

RECENT DEVELOPMENTS IN MARIJUANA POSSESSION LAW

Kathleen McIntosh

Introduction

Marijuana possession is a contentious issue. For decades the topic has been the subject of a raging national debate involving the media, politicians, lawyers, and everyday citizens. Should marijuana possession be criminal? Should it be decriminalized? Should it be legal? Is the prohibition on marijuana possession constitutional? Should ill Canadians be able to legally consume marijuana?

Historically this debate involved significant discussion but very little action. More recently, however, there has been a flurry of activity. In less than five years, the issue has gone before several appellate courts, including the Supreme Court of Canada. Regulations were developed to allow seriously ill persons to legally possess and cultivate marijuana. Furthermore, a marijuana decriminalization bill was put before the House of Commons. These significant events, combined with a brief discussion of the history of marijuana possession, are the focus of this paper.

A Brief Historical Overview

Marijuana was first criminalized in 1923 under the *Opium and Narcotic Drug Act*.¹ The rationale for this event is not entirely certain. There was no discussion in the House of Commons. The Honourable H.S. Beland simply stated that “[t]here is a new drug in the Schedule.”² As well, there were no cannabis-related problems at that time; opium was the drug of choice.

Interestingly, the prohibition on marijuana took place one year after *The Black Candle*³ was published. The author of that book, Emily Murphy, was a police magistrate and judge of the Juvenile Court in Edmonton, Alberta. She devoted an entire chapter to marijuana, which she called an “extraordinary menace.”⁴ In that chapter she reproduced portions of a sensationalist letter from the chief of police in Los Angeles, California:

Persons using this narcotic, smoke the dried leaves of the plant, which has the effect of driving them completely insane. The addict loses all sense of moral responsibility. Addicts to this drug, while under its influence, are immune to pain, and could be severely injured without having any realization of their condition. While in this condition they become raving maniacs and are liable to kill or indulge in any form of violence to other persons, using the most savage methods of cruelty...⁵

Murphy further quoted the chief of police’s statement that excessive consumption of marijuana “ends in the untimely death of its addict.”⁶ It is possible that concern about these supposed side effects of marijuana consumption influenced Parliament to take pre-emptive action.

Despite the prohibition on marijuana, enforcement was almost non-existent for several decades. The Dominion Bureau of Statistics reported that only 25 marijuana offences were recorded across

¹ S.C. 1923, c. 22.

² *House of Commons Debates* 3 (23 April 1923) at 2124 (Hon. H.S. Beland).

³ E. F. Murphy, *The Black Candle* (Toronto: Thomas Allen, 1922).

⁴ *Ibid.* at 331.

⁵ *Ibid.* at 332-33.

⁶ *Ibid.* at 333.

Canada between 1930 and 1946.⁷ However, this changed dramatically in the 1960s when marijuana was listed in the *Narcotic Control Act*.⁸ Enforcement of the marijuana prohibition was fervent. In a four-year period, convictions for simple possession of marijuana rose from 431 to 8,389.⁹

The Canadian public became concerned about this mass production of “cannabis criminals.” In 1968 the Liberal government responded by establishing the Le Dain Commission, formally known as the Commission of Inquiry into the Non-Medical Use of Drugs. The Commission engaged in an extensive analysis of drug use, treatment, and control and made recommendations for reform. Of particular significance was the recommendation for “the repeal of the prohibition against the simple possession of cannabis.”¹⁰

In an effort to make this recommendation a reality, Bill S-19 was launched in the Senate in 1974. It proposed that marijuana be decriminalized and that fines be the sole penalty for possession. The bill was approved by the Senate but subsequently died on the order paper in the House of Commons.

The decades to follow were full of promises for reform, yet the only reform that came to fruition took place in 1996 with the passage of Bill C-8, the *Controlled Drugs and Substances Act (CDSA)*.¹¹ This new legislation effectively changed nothing. Marijuana possession is still a criminal offence.¹² A conviction results in a criminal record and is punishable by a fine of \$1,000 and six months’ imprisonment.¹³

⁷ G. H. Josie, *A Report on Drug Addiction in Canada* (Ottawa: King’s Printer, 1948) cited in M. Green & R. D. Miller, “Cannabis Use in Canada” in Vera Rubin, ed., *Cannabis and Culture* (The Hague: Mouton, 1975) 497 at 498.

