

Citation: ☞

Date: ☞

File No: 113701C
Registry: VICTORIA

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

PHILIPPE LUCAS

**REASONS ON SENTENCE
OF THE
HONOURABLE JUDGE HIGINBOTHAM**

Counsel for the Crown:

Lori L. McMorran

Counsel for the Defendant:

John W. Conroy, Q.C.

Place of Hearing:

Victoria, B.C.

Date of Hearing:

April 12, 29, 2002

Date of Judgment:

July 5, 2002

[1] Philippe Lucas is President of the Vancouver Island Compassion Society, an organization that provides marijuana to its members for medical purposes. His activities in that regard resulted in a charge of possession of less than three kilograms of marijuana for the purpose of trafficking, contrary to section 5(2) of the *Controlled Drugs and Substances Act*, to which he entered a plea of guilty. Mr. Lucas has requested he be discharged absolutely, and the issue in this hearing is whether an absolute discharge is justified.

[2] The penalty provision is set out in section 5(4) of the *Controlled Drugs and Substances Act*, and provides for a maximum penalty in this case of imprisonment for five years less a day, and no minimum punishment. On the face of it, therefore, this Court may consider the discharge provisions of the *Criminal Code* in relation to this offence.

Circumstances of the Offence

[3] The Vancouver Island Compassion Society, founded by Mr. Lucas, was incorporated under the *Society Act* in November of 1999. Its business, as stated in its application for a business licence, is that of a "non-profit organization dedicated to treating those with legitimate medical needs using herbal and homeopathic therapies on a members only basis". This description is somewhat lacking in clarity. In fact, its purpose is to provide a safe, consistent and reasonably priced supply of marijuana for those for whom a physician has recommended the substance as a treatment for various medical conditions.

[4] The Compassionate Society carried on its program in a commercially zoned premise within the Municipality of Oak Bay for fourteen months with what appears to be the tacit approval of the police. In conducting its affairs, the Society made sure that all of its members understood and accepted certain rules meant to minimize the impact of the Society's activities upon the community in general. Among other things, members signed a contract promising neither to redistribute the substances provided to them nor to use them outside the privacy of their homes. In the one case where a member was found to be redistributing marijuana, that member was expelled from the Society. Careful financial records were also kept in compliance with the provisions of the *Society Act* and the usual accounting standards. The location of the premises was not widely known, and was not advertised.

[5] The attitude of the police changed when Mr. Lucas reported to them that the Society's premises had been broken into, and that two pounds of marijuana had been stolen. Mr. Lucas was cooperative and forthcoming during the investigation, pointing out where the marijuana had been kept, and upon the arrest of the thief, confirming ownership of retrieved property. He also confirmed to the police chief that he supplied marijuana to those for whom a doctor had approved its consumption.

[6] This frank disclosure by Mr. Lucas led to an investigation of him and his activities, even though his activities were known to the police and tolerated by them up to this point. The police obtained a search warrant and executed it both at the Society's premises and Mr. Lucas's home. Marijuana was found in both locations and charges of trafficking and possession of marijuana for the purpose of trafficking were laid.

[7] Mr. Lucas entered a plea of guilty and appeared before this Court for sentencing. He takes no issue with the claim that he was providing marijuana to persons with medical conditions that were helped in some way by the ingestion of marijuana.

The Offender

[8] Mr. Lucas is a 32 year old resident of Victoria with a degree in English Literature and a secondary education certificate qualifying him to teach English and Theatre. He is articulate, intelligent and fluently bilingual in both official languages. He has earned an income most recently by writing articles for magazines and by teaching. The principal of a school where he recently taught French to grade 2 and 3 students described him as a "wonderful" teacher and a "gift" to children. He is an avid and skilled archer and canoeist. Since 1999, he has been the Director of the Vancouver Island Compassion Society. He has not yet recovered his start up costs, and is out of pocket approximately \$6000.

[9] He has also become an important resource both in Canada and our local community on the issue of the medicinal use of marijuana. He has consulted with, and influenced, both federal cabinet ministers and local city councillors. During the course of this hearing I was made aware through correspondence and video evidence that he is highly regarded by these levels of government as a source of information on the subject of the medicinal use of marijuana.

