

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

**SEAMUS JOHN NEARY**

APPLICANT  
(Respondent/Appellant)

and

**HER MAJESTY THE QUEEN**

RESPONDENT  
(Appellant/Respondent)

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**RESPONSE TO APPLICATION FOR LEAVE TO APPEAL**  
**HER MAJESTY THE QUEEN, RESPONDENT**  
**(Rule 27)**

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## **PART I: STATEMENT OF FACTS**

### ***Overview***

1. The applicant, Seamus John Neary, trafficked seven pounds of marihuana to two young men who were arrested shortly after the sale. A search warrant was executed at the applicant's residence where the police found one pound of marihuana, \$1,000.00 in cash and a small quantity of psilocybin. Another search warrant was executed at a storage locker registered in the applicant's name where the police found an additional 13 pounds of marihuana.

2. The trial judge convicted the applicant of trafficking marihuana in an amount exceeding three kilograms, possession of marihuana in an amount exceeding three kilograms for the purpose of trafficking and possession of proceeds derived from crime. The applicant faced the prospect of an institutional jail sentence for these convictions.

3. Recent amendments to the *Criminal Code* had removed the availability of a conditional sentence for offenders convicted of an offence prosecuted by indictment where the maximum term of imprisonment is life or 14 years [s. 742.1(c) of the *Criminal Code*].

4. Because a conditional sentence was not available as a sentencing disposition, the applicant argued that having to serve a custodial sentence in a correctional centre instead of at home: i) would constitute cruel and unusual punishment and thereby contravene s. 12 of the *Canadian Charter of Rights and Freedoms* and ii) would deprive him of his liberty in a manner that does not accord with the principles of fundamental justice and thereby contravene of s. 7 of the *Charter*. These challenges were dismissed by the sentencing judge.

5. The sentencing judge then imposed a suspended sentence concurrent on all counts. This disposition was appealed by the Crown. The applicant resisted the Crown sentence appeal and, by Cross-Appeal, reasserted his *Charter* challenges.

6. The Saskatchewan Court of Appeal dismissed the *Charter* challenges, set aside the disposition of the sentencing judge court and substituted a jail sentence for these serious offences.

7. In his leave application, the applicant again asserts that the unavailability of a conditional sentence is unconstitutional, but only asserts that s. 742.1(c) violates his rights under s. 7 of the *Charter*.

8. In the 20 years since conditional sentences were introduced into Canadian law, no offender has had an *absolute right* to be availed of that disposition. Parliament set parameters for their availability. These were circumscribed in 2007, and again in 2012 under the *Safe Streets and Communities Act*.<sup>1</sup> Throughout this legislative history the purpose of the conditional sentence regime has remained consistent. The disposition is intended to be narrowly used as a meaningful alternative to incarceration for less serious offences and non-dangerous offenders, *provided always* that the disposition in the particular case accorded with the fundamental principle and purposes of sentencing.

9. The applicant is not challenging a mandatory minimum penalty. The thrust of his argument is that the jail sentence imposed upon him amounts to a “*de facto* mandatory minimum”, a submission that is fraught with difficulties. The jail sentence imposed in this case does not come from the application of s. 742.1(c); rather, it is the result of the application of sentencing guidelines from the Saskatchewan Court of Appeal.

10. The applicant’s claim that the jail sentence was grossly disproportionate rests almost exclusively upon his personal circumstances. This ignores the full matrix of considerations that must be taken into account in sentencing. It also ignores the right of Parliament to deem certain offences to be more serious and therefore deserving of a harsher penalty to emphasize denunciation and deterrence.

11. The Courts across Canada have repeatedly held that in the sentencing of serious drug offences, the personal circumstances of the accused can seldom trump the need to impose a sentence that emphasizes denunciation and deterrence. The large scale trafficking of marihuana for profit was and continues to be a serious offence that warrants a jail sentence. That was the case

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<sup>1</sup> *Safe Streets and Communities Act*, SC 2012, c 1, ss. 39-46, (in force 6 November, 2012).

before Bill C-45 that Parliament has introduced to legalize marihuana<sup>2</sup> and it will still be the case for the unauthorized sale and distribution of marihuana if Bill C-45 passes in its current form.

12. The applicant's argument is also premised on an erroneous interpretation of the Parliamentary record about the purpose of the conditional sentence regime. That record is clear: conditional sentences were always intended to be a sentencing option for offenders convicted of less serious offences. Conditional sentences were never intended for persons convicted of serious drug crimes like the offences in this case.

13. Because of these foundational flaws, the applicant cannot demonstrate that s. 742.1(c) violates his rights under s. 7 of the *Charter*. The issues he has identified have been resolved below by resorting to this Court's jurisprudence. This application for leave to appeal raises no question of public importance that deserves the attention of this Court and should be dismissed.

### ***Key facts***

#### *1. The police investigation*

14. In early 2014, the Saskatoon Police Service was investigating C.W., who had been identified by a confidential source as being involved in marihuana trafficking.<sup>3</sup>

15. On February 5, 2014, C.W. was seen entering a vehicle being operated by V.A. The police followed the vehicle to Temperance Street. The two left the vehicle and were seen going into an apartment building at 1001 Temperance Street. Each carried a partially full backpack. When they were seen leaving the apartment, these backpacks appeared to be nearly full. The two were arrested

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<sup>2</sup> Bill C-45, *An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts*, 1st sess, 42nd Parl, 2017 (first reading 13 April, 2017).

<sup>3</sup> Trial Transcript Vol 1: testimony of Cst. Gilbertson at pp. T9, T12-T14, T21; testimony of Cst. Schmalz at p. T58 [Respondent's Response ("RR"), Tab A, pp. 63, 66-68, 75, 90]

and searched. The police found a total of seven pounds of marihuana wrapped in ½ pound vacuum sealed packages in the backpacks.<sup>4</sup>

16. Further investigation led the police to believe that the applicant, who lived in suite #205 - 1001 Temperance Street, had likely provided the marihuana to C.W. and V.A. During a warranted search of the applicant's residence the police located and seized 456.73 grams (approximately one pound) of marihuana, 3.89 grams of psilocybin and \$1,000 in cash. The applicant was the sole occupant of the suite and he was arrested.<sup>5</sup>

17. Also located in the suite was a rental agreement in the applicant's name for a storage locker. The police obtained a warrant to search that storage locker. During the execution of the warrant, the police located and seized 5,958 grams (approximately 13 pounds) of marihuana wrapped in ½ pound and 1 pound vacuum sealed packages.<sup>6</sup>

## 2. The trial

18. The applicant was convicted of or had entered a guilty plea to all of the charges in the Indictment, including trafficking in marihuana in an amount exceeding three kilograms and possession of marihuana in an amount exceeding three kilograms for the purpose of trafficking.

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<sup>4</sup> Trial Transcript Vol 1: testimony of Cst. Gilbertson at p. T10, T11, T13, T24, T31; testimony of Cst. Schmalz at pp. T58-T62, T70 testimony of Cst. Nave at pp. T100, T101, T102 [RR, Tab A, pp. 64, 65, 67, 76, 78, 90-94, 95, 104-106]

<sup>5</sup> Trial Transcript Vol 1: testimony of Cst. Gilbertson at pp. T13, T14, T19; testimony of Cst. Campbell at pp. T39, T40, T41, T42; testimony of Cst. Landry at pp. T47, T48; testimony of Cst. Ehalt at pp. T51, T52; testimony of Cst. Schmalz at pp. T71-T73; testimony of Cst. Nave at pp. T102, T103, T105, T106 [RR, Tab A, pp. 67, 68, 73, 80-87, 96-98, 106-110]

<sup>6</sup> Trial Transcript Vol 1: testimony of Cst. Gilbertson at pp. T15, T16, T17, T27, T35; testimony of Cst. Ehalt at pp. T52, T53, T54; testimony of Cst. Schmalz at pp. T74-T76, T93, T94; testimony of Cst. Nave at pp. T106, T107, T109-T113, T116, T117 [RR, Tab A, pp. 69-71, 77, 79, 87-89, 99-103, 110, 111, 113-117, 120, 121]

3. *The Charter challenges—the unavailability of a conditional sentence compels a constitutionally invalid sentence*

19. At his sentencing, the applicant argued that if a jail sentence was the appropriate disposition, the fact that the sentencing judge was precluded from imposing a conditional sentence order violated his rights under ss. 7 and 12 of the *Charter*. He argued that the fact that he would have to serve a jail sentence in an institution rather than in the community was a grossly disproportionate penalty and amounted to cruel and unusual punishment. He argued, in the alternative, that s. 742.1(c) was overly broad and, for that reason, should be struck down as being unconstitutional.<sup>7</sup>

20. The sentencing judge found that the unavailability of a conditional sentence as a possible disposition did not violate any of the applicant's *Charter* rights and dismissed his *Charter* motion. The sentencing judge imposed a concurrent suspended sentence on all of the charges.<sup>8</sup>

4. *The appeal*

21. The Crown appealed that disposition and the applicant cross-appealed from the dismissal of his *Charter* challenges. The Court of Appeal dismissed the applicant's *Charter* challenges. It set aside the suspended sentence and directed to applicant to serve a concurrent 15 month jail sentence on all of the charges.<sup>9</sup>

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<sup>7</sup> Reasons of the Saskatchewan Court of Queen's Bench (QB Reasons)[Applicant's Record ("AR"), Tab 3A, pp. 6-22 at paras. 9-30]

<sup>8</sup> (QB Reasons)[AR, Tab 3A, pp. 21-22 at paras. 26-30]

<sup>9</sup> Reasons of the Saskatchewan Court of Appeal (CA Reasons) [AR, Tab 3C, pp. 35-52 at paras 1-48]



**PART II: QUESTION IN ISSUE**

22. The applicant proposes the following questions:

- 1) Is s. 742.1(c) of the *Criminal Code* unconstitutional as being “overbroad” the legislative purposes of the implementing legislation, the *Safe Street Act*, in breach of the Applicant’s right to liberty under s. 7 of the *Charter* and in a manner that is not justifiable under s. 1 of the *Charter*?
- 2) Is it an error of law for sentencing judges to consider changes in the social-legal context, in this case the pending legalization of marihuana, when exercising their discretion to determine the weight to place on denunciation and deterrence in the circumstances?<sup>10</sup>

***A. Respondent’s position on the first issue***

23. Regardless of whether an impugned sentencing provision is challenged under s. 7 or s. 12 of the *Charter*, the standard to be met is the same: a sentencing provision will only be constitutionally infirm if it requires the imposition of a “grossly disproportionate” penalty.

24. Since there is nothing in s. 742.1(c) that compels a sentencing court to impose a jail sentence only because a conditional sentence is not an available disposition, the applicant’s rights under ss. 7 and 12 of the *Charter* are not engaged. Even though the sentencing ranges suggested by the Saskatchewan Court of Appeal direct that a jail sentence should be presumptively considered, in an appropriate case, the sentencing courts still have the discretion to impose a non-custodial sentence.

25. Parliament’s intention in enacting s. 742.1(c) was to ensure that courts impose sentences for serious offences (like trafficking large quantities of marihuana) that predominantly emphasize denunciation and deterrence. Parliament is entitled to enact a sentencing provision which emphasizes these sentencing objectives over the sentencing objectives of rehabilitation and specific deterrence. This does not run afoul of the constitutional guarantee against “cruel and unusual punishment” found in s. 12 of the *Charter*. Furthermore, since the applicant cannot establish that

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<sup>10</sup> Applicant’s memorandum of argument, [AR, Tab 4, p. 60 at para. 14]

the sentence he received was grossly disproportionate, he cannot establish, under s. 7 of the *Charter*, that s. 742.1(c) is overly broad in relation to its legislative purpose.

***B. Respondent's position on the second issue***

26. A generic observation that Parliament promised to table legislation legalizing marihuana had no relevance in the applicant's sentencing.

27. These sorts of offences will continue to be serious offences under the new regime. The unauthorized sale, distribution or possession of cannabis for the purpose of distribution are hybrid offences under Bill C-45. If those offences are prosecuted by indictment, an accused would face a 14 year maximum sentence. The offences committed by the applicant were serious at the time and will continue to be serious offences under Bill C-45. When the Crown elects to proceed by indictment, a maximum penalty of 14 years can be imposed upon an adult offender for the distributing cannabis, possessing cannabis for the purpose of distribution, selling cannabis or possessing cannabis for the purpose of selling.<sup>11</sup>

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<sup>11</sup>Bill C-45, cls. 9(5)(a), 10(5)(a).

### **PART III: ARGUMENT**

#### **ISSUE I – S. 742.1(c) of the *Criminal Code* does not breach s. 7 of the Charter**

##### ***A. Overview***

28. The applicant asserts that s. 742.1(c) of the *Criminal Code* is inconsistent with s. 7 of the *Charter* because it is overly broad in effect. He does not argue that those provisions are arbitrary or grossly disproportionate. The foundation to his argument is that overbreadth is conceptually different from and broader in scope than gross disproportionality, the focus to a challenge to a sentencing provision under s. 12. That is not the law as established by this Court. The constitutional standard of gross disproportionality applies to both ss. 7 and 12.<sup>12</sup>

29. Furthermore, this is not a challenge to a mandatory minimum sentence or a *de facto* mandatory minimum sentence. Although the sentencing jurisprudence from the Saskatchewan Court of Appeal suggests that an institutional jail sentence is a presumptive starting point for larger scale commercial marihuana trafficking, there is no scenario where a judge would be obliged to impose a grossly disproportionate sentence upon the applicant or any other person charged with the same offence. A broad range of sentencing options can always be considered by the sentencing judge, including a non-custodial disposition in appropriate circumstances.

30. From the time the conditional sentence regime was established, Parliament has limited the circumstances in which it could be imposed. Amendments to the regime have merely clarified what those limited circumstances are. For that reason, s. 742.1(c) is not overly broad—it only removes the availability of a conditional sentence for serious offences (including larger scale commercial marihuana trafficking). These limitations are appropriately tailored to ensure that a conditional sentence is not available in cases involving serious, harmful and morally blameworthy misconduct.

