North Vancouver Registry
Court File No. 33558

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA	)	**REASONS ON SENTENCE**
v.	)	**OF THE HONOURABLE**
MARCUS RICHARDSON	)	**JUDGE J. B. PARADIS**

Appearances:

James Straith	**Counsel for the Crown**
John. W. Conroy, Q.C.	**Counsel for the Accused**

Date and Place of Hearing:	**December 8, 1999** **North Vancouver, B.C.**
Date of Sentence:	**January 26, 2000**

The accused was found guilty on June 14, 1999 of possession of marihuana in an amount exceeding 3 kilograms, for the purpose of trafficking, contrary to section 5(2) of the *Controlled Drugs and Substances Act*. He was also found guilty at the same time of possession of a small amount of cannabis resin.

The facts of the matter are set out in a ruling on a *voire dire* made on June 14th. Suffice it to say that the accused was found to be transporting, in the trunk of his vehicle, 6

kilograms of marihuana, as well as $6,000 in Canadian currency. A small amount of resin was found on his person.

CIRCUMSTANCES

From its submissions, it is difficult to draw the line between what the Crown concedes and what it disputes. The Defence says that the accused was, in essence, a wholesaler of marihuana who had obtained the substance from a grower and was transporting it to his home for later piecemeal distribution to the B.C. Compassion Club Society. I will discuss the society's role in more detail shortly; but here it is important to point out that, apart from submitting that the accused, when stopped in his vehicle was going away from, rather than towards, the location of the Compassion Club Society's outlet, the Crown does not appear to dispute the Defence's fundamental assertion. The Crown further concedes that this was not a "sophisticated commercial operation" and therefore it is not seeking a term of incarceration, in spite of the large amount found. Rather, it says the penalty should be a high fine; and, unless the money found can be said to have been from other sources, it should be forfeited.

Upon a review of my notes of the proceedings on sentence, I conclude that, although not expressly stated in the course of submissions, the Crown does not suggest any alternative reason for the accused being in possession of the marihuana at the relevant time.

The Compassion Club Society, a non-profit organization, was founded in May of 1997 by Hilary Black who testified in the course of the sentence hearing. She had worked for some time in a hemp-product retail store in Vancouver and was frequently asked by customers suffering from various diseases how they might acquire marihuana for medicinal purposes. She went to California and to Holland to acquaint herself with organizations involved in the distribution of marijuana for medical use and then returned here to establish the Compassion Club. At the time of Mr. Richardson's offence, November of 1998, there were approximately 600 members of the Club. They are all persons who suffer from diseases ranging from cancer to AIDS to multiple sclerosis.

They have been given “prescriptions” by their doctors for marihuana in the form of letters of recommendation indicating that relief from some symptoms or from pain could be accomplished by the ingestion of marihuana. Based on those prescriptions or recommendations the Society provides the appropriate marihuana for the patient at a relatively nominal fee.

Each member is assigned a number and has a running member’s record, which lists the nature or strain of the marihuana issued to that person, the date of issue and the cost. Sample records were put before the court in the course of the hearing and they established to my satisfaction that a reasonable accounting of the distribution of the marihuana is kept by the Society. What are not kept as carefully are records of the sums paid by the Society to its supplier, Mr. Richardson, from the money received from its members. That becomes important when considering the question of the forfeiture of the $6,000.

Ms. Black testified that, at the outset, a certain grower was prepared to provide initial amounts of marihuana to the Society at no charge. The Society distributed the marihuana to its members, received sums of money from them and used that as seed money for the continuing purchase of marihuana in the future. Ms. Black says that the $6,000, in neat $1,000 stacks of $20 bills was, to her knowledge, the “float” handled by Mr. Richardson for the purpose of his purchases.

In November of 1998, the situation was such that Mr. Richardson could not know from one purchase to the next whether the grower would wish to be paid immediately or would be prepared to “front” the marihuana, i.e., wait to be paid from the proceeds of distribution. She said it was her understanding that he would therefore carry with him sufficient cash to cover the value of the potential purchase and she makes the assumption that that was the origin of the $6,000 found in the accused’s vehicle.