[10] Mr. Lucas contracted hepatitis C at age 12 when he was given a blood transfusion during surgery. He didn't find out about his disease until he underwent a routine screening while applying to work as a child care worker. Symptoms developed

soon after, including loss of appetite and nausea. According to both Mr. Lucas and his physician, the consumption by Mr. Lucas of marijuana eases his nausea and general malaise, and stimulates his appetite. Mr. Lucas now has a category 3 exemption that permits him to grow and consume marijuana.

[11] Twelve years ago, while resident in Ottawa, he entered a guilty plea to a charge of having care and control of a motor vehicle with an excessive blood alcohol level and paid a fine of \$450. He stopped drinking alcohol many years ago when he discovered he had contracted hepatitis C.

The Crown Submissions

[12] Ms. McMorran submits that despite the unusual circumstances of the trafficking in this case, a discharge would be inappropriate for the following reasons:

- A real sanction needs to be imposed because of what she states is the "commercial aspect" of the operation;
- The break and entry to the Society's premises shows the risk to the immediate community of this type of conduct;
- The Court needs to send a message that society will not condone a willful flouting of the law by self-proclaimed healers not licensed to practice medicine;
- There is a lawful option for those who find marijuana helpful to their medical condition. The existence of a regulatory scheme that provides a framework

for the lawful possession, cultivation and use of marijuana tends to militate against any argument of necessity;

- While Mr. Lucas now has an exemption that permits him to grow and possess marijuana, he did not have it at the time of this offence, thereby aggravating the offence; and
- He has continued to operate his business even while awaiting sentencing.

[13] Ms. McMorran fairly points out that while this is a serious offence, it does not reach the level of turpitude found in many cases. While not resiling from her principled arguments, she agrees this is not a case like those where an offender has profiteered through the cocaine and heroin addictions of others, with greed the only motivation. In all the circumstances, she submits that the principles of sentencing do not mandate a jail sentence, but that this Court should sentence Mr. Lucas to pay a fine and be placed on a period of community supervision through a probation order.

The Submissions of the Defence

[14] Mr. Conroy asks that his client be granted an absolute discharge. He submits that Mr. Lucas has behaved honourably and honestly, albeit outside the law. He established through evidence the following facts:

- That the trafficking was done for compassionate purposes, not for greed;
- That the Society kept careful and accurate records of both inventory and finances;

- That the Society took reasonable steps to ensure that only those persons referred by physicians became members of the Society;
- That the Society took reasonable steps to ensure that its activities did not place the surrounding community at undue risk;
- That many persons who suffer medical conditions that might be relieved through marijuana ingestion have experienced significant difficulty in obtaining Health Canada exemptions for want of access to medical practitioners willing to certify their need, thus a palpable supply need exists for these individuals;
- That many others who possess exemptions are unable to grow their own supply, and are thus dependent either upon the black market with its inherent risks, including inconsistent supply and risk of harm from associating with street drug dealers, or alternatively, Mr. Lucas;
- That a conviction would seriously impair his client's teaching prospects. It would also affect his mobility, such that he would be unable to travel to the United States to attend conferences or to consult, and would be unable to join his intended spouse in New York, where she has recently obtained employment;
- None of the aggravating features found in section 10 of the *Controlled Drugs and Substances Act* is present.

Medical Use of Marijuana and the Law

[15] On July 31, 2000 the Ontario Court of Appeal issued an important judgement concerning this subject matter. In that case, *Regina v. Parker [2000] O.J. No. 2787*, Mr. Justice Rosenberg, speaking for the Court, considered the case of Terrance Parker, a severe epileptic of long-standing. His seizures were debilitating and largely uncontrollable, even after surgery and the use of conventional medication. Only by smoking marijuana was he able to markedly reduce the incidence of seizures. At his trial for cultivating and possessing marijuana, the trial judge stayed the charges after finding that Mr. Parker required marijuana to control his seizures. He found that in these circumstances, the prohibition against cultivating and possessing marijuana constituted an infringement of Mr. Parker's right under section 7 of the *Charter of Rights and Freedoms* to "life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice".

[16] At the *Parker* trial a large body of expert evidence was considered, including, by consent, three volumes of transcripts of expert evidence heard in *Regina v. Clay 35W.C.B. (2d) 440*. This evidence allowed the Court to conclude that smoking marijuana has a therapeutic effect in the treatment of:

- a) nausea and vomiting particularly related to chemotherapy
- b) intra-ocular pressure from glaucoma
- c) muscle spasticity from spinal cord injuries or multiple sclerosis
- d) migraine headaches

- e) epileptic seizures
- f) chronic pain

[17] At the appeal, Rosenberg J.A. also relied upon the expert evidence accepted at trial, and put the issue succinctly on the second page of his judgement:

"Put simply, Parker claims that he needs to grow and smoke marijuana as medicine to control his epilepsy. Because Parliament has made cultivation and possession of marijuana illegal, he faces the threat of imprisonment to keep his health. Parker argues that a statute that has this effect does not comport with fundamental justice."

