms associated with cannabis use are out of balance with the costs of its control. Various bodies have supported removing cannabis use from the criminal code:

- The Le Dain Commission in 1972
- The Canadian Senate in 1974
- the Canadian Bar Association in 1994
- the Canadian Police Association in 1982
- a working paper by the Health Department in 1982
- a Senate Committee
- the Canadian Centre on Substance Abuse (CCSA) in 1998
- the Canadian Association of Chiefs of Police in 1999
- Australia, England, Spain, Germany, The Netherlands, and Denmark have taken measures to control cannabis use less punitively, either by changing the law, changing enforcement practices, or both.
- In a recent survey, 69% of Canadians indicated that they are in favour of changes limited to a fine as the maximum punishment.

CANNABIS USE CONTROL OPTIONS (CCSA)

1. **The Fine Only Option** would reduce the maximum sentence for cannabis possession offense to a limited fine, and eliminate incarceration.

2. **The Civil Offense Option** would change cannabis possession from a criminal to a civil offense with a limited fine under the federal Contraventions Act.

3. **The Diversion Option** would divert cannabis possession offenders to special educational/rehabilitational programs under the Alternative Sentencing law (C-41), while suspending the original criminal conviction/sentence.

4. **The Devolution to Provinces Option** would devolve jurisdiction of control over cannabis possession from the federal to the provincial level. The provinces would then devise appropriate control schemes, or devolve this responsibility to municipalities.

CONCERNS AND RESPONSES

1. *If the penalties are lessened, more people will use cannabis.*

- Numerous international studies suggest that there is no correlation between cannabis use and the severity of cannabis use penalties.
- In the Netherlands, where cannabis use is not a criminal offence, usage rates are lower than in the US, which has some of the toughest cannabis laws in the Western world.
- US states that decriminalized marijuana possession in the 1970s did not see any increases in use; neither did the Australian states that introduced a civil offense model over the past decade.

2. *Tough cannabis laws deter people from using cannabis.*

- There is no evidence that harsh cannabis laws deter people from using cannabis.
- A twenty-year-old study showed that the vast majority of people convicted for cannabis use continued using it.
- Research with teenage students suggests that the criminalization and stigmatization of cannabis use as a dangerous and forbidden activity makes its use even more attractive.

3. *Cannabis is a gateway drug to other, more dangerous illicit substances.*

- It has never been scientifically proven that cannabis causes people to use other drugs.
- Since cannabis is the most commonly used illicit drug, most people who use other illegal drugs also have used cannabis, and they have used alcohol or tobacco. For the vast majority of cannabis users, it is a terminus rather than a gateway drug, as it is the only illegal drug they have ever used.

4. *Within current realities of Canadian law and enforcement, cannabis use is basically legal anyway.*

- Although first-time cannabis possession offenses are limited to a summary conviction charge, cannabis possession is still a criminal offense. Everyone convicted is burdened with a criminal record that may bar him or her from employment, travel and other social opportunities.
- Although incarceration for a first offense is rare, the maximum sentence of \$1,000/6 months in jail remains. Some individuals who are convicted and receive a fine penalty may be jailed because of fine default, or a repeat offense.

- Despite the fact that most cannabis use goes undetected, substantial resources go into policing, charging and processing the 30,000+ cannabis possession offenses in Canada each year. Each offense can take one or two officers off the street for up to half a shift, not to mention their time for court appearances, and other judicial costs. Cannabis possession offenses constitute approximately 1% of all criminal offenses enforced in Canada every year.

5. *Decriminalizing cannabis use will send the wrong message to people, especially teenagers and students.*

- Reducing the punitiveness of cannabis possession law and control in Canada is very unlikely to suggest to people that cannabis use is broadly tolerated or encouraged.
- The possession of cannabis will remain punishable behaviour under government control, but the proposed reforms will bring the harms of the offense into greater balance with the severity and costs of punishment. This is an important goal for law and policy, since it is known that people's compliance with the law is correlated with their respect for the values the law is perceived to embody.
- While the law is an important mechanism of behaviour control, comprehensive, accurate and balanced information and education should be seen as the primary means to enable people to make educated, conscious and rational choices about their drug use.

6. *Decriminalization equals legalization, or is the first step to legalization.*

- Reducing the severity of punishment for cannabis use while maintaining legal control of use is a fundamentally separate issue from legalization and does not imply a step towards such a goal.
- Under the models proposed for its decriminalization, cannabis use/possession remains controlled by law, while offenses involving supply, sale, or minors and behaviors endangering others (like driving) continue to be heavily punished.

7. *Cannabis use is dangerous, harmful and addictive.*

- Cannabis is not a benign drug; rather, like all other psychoactive substances, it has negative and harmful effect potentials.
- Some of the health risks and harms associated with long-term, regular cannabis use include respiratory damages, reduction of memory, cognition and physical coordination, psychiatric disorder effects, impairments of hormone production, immune system and cardio-vascular processes, and others.
- In terms of possible harm of cannabis use to others, like many other licit and illicit psychoactive drugs (including alcohol, tranquilizers, etc.), cannabis impairs cognition and coordination, and therefore should not be used when driving or operating machinery, or performing other complex tasks that may cause risk to others.

- The level of harm is correlated to the frequency, intensity and over-time length of use of cannabis, and are highly unlikely to occur at use patterns reported by the vast majority of Canadians who have used cannabis for recreational purposes.
- While it is acknowledged that cannabis may carry some potential for dependency, most people who use it do not become dependent on it. There is no evidence of any deaths from cannabis overdose.

8. *Even if Canada wanted to control cannabis use by means other than the criminal law, it would not be possible due to obligations under the international drug treaties.*

- There is dispute among experts as to whether the applicable international drug treaties, in their intent, refer to drug use and possession for personal purposes at all, or whether they are concerned with supply and trafficking issues.
- International drug treaties are limited by the signatories' constitutional rights and principles, and even explicitly emphasize (1988 Convention) that alternatives to criminal conviction or punishment of illicit drug users are available in the form of treatment, education, aftercare, rehabilitation or social reintegration of the offender (Art. 3(4)d).
- A number of Western countries which are signatories to the international conventions have established non-criminal alternatives to cannabis use control, without experiencing any major repercussions from the international drug control authorities.