Ms. Black emphasized Mr. Richardson's role went beyond being a mere purchaser of the marihuana. He was also charged with quality control. Although no medical evidence was put before the Court on the point, Ms. Black testified that various strains of marihuana have a better or worse impact on a patient depending upon that person's disease or that person's immunity to a particular strain. It was therefore Mr. Richardson's responsibility to confirm that, first of all, the quality of the marihuana he was receiving was appropriate for the Society's purposes; and secondly, to purchase a variety of strains from a variety of producers so that the Society could meet the needs of its members. The several members' records put in evidence confirm that a number of different strains are distributed.

Finally, on the question of why Mr. Richardson was going in the opposite direction at the time he was stopped, Ms. Black testified that for some period of time, the Society's offices were the focus of a number of break-ins. Drugs and money were stolen. It was therefore decided that it would be safer if Mr. Richardson kept the drug at his home and brought it into the Society's outlet in relatively small amounts to cover only a few days worth of distribution. I accept that evidence.

Along with the sample member's records, there was submitted by the Defence an excerpt from the Journal of the Canadian Medical Association, dated October 19, 1999. It describes in considerable detail the operation of the Club and repeats much of what Ms. Black said on the stand. Of some interest is the final paragraph of the article which in its entirety reads as follows:

> **What do the Police think of the Compassion Club? "It has not been one of our priorities in terms of our drug investigations," says Constable Anne Drennan of the Vancouver Police. "There are some things we won't tolerate, such as when it becomes evident that the drug being sold is not strictly for medicinal purposes, but if the Club abides by certain rules and regulations, they are not a priority for us. We are very much aware of the organization and what is going on."**

That excerpt suggests that one law-enforcement agency at least, charged with the responsibility of enforcing the *Controlled Drugs and Substances Act*, has concluded that the B.C. Compassion Club Society is an organization that appears to be dealing with a controlled substance in a responsible way for the purpose of effecting medical relief for its members. And that, of course, leads to the obvious question: where would the Compassion Club Society get its substance if not from growers who are growing it illegally and middle-men, like Mr. Richardson, who are transporting it illegally? If there is a medicinal use for marihuana but the substance remains illegal, how are patients going to get what they need if they are unable to grow it themselves?

THE ACCUSED

Marcus Richardson was twenty-five at the time of this offence and is now twenty-six years of age. He is married, lives in Lions Bay, British Columbia and is an entrepreneur involved in sales of "heritage salmon". He has also made a number of investments in hemp and hemp products. To some extent, his present financial independence has been assisted by the fact that he was unfortunately involved in a number of motor vehicle accidents in 1993 and personal injury settlements have allowed him to get involved in those various enterprises.

He became acquainted with Ms. Black and agreed to act as her principal purchaser of marihuana at the time the Club was founded. He periodically made such purchases until November of 1998. She has testified that she was perfectly satisfied the accused was not deriving any personal benefit from his activities in respect of the Club because she trusted him and believed that his actions were altruistic and intended solely for the purpose of benefiting the members of the Club. Mr. Richardson did not testify on sentence and Ms. Black's evidence is the only basis on which the Court can assess the sincerity of Mr. Richardson's intentions.

There is no question that making large purchases on behalf of the Club placed him in a position to traffic in the substance and maintain the "cover" of the Club while reaping a

substantial profit for himself. However, there is no evidence before me to suggest that that occurred at any time, let alone with respect to the substance found in the trunk of Mr. Richardson's car in November of 1998. He was admittedly a user of marihuana, was familiar with certain suppliers in the Lower Mainland (and perhaps elsewhere) and, because of his acquaintance with Ms. Black, agreed to use those contacts for the benefit of the B.C. Compassion Club Society. That is the evidence before me and that is the evidence which I believe the Crown implicitly accepts.

The accused has no criminal record.

THE LAW

It is clear that Canadian Courts have unanimously held that the prohibition against possession of marihuana for recreational use does not offend section 7 of the *Charter of Rights and Freedoms*: see, *R.* v. *Clay and Prentice* (Unreported, On.Ct. Gen. Div., London Registry, No. 3887F, August 14, 1997); *R.* v. *Cameron* (1998) BCJ No. 2621 (November 4, 1998 – BCCA); *R.* v. *Caine* (Unreported, Prov. Ct. B.C., Surrey Registry No. 65381, April 20, 1998); *R.* v. *Malmo-Levine & Roswell* (Unreported, B.C.S.C., Vancouver Registry No. CC970509, February 18, 1998); *R.* v. *Cholette* (Unreported B.C.S.C. Vancouver Registry No. 64964, March 23, 1993).