[18] The trial court and the Ontario Court of Appeal accepted Parker's claim of medical need. The Appeal Court also agreed that forcing Mr. Parker to choose between his health and imprisonment did not accord with the principles of fundamental justice. Justice Rosenberg, in speaking for the Court, further held that the system of exemptions then in place were equally inconsistent with these principles because the possibility of an individual exemption depended upon the "unfettered and unstructured discretion of the Minister of Health" (judgement, page 3). The Court therefore declared the prohibition against possessing marijuana of no force and effect, but suspended its invalidity for one year in order to give Parliament an opportunity to pass amending legislation that would comply with the *Charter*. Notwithstanding the hiatus, the Court also granted Mr. Parker a personal exemption so as not to deprive him of the right to use marijuana for medicinal purposes.

[19] This led to Parliament taking action to introduce a new regulatory scheme for the granting of exemptions as of July 4, 2001. While this was intended to be remedial legislation and regulation in response to the *Parker* decision, I have heard uncontested evidence in this hearing that significant difficulties arise within those regulations for those seeking an exemption. The regulatory scheme provides for three categories of exemption.

[20] In the case of category one, the applicant must have a symptom associated with a terminal illness or its medical treatment. "Terminal illness" is defined as one where death is expected within twelve months. In such a case, the only medical certification required is the declaration of the applicant's doctor. This works only if the applicant has a physician who understands and accepts the efficacy of marijuana treatment, and who is undeterred by the admonition from the College of Physicians and Surgeons (found in exhibit 35) that he or she would be wise not to certify any cases at all.

[21] In the case of category two, the applicant must have a symptom set out in column 2 of the Schedule that is associated with a non-terminal medical condition set out in column 1. For example, the applicant could have seizures associated with epilepsy. Or the applicant could have cancer or AIDS with the symptoms of nausea, pain or weight loss, among others, but not be expected to die within one year. In such a case medical certification from a medical "specialist" is required. In attempting to obtain such certification, the applicant is faced with the additional problem of delay, and the stress of perhaps not knowing if the specialist will be familiar with the therapeutic effects of marijuana, and be prepared to ignore the College's warning.

[22] The third category requires symptomology unrelated to category one or two that is associated with a medical condition or its treatment. Mr. Lucas, with nausea and weight loss associated with hepatitis C, is in this category. Qualifying under this category requires the certification of two specialists. Not surprisingly, this requirement generally involves significant delay and uncertainty.

[23] In all cases the physician must certify, among other things, that the physician is aware that no notice of compliance has been issued under the *Food and Drug Regulations* concerning the safety and effectiveness of marijuana as a drug.

[24] Although this regulatory scheme came into effect after Mr. Lucas was charged, it is relevant to this proceeding, based upon Mr. Lucas's assertion that he will continue to provide marijuana to qualified persons regardless of whether they have a Health Canada exemption. Mr. Lucas maintains that the regulatory scheme has not made medicinal marijuana more easily available, and may even have made it more difficult to obtain. He says that until the Government of Canada lives up to its commitment he will continue to help alleviate the suffering of those in need of medicinal marijuana.

[25] Unlike *Parker*, this case does not directly engage section 7 of the *Charter of Rights and Freedoms*, because Mr. Lucas has entered a plea of guilty. Nevertheless, the case is helpful insofar as it contains a liberty-based analysis of the rationale for exempting those for whom there is little practical choice but to smoke marijuana. Mr. Lucas is simply the other side of the equation. Arguably, if certain individuals are to be permitted to smoke marijuana, is it not reasonable that they should have a safe and consistent supply?

[26] The case of *Regina v. Malmö-Levine* and its companion case of *Regina v Caine*, both reported at [2000] B.C.J. No. 1095 are also useful analyses of section 7 in the context of a "harm" analysis. In these cases, heard together, the British Columbia Court of Appeal dealt with the issue of whether the prohibition against the possession of marijuana infringed the s.7 right of each accused. The question of the medical use of marijuana was not before the Court. The issue was whether Parliament has any business prohibiting conduct that does not cause harm, particularly harm that is serious in nature and degree.

