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“Sent via Facsimile @ 1-(613) 990-7255 & Canada Post”

Minister of Justice & Attorney General of Canada
284 Wellington Street
Ottawa, Ontario
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Attention: The Honourable Martin Cauchon

Dear Mr. Cauchon,

Re: The Cannabis (Marijuana) Issue

I realize you are about to make an important decision regarding Canada's policy on Cannabis, and I hope that you have not done so yet. I fear the problems you wish to address will not be addressed through "decriminalization", only through re-legalization and re-regulation. Here is why.

Consider the following quote from Justice Binnie:

"The question here is the apparent contradiction between the position taken outside the court and the position taken inside the court." - Justice Binnie Van. Sun. Dec. 14, 2002, Van. Prov. Dec. 15

Despite this contradiction, both the Crown and you take the position that the harms that come with cannabis use are inherent and require punishment in order to deter cannabis USE. Would you not concede that this approach is possibly an over-broad way of addressing concerns over cannabis ABUSE? Your positions differ only as to the cost-effectiveness of different methods of punishment - the question of whether punishment is required at all - a question relevant to every appellant - is not being addressed by either you or the crown. All three of the appellants are arguing against punishment, not simply against jail. All three challenges cite Mill's Harm Principle. Consider Mill writes that persons should not be "visited with any evil" for exercising their rights to "tastes and pursuits".

Consider the following quotes:

Paddy Torsney said on Thursday the 12 of December:

"We want to send two clear messages:

1. possession of MJ is illegal and should stay illegal.
2. We want people w/ small quantities of MJ to get a sanction for breaking the law, but not a criminal record."

"A ticket would be more immediate and a police officer would be MORE LIKELY TO WRITE A TICKET. Right now the laws are not evenly enforced, often police will turn a blind eye, which teaches disrespect for the law. WE WANT FINES TO BE RENDERED."

"There is an uneven application of the law. In many places the police warn an individual and don't charge. We think, actually, with what we're proposing a person with a small amount will be more likely to SUFFER a consequence for breaking the law. So we actually think we're being a little tougher on people by suggesting that there would be a fine for that breaking of the law and police officers would be more likely to write that ticket rather than it walk away."

Source: <http://www.pot-tv.net/ram/pottvshowse1681.ram> (time code - 28:20)

This above statement should make it clear to you that "decriminalization" could very well mean "tougher" punishment - a position that does not address concerns over cannabis mis-use or the problems associated with the black market.

"Mr. Cauchon has said that the current system, in which police in some provinces lay charges while others do not, might not be working as it should"

- Ottawa Citizen, Dec. 10, 2002, p. A2

"If you look at the system that we have in place, keeping it criminal, it's not very efficient". "Depending where you are across Canada, they apply or they don't have the legislation that we have."

- Mr. Cauchon, National Post, Dec. 10, p. A1

Again, the above two statements indicates your concern is over uniform punishment. You are missing an important opportunity to search within your own soul and asking yourself if punishment is at all a necessary reaction to responsible use, growing or distributing this herb.

The Committee on the "non-medical" use of drugs did point out that the punishment was "disproportionate" - the press wrongly attributed this perspective to you yourself:

"The majority of the Liberal-dominated committee, in an echo of a Senate committee report and recent comments by Justice Minister Martin Cauchon, said enforcement of current criminal laws against simple possession is expensive, uneven, "unfair and wasteful" and in the end stigmatizes young people with a criminal record for life."

- Toronto Star, Dec. 13, 2002

When considering whether the penalty is "disproportionate", perhaps you should also consider if there is such a thing as a "proportionate" penalty for a crime with no victim - a "proportionate" punishment for an action that, when done properly, results in no identifiable harm?

From the above quotes, it is clear that the motivation for the government to "decriminalization" is to switch punishments from one difficult to execute into an easier one. This is not what Canadians want, nor is it the most that could be done under the international drug-control treaties Canada is a signatory to - consider the fact that Holland has signed every treaty we have. Even if "decriminalization" were truly a reduction in penalties and something for pot-puffing Canadians to look forward to, why should the Appellants in this case believe that this promise to

"ease up" is any different from any of the other dozen promises to "ease up" over the last 30 or so years? The Prime Minister seems ready to backtrack right now:

"Jean Chrétien retreated yesterday from the government's plans to decriminalize marijuana by declaring that no final decision has been made. The prime minister's position contradicts that of Justice Minister Martin Cauchon, who said last week that he intended to introduce decriminalization legislation in the first four months of next year.

Mr. Chrétien, who said he has never tried marijuana, said that the debate over decriminalization is ongoing and that the government will have to make a decision "one day." Mr. Chrétien's spokesman, Jim Munson, acknowledged that Mr. Cauchon "has made his intentions known." But Mr. Munson cautioned that the justice minister's plans are not final."

- The Ottawa Citizen, Thursday, December 19, 2002.