On the other hand, Courts have given relatively lenient sentences when it was accepted that the possession of the substance was for medical purposes. In *R.* v. *Czolowski* (Unreported, Prov. Ct. B.C., Vancouver Registry No. 337-01-D, July 14, 1998), Godfrey, P.C.J., imposed a conditional discharge with a period of probation for one year with only statutory terms, on a 44-year-old man with no previous criminal record who, suffering from glaucoma, grew a large amount of marihuana for his personal medical use. He also sold some of it to the Compassion Club Society.

In *R.* v. *Lieph* (Unreported, B.C.C.A., Victoria Registry No. V00939, July 17, 1989), an appeal from discharges granted to an accused following his guilty pleas to charges of cultivating and possession of marihuana was dismissed. The accused had been found growing some 74 marihuana plants with a total weight of approximately 23 lbs. He was 27 years of age, had no prior criminal record, and had submitted in the Court below that the marihuana was used only for the purpose of extracting its oil which he applied as a lotion to his skin for a condition arising from injury suffered in a explosion some time before.

In *R.* v. *Parker* (Unreported, On. Ct. Prov. Div., December 10, 1997), Sheppard P.D.J. engaged in a lengthy analysis of a number of matters pertinent to the sentencing before this Court. In particular, the Court found that the accused had established a factual foundation for the medical use of marihuana and that the prohibition in the *Controlled Drugs and Substances Act* against all possession of marihuana deprives a patient, who is medically assisted by smoking marihuana, of his right to life, liberty and security of the person. Acting under section 24(1) of the *Charter*, the Court considered that the appropriate remedy was to read into the legislation an exemption for those in medical need of marihuana and to accordingly enter a stay of proceedings in the case before the Court.

In coming to that conclusion, Sheppard PDJ made a number of observations with respect to persons suffering from a number of illnesses (Mr. Parker suffers from epilepsy) who are assisted, symptomatically or otherwise, by the ingestion of marihuana. A few of those comments may be illustrative of some aspects of the matter before this Court:

> **Serious decisions regarding the management of illness and medical disability are, for most Canadians, made following consultation with a doctor. Canada has an elaborate and costly health care system to ensure this opportunity is available to all Canadians. This has been the lengthy course followed by Mr. Parker. The negative side-effects or "harms" in the use of any medication is a significant part of that medical decision-making process between a doctor and patient. Mr. Parker has made his decision in the management of his epilepsy. He has apparently met with some success. It has been known and supported by some of his doctors over the years.**

…

> **The control of his epileptic seizures is of critical personal importance to him and in the interest of the greater community of which he is a part, the same community who pays his health care cost. I find he has established its control is best achieved through a combination of prescribed medications and smoking of marihuana. For this applicant/accused to be deprived of his smoking marihuana is to be deprived of something of fundamental personal importance. (p.18)**

In *Wakeford* v. *Canada* [1998] O.J. No. 3522 and [1999] O.J. No. 1574 the On. Ct. of Justice (Gen. Div.) considered an application from Mr. Wakeford, pursuant to section 7 of the *Charter of Rights and Freedoms* and under section 24(1) of the *Charter*, to be granted an exemption by the Court from the prohibitions in sections 4 and 7 of the *Controlled Drugs and Substances Act*. In the first of the two proceedings the Court found that the applicant was a *bona fide* sufferer from a medical condition (AIDS) and derived specific symptomatic relief from smoking marihuana. The Court also found that to apply the prohibitions in the *Controlled Drugs and Substances Act* against this applicant violated his section 7 rights to liberty and security of the person. Nevertheless, the Court concluded that such a denial of his rights was "in accordance with the principles of fundamental justice" because, under section 56 of the *Controlled Drugs and Substances Act*, Mr. Wakeford could be granted an exemption by the Minister and the Court should not intervene unless it could be shown that the Ministerial power under section 56, in reality, "doesn't exist or is not being exercised properly" (p. 64).