[27] In ruling against Mr. Malmö-Levine and Mr. Caine, the Court of Appeal found that based upon the evidence introduced at trial, and the findings of the trial judges, there are risks associated with the smoking of marijuana both to the user and to others. For example, the Court points to health risks to the user and the risk of harm to others caused by drivers impaired by marijuana. While neither of these risks has led the federal government to prohibit the consumption of tobacco or liquor, but rather to control their consumption, the Court of Appeal found that "marijuana poses a risk of harm to others that is not insignificant nor trivial". (Judgement, paragraph 143). The Court clarifies this statement at paragraph 151 in stating "I have already found that marijuana does pose a risk of harm to society, however small, and that the degree of harm is neither insignificant nor trivial". The Court found that in the case of a "close call", deference should be given to Parliament's authority to legislate. In the result, there was no section 7 violation and Parliament was competent to legislate a prohibition.

[28] That case is of interest because of the closeness of the call, based upon a "harm" analysis. Perhaps the case would have been decided differently if those

charged with possession were using marijuana to alleviate debilitating medical symptoms and significantly enhance the quality of life. The *Malmo-Levine* and *Caine* cases are currently before the Supreme Court of Canada.

[29] Mr. Lucas can not assert the section 7 rights of others in his own defence, nor has he attempted to do so. However, the fact that his actions have enhanced the quality of life of others who may have a section 7 right to use marijuana is clearly relevant in the sentencing process.

The Properties of Marijuana

[30] Marijuana has been used both as an intoxicant and a medicine for centuries. Its properties as an intoxicant are well known. During this hearing I have been informed as to its medicinal properties. I have also heard anecdotal evidence and the opinion of others, including the video comments of Allan Rock, former Minister of Health and former Minister of Justice for Canada. This Court is led to conclude that it is now generally accepted that in addition to its intoxicating properties, marijuana has real value in the treatment of several serious medical conditions, many of which have been referred to previously.

[31] It is not practical in every case, particularly in a sentencing hearing in Provincial Court, to summon the evidence and opinions of renowned experts on the scientific aspect of the matter. In this case I have had the benefit of videotapes and the legal decisions in which the scientific evidence was introduced and accepted. I have also had the benefit of hearing from people with serious medical conditions who find marijuana effective in treating their symptoms.

[32] I understand that the intoxicating psychoactive characteristics of marijuana come from an ingredient called tetrahydrocannabinol (THC). This particular substance has been extensively studied, and a synthetic version, called Marinol, has been approved for distribution by prescription. According to the evidence received in the *Clay* and *Parker* cases, scientific opinion is inconclusive as to its usefulness in controlling seizures or any of the symptoms of diseases such as glaucoma or AIDS.

[33] Another compound found in marijuana, cannabidiol, is thought to be much more effective for these purposes but has not yet been widely studied. The studies that have been done indicate that cannabidiol may have anti-seizure properties without any psychoactive effect. This particular compound is thought to be the most promising of the several compounds in marijuana that are thought to have anti-seizure effects, particularly in combination with other prescription medication. Unfortunately, cannabidiol is not available. The result is that many find Marinol relatively ineffective while finding smoked marijuana very effective, perhaps because it contains all of the ingredient compounds, including cannabidiol, and is delivered to the body by a fast acting method. Ideally, one would wish for the production of cannabidiol as a prescription drug delivered by an inhaler, thereby assuring quick effect, and eliminating all risks associated with smoking. It would also mean users would not be impairing their faculties through the intoxicating effects of smoked marijuana, nor be facing the risks of respiratory ailments as an unintended side effect.

[34] It is clear that marijuana has both a recreational and medicinal use. This case has to do with medicinal use only, and ought not to be viewed as relevant to the debate over the legal proscription against the recreational use of marijuana. That issue will

presumably be decided in *Malmo-Levine*. In the medicinal sense, the drug clearly has value, and this value probably outweighs the risks to the individual and the community. The Government of Canada has recognized this by its unfulfilled attempts to make it available to patients with certain medical conditions.

[35] In an interview taped during his tenure as Minister of Health, introduced as an exhibit in this proceeding, Allan Rock acknowledged the value of marijuana as a therapeutic drug, the contributions made by Mr. Lucas, and the important role played by organizations such as the Vancouver Island Compassion Society.