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<sup>12</sup> *R v Malmo-Levine*; *R v Caine*, 2003 SCC 74, at para 161, [2003] 3 SCR 571 [*Malmo-Levine*]; *R v Safarzadeh-Markhali*, 2016 SCC 14 at paras 24-29 [2016] 1 SCR 180 [*Safarzadeh-Markhali*].

***B. A brief history of the conditional sentence of imprisonment***

31. In 1994, Parliament introduced a wide range of sentencing reforms. A component of that *Act* included the introduction of a conditional sentence of imprisonment, a novel sentencing disposition that permitted *some* offenders to serve a jail sentence in the community.<sup>13</sup>

32. This Court first considered these new sentencing provisions in *R v Proulx*.<sup>14</sup> Chief Justice Lamer, who spoke for a unanimous Court, noted that a conditional sentence was a sentencing option to be considered for less serious and non-dangerous offenders, *provided* that they met the statutory prerequisites.<sup>15</sup> The Chief Justice noted that four criteria were to be considered when assessing whether a conditional sentence could be imposed:

(1) the offender must be convicted of an offence that is *not punishable by a minimum term of imprisonment*;

(2) the court must impose a term of imprisonment of *less than two years*;

(3) the safety of the community would not be endangered by the offender serving the sentence in the community; and

(4) a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 of the *Criminal Code*.

In my view, the first three criteria are prerequisites to any conditional sentence. These prerequisites answer the question of whether or not a conditional sentence is possible in the circumstances. Once they are met, the next question is whether a conditional sentence is appropriate. This decision turns upon a consideration of the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2.<sup>16</sup>

[Emphasis added]

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<sup>13</sup> *An Act to amend the Criminal Code (sentencing) and other acts in consequence thereof*, SC 1995, c 22, s 6 (in force 3 September 1996).

<sup>14</sup> *R v Proulx*, [2000] 1 SCC 5 at para 21, [2000] 1 SCR 61 [*Proulx*].

<sup>15</sup> *Ibid*, at para 21.

<sup>16</sup> *Ibid*, at para 46.

33. The Chief Justice clearly stated that this new disposition would not always be available *even if the first three criteria were met*, because for some offenders or in some circumstances, an institutional jail sentence would be necessary to emphasize denunciation or deterrence.<sup>17</sup>

34. Section 742.1 was amended in 2007 to preclude the imposition of conditional sentences upon conviction for certain categories of offences, including ‘serious personal injury offences’.<sup>18</sup>

35. Additional amendments in the *Safe Streets and Communities Act* expressly prohibited conditional sentences for other specified offences, including serious drug offences punishable by a maximum term of imprisonment of 14 years or life.<sup>19</sup>

36. In *Proulx*, Lamer C.J. noted that “Parliament could have easily excluded specific offences [from the conditional sentence regime] in addition to those with a mandatory minimum term of imprisonment but chose not to”.<sup>20</sup> By the amendments to s. 742.1(c) effected by the *Safe Streets and Communities Act*, Parliament did what Chief Justice Lamer expressly said it could do—exclude specific serious offences from consideration for a conditional sentence.

37. From the beginning, a conditional sentence was a disposition that was subject to several statutory limitations as to its availability. As s. 742 was refined through the amendments, Parliament legitimately excluded certain categories of serious offences and serious offenders from the conditional sentence regime.

### ***C. The foundation to the applicant’s s. 7 challenge is flawed***

38. The applicant’s s. 7 challenge is flawed for three reasons:

1) He is not facing a mandatory minimum penalty by virtue of the operation of s. 742.1(c).

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<sup>17</sup> *Ibid*, at paras 106, 107, 127(8).

<sup>18</sup> *An Act to amend the Criminal Code (conditional sentence of imprisonment)*, SC 2007, c 12 (in force 30 November 2007).

<sup>19</sup> *Criminal Code* s 742.1, as amended, SC 2012, c 1, s 34; in force 20 November 2012, per SI/2012-48.

<sup>20</sup> *Proulx*, at para 79.

2) He has elected to challenge the constitutional validity of his sentence under s. 7 of the *Charter* on the basis that “overbreadth” is broader in scope than “gross disproportionality”, a position that does not accord with this Court’s jurisprudence.

3) He maintains that the purpose of the amendments to s. 742.1, and in particular paragraph (c), is to protect the public by incarcerating offenders who commit serious crimes and who pose a risk to public safety. This does not reflect the Parliamentary record. One of the purposes to the amendments was to ensure that sentences imposed for serious offences adequately emphasized denunciation and deterrence.

1. An institutional jail sentence was not mandatory

39. Nothing in s. 742.1(c) compels a sentencing court to impose a jail sentence simply because a conditional sentence is not an available disposition. The Court of Appeal imposed a jail sentence after a careful consideration of all of the sentencing principles in ss. 718, 718.1 and 718.2 of the *Criminal Code* and the sentencing ranges it had established for serious marihuana trafficking offences. The effect of a “range” of appropriate sentences for a particular offence is not the same as a mandatory minimum sentence or a maximum sentence. As this Court pointed out in *R v Lacasse*, sentencing ranges “should not be considered ‘averages’, let alone straitjackets, but should instead be seen as historical portraits for the use of sentencing judges, who must still exercise their discretion in each case”.<sup>21</sup>

2. An overbreadth challenge to a sentencing provision must be based on gross disproportionality

40. The applicant’s premise that “overbreadth” is broader in scope than “gross disproportionality” appears to be based on a comment made by this Court in *R v Nur*, suggesting that in some sentencing challenges may require recourse to s. 7 of the *Charter*. This was an *obiter* comment as the Court had found that the impugned sentencing provisions in that case violated s. 12 and it did not elaborate on the circumstances where it would be possible to rely upon s. 7 instead of s. 12 of the *Charter*.<sup>22</sup>

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<sup>21</sup> *R v Lacasse*, 2015 SCC 64 at para 57, [2015] 3 SCR 1089.

<sup>22</sup> *R v Nur*, 2015 SCC15 at para 110, [2015] 1 SCR 773.

41. In its earlier decision in *Malmo-Levine*, this Court explained that when a sentencing provision is alleged to be unconstitutional because it is harsh or excessive, this falls to be decided under s. 12 of the *Charter*, not s. 7.<sup>23</sup> In *Safarzadeh-Markhali*, decided a year after *Nur*, this court reaffirmed the approach it had taken in *Malmo-Levine*.<sup>24</sup>

[72] . . . In *R. v. Malmo-Levine*, 2003 SCC 74 (CanLII), [2003] 3 S.C.R. 571, at para. 160, a majority of this Court squarely rejected the proposition that there is “a principle of fundamental justice embedded in s. 7 that would give rise to a constitutional remedy against a punishment that does not infringe s. 12”. The standard imposed by s. 7 with respect to sentencing is the same as it is under s. 12: *gross* disproportionality.

[73] I see no reason to depart from that holding here. Proportionality, as expressed in s. 718.1 of the *Criminal Code*, is a foundational principle of sentencing. But the constitutional standard against which punishment is measured is and remains gross disproportionality. Proportionality in the sentencing process is not a principle of fundamental justice under s. 7.

[Emphasis in original]

42. In assessing whether an impugned sentencing provision leads to a grossly disproportionate penalty, it must be noted that on two occasions this Court has said that proportionality is not a principle of fundamental justice.<sup>25</sup> In *Lloyd*, the majority held that proportionality is only a guide to the construction of a fit sentence—it does not rise to the level of a constitutional norm.<sup>26</sup> In *Safarzadeh-Markhali*, the majority held that Parliament has the right to deviate from the principles and purposes of sentencing as long as it does not compel a sentencing judge to impose a sentence that is grossly disproportionate.<sup>27</sup>

43. Thus, in the context of both s. 7 and s. 12, it is constitutionally permissible for a law to require the imposition of a sentence that might be viewed as excessive for some offenders but necessary, in Parliament’s view, to emphasize legitimate sentencing objectives like denunciation

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<sup>23</sup> *Malmo-Levine*, at paras 124, 158.

<sup>24</sup> *Safarzadeh-Markhali*, at paras 72-73.

<sup>25</sup> *R v Lloyd*, 2016 SCC 13 at paras 38-47, [2016] 1 SCR 130 [*Lloyd*]; and *Safarzadeh-Markhali*, at paras 21, 70-73.

<sup>26</sup> *Lloyd*, at para 43.

<sup>27</sup> *Safarzadeh-Markhali*, at para 71.

and deterrence. In those circumstances the sentence will not be “grossly disproportionate” nor “overly broad”.

44. Even if the analytic paths to be followed under s. 7 or s. 12 are somewhat different, the ultimate issue is the same: is a sentence that *must* be imposed *grossly disproportionate* when assessed in relation to the particular offender or any other individual who may be reasonably be caught by the sentencing provision?

***D. The analytical framework under s. 12 of the Charter***

45. Since the standard of “gross disproportionality” applies equally to sentencing challenges under s. 7 and s. 12 of the *Charter*, a review of this Court’s jurisprudence about the analytical framework relevant to a s. 12 challenge will inform the assessment of the applicant’s s. 7 challenge.

46. The phrase “cruel and unusual punishment” in s. 12 is meant to guard against punishments viewed as “abhorrent or intolerable”<sup>28</sup> or “grossly disproportionate”.<sup>29</sup> Not every disproportionate or excessive sentence can be stigmatized as a constitutional violation—the impugned penalty must be so harsh or excessive that it “outrage[s] standards of decency.”<sup>30</sup> Gross disproportionality is a stringent legal standard that must be established in accordance with the analytical framework developed in this Court’s s. 12 *Charter* jurisprudence.<sup>31</sup>

47. This s. 12 jurisprudence recognizes that Parliament is not required to enact sentencing provisions that give equal weight to all sentencing objectives in all circumstances. The weight that will attach to those purposes and principles can, and indeed must, vary according to the context. A sentencing provision which “pursues the sentencing objectives of general deterrence, denunciation, and retributive justice more than the principles of rehabilitation and specific deterrence” does not run afoul of the constitutional guarantee against “cruel and unusual punishment” in s. 12 of the

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<sup>28</sup> *R v Ferguson*, [2008] 1 SCR 96 at para 14 2008 SCC 6 [*Ferguson*]; *R v Smith*, [1987] 1 SCR 1045 at paras 52-56 40 DLR (4<sup>th</sup>) 435 [*Smith*].

<sup>29</sup> *Lloyd*, at para 22.

<sup>30</sup> *Smith*, *supra* note 20 at para 54.

<sup>31</sup> As noted above, this analytical framework was first articulated in *Smith* and was refined or adopted in *R v Goltz*, [1991] 3 SCR 485, 67 CCC (3d) 481 [*Goltz*]; *R v Morrissey*, 2000 SCC 39, [2000] 2 SCR 90 [*Morrissey*]; *Ferguson*; *Nur*, and *Lloyd*.



*Charter*.<sup>32</sup> General deterrence can support a sentence that might otherwise be characterized as “disproportionate” or “excessive”.

48. This Court has held that there must be a two-step analysis of a s. 12 challenge. Initially a reviewing court must consider whether the imposition of the sentence directed by the impugned provision constitutes cruel and unusual punishment for the specific offender being sentenced. If the impugned sentencing provision is not shown to be grossly disproportionate when applied to that particular offender, the court must then consider whether it is grossly disproportionate when applied to “reasonable hypothetical” scenarios. In *Goltz*, in *Morrissey*, and in *Nur*, this Court held that a “reasonable hypothetical” must be one that could commonly arise in order to avoid striking down legislation based on “far-fetched”, “marginally imaginable”, “remote”, or “extreme” examples.<sup>33</sup>

#### ***E. The analytical framework under s. 7 of the Charter***

49. In *Canada (Attorney General) v Bedford*,<sup>34</sup> this Court held that the question to be answered on a s. 7 challenge is whether *anyone’s* life, liberty or security of the person has been denied by an impugned law—a grossly disproportionate, overbroad, or arbitrary effect on one person is sufficient to establish a breach of s. 7. This Court explained that an overbroad law is one that is generally connected to its purpose, but, in some circumstances, goes too far and captures conduct that bears *no connection* to its objective.<sup>35</sup>

50. At the first stage of the overbreadth analysis, the applicant must show that his life, liberty and security interests are engaged by the impugned legislation. The second stage involves identifying and defining the relevant principles of fundamental justice that bear upon the analysis, and then determining whether the applicant’s constitutionally protected interests are infringed or denied in a manner that does not accord with those principles.<sup>36</sup>

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<sup>32</sup> *Morrissey*, at paras 45-46; *Nur*, supra para 45.

<sup>33</sup> *Goltz*, at paras 42, 69; *Morrissey*, at paras 30-32, 45-46; *Nur*, at paras 52-65, 73-76.

<sup>34</sup> *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at para 123, [2013] 3 SCR 1101 [*Bedford*].

<sup>35</sup> *Ibid* at paras 98-113.

<sup>36</sup> *Ibid* at paras 112-113.

1. Deprivation of liberty interests

51. Since the Court of Appeal sentenced the applicant to 15 months in jail, his liberty interests were engaged. The essential question however is whether this deprivation of his liberty comports with the principles of fundamental justice. If it does, there is no s. 7 violation.

2. Determining the law's purpose

52. In *Safarzadeh-Markhali*, this Court held that because overbreadth concerns the relationship between the effect of the law and the law's purpose, the analysis must begin with a proper interpretation of the legislative objective.<sup>37</sup> In determining a law's purpose, the Courts can look to: (1) any explicit statement of purpose in the legislation; (2) the text, context, and scheme of the legislation; and (3) extrinsic evidence such as legislative history and evolution.<sup>38</sup>

53. The Court of Appeal reviewed the Parliamentary record and correctly concluded that the *Safe Streets and Communities Act* reflects at least the following broad purposes:

- (a) providing consistency and clarity to the sentencing regime;
- (b) promoting of public safety and security;
- (c) establishing paramountcy of the secondary principles of denunciation and deterrence in sentencing for the identified offences; and
- (d) treating of non-violent serious offences as serious offences for sentencing purposes.<sup>39</sup>

54. A review of the Hansard supports the Court of Appeal's view of the legislative purpose. Shelley Glover, Parliamentary Secretary to the Minister of Finance, noted that the proposed amendments would remove the availability of a conditional sentence for

. . . offences prosecuted on indictment and punishable by a maximum term of imprisonment of 10 years ineligible for a conditional sentence if they: result in bodily harm; involve the import or export, trafficking and production of drugs; or involve the use of a weapon. *It is the opinion of the government that where these circumstances are present, there is a need to emphasize the sentencing objectives of*

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<sup>37</sup> *Safarzadeh-Markhali*, at paras 24-29; *R v Moriarity*, 2015 SCC 55, at paras. 24, 27-31 [2015] 3 SCR 485 [*Moriarity*].