⁸ S.C. 1960-61, c. 35.

⁹ Canada, *Cannabis: A Report of the Commission of Inquiry into the Non-Medical Use of Drugs* (Ottawa: Information Canada, 1972) at 290 (Chair: G. Le Dain).

¹⁰ *Ibid.* at 302.

¹¹ S.C. 1996, c. 19 [CSDA].

¹² *Ibid.* at s. 4(1).

¹³ *Ibid.* at s. 5.

Parker and the Aftermath

Despite the longstanding controversy surrounding marijuana possession, the prohibition on marijuana possession had never been successfully challenged until *R. v. Parker*¹⁴ (“Parker”). In that case, the accused suffered from a severe form of epilepsy. From a very young age he was prone to experience seizures that would cause him to lose consciousness and shake violently while lying on the ground. During these seizures he vomited, lost control of his bowels, choked on his saliva, and smashed his head on the ground. Aggressive medical treatment, including a temporal lobectomy, did not improve his condition. He found that smoking marijuana helped minimize the frequency and intensity of the seizures.

The police searched Parker’s home and charged him with possessing marijuana contrary to s. 4(1) of the *CDSA*. Parker argued that s. 4(1) of the *CDSA* violated his right to liberty and security of the person under s. 7 of the *Canadian Charter of Rights and Freedoms (Charter)*¹⁵ because it did not allow for the medical use of marijuana. The Ontario Court of Appeal unanimously agreed. Given that there was no way for Parker to legally obtain and possess marijuana for medical use, he was forced to choose between his health and imprisonment. This was a clear violation of s. 7 that could not be saved by s. 1 of the Charter. The Court declared the marijuana prohibition in s. 4 to be invalid, but suspended the declaration of invalidity for a period of 12 months to give Parliament an opportunity to address the constitutional defect.

As a result of this declaration of invalidity, the Governor-in-Council enacted the *Marijuana Medical Access Regulations (MMAR)*.¹⁶ The *MMAR* came into force the day before the Parker suspension expired.¹⁷ They provide a regulatory framework for seriously ill people to possess marijuana for therapeutic purposes. They established an application program whereby seriously ill persons could apply for permits to possess marijuana. Permit holders are also able

¹⁴ (2000), 146 C.C.C. (3d) 193 (Ont. C.A.) (Q.L.) [*Parker*].

¹⁵ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*].

¹⁶ S.O.R./2001-227.

¹⁷ *Ibid.* at s. 73.

to grow their own marijuana (or have a designated person grow it for them) if approved for a production licence.

The validity of the *MMAR* was subsequently challenged in *Hitzig v. Canada*¹⁸ (“Hitzig”). In that case, the Ontario Superior Court of Justice held that the *MMAR* violated s. 7 of the *Charter* because they did not provide seriously ill Canadians with legal access to marijuana. Individuals with possession permits or production licences were required to rely on the black market for access to marijuana and marijuana seeds. The violation could not be saved under s. 1; therefore, the *MMAR* were declared invalid. The declaration of invalidity was suspended for six months.

These events led to considerable disagreement as to the state of the law. Was marijuana possession legal or illegal? Saskatchewan¹⁹ and Alberta²⁰ trial judges held that marijuana possession was illegal. Ontario²¹ and Prince Edward Island²² courts concluded that it was legal. Courts in British Columbia rendered conflicting judgments. Chief Justice Stansfield in *R. v. Nicholls*²³ (“*Nicholls*”) found that marijuana possession was illegal, whereas Judge Chen in *R. v. Masse*²⁴ concluded that it was legal.