Mr. Wakeford was back before the Court in the second of the two hearings and, on May 10, 1999, the Court ruled that it was satisfied, principally on new evidence, that no real protocol exists in the Ministry of Health for considering exemptions on behalf of those who use marihuana for medical purposes. There being no likelihood of such a protocol being developed in a sufficiently timely way to benefit Mr. Wakeford, the Court granted an "interim" exemption from the application of sub-sections 4 and 7 of the *Controlled Drugs and Substances Act* until the Minister has given consideration to his application for exemption under section 56.

DISCUSSION

On December 14, 1999, at page A10, the Vancouver Sun carried a story to the effect that Health Canada has now produced a 28-page "Statement of Work for the Development of a Comprehensive Operation for the Cultivation and Fabrication of Marihuana in Canada". The brief news story reports that the introduction to the document states that "the Purpose of this project is to provide for Health Canada a reliable source of affordable, quality, standardized marihuana products to meet the needs of exemption recipients and of researchers in this country and abroad …".

In the National Post of Tuesday, January 11, 2000 there is a brief report of a man who is seeking an exemption under section 56 and who has decided to camp out on Parliament Hill until he is granted that exemption. The story reports that some 14 Canadians enjoy such an exemption at this point. If that story is accurate, it would appear that the protocol sought in *Wakeford* has been established. I do not know whether Mr. Wakeford is a recipient of one of those 14 exemptions, but I assume he is.

I refer to those reports in the press, as I did earlier with respect to the Vancouver Police and the Compassion Club Society, for the purpose of illustrating that undoubtedly the times are changing. And it is in the context of that change that this accused must be sentenced. I consider the cases of *Parker* and *Wakeford* persuasive in their approach to the medical use of marihuana; and, although I am advised they are presently under appeal, I am satisfied that they are the law in Canada on the subject at this juncture. That being so, if certain persons may be exempted from the legislated prohibition against possession of marihuana, that cannot mean that only those who have the knowledge, an appropriate location and the financial wherewithal to grow their own marihuana can take advantage of such an exemption. The brief excerpt from the Vancouver Sun cited above suggests that Health Canada does not believe that that should be so. Some patients will

have to secure their medicinal marihuana from some kind of retail outlet. Those in need of other drugs, the possession of which for recreational purposes is prohibited, may get those from their neighborhood pharmacy. The pharmacy in this case, known to and tolerated by the police, is the Compassion Club Society. Marihuana will not fall into its hands as manna from heaven. It must be obtained either directly from growers, as is now the case, or through a middleman, such as Mr. Richardson, as was the case in November of 1998.

In my view, no serious distinction can be drawn between Mr. Parker, who grew his own, and the grower, the wholesaler and the retailer who provide the drug to persons, like Mr. Parker, who are in medical need.

CONCLUSION

Section 10 of the *Controlled Drugs and Substances Act* reads as follows:

> **Without restricting the generality of the *Criminal Code*, the fundamental purpose of any sentence for an offence under this part is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.**

S.S. 2 goes on to enumerate a number of aggravating factors, none of which are present in this case.

I am unable to conclude that it would contribute to respect for the law and the maintenance of a just, peaceful and safe society to impose anything more than a minimum sentence with respect to Count 1 in the information. To summarize the more important factors under consideration:

1) I accept that the accused was a wholesaler for the purpose of providing the Compassion Club Society of B.C. with a quantity of marihuana to distribute to its members;
2) those members are in need of marihuana for medical purposes in the same way as the Courts in Ontario found Mr. Parker and Mr. Wakeford to be in need;
3) many people who suffer from a number of debilitating diseases in this society and who derive some benefit from marihuana, are not in a position to grow their own and must rely on such retailers as the Compassion Club Society;
4) that club cannot secure its necessary substance without the assistance of growers and wholesalers, of which Mr. Richardson is one;
5) there is no evidence to suggest that Mr. Richardson was involved in any other way in trafficking in marihuana for recreational purposes.