<sup>38</sup> *Safarzadeh-Markhali*, at paras 31, 36; *Moriarity*, at para 31.

<sup>39</sup> *R v Neary*, 2017 SKCA 29 at para 35; CA Reasons [AR, Tab 3C, pp. 44-45 at para 35]

*denunciation and deterrence and therefore eliminate the possibility of a conditional sentence.*<sup>40</sup>

[Emphasis added]

3. *The sentence imposed was not a grossly disproportionate penalty for the applicant*

55. Trafficking and possession for the purpose of trafficking offences are serious by their very nature and are deserving of a significant sanction. The applicant had more than 20 pounds of marihuana some of which he had sold and the remainder of which he intended to sell. These are not trifling amounts.

56. The personal circumstances of the offender are not to be afforded significant weight when assessing an appropriate penalty for a significant drug trafficking offence including marihuana trafficking. Just because it might be said that the applicant does not pose a risk to society, his conduct was worthy of a significant penalty. The quantity of marihuana involved and his purely commercial motive demonstrate the gravity of the offences he committed and his moral blameworthiness. Even if it can be said that the applicant was a “candidate” for a conditional sentence, this does not mean the jail sentence imposed by the Court of Appeal was “grossly disproportionate”. A custodial sentence that is entirely appropriate does not become grossly disproportionate because the sentencing judge was precluded from allowing it to be served in the community.

4. *The hypothetical is far-fetched*

57. The applicant’s hypothetical of the generous “student” who gives away large quantities of marihuana for free<sup>41</sup> is not a reasonable one within the context of s. 7 or s. 12 *Charter* jurisprudence. Cases of trafficking by sharing larger quantities of marihuana are almost totally absent from the Court of Appeal sentencing precedents. This hypothetical is remote, far-fetched, or extreme—precisely the kind of scenario that this Court has said must be excluded from consideration.

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<sup>40</sup> *House of Commons Debates*, 41st Parl, 1st Sess, No 17 (22 September 2011) at pp. 1305-1319. See also the comments made by Robert Goguen, Parliamentary Secretary to the Minister of Justice, *House of Commons Debates*, 41st Parl., 1st Sess. No 17 (21 September 2011) at pp 1750-1755 [RR, Tab B at pp. 123-131].

<sup>41</sup> Applicant’s memorandum of argument, [AR, Tab 4, p. 66 at para 29]

58. Furthermore, this hypothetical is premised on the assumption that the sentencing jurisprudence in Saskatchewan *mandates* that this “hypothetical offender” would be sentenced to jail. However, *a non-prison sentence would still be available*. As was the case for the applicant, s. 742.1(c) is not *mandatory* direction that *requires* a sentencing court to send the generous “students” to jail.

***F. Section 742(1)(c) is neither grossly disproportionate nor overly broad***

59. Section 742.1(c) recognizes the inherent severity of large scale marihuana trafficking offences and the need to prioritize the principles of denunciation and deterrence in the sentencing of those offences. Section 742.1(c) does nothing more than ensure that an adequate punishment is imposed for these serious offences. Precluding the availability of conditional sentences for offences like these is entirely consistent with the purposes of the conditional sentencing regime as originally enacted and as amended by the *Safe Streets and Communities Act*.

60. Section 742.1(c) does not operate as an impediment to a court’s discretion to impose a fit sentence. The full spectrum of sentencing options (other than a conditional sentence) remain available to address scenarios where the offender is seen as less culpable.<sup>42</sup> This provision is not overbroad.

61. The applicant has not identified a single authority, appellate or otherwise, in support of his argument that s. 742.1(c) violates either s. 7 or s. 12 of the *Charter*. In addition to the decision from the Court of Appeal in this case, there are five reported Court decisions holding that the unavailability of a conditional sentence resulting from s. 742.1(c) does not violate either s. 7 or s. 12 of the *Charter*.<sup>43</sup>

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<sup>42</sup> *Malmo-Levine*; at para 155

<sup>43</sup> *R v Sawh*, 2016 ONSC 7797, at para 51; *R v Anderson*, 2016 ONSC 7501, at para 46; *R v Perry*, 2013 QCCA 212, para 152, leave to SCC refused; *R v DeYoung*, 2017 NSCA 13, at paras. 23, 25; *R v Veljanovski*, 2017 ONCJ 150, at para 20.

## **ISSUE II – The pending legalization of marihuana was irrelevant to the applicant’s sentencing**

62. The Court of Appeal correctly held that a generic observation about proposed legislation promising to legalize marihuana had no relevance in his sentencing:

[44] Mr. Neary also argues that his offences are less serious on the basis that the government has proposed in the future to fulfill its election promise to make simple *possession* of marijuana legal. He asks the Court to place less weight on the principles of denunciation and deterrence mandated by the *Act*. Such an argument cannot succeed. This Court cannot give less effect to the existing law because of the possibility or even the probability of a future law that has been promised but which is not law at the moment. This Court is bound to apply the law as it stands at the present time and, in any event, the government has not proposed the decriminalization of *trafficking* in marijuana.

[Emphasis in original]

63. After the Court of Appeal handed down its decision, Parliament tabled Bill C-45. It is now clear that the offences committed by the applicant will, if this Bill become law, continue to be offences, and indeed serious offences, under the new regime.

64. The applicant has not identified any issues of any national or public importance.

## **PART IV: SUBMISSION ON COSTS**

65. The applicant seeks public interest costs on a “special costs” or “substantial indemnity basis”. He argues that the issues he raises require “clarification in the public interest as they impact the availability of conditional sentences for not only Mr. Neary but others who are similarly situated, as well as the ambit and scope of the discretion of a judge at sentencing...”<sup>44</sup>.

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<sup>44</sup> Applicant’s memorandum of argument, [AR, Tab 4, p. 72 at para 47]

66. This Court has stated that, although it has the discretionary power to order costs in a criminal matter, costs will not be awarded unless there is something “remarkable” about the defendant’s case or the Crown’s conduct was oppressive or improper.<sup>45</sup>

67. The request for costs made by the applicant in the instant case is premised on the fact that, in his submission, this file meets the “public importance” test under s. 40(1) of the *Supreme Court Act*. There is nothing “remarkable” about any application for which leave may be granted by this Court that would justify costs, even in an appeal that could be qualified as a “test case” on issues with constitutional ramifications. If that were to be the law, all successful leave applications raising a *Charter* provision or remedy would justify an order for costs. This is contrary to the long prevailing convention of criminal practice followed by this Court that parties are not entitled to costs in criminal matters, whether successful or unsuccessful.

68. No costs should be awarded, whether leave is granted or not, because the applicant has not shown that this case is remarkable or that the Crown’s conduct has been oppressive or improper.

69. The respondent does not seek costs in this Court.

#### **PART V: NATURE OF ORDER SOUGHT**

70. That the application for leave to appeal be dismissed, without costs.

DATED at Ottawa, Ontario, this 28<sup>th</sup> day of August, 2017.

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Wade McBride  
Counsel for the respondent

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<sup>45</sup> *R v M. (C.A.)*, [1996] 1 SCR 500 at para 97.

**PART VI: AUTHORITIES**

<b><u>Jurisprudence</u></b>	<b><u>Paragraphs</u></b>
<i>Canada (Attorney General) v. Bedford</i> , 2013 SCC 72, [2013] 3 SCR 1101	49, 50
<i>R v Anderson</i> , 2016 ONSC 7501	61
<i>R v DeYoung</i> , 2017 NSCA 13	61
<i>R v Ferguson</i> , [2008] 1 SCR 96	46
<i>R v Goltz</i> , [1991] 3 SCR 485	46, 48
<i>R v Lacasse</i> , 2015 SCC 64, [2015] 3 SCR 1089	39
<i>R. v. Lloyd</i> , 2016 SCC 13, [2016] 1 SCR 130	42, 46
<i>R v M. (C.A.)</i> , [1996] 1 SCR 500	66
<i>R v Marmo-Levine; R v Caine</i> , 2003 SCC 74, [2003] 3 SCR 571	28, 41, 60
<i>R v Moriarity</i> , 2015 SCC 55, at paras. 24, 27-31 [2015] 3 SCR 485	52
<i>R v Morrissey</i> , [2000] 2 SCR 90	46, 48
<i>R v Neary</i> , 2017 SKCA 29	53
<i>R v Nur</i> , 2015 SCC15 at para 110, [2015] 1 SCR 773	40, 41, 46, 48
<i>R v Perry</i> , 2013 QCCA 212	61
<i>R v Proulx</i> , [2000] 1 SCR 61	32, 33, 36
<i>R v Safarzadeh-Markhali</i> , 2016 SCC 14	28, 41, 42, 52
<i>R v Sawh</i> , 2016 ONSC 7797	61
<i>R v Smith</i> , [1987] 1 SCR 1045	46
<i>R v Veljanovski</i> , 2017 ONCJ 150	61
<b><u>Secondary References</u></b>	
<i>House of Commons Debates</i> , 41st Parl. 1st Sess, No 17 (22 September 2011) at 1305-1319.	54
<i>House of Commons Debates</i> , 41st Parl. 1st Sess, No 17 (21 September 2011) at p 1750-1755.	54

**PART VII: STATUTORY AUTHORITIES**

1. *Supreme Court of Canada Act*, R.S. 1985, c. S-26, s. 40  
<http://laws-lois.justice.gc.ca/eng/acts/S-26/FullText.html>
2. *The Controlled Drugs and Substances Act*, SC 1996, c. 19, s. 5,7, 10  
<http://laws-lois.justice.gc.ca/eng/acts/C-38.8/>
3. *The Criminal Code of Canada*, R.S.C. 1970, c. C-34, s. 718, 718.1, 718.2, 742.1  
<http://laws-lois.justice.gc.ca/eng/acts/C-46/>
4. *The Safe Streets and Communities Act*, SC, 2012, c. 1  
[http://laws-lois.justice.gc.ca/eng/AnnualStatutes/2012\\_1/FullText.html](http://laws-lois.justice.gc.ca/eng/AnnualStatutes/2012_1/FullText.html)
5. *Bill C-45-The Cannabis Act* 2018  
<https://openparliament.ca/bills/42-1/C-45/>





CANADA

CONSOLIDATION

CODIFICATION

## Supreme Court Act

## Loi sur la Cour suprême

R.S.C., 1985, c. S-26

L.R.C. (1985), ch. S-26

Current to August 14, 2017

À jour au 14 août 2017

Last amended on December 12, 2013

Dernière modification le 12 décembre 2013

### Exceptions

**39** No appeal to the Court lies under section 37, 37.1 or 38 from a judgment in a criminal cause, in proceedings for or on

(a) a writ of *habeas corpus*, *certiorari* or prohibition arising out of a criminal charge; or

(b) a writ of *habeas corpus* arising out of a claim for extradition made under a treaty.

R.S., 1985, c. S-26, s. 39; 1990, c. 8, s. 36.

### Appeals with leave of Supreme Court

**40 (1)** Subject to subsection (3), an appeal lies to the Supreme Court from any final or other judgment of the Federal Court of Appeal or of the highest court of final resort in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, whether or not leave to appeal to the Supreme Court has been refused by any other court, where, with respect to the particular case sought to be appealed, the Supreme Court is of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it, and leave to appeal from that judgment is accordingly granted by the Supreme Court.

### Application for leave

**(2)** An application for leave to appeal under this section shall be brought in accordance with paragraph 58(1)(a).

### Appeals in respect of offences

**(3)** No appeal to the Court lies under this section from the judgment of any court acquitting or convicting or setting aside or affirming a conviction or acquittal of an indictable offence or, except in respect of a question of law or jurisdiction, of an offence other than an indictable offence.

### Extending time for allowing appeal

**(4)** Whenever the Court has granted leave to appeal, the Court or a judge may, notwithstanding anything in this Act, extend the time within which the appeal may be allowed.

R.S., 1985, c. S-26, s. 40; R.S., 1985, c. 34 (3rd Suppl.), s. 3; 1990, c. 8, s. 37.

### Appeals under other Acts

**41** Notwithstanding anything in this Act, the Court has jurisdiction as provided in any other Act conferring jurisdiction.

R.S., c. S-19, s. 42.

### Exceptions

**39** Il ne peut être interjeté appel devant la Cour, au titre des articles 37, 37.1 ou 38, d'un jugement rendu dans une affaire pénale relativement à des procédures touchant à :

a) un bref d'*habeas corpus*, de *certiorari* ou de prohibition découlant d'une accusation au pénal;

b) un bref d'*habeas corpus* résultant d'une demande d'extradition fondée sur un traité.

L.R. (1985), ch. S-26, art. 39; 1990, ch. 8, art. 36.

### Appel avec l'autorisation de la Cour

**40 (1)** Sous réserve du paragraphe (3), il peut être interjeté appel devant la Cour de tout jugement, définitif ou autre, rendu par la Cour d'appel fédérale ou par le plus haut tribunal de dernier ressort habilité, dans une province, à juger l'affaire en question, ou par l'un des juges de ces juridictions inférieures, que l'autorisation d'en appeler à la Cour ait ou non été refusée par une autre juridiction, lorsque la Cour estime, compte tenu de l'importance de l'affaire pour le public, ou de l'importance des questions de droit ou des questions mixtes de droit et de fait qu'elle comporte, ou de sa nature ou importance à tout égard, qu'elle devrait en être saisie et lorsqu'elle accorde en conséquence l'autorisation d'en appeler.