The Supreme Court has stated it's intention to attempt to understand the concept of "decriminalization" a bit better:

"A central question is the Minister of Justice has announced his intention to introduce legislation in the Parliament that will decriminalize, in some ways, possession of marijuana. The underlying basis will be taken up in Parliament and widely discussed for months to come. In considering all these circumstances, the court will adjourn."

-Supreme Justice McLachlin, Dec. 14, Globe & Mail

If the Supreme Court is taking time to consider the government's offer, it should also take time to hear how decriminalization is not what the appellant's are fighting for:

In Singapore, cannabis decriminalization means years of abstinence-based treatment in the form of large fines, group therapy, urinalysis and community service.

-Dec. 15/89/NYT

In some places in the USA, the cannabis decriminalization resembles that of Singapore.

-The Province (British Columbia), Nov. 1, 1998

In Toronto, first-time marijuana offenders are forced to do "community work".

-March 6, 1998 London Free Press

In South Australia, 20% more pot-possession cases came before the courts than before the fine system was put into place. In Canada, non-payment of a fine usually gets you jail time at a rate of \$70 per day. So your third pot possession ticket would get you two weeks in jail if you couldn't cough up \$1000.

-"Decriminalization is Dangerous" Cannabis Culture magazine, issue #35,
<http://www.cannabisculture.com/articles/2216.html>

The House of Commons report on the "non-medical" use of drugs recommends that 1) the "drug court" program should be expanded (recommendation #28), 2) forced treatment programs should be allowed (recommendation #29), 3) extra-invasive prisons should be created (recommendation #34), 4) cannabis distribution should remain a crime (recommendation #40) and 5) the possession of under 30 grams of cannabis would result in a fine of up to \$1000 (recommendation #41 - p. 127).

The minority report - written by NDP member Libby Davies has strong reservations regarding the above recommendations. Regarding cannabis, Mrs. Davies wrote:

"The NDP sees decriminalization as only a partial solution. Decriminalization of possession and cultivation of small amounts, as recommended by the committee, would prevent such users and cultivators from receiving a criminal record. However, it still leaves intact other harms associated with our current system of criminal prohibition. Among them, simply handing a "joint" to a friend would continue to constitute the offence of trafficking under the Controlled Drugs and Substances Act. The intrusive police powers given by the act would likely remain.

Furthermore, the Committee's proposal does nothing to address the situation of those saddled with a criminal record for simple possession or for transfer or cultivation of small amounts for non-criminal purposes. If we accept that Canadians should not in future receive a criminal record for certain acts relating to marijuana, those convicted in the past should be pardoned under a general amnesty, and their records erased.

There has already been extensive public debate on the use of marijuana, decriminalization, and legalization. The NDP appreciates the Senate Special Committee Report on Cannabis that raises rational and significant questions. The federal government should consider their analysis and recommendation for a criminal exemption scheme. The NDP urges the federal government to investigate and introduce non-criminal and non-punitive regulatory approaches for adult use, as a preferable direction of public policy, emphasizing the need for realistic education and harm prevention programs."

The Senate report recommends:

The Committee wrote that "we should ... stop our crusade" and give up all hope of a drug-free society. Policy should be based upon "freedom", "autonomy" and "responsibility" - "only behaviour causing demonstrable harm to others shall be prohibited". Also of note, the Committee wrote that "used in moderation, cannabis in itself poses very little danger to users and to society as a whole" and "even if cannabis were to have serious harmful effects, one would have to question the relevance of using the criminal law to limit these effects". The Senate Committee recommended setting up licensing for producing and selling cannabis (recommendation 6) as well as amnesty for users (recommendation 7) and "impairment" testing instead of "amount-of-substance within system" testing (recommendation 9).

- Cannabis: Our Position for a Canadian Public Policy, Sept. 2002, pp. 610-622

To put it even more plainly;

"Decriminalization is just another form of prohibition"

-Sen. Claude Nolin

The appellant's positions

In this case, none of the appellants are fighting for the right to pay fines instead of go to jail. The appellant's are united in a "no punishment of any kind for harmless-to-others activities" position. The appellant's positions are consistent with those of the Senate Committee and the NDP minority report within the House of Commons report.

Finally, it is worthwhile examining why the Government of Canada should ignore the House of Common's recommendations to "decriminalization" and instead act upon the Davies minority report and the Senate Report. It is a question of keeping old promises.

In 1970, the day after the Le Dain interim report was released, the Trudeau government promised to "ease up" on cannabis users, "no jail time" for users. These promises were never kept. (June 20, 1970, Globe & Mail)

In 1972, the Trudeau government, through then Health Minister

John Munro introduced amendments to the Criminal Code to allow for the imposition of an absolute or conditional discharge for cannabis possession. This did not result in any noticeable change in cannabis prosecutions. (Appellant's record, Malmo-Levine, p. 88)

In 1975, the Trudeau government introduced Bill S-19, which would have turned a discharge for cannabis possession into a pardon - this proposal died on the order paper. (Appellant's record, Malmo-Levine, p. 88)

In 1977, Jimmy Carter promised federal "decriminalization" of cannabis to US citizens - acting on the recommendations of Nixon's Shafer Commission - but did not act on his promise. (Aug. 3, 1977 Globe & Mail)