Testimonials

[36] In addition to the character evidence of the principal of the school where Mr. Lucas was employed, the Court heard from two people who use marijuana for therapeutic purposes.

[37] Ronald Ranger has had twenty-four eye operations and was blind for one and a half years until told by his specialist that marijuana could relieve his intra-ocular pressure. He told the Court that the pressure build-up behind his eyes causes him incredible pain and renders him completely helpless. He decided to try marijuana but initially had no source, other than to buy from street level drug dealers. Perhaps because he presents as a somewhat physically vulnerable man, he has been mugged three times and was raped once while trying to effect a purchase. He was not challenged on this in cross-examination, and I have no reason to disbelieve him.

[38] Mr. Ranger learned about the Vancouver Island Compassion Society and applied for a Health Canada exemption. My recollection of the evidence is that he still does not

have the exemption. He now purchases his marijuana from the Society instead of buying from traffickers in Centennial Square. He reports enormous beneficial effect from the consumption of marijuana in reducing extreme swelling and pain in the intra-ocular area. It allows him some limited degree of normality in his life. Assuming that Mr. Ranger is able to qualify for an exemption, he would still be without a supply of marijuana because he could not tolerate the bright lights necessary to grow it. Nor does he have the money for the equipment. Since the government will not supply him with marijuana, his choices remain the same. The Vancouver Island Compassion Society is his only practical and safe source of the drug he needs to make life bearable.

[39] Dominic DeBattista also gave evidence in support of Mr. Lucas. He has been diagnosed as being HIV positive for over ten years. He also buys marijuana from the Society to help with pain, insomnia and nausea associated with this condition. The four joints per day that he smokes also have the beneficial effect of stimulating his appetite so he is able to eat a sufficient quantity of food to keep up his strength. Although he has an exemption, he said he encountered extreme difficulty in finding a medical specialist willing to sign the necessary certification. Despite now having the legal right to possess and grow marijuana he can't grow it because he has a "black thumb", meaning he has no talent as a gardener. He is also financially unable to purchase the necessary equipment.

The Purpose, Objectives, and Principles of Sentencing

[40] The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions (section 718, Criminal Code).

[41] A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender (section 718.1). Here the offence is one carrying a maximum penalty of imprisonment for five years less a day, placing it in the mid-range in terms of seriousness. The offender is solely culpable in this offence, and it was effectively a continuing offence committed in full knowledge, and in complete defiance, of the law.

[42] Section 718 of the *Criminal Code* sets out a number of objectives a sentencing judge should bear in mind in performing the sentencing task. The objectives which bear consideration in this case include:

- Denouncing unlawful conduct, and
- Deterring the offender and other persons from committing offences.

[43] The objectives of sentencing set out in section 718 which do not bear consideration in this case are the following:

- Because it is necessary to do so, separating the offender from society;
- Assisting in rehabilitating the offender;
- Providing reparations for harm done to victims or to the community, and
- Promoting a sense of responsibility in the offender, and acknowledging the harm done to the victims and to the community.

The above four factors do not attract attention in this case for several reasons. First, the Crown acknowledges that Mr. Lucas does not need to be jailed. Second, Mr. Lucas needs no rehabilitation, normally done through the requirements of a conditional sentence or probation order. Third, there has been no harm done to victims or the community. In fact, quite the contrary is true, according to the evidence. Last, it must be said that Mr. Lucas has a well developed sense of responsibility, evidenced by his guilty plea, his frank and honest acknowledgement of what he has done, and his principled arguments before this Court.

[44] A judge is guided by a number of principles set out in section 718.2. A sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. The mitigating factors in this case include:

- Mr. Lucas has frankly acknowledged his legal culpability;
- He committed the offence not for profit, but in order to help other people in his situation or worse;
- He committed the offence with the knowledge, and tacit approval, of the police;
- He did not operate in competition with the Ministry of Health of the Government of Canada, but operated to fill a void created by the legal framework that existed prior to 2001 and the regulatory framework that has proved difficult to traverse;

- His actions were life enhancing, in that he helped to ameliorate the pain and suffering of many people who had no other viable therapy;
- He has been a helpful and conscientious contributor to the knowledge base surrounding the medical use of marijuana, and has been acknowledge as such by the former Minister of Health of the Government of Canada;
- He chose to commit the offence in a manner that provided accountability. He incorporated under the *Society Act*, took out a business licence, and kept meticulous records of both finances and inventory;
- He took steps to ensure there was no redistribution of marijuana by members.