### Demandes d'autorisation d'appel

**(2)** Les demandes d'autorisation d'appel présentées au titre du présent article sont régies par l'alinéa 58(1)a).

### Appels à l'égard d'infractions

**(3)** Le présent article ne permet pas d'en appeler devant la Cour d'un jugement prononçant un acquittement ou une déclaration de culpabilité ou annulant ou confirmant l'une ou l'autre de ces décisions dans le cas d'un acte criminel ou, sauf s'il s'agit d'une question de droit ou de compétence, d'une infraction autre qu'un acte criminel.

### Prorogation du délai d'appel

**(4)** Dans tous les cas où elle accorde une autorisation d'appel, la Cour ou l'un de ses juges peut, malgré les autres dispositions de la présente loi, proroger le délai d'appel.

L.R. (1985), ch. S-26, art. 40; L.R. (1985), ch. 34 (3<sup>e</sup> suppl.), art. 3; 1990, ch. 8, art. 37.

### Appels fondés sur d'autres lois

**41** Malgré les autres dispositions de la présente loi, la Cour a la compétence prévue par toute autre loi attributive de compétence.

S.R., ch. S-19, art. 42.



CANADA

CONSOLIDATION

CODIFICATION

## Controlled Drugs and Substances Act

## Loi réglementant certaines drogues et autres substances

S.C. 1996, c. 19

L.C. 1996, ch. 19

Current to August 14, 2017

À jour au 14 août 2017

Last amended on May 18, 2017

Dernière modification le 18 mai 2017

### Trafficking in substance

**5 (1)** No person shall traffic in a substance included in Schedule I, II, III, IV or V or in any substance represented or held out by that person to be such a substance.

### Possession for purpose of trafficking

**(2)** No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II, III, IV or V.

### Punishment

**(3)** Every person who contravenes subsection (1) or (2)

**(a)** subject to paragraph (a.1), if the subject matter of the offence is a substance included in Schedule I or II, is guilty of an indictable offence and liable to imprisonment for life, and

**(i)** to a minimum punishment of imprisonment for a term of one year if

**(A)** the person committed the offence for the benefit of, at the direction of or in association with a criminal organization, as defined in subsection 467.1(1) of the *Criminal Code*,

**(B)** the person used or threatened to use violence in committing the offence,

**(C)** the person carried, used or threatened to use a weapon in committing the offence, or

**(D)** the person was convicted of a designated substance offence, or had served a term of imprisonment for a designated substance offence, within the previous 10 years, or

**(ii)** to a minimum punishment of imprisonment for a term of two years if

**(A)** the person committed the offence in or near a school, on or near school grounds or in or near any other public place usually frequented by persons under the age of 18 years,

**(B)** the person committed the offence in a prison, as defined in section 2 of the *Criminal Code*, or on its grounds, or

**(C)** the person used the services of a person under the age of 18 years, or involved such a person, in committing the offence;

**(a.1)** if the subject matter of the offence is a substance included in Schedule II in an amount that is not more than the amount set out for that substance in Schedule

### Trafic de substances

**5 (1)** Il est interdit de faire le trafic de toute substance inscrite aux annexes I, II, III, IV ou V ou de toute substance présentée ou tenue pour telle par le trafiquant.

### Possession en vue du trafic

**(2)** Il est interdit d'avoir en sa possession, en vue d'en faire le trafic, toute substance inscrite aux annexes I, II, III, IV ou V.

### Peine

**(3)** Quiconque contrevient aux paragraphes (1) ou (2) commet :

**a)** dans le cas de substances inscrites aux annexes I ou II, mais sous réserve de l'alinéa a.1), un acte criminel passible de l'emprisonnement à perpétuité, la durée de l'emprisonnement ne pouvant être inférieure :

**(i)** à un an, si la personne, selon le cas :

**(A)** a commis l'infraction au profit ou sous la direction d'une organisation criminelle au sens du paragraphe 467.1(1) du *Code criminel* ou en association avec elle,

**(B)** a eu recours ou a menacé de recourir à la violence lors de la perpétration de l'infraction,

**(C)** portait ou a utilisé ou menacé d'utiliser une arme lors de la perpétration de l'infraction,

**(D)** a, au cours des dix dernières années, été reconnue coupable d'une infraction désignée ou purgé une peine d'emprisonnement relativement à une telle infraction,

**(ii)** à deux ans, si la personne, selon le cas :

**(A)** a commis l'infraction à l'intérieur d'une école, sur le terrain d'une école ou près de ce terrain ou dans tout autre lieu

public normalement fréquenté par des personnes de moins de dix-huit ans ou près d'un tel lieu,

**(B)** a commis l'infraction à l'intérieur d'une prison au sens de l'article 2 du *Code criminel* ou sur le terrain d'un tel établissement,

**(C)** a eu recours aux services d'une personne de moins de dix-huit ans pour la perpétration de l'infraction ou l'y a mêlée;

VII, is guilty of an indictable offence and liable to imprisonment for a term of not more than five years less a day;

**(b)** if the subject matter of the offence is a substance included in Schedule III or V,

**(i)** is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or

**(ii)** is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months; and

**(c)** where the subject-matter of the offence is a substance included in Schedule IV,

**(i)** is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years, or

**(ii)** is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding one year.

**(4)** [Repealed, 2012, c. 1, s. 39]

#### Interpretation

**(5)** For the purposes of applying subsection (3) in respect of an offence under subsection (1), a reference to a substance included in Schedule I, II, III, IV or V includes a reference to any substance represented or held out to be a substance included in that Schedule.

#### Interpretation

**(6)** For the purposes of paragraph (3)(a.1) and Schedule VII, the amount of the substance means the entire amount of any mixture or substance, or the whole of any plant, that contains a detectable amount of the substance.

1996, c. 19, s. 5; 2012, c. 1, s. 39; 2017, c. 7, s. 3.

#### Importing and exporting

**6 (1)** Except as authorized under the regulations, no person shall import into Canada or export from Canada a substance included in Schedule I, II, III, IV, V or VI.

#### Possession for the purpose of exporting

**(2)** Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II, III, IV, V or VI for the purpose of exporting it from Canada.

**a.1)** dans le cas de substances inscrites à la fois à l'annexe II et à l'annexe VII, et ce, pourvu que la quantité en cause n'excède pas celle mentionnée à cette dernière annexe, un acte criminel passible d'un emprisonnement maximal de cinq ans moins un jour;

**b)** dans le cas de substances inscrites aux annexes III ou V :

**(i)** soit un acte criminel passible d'un emprisonnement maximal de dix ans,

**(ii)** soit une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois;

**c)** dans le cas de substances inscrites à l'annexe IV :

**(i)** soit un acte criminel passible d'un emprisonnement maximal de trois ans,

**(ii)** soit une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal d'un an.

**(4)** [Abrogé, 2012, ch. 1, art. 39]

#### Interprétation

**(5)** Dans le cadre de l'application du paragraphe (3) à l'égard d'une infraction prévue au paragraphe (1), la mention d'une substance inscrite aux annexes I, II, III, IV ou V vaut également mention de toute substance présentée ou tenue pour telle.

#### Définition de *quantité*

**(6)** Pour l'application de l'alinéa (3)a.1) et de l'annexe VII, *quantité* s'entend du poids total de tout mélange, substance ou plante dans lequel on peut déceler la présence de la substance en cause.

1996, ch. 19, art. 5; 2012, ch. 1, art. 39; 2017, ch. 7, art. 3.

#### Importation et exportation

**6 (1)** Sauf dans les cas autorisés aux termes des règlements, l'importation et l'exportation de toute substance inscrite à l'une ou l'autre des annexes I à VI sont interdites.

#### Possession en vue de l'exportation

**(2)** Sauf dans les cas autorisés aux termes des règlements, il est interdit d'avoir en sa possession, en vue de son exportation, toute substance inscrite à l'une ou l'autre des annexes I à VI.

## Punishment

### (3) Every person who contravenes subsection (1) or (2)

**(a)** if the subject matter of the offence is a substance included in Schedule I in an amount that is not more than one kilogram, or in Schedule II, is guilty of an indictable offence and liable to imprisonment for life, and to a minimum punishment of imprisonment for a term of one year if

**(i)** the offence is committed for the purposes of trafficking,

**(ii)** the person, while committing the offence, abused a position of trust or authority, or

**(iii)** the person had access to an area that is restricted to authorized persons and used that access to commit the offence;

**(a.1)** if the subject matter of the offence is a substance included in Schedule I in an amount that is more than one kilogram, is guilty of an indictable offence and liable to imprisonment for life and to a minimum punishment of imprisonment for a term of two years;

**(b)** if the subject matter of the offence is a substance included in Schedule III, V or VI,

**(i)** is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or

**(ii)** is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months; and

**(c)** if the subject matter of the offence is a substance included in Schedule IV,

**(i)** is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years, or

**(ii)** is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding one year.

1996, c. 19, s. 6; 2012, c. 1, s. 40; 2017, c. 7, s. 4.

## Production of substance

**7 (1)** Except as authorized under the regulations, no person shall produce a substance included in Schedule I, II, III, IV or V.

## Punishment

### (2) Every person who contravenes subsection (1)

## Peine

### (3) Quiconque contrevient aux paragraphes (1) ou (2) commet :

**a)** dans le cas de substances inscrites à l'annexe I, et ce, pourvu que la quantité en cause n'excède pas 1 kg, ou à l'annexe II, un acte criminel passible de l'emprisonnement à perpétuité, la durée de l'emprisonnement ne pouvant être inférieure à un an si, selon le cas :

**(i)** l'infraction est commise à des fins de trafic,

**(ii)** la personne, en perpétrant l'infraction, a commis un abus de confiance ou un abus d'autorité,

**(iii)** la personne avait accès à une zone réservée aux personnes autorisées et a utilisé cet accès pour perpétrer l'infraction;

**a.1)** dans le cas de substances inscrites à l'annexe I, et ce, pourvu que la quantité en cause excède 1 kg, un acte criminel passible de l'emprisonnement à perpétuité, la durée de l'emprisonnement ne pouvant être inférieure à deux ans;

**b)** dans le cas de substances inscrites aux annexes III, V ou VI :

**(i)** soit un acte criminel passible d'un emprisonnement maximal de dix ans,

**(ii)** soit une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois;

**c)** dans le cas de substances inscrites à l'annexe IV :

**(i)** soit un acte criminel passible d'un emprisonnement maximal de trois ans,

**(ii)** soit une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal d'un an.

1996, ch. 19, art. 6; 2012, ch. 1, art. 40; 2017, ch. 7, art. 4.

## Production de substance

**7 (1)** Sauf dans les cas autorisés aux termes des règlements, la production de toute substance inscrite aux annexes I, II, III, IV ou V est interdite.

## Peine

### (2) Quiconque contrevient au paragraphe (1) commet :

**(a)** if the subject matter of the offence is a substance included in Schedule I, is guilty of an indictable offence and liable to imprisonment for life and to a minimum punishment of imprisonment for a term of three years if any of the factors set out in subsection (3) apply and for a term of two years in any other case;

**(a.1)** if the subject matter of the offence is a substance included in Schedule II, other than cannabis (marihuana), is guilty of an indictable offence and liable to imprisonment for life, and to a minimum punishment of imprisonment

**(i)** for a term of one year if the production is for the purpose of trafficking, or

**(ii)** for a term of 18 months if the production is for the purpose of trafficking and any of the factors set out in subsection (3) apply;

**(b)** if the subject matter of the offence is cannabis (marihuana), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years, and to a minimum punishment of

**(i)** imprisonment for a term of six months if the number of plants produced is less than 201 and more than five, and the production is for the purpose of trafficking,

**(ii)** imprisonment for a term of nine months if the number of plants produced is less than 201 and more than five, the production is for the purpose of trafficking and any of the factors set out in subsection (3) apply,

**(iii)** imprisonment for a term of one year if the number of plants produced is more than 200 and less than 501,

**(iv)** imprisonment for a term of 18 months if the number of plants produced is more than 200 and less than 501 and any of the factors set out in subsection (3) apply,

**(v)** imprisonment for a term of two years if the number of plants produced is more than 500, or

**(vi)** imprisonment for a term of three years if the number of plants produced is more than 500 and any of the factors set out in subsection (3) apply;

**(c)** if the subject matter of the offence is a substance included in Schedule III or V,

**(i)** is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or

**a)** dans le cas de substances inscrites à l'annexe I, un acte criminel passible de l'emprisonnement à perpétuité, la durée de l'emprisonnement ne pouvant être inférieure à deux ans ou, si l'infraction est commise dans l'une ou l'autre des circonstances prévues au paragraphe (3), à trois ans;

**a.1)** dans le cas de substances inscrites à l'annexe II, à l'exception du cannabis (marihuana), un acte criminel passible de l'emprisonnement à perpétuité, la durée de l'emprisonnement ne pouvant être inférieure :

**(i)** à un an, si l'infraction est commise à des fins de trafic,

**(ii)** à dix-huit mois, si l'infraction est commise à des fins de trafic dans l'une ou l'autre des circonstances prévues au paragraphe (3);

**b)** dans le cas du cannabis (marihuana), un acte criminel passible d'un emprisonnement maximal de quatorze ans, la durée de l'emprisonnement ne pouvant être inférieure :

**(i)** à six mois, si l'infraction est commise à des fins de trafic et que le nombre de plantes en cause est inférieur à 201 et supérieur à cinq,

**(ii)** à neuf mois, si l'infraction est commise à des fins de trafic dans l'une ou l'autre des circonstances prévues au paragraphe (3) et que le nombre de plantes en cause est inférieur à 201 et supérieur à cinq,

**(iii)** à un an, si le nombre de plantes en cause est supérieur à 200 mais inférieur à 501,

**(iv)** à dix-huit mois, si le nombre de plantes en cause est supérieur à 200 mais inférieur à 501 et que l'infraction est commise dans l'une ou l'autre des circonstances prévues au paragraphe (3),

**(v)** à deux ans, si le nombre de plantes en cause est supérieur à 500,

**(vi)** à trois ans, si le nombre de plantes en cause est supérieur à 500 et que l'infraction est commise dans l'une ou l'autre des circonstances prévues au paragraphe (3);

**c)** dans le cas de substances inscrites aux annexes III ou V :

**(i)** soit un acte criminel passible d'un emprisonnement maximal de dix ans,

**(ii)** is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months; and

**(d)** where the subject-matter of the offence is a substance included in Schedule IV,

**(i)** is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years, or

**(ii)** is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding one year.

### Factors

**(3)** The following factors must be taken into account in applying paragraphs (2)(a) to (b):

**(a)** the person used real property that belongs to a third party in committing the offence;

**(b)** the production constituted a potential security, health or safety hazard to persons under the age of 18 years who were in the location where the offence was committed or in the immediate area;

**(c)** the production constituted a potential public safety hazard in a residential area; or

**(d)** the person set or placed a trap, device or other thing that is likely to cause death or bodily harm to another person in the location where the offence was committed or in the immediate area, or permitted such a trap, device or other thing to remain or be placed in that location or area.