Therefore, if those who ultimately use the drug for medical purposes may be exempt from the prohibition against possession or cultivation of marihuana, and taking into account the sentences imposed in *Czolowski* and *Lieph*, I consider that it would not reflect a just, peaceful and safe society to impose a punitive sanction on Mr. Richardson, who acted as nothing more than a conduit for the provision of marihuana for medical purposes.

Because of the amount involved in this case, and the application of section 5(3) of the *Controlled Drugs and Substances Act* in conjunction with Schedule VII and the sentencing provisions of the *Criminal Code*, the minimum sanction which may be imposed is a suspended sentence and a period of probation. I therefore suspend the passing of sentence on the accused and place him on probation for a period of six months under the statutory terms only, that he keep peace and be of good behaviour, and that he report to the Court if and when he is required to do so.

With regard to Count 2, in keeping with sentences normally imposed in this Court for a first offence of cannabis possession without any aggravating circumstances, and bearing in mind s.718.2(b) of the *Criminal Code*, I conditionally discharge the accused and place him on probation for three months, again under only the statutory terms.

FORFEITURE

Section 2 of the *Controlled Drugs and Substances Act* defines "offence-related property" as any property:

a) by means of or in respect of which a designated substance offence is committed,
b) that is used in any manner in connection with the commission of a designated substance offence, or
c) that is intended for use for the purpose of committing a designated substance offence.

Section 16 of the *Act* reads as follows:

(1) Subject to Sections 18 and 19 where a person is convicted of a designated substance offence and, on application of the Attorney General, the Court is satisfied on a balance of probabilities, that any property is offence-related property and that the offence was committed in relation to that property, the Court shall:
  (a) in the case of a substance included in Schedule VI, order that the substance be forfeited to Her Majesty in right of Canada and disposed of by the Minister as the Minister thinks fit; and
  (b) in the case of any other offence-related property,
    (i) where the prosecution of the offence was commenced at the instance of the government of a province and conducted by or on behalf of that government, order that the property be forfeited to Her Majesty in right of that province and disposed of by the Attorney General or Solicitor General of that province in accordance with the law, and
    (ii) in any other case order that the property by forfeited to Her Majesty in right of Canada and disposed of by such member of the Queen's Privy Council for Canada as may be designated for the purposes of this sub-paragraph in accordance with the law.

> (2) Where the evidence does not establish to the satisfaction of the Court that the designated substance offence of which a person has been convicted was committed in relation to property in respect of which an order of forfeiture would otherwise be made under subsection (1) but the Court is satisfied, beyond a reasonable doubt, that that property is offence-related property, the Court may make an order of forfeiture under subsection (1) in relation to that property. (my emphasis)

Sections 18 and 19 are not relevant to this application.

Those provisions, in their almost unfathomable language, set out that if the Court is satisfied on a balance of probabilities that the property in question was used in the commission of the offence that is before the Court, the Court must order forfeiture. On the other hand, if the Court is not so satisfied, but is satisfied beyond a reasonable doubt that the property in question is in some other way "offence-related property", the Court has a discretion and may or may not order forfeiture.

The only evidence before me with respect to the $6000 is that of Hilary Black who explains why she assumes that the $6000 found in the accused's vehicle was the "float" for the purpose of purchasing marihuana should it be necessary. In conjunction with that, I consider that I have accepted that the accused was returning from acquiring some marihuana from a grower and that he had the money with him. Had he paid for the marihuana, the money would be with the grower; if he did not pay for the marihuana it cannot be said that those funds are related to the commission of the offence that is before the Court.

I conclude that the appropriate provision in this case is subsection (2) of section 16. Referring to that subsection, I am satisfied beyond a reasonable doubt that the $6000 found in Mr. Richardson's vehicle was offence-related property in that the funds were originally obtained by the Compassion Club Society and passed on to Mr. Richardson for the specific purpose of paying for marihuana should a grower so demand.

However, for all of the reasons I have expressed with regard to the sentencing of Mr. Richardson himself, I consider it would be an inappropriate exercise of my discretion in these circumstances to order forfeiture and I decline to so order.

I further direct that the various items mentioned in submissions by the Defence, taken from the accused and/or his passengers should be returned to their rightful owners.

Judge J. B. Paradis
Provincial Court of British Columbia

January 26, 2000