These differing applications of the criminal law across Canada has led to several challenges. In *R. v. Clarke*,²⁵ the accused claimed that it was an abuse of process to allow the federal Crown to prosecute marijuana possession charges in Nova Scotia when other provinces found that marijuana possession was not illegal. The Court agreed:

I find that it would be oppressive and vexatious to allow the prosecution of Ms. Clarke on the charge of marijuana possession to continue, given the state of this law in the Provinces of Ontario

¹⁸ (2003), 171 C.C.C. (3d) 18 (Ont. S.C.J.) (QL).

¹⁹ *R. v. Hadwen* (2003), 174 C.C.C. (3d) 420 (Sask. Prov. Ct.) (QL).

²⁰ *R. v. Ocoin*, [2003] A.J. No. 633 (Prov. Ct.) (QL) [*Ocoin*].

²¹ *R. v. J.P.*, [2003] O.J. No. 3876 (C.A.) (QL); *R. v. Barnes*, [2003] O.J. No. 261 (Ct. J.) (QL).

²² *R. v. Stavert*, [2003] P.E.I.J. No. 104 (S.C.(T.D.)) (QL).

²³ [2003] B.C.J. No. 881 (Prov. Ct.) (QL) [*Nicholls*].

²⁴ [2003] B.C.J. No. 2085 (Prov. Ct. (Crim. Div.)) (QL).

²⁵ [2003] N.S.J. No. 124 (Prov. Ct.) (QL).

and Prince Edward Island. To do otherwise would undermine the fundamental justice of the system.²⁶

Yet the Court in *Nicholls* found that there is tolerance for varied geographic applications of the criminal law where such differences occur as a function of the law. Given that Ontario judgments are not binding on other provinces, marijuana possession continued to be illegal in British Columbia. The Court also stated the following:

There is an unfortunate degree of uncertainty at the moment regarding the status of the CDSA legislation ... But for courts to interpret the law differently in different provinces does not by definition give rise to an abuse of the process of the court.²⁷

Similarly, Chief Justice Caffaro in *R v. Ocoin* (“*Ocoin*”) said that the Crown is permitted to prosecute possession of marijuana so long as s. 4(1) of the *CDSA* is in force in Alberta. The Court stated that to do otherwise would “create a dysfunctional juridical system in our federal system of government.”²⁸

In light of these conflicting provincial decisions, it is no wonder this area of the law was described as a “mess” by Chief Justice Stansfield.²⁹ Thankfully, a resolution was found in October 2003 when the Ontario Court of Appeal rendered its reasons in *Hitzig v. Canada*.³⁰ In that case, the Court reviewed the *MMAR* and found that there were two violations of s. 7 of the Charter that could not be saved by s. 1. First, some applications for marijuana possession permits required the support of two medical specialists, whereas others only required the support of one specialist. The Court held that the requirement for a second specialist was an arbitrary barrier that served no purpose.³¹

Second, permit holders who were too ill to grow their own marijuana were permitted to designate a person to produce marijuana for them. These licensed, designated producers could not be remunerated, could not provide marijuana to more than one permit holder, and could not

²⁶ *Ibid.* at para. 23.

²⁷ *Nicholls*, *supra* note 23 at para. 76.

²⁸ *Ocoin*, *supra* note 20 at para. 8.

²⁹ *Nicholls*, *supra* note 23 at para. 2.

³⁰ [2003] O.J. No. 3873 (C.A.) (Q.L.).

³¹ *Ibid.* at para. 145.

combine their crops with other designated producers. These restrictions prevented the formation of legal “compassion clubs” and other efficient methods of supplying permit holders with marijuana. As a result, some permit holders were unable to legally access marijuana and were forced to rely on the black market to get their medication.³²

These problematic provisions of the *MMAR* were declared invalid and were struck from the *MMAR*.³³ The modified *MMAR* became a constitutionally sound medical exemption to the marijuana prohibition in s. 4(1) of the *CDSA*.³⁴ Finally, the concern about medical access to marijuana that was raised in *Parker* more than three years earlier was rectified. The *Parker* declaration of invalidity was no longer an issue, and the prohibition on marijuana possession became Canada-wide once again.