1996, c. 19, s. 7; 2012, c. 1, s. 41; 2017, c. 7, s. 5.

### Possession, sale, etc., for use in production of or trafficking in substance

**7.1 (1)** No person shall possess, produce, sell, import or transport anything intending that it will be used

**(a)** to produce a controlled substance, unless the production of the controlled substance is lawfully authorized; or

**(b)** to traffic in a controlled substance.

### Punishment

**(2)** Every person who contravenes subsection (1)

**(a)** if the subject matter of the offence is a substance included in Schedule I, II, III or V,

**(ii)** soit une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois;

**d)** dans le cas de substances inscrites à l'annexe IV :

**(i)** soit un acte criminel passible d'un emprisonnement maximal de trois ans,

**(ii)** soit une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal d'un an.

### Circumstances

**(3)** Les circonstances ci-après sont prises en considération pour l'application des alinéas (2)a) à b) :

**a)** la personne a utilisé des biens immeubles appartenant à autrui lors de la perpétration de l'infraction;

**b)** la production a créé un risque d'atteinte à la santé ou à la sécurité de personnes de moins de dix-huit ans présentes dans le lieu où l'infraction a été commise ou à proximité;

**c)** la production a créé un risque d'atteinte à la sécurité publique dans un secteur résidentiel;

**d)** la personne a mis, dans le lieu où l'infraction a été commise ou à proximité, des trappes, appareils ou autres choses susceptibles de causer la mort ou des lésions corporelles à autrui ou a permis que de telles choses y soient mises ou y demeurent.

1996, ch. 19, art. 7; 2012, ch. 1, art. 41; 2017, ch. 7, art. 5.

### Possession, vente, etc., pour utilisation dans la production ou le trafic

**7.1 (1)** Il est interdit d'avoir en sa possession, de produire, de vendre, d'importer ou de transporter toute chose dans l'intention qu'elle soit utilisée à l'une des fins suivantes :

**a)** pour la production d'une substance désignée, sauf autorisation légitime de la produire;

**b)** pour faire le trafic d'une substance désignée.

### Peine

**(2)** Quiconque contrevient au paragraphe (1) commet :

**a)** dans le cas de substances inscrites aux annexes I, II, III ou V :



## Sentencing

### Purpose of sentencing

**10 (1)** 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.

### Factors to take into consideration

**(2)** If a person is convicted of a designated substance offence for which the court is not required to impose a minimum punishment, the court imposing sentence on the person shall consider any relevant aggravating factors including that the person

- (a)** in relation to the commission of the offence,
  - (i)** carried, used or threatened to use a weapon,
  - (ii)** used or threatened to use violence,
  - (iii)** trafficked in a substance included in Schedule I, II, III, IV or V, or possessed such a substance for the purpose of trafficking, in or near a school, on or near school grounds or in or near any other public place usually frequented by persons under the age of 18 years, or
  - (iv)** trafficked in a substance included in Schedule I, II, III, IV or V, or possessed such a substance for the purpose of trafficking, to a person under the age of 18 years;
- (b)** was previously convicted of a designated substance offence; or
- (c)** used the services of a person under the age of eighteen years to commit, or involved such a person in the commission of, the offence.

### Reasons

**(3)** If, under subsection (1), the court is satisfied of the existence of one or more of the aggravating factors enumerated in paragraphs (2)(a) to (c), but decides not to sentence the person to imprisonment, the court shall give reasons for that decision.

## Détermination de la peine

### Objectif

**10 (1)** Sans qu'en soit limitée la portée générale du *Code criminel*, le prononcé des peines prévues à la présente partie a pour objectif essentiel de contribuer au respect de la loi et au maintien d'une société juste, paisible et sûre tout en favorisant la réinsertion sociale des délinquants et, dans les cas indiqués, leur traitement et en reconnaissant les torts causés aux victimes ou à la collectivité.

### Circonstances à prendre en considération

**(2)** Le tribunal qui détermine la peine à infliger à une personne reconnue coupable d'une infraction désignée — autre qu'une infraction pour laquelle il est tenu d'imposer une peine minimale d'emprisonnement — est tenu de considérer toute circonstance aggravante pertinente, notamment le fait que cette personne, selon le cas :

- a)** relativement à la perpétration de cette infraction :
  - (i)** soit portait ou a utilisé ou menacé d'utiliser une arme,
  - (ii)** soit a eu recours ou a menacé de recourir à la violence,
  - (iii)** soit a fait le trafic d'une substance inscrite aux annexes I, II, III, IV ou V — ou l'a eue en sa possession en vue d'en faire le trafic — à l'intérieur d'une école ou près de celle-ci, sur le terrain d'une école ou près de ce terrain ou dans tout autre lieu public normalement fréquenté par des personnes de moins de dix-huit ans ou près d'un tel lieu,
  - (iv)** soit a fait le trafic d'une substance inscrite aux annexes I, II, III, IV ou V — ou l'a eue en sa possession en vue d'en faire le trafic — auprès d'une personne de moins de dix-huit ans;
- b)** a déjà été reconnue coupable d'une infraction désignée;
- c)** a eu recours aux services d'une personne de moins de dix-huit ans pour la perpétration de l'infraction ou l'y a mêlée.

### Motifs du tribunal

**(3)** Le tribunal qui décide de n'imposer aucune peine d'emprisonnement à la personne visée au paragraphe (1), bien qu'il soit convaincu de l'existence d'une ou de plusieurs des circonstances aggravantes mentionnées aux alinéas (2)a) à c), est tenu de motiver sa décision.

### Drug treatment court program

**(4)** A court sentencing a person who is convicted of an offence under this Part may delay sentencing to enable the offender

- (a)** to participate in a drug treatment court program approved by the Attorney General; or
- (b)** to attend a treatment program under subsection 720(2) of the *Criminal Code*.

### Minimum punishment

**(5)** If the offender successfully completes a program under subsection (4), the court is not required to impose the minimum punishment for the offence for which the person was convicted.

1996, c. 19, s. 10; 1999, c. 5, s. 49; 2012, c. 1, s. 43; 2017, c. 7, s. 7.

## PART II

# Enforcement

## Search, Seizure and Detention

### Information for search warrant

**11 (1)** A justice who, on *ex parte* application, is satisfied by information on oath that there are reasonable grounds to believe that

- (a)** a controlled substance or precursor in respect of which this Act has been contravened,
- (b)** any thing in which a controlled substance or precursor referred to in paragraph (a) is contained or concealed,
- (c)** offence-related property, or
- (d)** any thing that will afford evidence in respect of an offence under this Act or an offence, in whole or in part in relation to a contravention of this Act, under section 354 or 462.31 of the *Criminal Code*

is in a place may, at any time, issue a warrant authorizing a peace officer, at any time, to search the place for any such controlled substance, precursor, property or thing and to seize it.

### Programme judiciaire de traitement de la toxicomanie

**(4)** Le tribunal qui détermine la peine à infliger à une personne reconnue coupable d'une infraction prévue par la présente partie peut reporter la détermination de la peine :

- a)** afin de permettre à la personne de participer à un programme judiciaire de traitement de la toxicomanie approuvé par le procureur général;
- b)** afin de permettre à la personne de participer à un programme conformément au paragraphe 720(2) du *Code criminel*.

### Peine minimale

**(5)** Le tribunal n'est pas tenu d'infliger une peine minimale d'emprisonnement à la personne qui termine avec succès un programme visé au paragraphe (4).

1996, ch. 19, art. 10; 1999, ch. 5, art. 49; 2012, ch. 1, art. 43; 2017, ch. 7, art. 7.

## PARTIE II

# Exécution et mesures de contrainte

## Perquisitions, fouilles, saisies et rétention

### Mandat de perquisition

**11 (1)** Le juge de paix qui, sur demande *ex parte*, est convaincu sur la foi d'une dénonciation faite sous serment qu'il existe des motifs raisonnables de croire à la présence, en un lieu, d'un ou de plusieurs des articles énumérés ci-dessous peut délivrer à un agent de la paix un mandat l'autorisant, à tout moment, à perquisitionner en ce lieu et à les y saisir :

- a)** une substance désignée ou un précurseur ayant donné lieu à une infraction à la présente loi;
- b)** une chose qui contient ou recèle une substance désignée ou un précurseur visé à l'alinéa a);
- c)** un bien infractionnel;
- d)** une chose qui servira de preuve relativement à une infraction à la présente loi ou, dans les cas où elle découle en tout ou en partie d'une contravention à la présente loi, à une infraction prévue aux articles 354 ou 462.31 du *Code criminel*.



CANADA

CONSOLIDATION

CODIFICATION

## Criminal Code

## Code criminel

R.S.C., 1985, c. C-46

L.R.C. (1985), ch. C-46

Current to August 14, 2017

À jour au 14 août 2017

Last amended on June 19, 2017

Dernière modification le 19 juin 2017

### Subsequent disclosure

**(2)** Where a record is made available for inspection to any person under subparagraph (1)(d)(i), that person may subsequently disclose information contained in the record, but may not disclose the information in any form that would reasonably be expected to identify the person to whom it relates.

### Information, copies

**(3)** Any person to whom a record is authorized to be made available under this section may be given any information contained in the record and may be given a copy of any part of the record.

### Evidence

**(4)** Nothing in this section authorizes the introduction into evidence of any part of a record that would not otherwise be admissible in evidence.

### Idem

**(5)** A record kept pursuant to section 717.2 or 717.3 may not be introduced into evidence, except for the purposes set out in paragraph 721(3)(c), more than two years after the end of the period for which the person agreed to participate in the alternative measures.

1995, c. 22, s. 6.

### Révélation postérieure

**(2)** La personne qui, aux termes du sous-alinéa (1)d)(i), a accès à un dossier peut postérieurement communiquer les renseignements qui y sont contenus; toutefois cette communication ne peut se faire d'une manière qui permettrait normalement d'identifier la personne en cause.

### Communication de renseignements et de copies

**(3)** Les personnes à qui l'accès à un dossier peut, en application du présent article, être accordé peuvent obtenir tous renseignements contenus dans le dossier ou tout extrait de celui-ci.

### Production en preuve

**(4)** Le présent article n'autorise pas la production en preuve des pièces d'un dossier qui, autrement, ne seraient pas admissibles en preuve.

### Idem

**(5)** Tout dossier tenu en application des articles 717.2 ou 717.3 ne peut être produit en preuve après l'expiration d'une période de deux ans suivant la fin de la période d'application des mesures de rechange, sauf si le dossier est produit à l'égard des éléments mentionnés à l'alinéa 721(3)c).

1995, ch. 22, art. 6.

## Purpose and Principles of Sentencing

### Purpose

**718** The fundamental purpose of sentencing is to protect society and 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 that have one or more of the following objectives:

- (a)** to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b)** to deter the offender and other persons from committing offences;
- (c)** to separate offenders from society, where necessary;
- (d)** to assist in rehabilitating offenders;
- (e)** to provide reparations for harm done to victims or to the community; and

## Objectif et principes

### Objectif

**718** Le prononcé des peines a pour objectif essentiel de protéger la société et de contribuer, parallèlement à d'autres initiatives de prévention du crime, au respect de la loi et au maintien d'une société juste, paisible et sûre par l'infliction de sanctions justes visant un ou plusieurs des objectifs suivants :

- a)** dénoncer le comportement illégal et le tort causé par celui-ci aux victimes ou à la collectivité;
- b)** dissuader les délinquants, et quiconque, de commettre des infractions;
- c)** isoler, au besoin, les délinquants du reste de la société;
- d)** favoriser la réinsertion sociale des délinquants;
- e)** assurer la réparation des torts causés aux victimes ou à la collectivité;

**(f)** to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

R.S., 1985, c. C-46, s. 718; R.S., 1985, c. 27 (1st Supp.), s. 155; 1995, c. 22, s. 6; 2015, c. 13, s. 23.

### **Objectives — offences against children**

**718.01** When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

2005, c. 32, s. 24.

### **Objectives — offence against peace officer or other justice system participant**

**718.02** When a court imposes a sentence for an offence under subsection 270(1), section 270.01 or 270.02 or paragraph 423.1(1)(b), the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

2009, c. 22, s. 18.

### **Objectives — offence against certain animals**

**718.03** When a court imposes a sentence for an offence under subsection 445.01(1), the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

2015, c. 34, s. 4.

### **Fundamental principle**

**718.1** A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

R.S., 1985, c. 27 (1st Supp.), s. 156; 1995, c. 22, s. 6.

### **Other sentencing principles**

**718.2** A court that imposes a sentence shall also take into consideration the following principles:

**(a)** a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

**(i)** evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,

**f)** susciter la conscience de leurs responsabilités chez les délinquants, notamment par la reconnaissance du tort qu'ils ont causé aux victimes ou à la collectivité.

L.R. (1985), ch. C-46, art. 718; L.R. (1985), ch. 27 (1<sup>er</sup> suppl.), art. 155; 1995, ch. 22, art. 6; 2015, ch. 13, art. 23.

### **Objectif — infraction perpétrée à l'égard des enfants**

**718.01** Le tribunal qui impose une peine pour une infraction qui constitue un mauvais traitement à l'égard d'une personne âgée de moins de dix-huit ans accorde une attention particulière aux objectifs de dénonciation et de dissuasion d'un tel comportement.