In 1979, Joe Clark suggested that he might decriminalize cannabis and "consider sales". He never acted on his own suggestion. (CBC, "Acapulco Cold", 1993 - in the High Society archive at www.pot-tv.net - <http://www.pot-tv.net/archive/shows/pottvshowse-1463.html>)

In 1980, the Trudeau government promised, in it's throne speech, to reduce the penalties for marijuana use. Then Justice Minister Jean Chretien made similar promises. These promises were never kept. (Appellant's record, Malmo-Levine, p. 89)

In 1995, amendments to the Controlled Drugs and Substances Act were "leaked" to the press. According to the November 15th front-page headlines in at least four newspapers across Canada, the Act would now "eliminate criminal records" by rendering them "untraceable" - a claim that was exposed as false the next day

- on page B12 of one newspaper. (Nov. 15, 1995 Winnipeg Free Press/Vancouver Sun/Toronto Sun/Edmonton Journal p. A1, Nov. 16, 1995 Vancouver Sun p. B12)

In 1996, some Senators announced their support for "legal pot". When asked, the Prime Minister said decriminalization would be "difficult to pass" but that he was not "in a position to be judgmental ... I've had a beer or two in my time". (Vancouver Sun, May 18, May 25, 1996)

In 1997, Reform MP Keith Martin put his vision of "decriminalization" forward - "He says penalties should be increased for marijuana possession, with much higher fines used to pay for mandatory treatment programs for pot smokers." (Province, Feb. 12, 1997)

In 2000, the Ontario Court of Appeal declared the prohibition of the possession of cannabis "unconstitutional" and gave the government a year to amend it. A year later, the laws remained on the books. (Aug. 1, 2000 Winnipeg Free Press, Toronto Sun)

In 2001, Keith Martin was prevented from calling a free vote on cannabis "decriminalization" by the Liberal government. (In the High Society archive at www.pot-tv.net - <http://www.pot-tv.net/archive/shows/pottvshowse-1439.html>)

As you can see, powerful people have a habit of promising to ease up on cannabis users (and sometimes dealers too) - but no actual "easing up" ever takes place - even if laws are adjusted to seem as if they are "easing up". This string of broken promises began before two of the three appellants were born, and are likely to continue for many generations to come if steps are not quickly taken to address the arguments raised by the appellants.

If you as a human being are concerned that Canada is currently involved in punishing citizens who are at most harming themselves (and there's not a lot of evidence of this either), and you want to do the right thing when it comes to cannabis policy, the right thing to do, in my humble opinion, is take this unique opportunity to set up regulations for distribution (I've got some suggestions ready) and re-legalize this very useful herb.

Finally, one last point. There is a list of negative side effects to cannabis prohibition, found in Paragraph 28 of Malmo-Levine &

Caine Supra. These were 1) Giving hundreds of thousands of people - mostly young people - criminal records while encouraging the use of more dangerous stimulants and relaxants, 2) encouraging disrespect for the law, 3) encouraging distrust of health and educational authorities, 4) discouraging open communication between young and old, 5) the risk of the black market to young people, 6) the lack of quality control of the black market, 7) the creation of a "lawless subculture", 8) the enormous cost of law enforcement, and 9) the limitation of meaningful research. Any unnecessary delay in waiting to for the Government to once-again discuss decriminalization will perpetuate these above 9 articulated harms.

And while we are contemplating harms that come with delay, there's a few more I'd like you to consider. Consider 1) the families, doors broken down, dragged out in the rain at gunpoint, weeping in their nightgowns all the way to the station - just for the herbs growing in the basement, 2) the musicians, students, scholars, doctors, cops and businessmen pressured, warned, blackmailed and prosecuted, 3) the incredible corruption of our law enforcement 4) the shrinking opportunity to evolve into autonomous beings that learn how to use cannabis and other herbs properly, 5) the shrinking opportunity to end scapegoating and cycles of endless war through the entrenchment of the harm principle, 6) the example of tolerance and respect for liberty Canada could be setting for more war-like countries, 7) the economic hardships that could be ended by opening up the emerging herbal healthcare industry to anyone willing to grow organically, 8) the hardship on sick people who don't need the red tape when they're just looking for high-quality organic cannabis, and 9) the removal of red-tape that's preventing the industrial hemp industry from manifesting into it's true strong economic and environmentally sustainable potential. One might be tempted to dismiss this last list of harms as "mere politics". Considering the first list of harms from paragraph 28 of the decision below, they must also be considered an aspect of law - the downside to prohibition or "decriminalization" in general, and of delays in particular.

Justice delayed is justice denied, and the Liberal Government has been promising "easing up" since before appellants Chris Clay or myself were born.

Both the US and Canada contain many important documents and monuments extolling peace, justice and liberty, very few extolling war, conformity and paternalism. Perhaps you should use this opportunity to do the right thing and re-legalize and re-regulate cannabis and save the government further embarrassment and the taxpayers another day or two of Supreme Court time.

Sincerely, David Malmo-Levine

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