The Supreme Court of Canada on Marijuana Possession

Two months after the *Hitzig* decision was rendered, the Supreme Court of Canada addressed the constitutionality of prohibition on marijuana possession. Two separate, yet closely related, judgments were given on December 23, 2003. The first case, *R. v. Malmo-Levine* (“*Malmo-Levine*”); *R. v. Caine*,³⁵ involved two incidents of marijuana possession addressed by British Columbia courts. The second, *R. v. Clay*,³⁶ concerned an accused convicted of marijuana possession in Ontario. The reasons in both judgments complement each other and should be read together.

Division of Powers

The accused in *Malmo-Levine* claimed that the prohibition against marijuana is outside the federal Government’s criminal law power in s. 91(27) of the *Constitution Act*, 1867.³⁷ Both the majority and the

³² *Ibid.* at para. 116.

³³ *Ibid.* at para. 166.

³⁴ *Ibid.*

³⁵ [2003] S.C.J. No. 79 (QL) [*Malmo-Levine*].

³⁶ [2003] S.C.J. No. 80 (QL) [*Clay*].

³⁷ (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5.

minority disagreed with this argument. Marijuana is a psychoactive drug that causes the alteration of mental function. That is why people use it. Lower courts made findings that marijuana can be harmful, especially for vulnerable groups such as pregnant women, schizophrenics, and adolescents with a history of poor school performance. The protection of these vulnerable groups is a valid criminal law objective. The other two requirements for a valid criminal law (a prohibition and a penalty) are also satisfied. “The use of marijuana is therefore a proper subject matter for the exercise of the criminal law power.”³⁸

The Court also turned its mind to the possibility that the prohibition could be permitted under Parliament’s residual power to legislate for the federal *Peace, Order, and Good Government* (POGG). The use of marijuana is not a national emergency, and it is a subject matter that did not exist at the time of Confederation. However, the Attorney General of Canada contended that the control of marijuana is a legislative subject matter that “goes beyond local or provincial concern and must, from its inherent nature, be the concern of the Dominion of the whole.”³⁹ This argument was left for another day:

Our conclusion that the present prohibition against the use of marijuana can be supported under the criminal law power makes it unnecessary to deal with the Attorney General’s alternative position under the POGG power, and we leave this question open for another day.⁴⁰

Section 7 of the Charter

Between the two sets of reasons, a number of s. 7 arguments were addressed by the Supreme Court. First, Malmo-Levine asserted that smoking marijuana is integral to his lifestyle and that criminalizing marijuana is an infringement of his personal liberty. He wrote the following in his factum:

It is submitted that a decision whether or not to possess and consume Cannabis (marijuana), even if it is potentially harmful to the user, is analogous to the decision by an individual as to what food to eat or

³⁸ *Malmo-Levine*, *supra* note 35 at para. 78.

³⁹ *Ibid.* at para. 71.

⁴⁰ *Ibid.* at para. 72.

not eat and whether or not to eat fatty foods, and as such a decision of fundamental personal importance involving a choice made by the individual involving that individual's personal autonomy.⁴¹

The Court was not persuaded by this argument. The *Constitution Act* cannot be stretched to protect every single activity that individuals choose to define as central to their lifestyle. If this were the case, then other activities (for example, golfing, and gambling) would have to be constitutionally protected as well.

Second, Clay raised a similar s. 7 argument but put more emphasis on privacy. He asserted that marijuana smokers almost always smoke in the privacy of their own homes; therefore, it is a violation of the principles of fundamental justice to prohibit marijuana when there is no substantial harm to society. This contention was quickly dismissed by the Court:

We do not think that the more general lifestyle argument, which we considered and rejected in *Malmo-Levine* and *Caine*, gains any strength by the appellant Clay's invocation of privacy right.⁴²

Third, Caine claimed that the potential for imprisonment upon conviction for marijuana possession is a liberty violation that is not in accordance with the principles of fundamental justice. The Court agreed that the risk of imprisonment clearly engages the liberty component of s. 7. However, there is no mandatory minimum sentence upon conviction, and imprisonment is imposed for simple possession in "exceptional circumstances" only.⁴³ The availability of imprisonment is largely due to the fact that the prohibitive statute deals with a wide variety of narcotics, ranging from marijuana to heroin and cocaine:

The mere fact of the availability of imprisonment in a statute dealing with a variety of prohibited drugs does not, in our view, make the criminalization of possession of a psychoactive drug like marijuana contrary to the principles of fundamental justice.⁴⁴

⁴¹ Cited in *ibid.* at para. 84.