2005, ch. 32, art. 24.

### **Objectifs — infraction à l'égard d'un agent de la paix ou autre personne associée au système judiciaire**

**718.02** Le tribunal qui impose une peine pour l'une des infractions prévues au paragraphe 270(1), aux articles 270.01 ou 270.02 ou à l'alinéa 423.1(1)b accorde une attention particulière aux objectifs de dénonciation et de dissuasion de l'agissement à l'origine de l'infraction.

2009, ch. 22, art. 18.

### **Objectifs — infraction à l'égard de certains animaux**

**718.03** Le tribunal qui impose une peine pour une infraction prévue au paragraphe 445.01(1) accorde une attention particulière aux objectifs de dénonciation et de dissuasion de l'agissement à l'origine de l'infraction.

2015, ch. 34, art. 4.

### **Principe fondamental**

**718.1** La peine est proportionnelle à la gravité de l'infraction et au degré de responsabilité du délinquant.

L.R. (1985), ch. 27 (1<sup>er</sup> suppl.), art. 156; 1995, ch. 22, art. 6.

### **Principes de détermination de la peine**

**718.2** Le tribunal détermine la peine à infliger compte tenu également des principes suivants :

**a)** la peine devrait être adaptée aux circonstances aggravantes ou atténuantes liées à la perpétration de l'infraction ou à la situation du délinquant; sont notamment considérées comme des circonstances aggravantes des éléments de preuve établissant :

**(i)** que l'infraction est motivée par des préjugés ou de la haine fondés sur des facteurs tels que la race, l'origine nationale ou ethnique, la langue, la couleur, la religion, le sexe, l'âge, la déficience mentale ou physique, l'orientation sexuelle ou l'identité ou l'expression de genre,

**(ii)** evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,

**(ii.1)** evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

**(iii)** evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

**(iii.1)** evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

**(iv)** evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,

**(v)** evidence that the offence was a terrorism offence, or

**(vi)** evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the *Corrections and Conditional Release Act*

shall be deemed to be aggravating circumstances;

**(b)** a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

**(c)** where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

**(d)** an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

**(e)** all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

1995, c. 22, s. 6; 1997, c. 23, s. 17; 2000, c. 12, s. 95; 2001, c. 32, s. 44(F), c. 41, s. 20; 2005, c. 32, s. 25; 2012, c. 29, s. 2; 2015, c. 13, s. 24, c. 23, s. 16; 2017, c. 13, s. 4.

**(ii)** que l'infraction perpétrée par le délinquant constitue un mauvais traitement de son époux ou conjoint de fait,

**(ii.1)** que l'infraction perpétrée par le délinquant constitue un mauvais traitement à l'égard d'une personne âgée de moins de dix-huit ans,

**(iii)** que l'infraction perpétrée par le délinquant constitue un abus de la confiance de la victime ou un abus d'autorité à son égard,

**(iii.1)** que l'infraction a eu un effet important sur la victime en raison de son âge et de tout autre élément de sa situation personnelle, notamment sa santé et sa situation financière,

**(iv)** que l'infraction a été commise au profit ou sous la direction d'une organisation criminelle, ou en association avec elle,

**(v)** que l'infraction perpétrée par le délinquant est une infraction de terrorisme,

**(vi)** que l'infraction a été perpétrée alors que le délinquant faisait l'objet d'une ordonnance de sursis rendue au titre de l'article 742.1 ou qu'il bénéficiait d'une libération conditionnelle ou d'office ou d'une permission de sortir sans escorte en vertu de la *Loi sur le système correctionnel et la mise en liberté sous condition*;

**b)** l'harmonisation des peines, c'est-à-dire l'infliction de peines semblables à celles infligées à des délinquants pour des infractions semblables commises dans des circonstances semblables;

**c)** l'obligation d'éviter l'excès de nature ou de durée dans l'infliction de peines consécutives;

**d)** l'obligation, avant d'envisager la privation de liberté, d'examiner la possibilité de sanctions moins contraignantes lorsque les circonstances le justifient;

**e)** l'examen, plus particulièrement en ce qui concerne les délinquants autochtones, de toutes les sanctions substitutives qui sont raisonnables dans les circonstances et qui tiennent compte du tort causé aux victimes ou à la collectivité.

1995, ch. 22, art. 6; 1997, ch. 23, art. 17; 2000, ch. 12, art. 95; 2001, ch. 32, art. 44(F), ch. 41, art. 20; 2005, ch. 32, art. 25; 2012, ch. 29, art. 2; 2015, ch. 13, art. 24, ch. 23, art. 16; 2017, ch. 13, art. 4.

**supervisor** means a person designated by the Attorney General, either by name or by title of office, as a supervisor for the purposes of sections 742.1 to 742.7. (*agent de surveillance*)

R.S., 1985, c. C-46, s. 742; R.S., 1985, c. 27 (1st Supp.), s. 165; 1992, c. 11, s. 15; 1995, c. 22, s. 6.

### Imposing of conditional sentence

**742.1** If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the conditions imposed under section 742.3, if

(a) the court is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2;

(b) the offence is not an offence punishable by a minimum term of imprisonment;

(c) the offence is not an offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 14 years or life;

(d) the offence is not a terrorism offence, or a criminal organization offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years or more;

(e) the offence is not an offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years, that

(i) resulted in bodily harm,

(ii) involved the import, export, trafficking or production of drugs, or

(iii) involved the use of a weapon; and

(f) the offence is not an offence, prosecuted by way of indictment, under any of the following provisions:

(i) section 144 (prison breach),

(ii) section 264 (criminal harassment),

(iii) section 271 (sexual assault),

(iv) section 279 (kidnapping),

**conditions facultatives** Les conditions prévues au paragraphe 742.3(2). (*optional conditions*)

**modification** Comprend, en ce qui concerne les conditions facultatives, les suppressions et les adjonctions. (*change*)

L.R. (1985), ch. C-46, art. 742; L.R. (1985), ch. 27 (1<sup>er</sup> suppl.), art. 165; 1992, ch. 11, art. 15; 1995, ch. 22, art. 6.

### Octroi du sursis

**742.1** Le tribunal peut ordonner à toute personne qui a été déclarée coupable d'une infraction de purger sa peine dans la collectivité afin que sa conduite puisse être surveillée — sous réserve des conditions qui lui sont imposées en application de l'article 742.3 —, si elle a été condamnée à un emprisonnement de moins de deux ans et si les conditions suivantes sont réunies :

a) le tribunal est convaincu que la mesure ne met pas en danger la sécurité de la collectivité et est conforme à l'objectif essentiel et aux principes énoncés aux articles 718 à 718.2;

b) aucune peine minimale d'emprisonnement n'est prévue pour l'infraction;

c) il ne s'agit pas d'une infraction poursuivie par mise en accusation et passible d'une peine maximale d'emprisonnement de quatorze ans ou d'emprisonnement à perpétuité;

d) il ne s'agit pas d'une infraction de terrorisme ni d'une infraction d'organisation criminelle poursuivies par mise en accusation et passibles d'une peine maximale d'emprisonnement de dix ans ou plus;

e) il ne s'agit pas d'une infraction poursuivie par mise en accusation et passible d'une peine maximale d'emprisonnement de dix ans, et, selon le cas :

(i) dont la perpétration entraîne des lésions corporelles,

(ii) qui met en cause l'importation, l'exportation, le trafic ou la production de drogues,

(iii) qui met en cause l'usage d'une arme;

f) il ne s'agit pas d'une infraction prévue à l'une ou l'autre des dispositions ci-après et poursuivie par mise en accusation :

(i) l'article 144 (bris de prison),

(ii) l'article 264 (harcèlement criminel),

(iii) l'article 271 (agression sexuelle),

(v) section 279.02 (trafficking in persons — material benefit),

(vi) section 281 (abduction of person under fourteen),

(vii) section 333.1 (motor vehicle theft),

(viii) paragraph 334(a) (theft over \$5000),

(ix) paragraph 348(1)(e) (breaking and entering a place other than a dwelling-house),

(x) section 349 (being unlawfully in a dwelling-house), and

(xi) section 435 (arson for fraudulent purpose).

1992, c. 11, s. 16; 1995, c. 19, s. 38, c. 22, s. 6; 1997, c. 18, s. 107.1; 2007, c. 12, s. 1; 2012, c. 1, s. 34.

#### **Firearm, etc., prohibitions**

**742.2 (1)** Before imposing a conditional sentence under section 742.1, the court shall consider whether section 109 or 110 is applicable.

#### **Application of section 109 or 110**

(2) For greater certainty, a condition of a conditional sentence order referred to in paragraph 742.3(2)(b) does not affect the operation of section 109 or 110.

1995, c. 22, s. 6; 2002, c. 13, s. 75; 2004, c. 12, s. 14(E).

#### **Compulsory conditions of conditional sentence order**

**742.3 (1)** The court shall prescribe, as conditions of a conditional sentence order, that the offender do all of the following:

- (a) keep the peace and be of good behaviour;
- (b) appear before the court when required to do so by the court;
- (c) report to a supervisor
  - (i) within two working days, or such longer period as the court directs, after the making of the conditional sentence order, and
  - (ii) thereafter, when required by the supervisor and in the manner directed by the supervisor;
- (d) remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the supervisor; and

(iv) l'article 279 (enlèvement),

(v) l'article 279.02 (traite de personnes : tirer un avantage matériel),

(vi) l'article 281 (enlèvement d'une personne âgée de moins de quatorze ans),

(vii) l'article 333.1 (vol d'un véhicule à moteur),

(viii) l'alinéa 334a) (vol de plus de 5 000 \$),

(ix) l'alinéa 348(1)e) (introduction par effraction dans un dessein criminel : endroit autre qu'une maison d'habitation),

(x) l'article 349 (présence illégale dans une maison d'habitation),

(xi) l'article 435 (incendie criminel : intention frauduleuse).

1992, ch. 11, art. 16; 1995, ch. 19, art. 38, ch. 22, art. 6; 1997, ch. 18, art. 107.1; 2007, ch. 12, art. 1; 2012, ch. 1, art. 34.

#### **Armes à feu**

**742.2 (1)** Avant d'octroyer le sursis, le tribunal vérifie l'applicabilité des articles 109 ou 110.

#### **Application des articles 109 ou 110**

(2) Il est entendu que l'adjonction de la condition visée à l'alinéa 742.3(2)b) à une ordonnance de sursis ne porte pas atteinte à l'application des articles 109 ou 110.

1995, ch. 22, art. 6; 2002, ch. 13, art. 75; 2004, ch. 12, art. 14(A).

#### **Conditions obligatoires**

**742.3 (1)** Le tribunal assortit l'ordonnance de sursis des conditions suivantes, intimant au délinquant :

- a) de ne pas troubler l'ordre public et d'avoir une bonne conduite;
- b) de répondre aux convocations du tribunal;
- c) de se présenter à l'agent de surveillance :
  - (i) dans les deux jours ouvrables suivant la date de l'ordonnance, ou dans le délai plus long fixé par le tribunal,
  - (ii) par la suite, selon les modalités de temps et de forme fixées par l'agent de surveillance;
- d) de rester dans le ressort du tribunal, sauf permission écrite d'en sortir donnée par le tribunal ou par l'agent de surveillance;



First Session, Forty-first Parliament,  
60-61 Elizabeth II, 2011-2012

Première session, quarante et unième législature,  
60-61 Elizabeth II, 2011-2012

## STATUTES OF CANADA 2012

## LOIS DU CANADA (2012)

### CHAPTER 1

### CHAPITRE 1

An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts

Loi édictant la Loi sur la justice pour les victimes d'actes de terrorisme et modifiant la Loi sur l'immunité des États, le Code criminel, la Loi réglementant certaines drogues et autres substances, la Loi sur le système correctionnel et la mise en liberté sous condition, la Loi sur le système de justice pénale pour les adolescents, la Loi sur l'immigration et la protection des réfugiés et d'autres lois

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#### ASSENTED TO

13th MARCH, 2012

BILL C-10

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#### SANCTIONNÉE

LE 13 MARS 2012

PROJET DE LOI C-10

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or 273 (aggravated sexual assault), or has engaged in serious conduct of a sexual nature in the commission of another offence of which the offender has been convicted; and

**37. (1) Subsection 810.1(1) of the Act is amended by replacing**

- (a) “151, 152, 155” with “151 or 152, subsection 153(1), section 155”;
- (b) “171 or 172.1” with “171, 171.1, 172.1 or 172.2”;
- (c) “173(2)” with “173(2) or 212(1), (2), (2.1) or (4)”;
- (d) “272 or 273” with “272, 273, 280 or 281”.

2008, c. 6,  
par. 62(2)(b)

**(2) Paragraph 810.1(3.02)(a) of the Act is replaced by the following:**

- (a) prohibit the defendant from having any contact — including communicating by any means — with a person under the age of 16 years, unless the defendant does so under the supervision of a person whom the judge considers appropriate;
- (a.1) prohibit the defendant from using the Internet or other digital network, unless the defendant does so in accordance with conditions set by the judge;

2007, c. 22, s. 23

**38. Subparagraph (b)(iii) of Form 5.04 in Part XXVIII of the Act is replaced by the following:**

- [ ] (iii) an offence under any of sections 145 to 148, subsection 160(3), sections 170, 171.1, 173, 252, 264, 264.1, 266 and 270, paragraph 348(1)(e) and sections 349 and 423 of the *Criminal Code*,

1996, c. 19

#### CONTROLLED DRUGS AND SUBSTANCES ACT

**39. (1) Paragraph 5(3)(a) of the *Controlled Drugs and Substances Act* is replaced by the following:**

aux articles 271 (agression sexuelle), 272 (agression sexuelle armée) ou 273 (agression sexuelle grave), ou a commis un acte grave de nature sexuelle lors de la perpétration d’une autre infraction dont il a été déclaré coupable;

**37. (1) Le paragraphe 810.1(1) de la même loi est modifié par remplacement de :**

- a) « 151, 152, 155 » par « 151 ou 152, au paragraphe 153(1), aux articles 155 »;
- b) « 171 ou 172.1 » par « 171, 171.1, 172.1 ou 172.2 »;
- c) « au paragraphe 173(2) » par « aux paragraphes 173(2) ou 212(1), (2), (2.1) ou (4) »;
- d) « 272 ou 273 » par « 272, 273, 280 ou 281 ».