[45] The provisions of section 10 of the *Controlled Drugs and Substances Act* add certain aggravating factors specific to drug offences in addition to those factors found in sections 718 and 718.2. The only significant potentially aggravating feature of this case is that Mr. Lucas shows absolutely no remorse for committing the offence, and intends to continue offending in the same manner. In ordinary circumstances, this might be fatal to a discharge application.

Considerations for a Discharge

[46] A discharge under section 730 is discretionary, and can only be considered when

:

- There exists no minimum punishment for the offence;
- The maximum punishment is less than fourteen years imprisonment;

- A discharge would be in the best interests of the accused, and
- A discharge would not be contrary to the public interest.

As stated in the British Columbia Court of Appeal case of *Regina v. Fallofield* (1973) 13 C.C.C. (2d) 450, the benefit of this provision is not extended just to those who have committed a technical or trivial violation of the law. Also, in considering the "best interests of the accused", it is presumed that the offender has a previously unblemished record, is of good character, and that the recording of a conviction is not required either to deter him from future misconduct or to rehabilitate him. He has a previous conviction for over .08, but I see nothing in the language of the statute or the *Fallofield* case that operates to make a previous criminal conviction an absolute bar to a discharge.

Discharges are routinely granted to previous offenders in this Court, with the concurrence of Crown counsel. Dispositions are dependent upon the circumstances. As stated earlier, once the statutory criteria have been met, a discharge is within the discretionary power of the sentencing judge.

[47] This case must be viewed in a broad context, in which to date, the combination of federal regulations and College of Physicians trepidation has made it extremely difficult for applicants to obtain approval to use marijuana. Further, the federal government has so far been unable to ensure any legal supply of marijuana to those whom Health Canada thinks need it as a therapy. This is a particular hardship for those who cannot grow it.

[48] The principles of fundamental justice in a democratic society demand that I sentence in context. In this case, some of the circumstances as outlined by Crown

counsel in paragraph 12 of this judgement as being aggravating factors, are only such when viewed out of context. This was not truly a "commercial operation" in the sense that we usually understand it. Profit was not the motive. Nor can she sustain the argument that the community was put at risk. Further, the Crown cannot rely upon the argument that there is a lawful option for those in need of the drug when the evidence establishes that the drug is only theoretically available through legitimate sources.

[49] I find that while there is no doubt that Mr. Lucas offended against the law by providing marijuana to others, his actions were intended to ameliorate the suffering of others. His conduct did ameliorate the suffering of others. By this Court's analysis, Mr. Lucas enhanced other people's lives at minimal or no risk to society, although he did it outside any legal framework. He provided that which the Government was unable to provide – a safe and high quality supply of marijuana to those needing it for medicinal purposes. He did this openly, and with reasonable safeguards. The fact that he has stated he will continue this activity points to the sincerity of his principles, and points to our need as a society to get this thorny issue resolved quickly by either Parliament or the Supreme Court of Canada. If he re-offends, he will have to argue his case again, and may find a discharge difficult to attain in the future. This court hopes that cooler heads will prevail pending the final resolution of issues regarding the medical and non-medical use of marijuana.

[50] Mr. Lucas has established that he is a man of good character, who would benefit from receiving a discharge. He has also established that in the circumstances of this case, the granting of a discharge would not be contrary to the public interest. As there is no need to apply rehabilitative principles in terms of a conditional order, I grant him an

absolute discharge. He will be subject to the mandatory firearm prohibition under section 109 of the *Criminal Code* for a period of ten years.

[51] I am not satisfied that all of the items seized by the police were sufficiently related to the offence to justify blanket forfeiture. The money seized from the Society office was only partly derived from the sale of marijuana. Much of it was derived from the sale of other therapies or was donated. Other monies were seized from Mr. Lucas's backpack, and I am satisfied it was not derived from the offence at all. I therefore order all monies seized to be returned to Mr. Lucas. I further order that the seized computer be returned to him, as there is no legitimate purpose in ordering it forfeited. Finally, I order the return of any unused paraphernalia only. The seized marijuana and any used paraphernalia are forfeited to the federal Crown.

A handwritten signature in cursive script, appearing to read 'R. A. Higinbotham'.

R. A. Higinbotham, P.C.J.