⁴² *Clay*, *supra* note 36 at para. 33.

⁴³ *Malmo-Levine*, *supra* note 35 at para. 154.

⁴⁴ *Ibid.* at para. 4.

Therefore, the majority held that although liberty interests are at stake, they are deprived in a manner that accords with the principles of fundamental justice.

Fourth, Clay asserted that Parliament's prohibition against marijuana is overbroad in that it catches a huge number of casual marijuana users in an effort to prevent harm to a very small percentage of chronic users. This argument also failed. The test for overbreadth as it relates to the potential infringement of fundamental justice is whether the legislative measure is "grossly disproportionate" to the state interest that the legislation seeks to protect.⁴⁵ The marijuana prohibition is not grossly disproportionate to the state interest in avoiding harm to marijuana users. Moreover, a complete prohibition is necessary. A more narrow prohibition "would not be effective because the members of at least some of the vulnerable groups and chronic users could not be identified in advance."⁴⁶

Fifth, Malmo-Levine and Caine relied on the writings of John Stuart Mill in arguing that Parliament lacks the authority to impose criminal liability on activity that does not cause harm to others.⁴⁷ They further argued that this "harm principle" is a principle of fundamental justice under s. 7.⁴⁸ The majority of the Court disagreed. Although the avoidance of harm is an important state interest,⁴⁹ it does not meet the criteria for a principle of fundamental justice. There is no social consensus that tangible harm to others is a necessary precondition to the creation of a criminal offence.⁵⁰ Some criminal offences, such as cannibalism, incest, bestiality, and cruelty to animals, are aimed at morality. Other offences are paternalistic and are designed to "save people from themselves."⁵¹ These laws do not offend our notions of justice. Furthermore, harm takes so many forms that the harm

⁴⁵ *Clay*, *supra* note 36 at para. 38.

⁴⁶ *Ibid.* at para. 40.

⁴⁷ *Malmo-Levine*, *supra* note 35 at para. 103.

⁴⁸ *Ibid.* at para. 110.

⁴⁹ *Ibid.* at para. 114.

⁵⁰ *Ibid.* at paras. 115-126.

⁵¹ *Ibid.* at para. 124.

principle is an unmanageable tool for measuring deprivation of life, liberty, and security of the person.⁵²

Section 15 of the Charter

Finally, an equality claim was raised by Malmo-Levine. He argued that the criminalization of marijuana is a breach of s. 15 of the *Charter* because marijuana users have a “substance orientation,” a personal characteristic analogous to sexual orientation. The Court held that marijuana consumption is a lifestyle choice that bears no analogy with the personal characteristics listed in s. 15. To find otherwise would “create a parody of a noble purpose.”⁵³

Decriminalization

In addition to addressing these arguments, the Supreme Court discussed Parliament’s authority to decriminalization marijuana:

We have concluded that it is within Parliament’s jurisdiction to criminalize the possession of marijuana should it choose to continue to do so, but it is equally open to Parliament to decriminalize or otherwise soften any aspect of the marijuana laws that it no longer considers to be good public policy.⁵⁴

This is a clear message to Parliament and Canadian citizens that decriminalization is a policy choice. Any initiatives to decriminalize marijuana possession fall squarely within Parliament’s policy-making role.

The Future: Decriminalization on the Horizon?

In 2003, Jean Chretien’s Liberal government announced its intention to decriminalize simple possession of marijuana. Bill C-38, *An Act to Amend the Contraventions Act* and the *Controlled Drugs and Substances Act*,⁵⁵ received first reading in the House of Commons on May 27, 2003.

⁵² *Ibid.* at paras. 127-129.

⁵³ *Ibid.* at para. 185.

⁵⁴ *Clay, supra* note 36 at para. 4.