**(2) L’alinéa 810.1(3.02)(a) de la même loi est remplacé par ce qui suit :**

- a) de ne pas avoir de contacts — notamment communiquer par quelque moyen que ce soit — avec des personnes âgées de moins de seize ans, à moins de le faire sous la supervision d’une personne que le juge estime convenir en l’occurrence;
- a.1) de ne pas utiliser Internet ou tout autre réseau numérique, à moins de le faire en conformité avec les conditions imposées par le juge;

2008, ch. 6,  
al. 62(2)(b)

**38. Le sous-alinéa b)(iii) de la formule 5.04 de la partie XXVIII de la même loi est remplacé par ce qui suit :**

- [ ] (iii) une infraction créée par l’une des dispositions suivantes : les articles 145 à 148, le paragraphe 160(3), les articles 170, 171.1, 173, 252, 264, 264.1, 266 et 270, l’alinéa 348(1)(e) et les articles 349 et 423 du *Code criminel*,

2007, ch. 22,  
art. 23

#### LOI RÉGLEMENTANT CERTAINES DROGUES ET AUTRES SUBSTANCES

**39. (1) L’alinéa 5(3)(a) de la *Loi réglementant certaines drogues et autres substances* est remplacé par ce qui suit :**

1996, ch. 19

(a) subject to paragraph (a.1), if the subject matter of the offence is a substance included in Schedule I or II, is guilty of an indictable offence and liable to imprisonment for life, and

(i) to a minimum punishment of imprisonment for a term of one year if

(A) the person committed the offence for the benefit of, at the direction of or in association with a criminal organization, as defined in subsection 467.1(1) of the *Criminal Code*,

(B) the person used or threatened to use violence in committing the offence,

(C) the person carried, used or threatened to use a weapon in committing the offence, or

(D) the person was convicted of a designated substance offence, or had served a term of imprisonment for a designated substance offence, within the previous 10 years, or

(ii) to a minimum punishment of imprisonment for a term of two years if

(A) the person committed the offence in or near a school, on or near school grounds or in or near any other public place usually frequented by persons under the age of 18 years,

(B) the person committed the offence in a prison, as defined in section 2 of the *Criminal Code*, or on its grounds, or

(C) the person used the services of a person under the age of 18 years, or involved such a person, in committing the offence;

(a.1) if the subject matter of the offence is a substance included in Schedule II in an amount that is not more than the amount set out for that substance in Schedule VII, is guilty of an indictable offence and liable to imprisonment for a term of not more than five years less a day;

a) dans le cas de substances inscrites aux annexes I ou II, mais sous réserve de l'alinéa a.1), un acte criminel passible de l'emprisonnement à perpétuité, la durée de l'emprisonnement ne pouvant être inférieure :

(i) à un an, si la personne, selon le cas :

(A) a commis l'infraction au profit ou sous la direction d'une organisation criminelle au sens du paragraphe 467.1(1) du *Code criminel* ou en association avec elle,

(B) a eu recours ou a menacé de recourir à la violence lors de la perpétration de l'infraction,

(C) portait ou a utilisé ou menacé d'utiliser une arme lors de la perpétration de l'infraction,

(D) a, au cours des dix dernières années, été reconnue coupable d'une infraction désignée ou purgée une peine d'emprisonnement relativement à une telle infraction,

(ii) à deux ans, si la personne, selon le cas :

(A) a commis l'infraction à l'intérieur d'une école, sur le terrain d'une école ou près de ce terrain ou dans tout autre lieu

public normalement fréquenté par des personnes de moins de dix-huit ans ou près d'un tel lieu,

(B) a commis l'infraction à l'intérieur d'une prison au sens de l'article 2 du *Code criminel* ou sur le terrain d'un tel établissement,

(C) a eu recours aux services d'une personne de moins de dix-huit ans pour la perpétration de l'infraction ou l'y a mêlée;

*a.1)* dans le cas de substances inscrites à la fois à l'annexe II et à l'annexe VII, et ce, pourvu que la quantité en cause n'excède pas celle mentionnée à cette dernière annexe, un acte criminel passible d'un emprisonnement maximal de cinq ans moins un jour;

**(2) Subsections 5(4) to (6) of the Act are replaced by the following:**

Interpretation

(5) For the purposes of applying subsection (3) in respect of an offence under subsection (1), a reference to a substance included in Schedule I, II, III or IV includes a reference to any substance represented or held out to be a substance included in that Schedule.

Interpretation

(6) For the purposes of paragraph (3)(*a.1*) and Schedule VII, the amount of the substance means the entire amount of any mixture or substance, or the whole of any plant, that contains a detectable amount of the substance.

**40. Paragraph 6(3)(*a*) of the Act is replaced by the following:**

(*a*) if the subject matter of the offence is a substance included in Schedule I in an amount that is not more than one kilogram, or in Schedule II, is guilty of an indictable offence and liable to imprisonment for life, and to a minimum punishment of imprisonment for a term of one year if

(i) the offence is committed for the purposes of trafficking,

(ii) the person, while committing the offence, abused a position of trust or authority, or

**(2) Les paragraphes 5(4) à (6) de la même loi sont remplacés par ce qui suit :**

Interprétation

(5) Dans le cadre de l'application du paragraphe (3) à l'égard d'une infraction prévue au paragraphe (1), la mention d'une substance inscrite aux annexes I, II, III ou IV vaut également mention de toute substance présentée ou tenue pour telle.

Définition de « quantité »

(6) Pour l'application de l'alinéa (3)*a.1*) et de l'annexe VII, « quantité » s'entend du poids total de tout mélange, substance ou plante dans lequel on peut déceler la présence de la substance en cause.

**40. L'alinéa 6(3)*a*) de la même loi est remplacé par ce qui suit :**

*a)* dans le cas de substances inscrites à l'annexe I, et ce, pourvu que la quantité en cause n'excède pas 1 kg, ou à l'annexe II, un acte criminel passible de l'emprisonnement à perpétuité, la durée de l'emprisonnement ne pouvant être inférieure à un an si, selon le cas :

(i) l'infraction est commise à des fins de trafic,

(ii) la personne, en perpétrant l'infraction, a commis un abus de confiance ou un abus d'autorité,

(iii) the person had access to an area that is restricted to authorized persons and used that access to commit the offence;

(a.1) if the subject matter of the offence is a substance included in Schedule I in an amount that is more than one kilogram, is guilty of an indictable offence and liable to imprisonment for life and to a minimum punishment of imprisonment for a term of two years;

**41. (1) Paragraphs 7(2)(a) and (b) of the Act are replaced by the following:**

(a) if the subject matter of the offence is a substance included in Schedule I, is guilty of an indictable offence and liable to imprisonment for life and to a minimum punishment of imprisonment for a term of three years if any of the factors set out in subsection (3) apply and for a term of two years in any other case;

(a.1) if the subject matter of the offence is a substance included in Schedule II, other than cannabis (marijuana), is guilty of an indictable offence and liable to imprisonment for life, and to a minimum punishment of imprisonment

(i) for a term of one year if the production is for the purpose of trafficking, or

(ii) for a term of 18 months if the production is for the purpose of trafficking and any of the factors set out in subsection (3) apply;

(b) if the subject matter of the offence is cannabis (marijuana), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years, and to a minimum punishment of

(i) imprisonment for a term of six months if the number of plants produced is less than 201 and more than five, and the production is for the purpose of trafficking,

(ii) imprisonment for a term of nine months if the number of plants produced is less than 201 and more than five, the

(iii) la personne avait accès à une zone réservée aux personnes autorisées et a utilisé cet accès pour perpétrer l'infraction;

a.1) dans le cas de substances inscrites à l'annexe I, et ce, pourvu que la quantité en cause excède 1 kg, un acte criminel passible de l'emprisonnement à perpétuité, la durée de l'emprisonnement ne pouvant être inférieure à deux ans;

**41. (1) Les alinéas 7(2)a) et b) de la même loi sont remplacés par ce qui suit :**

a) dans le cas de substances inscrites à l'annexe I, un acte criminel passible de l'emprisonnement à perpétuité, la durée de l'emprisonnement ne pouvant être inférieure à deux ans ou, si l'infraction est commise dans l'une ou l'autre des circonstances prévues au paragraphe (3), à trois ans;

a.1) dans le cas de substances inscrites à l'annexe II, à l'exception du cannabis (marihuana), un acte criminel passible de l'emprisonnement à perpétuité, la durée de l'emprisonnement ne pouvant être inférieure :

(i) à un an, si l'infraction est commise à des fins de trafic,

(ii) à dix-huit mois, si l'infraction est commise à des fins de trafic dans l'une ou l'autre des circonstances prévues au paragraphe (3);

b) dans le cas du cannabis (marihuana), un acte criminel passible d'un emprisonnement maximal de quatorze ans, la durée de l'emprisonnement ne pouvant être inférieure :

(i) à six mois, si l'infraction est commise à des fins de trafic et que le nombre de plantes en cause est inférieur à 201 et supérieur à cinq,

(ii) à neuf mois, si l'infraction est commise à des fins de trafic dans l'une ou l'autre des circonstances prévues au paragraphe (3) et que le nombre de plantes en cause est inférieur à 201 et supérieur à cinq,

production is for the purpose of trafficking and any of the factors set out in subsection (3) apply,

(iii) imprisonment for a term of one year if the number of plants produced is more than 200 and less than 501,

(iv) imprisonment for a term of 18 months if the number of plants produced is more than 200 and less than 501 and any of the factors set out in subsection (3) apply,

(v) imprisonment for a term of two years if the number of plants produced is more than 500, or

(vi) imprisonment for a term of three years if the number of plants produced is more than 500 and any of the factors set out in subsection (3) apply;

**(2) Section 7 of the Act is amended by adding the following after subsection (2):**

Factors

(3) The following factors must be taken into account in applying paragraphs (2)(a) to (b):

(a) the person used real property that belongs to a third party in committing the offence;

(b) the production constituted a potential security, health or safety hazard to persons under the age of 18 years who were in the location where the offence was committed or in the immediate area;

(c) the production constituted a potential public safety hazard in a residential area; or

(d) the person set or placed a trap, device or other thing that is likely to cause death or bodily harm to another person in the location where the offence was committed or in the immediate area, or permitted such a trap, device or other thing to remain or be placed in that location or area.

**42. The Act is amended by adding the following after section 7:**

(iii) à un an, si le nombre de plantes en cause est supérieur à 200 mais inférieur à 501,

(iv) à dix-huit mois, si le nombre de plantes en cause est supérieur à 200 mais inférieur à 501 et que l'infraction est commise dans l'une ou l'autre des circonstances prévues au paragraphe (3),

(v) à deux ans, si le nombre de plantes en cause est supérieur à 500,

(vi) à trois ans, si le nombre de plantes en cause est supérieur à 500 et que l'infraction est commise dans l'une ou l'autre des circonstances prévues au paragraphe (3);

**(2) L'article 7 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :**

(3) Les circonstances ci-après sont prises en considération pour l'application des alinéas (2)a) à b) :

Circonstances

a) la personne a utilisé des biens immeubles appartenant à autrui lors de la perpétration de l'infraction;

b) la production a créé un risque d'atteinte à la santé ou à la sécurité de personnes de moins de dix-huit ans présentes dans le lieu où l'infraction a été commise ou à proximité;

c) la production a créé un risque d'atteinte à la sécurité publique dans un secteur résidentiel;

d) la personne a mis, dans le lieu où l'infraction a été commise ou à proximité, des trappes, appareils ou autres choses susceptibles de causer la mort ou des lésions corporelles à autrui ou a permis que de telles choses y soient mises ou y demeurent.

**42. La même loi est modifiée par adjonction, après l'article 7, de ce qui suit :**

## NOTICE

Notice

**8.** The court is not required to impose a minimum punishment unless it is satisfied that the offender, before entering a plea, was notified of the possible imposition of a minimum punishment for the offence in question and of the Attorney General's intention to prove any factors in relation to the offence that would lead to the imposition of a minimum punishment.

## REPORT TO PARLIAMENT

Review

**9.** (1) Within five years after this section comes into force, a comprehensive review of the provisions and operation of this Act, including a cost-benefit analysis of mandatory minimum sentences, shall be undertaken by any committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established for that purpose.

Report

(2) The committee referred to in subsection (1) shall, within one year after a review is undertaken under that subsection, submit a report to Parliament including a statement of any changes that the committee recommends.

1999, c. 5,  
s. 49(1)

**43. (1) The portion of subsection 10(2) of the Act before paragraph (a) is replaced by the following:**

Factors to take  
into  
consideration

(2) If a person is convicted of a designated substance offence for which the court is not required to impose a minimum punishment, the court imposing sentence on the person shall consider any relevant aggravating factors including that the person

**(2) Section 10 of the Act is amended by adding the following after subsection (3):**

Drug treatment  
court program

(4) A court sentencing a person who is convicted of an offence under this Part may delay sentencing to enable the offender

(a) to participate in a drug treatment court program approved by the Attorney General;  
or

## AVIS

Avis

**8.** Le tribunal n'est pas tenu d'imposer une peine minimale d'emprisonnement sauf s'il est convaincu que la personne accusée a été avisée avant d'enregistrer son plaidoyer qu'une peine minimale d'emprisonnement peut être imposée pour l'infraction qui lui est reprochée et que le procureur général a l'intention de prouver que l'infraction a été commise dans des circonstances entraînant l'imposition d'une peine minimale d'emprisonnement.

## RAPPORT AU PARLEMENT

Examen

**9.** (1) Dans les cinq ans suivant l'entrée en vigueur du présent article, un examen détaillé de la présente loi et des conséquences de son application, assorti d'une analyse coût-avantage des peines minimales obligatoires, doit être fait par le comité du Sénat, de la Chambre des communes ou des deux chambres du Parlement désigné ou établi à cette fin.