⁵⁵ 2d Sess., 37th Parl., 2003 [Bill C-38].

The Proposed Scheme

Bill C-38, as introduced, proposed that possession of small amounts of marijuana be dealt with under the *Contraventions Act*,⁵⁶ instead of the *CDSA*. Violation tickets would be issued, and existing provincial and territorial systems would be used to process the tickets. Under this regime, marijuana possession would still be illegal, but offenders would only receive a fine and would not receive a criminal record.

Possession of 15 grams or less of marijuana would be punishable by a fine of \$100 for youth and \$150 for adults.⁵⁷ Larger fines would be ordered if aggravating circumstances were present. Aggravating circumstances include operating a motor vehicle, committing an indictable offence, and being in, or near, a school.⁵⁸ Under those circumstances, adults would be fined \$400 and youth would be fined \$250.⁵⁹

The Federal government believes that these reforms would discourage the use of marijuana because they would allow for greater enforcement.⁶⁰ Under the *CDSA*, police officers often issue warnings for possession of small amounts of marijuana. Under the proposed scheme they could issue tickets instead. The Honourable Martin Cauchon, the Minister of Justice and Attorney General of Canada, said that the reforms would “ensure that enforcement resources are focused on where they are most needed by allowing police to enforce the law, but without the complications of going before the courts for minor offences”.⁶¹

⁵⁶ S.C. 1992, c. 47.

⁵⁷ Bill C-38, *supra* note 55 at cl. 5.1.

⁵⁸ *Ibid.* at cl. 5.3.

⁵⁹ *Ibid.* at cl. 5.2.

⁶⁰ Health Canada, News Release, 2003-34 “Renewal of Canada’s Drug Strategy To Help Reduce the Supply and Demand for Drugs” (27 May 2003), online: Health Canada <http://www.hc-sc.gc.ca/english/media/releases/2003/2003_34.htm>.

⁶¹ *House of Commons Debates* 106 (May 27, 2003) at 6573.

Potential Advantages of Decriminalization

Some Canadians support the decriminalization of marijuana because they feel that it is one step closer to legalization. They argue that marijuana possession should be legal because consumption of marijuana is a personal choice that does not harm others. This point of view can be buttressed by John Stuart Mill's writings:

That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.⁶²

Given that marijuana use only harms the consumer, marijuana possession should not be the subject of the criminal law.

Decriminalization also avoids the problems associated with criminal convictions. Criminal convictions carry significant social stigma and can severely affect people's lives in terms of education, employment, and travel. Convictions also cause tremendous stress and personal upheaval. Violation tickets, on the other hand, do not cause the same level of anxiety and do not have life-altering implications.

Finally, decriminalization allows law enforcement officials and Crown counsel to focus their attention on more important issues. The prohibition on small amounts of marijuana demands significant resources and imposes severe strains on the criminal justice system.

Dealing with possession of marijuana by way of a violation ticket frees up tremendous enforcement and judicial resources that can be redirected elsewhere.

Potential Disadvantages of Decriminalization

On the other hand, there may be negative repercussions to decriminalization. There is concern that more people will drive while under the influence of marijuana, thereby causing more accidents, injuries, and deaths. Although driving while impaired by marijuana is an offence under s. 253(a) of the *Criminal Code*,⁶³ there is currently no roadside device to determine impairment. Mothers Against Drunk

⁶² J. S. Mill, *On Liberty* (New York: Norton, 1975) at 11.

⁶³ R.S.C. 1985, c. C-46.

Driving (MADD) argues that decriminalization should not take place until the police are able to deal with drivers impaired by marijuana.⁶⁴

Moreover, significant discussion has focused on the potential impact on Canada's relationship with the United States. It is feared that America will tighten its border, making it more difficult for Canadians to travel and engage in international trade. This concern was raised by Stephen Harper during Question Period:

American authorities have threatened to increase searches on Canadian travellers at the border. We already have duties on softwood lumber and wheat. We have bans on importations of beef. We have travel advisories because of SARS. We have an endless number of problems because of bad relations over Iraq. What assurances can the government give us that its pet project on marijuana will not jeopardize legitimate trade with the United States?⁶⁵

Some believe that Canada's "relationship with the U.S. is too valuable to let it go up in smoke."⁶⁶

Provincial justice ministers have also argued that there are more pressing initiatives for Parliament to consider. Dave Hancock, the Alberta Justice Minister, expressed this sentiment:

If you only have so much time, don't use it on decriminalizing marijuana when there's a lot of other more important, pressing issues to deal with.⁶⁷

Some of those pressing issues include implementing a national sex offender registry, legislating for automatic first-degree murder charges in child killing, increasing legal aid funding, ending expensive preliminary enquiries, and streamlining "mega-trials" that are bogging down the justice system.

⁶⁴ MADD Canada, News Release, "An Open Letter Concerning Bill C-10 *Decriminalization of Marijuana*" (21 February 2004), online: MADD <<http://www.madd.ca/english/news/pr/p040224letter.htm>>.

⁶⁵ *House of Commons Debates*, 106 (27 May 2003) at 6531.

⁶⁶ "Not the Time To Push Pot Laws Too Far" [*Victoria*] *Times Colonist* (7 March 2004) D2.

⁶⁷ J. Tibbetts "Provinces Want Pot Bill Put on Backburner" [*Victoria*] *Times Colonist* (30 September 2003) A3.

The Future of Bill C-38

Bill C-38 died in November 2003 when Parliament was temporarily suspended for the swearing-in of the new Prime Minister, Paul Martin. Parliament resumed sitting, and the decriminalization proposal was reintroduced into the House of Commons as Bill C-10. Bill C-10 received first and second reading but died on the order paper in May 2004 when an election was called. Following the re-election of the Liberal government, the legislation was reintroduced again. Bill C-17 received first reading on November 1, 2004, and second reading on November 2, 2004. No further action has been taken.⁶⁸

Conclusion

After a period of ambiguity and national confusion, appellate courts stepped in and clarified the law as it relates to marijuana possession. It is now evident that the current prohibition on marijuana possession and the current *MMAR* pass constitutional muster. Yet much uncertainty remains in light of Parliament's broad policy-making role. Will reforms be made? Will possession of small amounts of marijuana ever be decriminalized? Or will the law remain unchanged, as it has been for years?

In light of past unfulfilled promises for change, some are sceptical that current initiatives will actually come to fruition:

...[F]ederal promises of reform are far from new. Indeed, political promises of revisions to the cannabis law have been made frequently over the past four decades, with little effect in the form of substantive law reform. Such promises should, therefore, be taken with the proverbial grain of salt until a new legal framework has actually been developed and established.⁶⁹

Others disagree and feel that decriminalization is imminent. Although our history holds many unfulfilled promises, much has changed. We now know that Emily Murphy was wrong and that marijuana

⁶⁸ This was last confirmed on January 18, 2005.

⁶⁹ B. Fischer, K. Ala-Leppilampi, E. Single & Amanda Robins, "Cannabis Law Reform in Canada: Is the 'Saga of Promise, Hesitation and Retreat' Coming to an End?" (2003) *Can. J. Crim. & Crim. J.* 266 at 282.

consumption does not lead to mania, violence, and death. We now clearly recognize the value of marijuana as a form of medicine for the seriously ill. We acknowledge the Ledain Commission's finding that marijuana possession convictions have a huge impact on the lives of youth and adults. We are more "liberal" in our views of marijuana than we were even ten years ago.⁷⁰ We are also currently living in an era of fiscal restraint where we demand that government officials make the best use of our tax dollars.⁷¹ When taken in combination, these factors indicate that change is on the horizon.

⁷⁰ Canada, Senate Special Committee on Illegal Drugs, *Cannabis: Our Position for a Canadian Public Policy* (Ottawa: Communication Group, 2002) at 20 (Chair: Pierre Claude Nolin), online: Library of Parliament <<http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/ille-e/rep-e/summary-e.pdf>>.

⁷¹ Enforcing the current marijuana possession law costs Canadians between 350 and 500 million dollars each year. *Ibid.* at 24.