Rapport

(2) Dans l'année qui suit le début de l'examen, le comité présente au Parlement son rapport, en l'assortissant de toute recommandation quant aux modifications qu'il juge souhaitables.

**43. (1) Le passage du paragraphe 10(2) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

1999, ch. 5,  
par. 49(1)

(2) Le tribunal qui détermine la peine à infliger à une personne reconnue coupable d'une infraction désignée — autre qu'une infraction pour laquelle il est tenu d'imposer une peine minimale d'emprisonnement — est tenu de considérer toute circonstance aggravante pertinente, notamment le fait que cette personne, selon le cas :

Circonstances à  
prendre en  
considération

**(2) L'article 10 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :**

(4) Le tribunal qui détermine la peine à infliger à une personne reconnue coupable d'une infraction prévue par la présente partie peut reporter la détermination de la peine :

Programme  
judiciaire de  
traitement de la  
toxicomanie

(b) to attend a treatment program under subsection 720(2) of the *Criminal Code*.

a) afin de permettre à la personne de participer à un programme judiciaire de traitement de la toxicomanie approuvé par le procureur général;

b) afin de permettre à la personne de participer à un programme conformément au paragraphe 720(2) du *Code criminel*.

Minimum  
punishment

(5) If the offender successfully completes a program under subsection (4), the court is not required to impose the minimum punishment for the offence for which the person was convicted.

(5) Le tribunal n'est pas tenu d'infliger une peine minimale d'emprisonnement à la personne qui termine avec succès un programme visé au paragraphe (4).

Peine minimale

**44. Schedule I to the Act is amended by adding the following after item 18:**

**44. L'annexe I de la même loi est modifiée par adjonction, après l'article 18, de ce qui suit :**

19. Amphetamines, their salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues including:

19. Amphétamines, leurs sels, dérivés, isomères et analogues, ainsi que les sels de leurs dérivés, isomères et analogues, notamment :

- (1) amphetamine ( $\alpha$ -methylbenzene-ethanamine)
- (2) N-ethylamphetamine (N-ethyl- $\alpha$ -methylbenzeneethanamine)
- (3) 4-methyl-2,5-dimethoxyampheta- mine (STP) (2,5-dimethoxy-4, $\alpha$ -dimethylbenzeneethanamine)
- (4) 3,4-methylenedioxyamphetamine (MDA) ( $\alpha$ -methyl-1,3-benzodiox- ole-5-ethanamine)
- (5) 2,5-dimethoxyamphetamine (2,5- dimethoxy- $\alpha$ -methylbenzene-etha- namine)
- (6) 4-methoxyamphetamine (4-meth- oxy- $\alpha$ -methylbenzeneethanamine)
- (7) 2,4,5-trimethoxyamphetamine (2,4,5-trimethoxy- $\alpha$ - methylbenzeneethanamine)
- (8) N-methyl-3,4-methylenedioxy- amphetamine (N, $\alpha$ -dimethyl-1,3- benzodioxole-5-ethanamine)
- (9) 4-ethoxy-2,5-dimethoxyampheta- mine (4-ethoxy-2,5-dimethoxy- $\alpha$ - methylbenzeneethanamine)

- (1) amphétamine ( $\alpha$ -méthylbenzène- éthanamine)
- (2) N-éthylamphétamine (N-éthyl  $\alpha$ - méthylbenzèneéthanamine)
- (3) méthyl-4 diméthoxy-2,5 amphéta- mine (STP) (diméthoxy-2,5 4, $\alpha$ - diméthylbenzèneéthanamine)
- (4) méthylènedioxy-3,4 amphétamine (MDA) ( $\alpha$ -méthyl benzodioxole- 1,3 éthanamine-5)
- (5) diméthoxy-2,5 amphétamine (di- méthoxy-2,5  $\alpha$ -méthylbenzèneé- thanamine)
- (6) méthoxy-4 amphétamine (métho- xy-4  $\alpha$ -méthylbenzèneéthana- mine)
- (7) triméthoxy-2,4,5 amphétamine (triméthoxy-2,4,5  $\alpha$ -méthylbenzè- neéthanamine)
- (8) N-méthyl méthylènedioxy-3,4 amphétamine (N, $\alpha$ -diméthyl ben- zodioxole-1,3 éthanamine-5)
- (9) éthoxy-4 diméthoxy-2,5 amphéta- mine (éthoxy-4 diméthoxy-2,5  $\alpha$ - méthylbenzèneéthanamine)



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|--|---|
| (10) 5-methoxy-3,4-methylenedioxy-amphetamine (7-methoxy- $\alpha$ -methyl-1,3-benzodioxole-5-ethanamine)                          | (10) méthoxy-5 méthylènedioxy-3,4 amphétamine (N, $\alpha$ -diméthyl benzodioxole-1,3 éthanamine-5)                           |
| (11) N,N-dimethyl-3,4-methylenedioxy-amphetamine (N,N, $\alpha$ -trimethyl-1,3-benzodioxole-5-ethanamine)                          | (11) N,N-diméthyl méthylènedioxy-3,4 amphétamine (N,N, $\alpha$ -triméthyl benzodioxole-1,3 éthanamine-5)                     |
| (12) N-ethyl-3,4-methylenedioxyamphetamine (N-ethyl- $\alpha$ -methyl-1,3-benzodioxole-5-ethanamine)                               | (12) N-éthyl méthylènedioxy-3,4 amphétamine (N-éthyl $\alpha$ -méthyl benzodioxole-1,3 éthanamine-5)                          |
| (13) 4-ethyl-2,5-dimethoxyamphetamine (DOET) (4-ethyl-2,5-dimethoxy- $\alpha$ -methylbenzeneethanamine)                            | (13) éthyl-4 diméthoxy-2,5 amphétamine (DOET) (éthyl-4 diméthoxy-2,5 $\alpha$ -méthylbenzène-éthanamine)                      |
| (14) 4-bromo-2,5-dimethoxyamphetamine (4-bromo-2,5-dimethoxy- $\alpha$ -methylbenzeneethanamine)                                   | (14) bromo-4 diméthoxy-2,5 amphétamine (bromo-4 diméthoxy-2,5 $\alpha$ -méthylbenzèneéthanamine)                              |
| (15) 4-chloro-2,5-dimethoxyamphetamine (4-chloro-2,5-dimethoxy- $\alpha$ -methyl-benzeneethanamine)                                | (15) chloro-4 diméthoxy-2,5 amphétamine (chloro-4 diméthoxy-2,5 $\alpha$ -méthylbenzèneéthanamine)                            |
| (16) 4-ethoxyamphetamine (4-ethoxy- $\alpha$ -methylbenzeneethanamine)   | (16) éthoxy-4 amphétamine (éthoxy-4 $\alpha$ -méthylbenzèneéthanamine)  |
| (17) Benzphetamine (N-benzyl-N, $\alpha$ -dimethylbenzeneethanamine)   | (17) benzphétamine (N-benzyl N, $\alpha$ -diméthylbenzèneéthanamine)  |
| (18) N-Propyl-3,4-methylenedioxy-amphetamine ( $\alpha$ -methyl-N-propyl-1,3-benzodioxole-5-ethanamine)                            | (18) Npropyl méthylènedioxy-3,4 amphétamine ( $\alpha$ -méthyl N-propyl benzodioxole-1,3 éthanamine-5)                        |
| (19) N-(2-Hydroxyethyl)- $\alpha$ -methylbenzeneethanamine   | (19) (hydroxy-2 éthyl)-N méthyl- $\alpha$ benzèneéthanamine   |
| (20) N-hydroxy-3,4-methylenedioxy-amphetamine (N-[ $\alpha$ -methyl-3,4-(methylenedioxy)phenethyl]hydroxylamine)                   | (20) N-hydroxy méthylènedioxy-3,4 amphétamine (N-[ $\alpha$ -méthyl (méthylènedioxy)-3,4 phénéthyl]hydroxylamine)             |
| (21) 3,4,5-trimethoxyamphetamine (3,4,5-trimethoxy- $\alpha$ -methylbenzeneethanamine)   | (21) triméthoxy-3,4,5 amphétamine (triméthoxy-3,4,5 $\alpha$ -méthylbenzèneéthanamine)  |
| 20. Flunitrazepam (5-(o-fluorophenyl)-1,3-dihydro-1-methyl-7-nitro-2H-1,4-benzodiazepin-2-one) and any of its salts or derivatives | 20. Flunitrazépam ((o-fluorophényl)-5 dihydro-1,3 méthyl-1 nitro-7 2H-benzodiazépine-1,4 one-2) ainsi que ses sels et dérivés |
| 21. 4-hydroxybutanoic acid (GHB) and any of its salts  | 21. Acide hydroxy-4 butanoïque et ses sels  |

30	C. 1	<i>Safe Streets and Communities</i>	60-61 ELIZ. II
SOR/97-230, s. 7; SOR/2003-32, s. 2; SOR/2005-235, s. 2	<b>45. Item 1 of Schedule III to the Act is repealed.</b>	<b>45. L'article 1 de l'annexe III de la même loi est abrogé.</b>	DORS/97-230, art. 7; DORS/2003-32, art. 2; DORS/2005-235, art. 2
SOR/98-173, s. 1; SOR/2000-220, s. 1	<b>46. Items 25 and 26 of Schedule III to the Act are repealed.</b>	<b>46. Les articles 25 et 26 de l'annexe III de la même loi sont abrogés.</b>	DORS/98-173, art. 1; DORS/2000-220, art. 1
	<b>RELATED AMENDMENTS</b>	<b>MODIFICATIONS CONNEXES</b>	
2003, c. 8	<b><i>An Act to amend the Criminal Code (firearms) and the Firearms Act</i></b>	<b><i>Loi modifiant le Code criminel (armes à feu) et la Loi sur les armes à feu</i></b>	2003, ch. 8
	<b>47. Section 8 of <i>An Act to amend the Criminal Code (firearms) and the Firearms Act</i> is repealed.</b>	<b>47. L'article 8 de la <i>Loi modifiant le Code criminel (armes à feu) et la Loi sur les armes à feu</i> est abrogé.</b>	
R.S., c. N-5	<b><i>National Defence Act</i></b>	<b><i>Loi sur la défense nationale</i></b>	L.R., ch. N-5
1998, c. 35, s. 40	<b>48. Subparagraph (a)(ii) of the definition "designated offence" in section 153 of the English version of the <i>National Defence Act</i> is replaced by the following:</b>	<b>48. Le sous-alinéa a)(ii) de la définition de «designated offence», à l'article 153 de la version anglaise de la <i>Loi sur la défense nationale</i>, est remplacé par ce qui suit :</b>	1998, ch. 35, art. 40
	(ii) an offence punishable by imprisonment for life under subsection 5(3), 6(3) or 7(2) of the <i>Controlled Drugs and Substances Act</i> , or	(ii) an offence punishable by imprisonment for life under subsection 5(3), 6(3) or 7(2) of the <i>Controlled Drugs and Substances Act</i> , or	
	<b>CONSEQUENTIAL AMENDMENTS</b>	<b>MODIFICATIONS CORRÉLATIVES</b>	
R.S., c. C-47	<b><i>Criminal Records Act</i></b>	<b><i>Loi sur le casier judiciaire</i></b>	L.R., ch. C-47
	<b>49. (1) Paragraph 1(a) of Schedule 1 to the <i>Criminal Records Act</i> is amended by adding the following after subparagraph (vii):</b>	<b>49. (1) L'alinéa 1a) de l'annexe 1 de la <i>Loi sur le casier judiciaire</i> est modifié par adjonction, après le sous-alinéa (vii), de ce qui suit :</b>	
	(vii.1) paragraph 171.1(1)(a) (making sexually explicit material available to child under 18 for purposes of listed offences),	(vii.1) l'alinéa 171.1(1)a) (rendre accessible à une personne âgée de moins de dix-huit ans du matériel sexuellement explicite en vue de faciliter la perpétration d'une infraction mentionnée à cet alinéa),	
	(vii.2) paragraph 171.1(1)(b) (making sexually explicit material available to child under 16 for purposes of listed offences),	(vii.2) l'alinéa 171.1(1)b) (rendre accessible à une personne âgée de moins de seize ans du matériel sexuellement explicite en vue de faciliter la perpétration d'une infraction mentionnée à cet alinéa),	
	(vii.3) paragraph 171.1(1)(c) (making sexually explicit material available to child under 14 for purposes of listed offences),	(vii.3) l'alinéa 171.1(1)c) (rendre accessible à une personne âgée de moins de quatorze ans du matériel sexuellement explicite en vue de faciliter la perpétration d'une infraction mentionnée à cet alinéa),	

First Session, Forty-second Parliament,  
64-65-66 Elizabeth II, 2015-2016-2017

Première session, quarante-deuxième législature,  
64-65-66 Elizabeth II, 2015-2016-2017

HOUSE OF COMMONS OF CANADA

CHAMBRE DES COMMUNES DU CANADA

## BILL C-45

## PROJET DE LOI C-45

An Act respecting cannabis and to amend  
the Controlled Drugs and Substances Act,  
the Criminal Code and other Acts

Loi concernant le cannabis et modifiant la  
Loi réglementant certaines drogues et autres  
substances, le Code criminel et d'autres lois

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FIRST READING, APRIL 13, 2017

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PREMIÈRE LECTURE LE 13 AVRIL 2017

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MINISTER OF JUSTICE

MINISTRE DE LA JUSTICE

## PART 1

# Prohibitions, Obligations and Offences

## DIVISION 1

### Criminal Activities

#### Possession

**8 (1)** Unless authorized under this Act, it is prohibited

- (a) for an individual who is 18 years of age or older to possess, in a public place, cannabis of one or more classes of cannabis the total amount of which, as determined in accordance with Schedule 3, is equivalent to more than 30 g of dried cannabis;
- (b) for an individual who is 18 years of age or older to possess any cannabis that they know is illicit cannabis;
- (c) for a young person to possess cannabis of one or more classes of cannabis the total amount of which, as determined in accordance with Schedule 3, is equivalent to more than 5 g of dried cannabis;
- (d) for an individual to possess, in a public place, one or more cannabis plants that are budding or flowering;
- (e) for an individual to possess more than four cannabis plants that are not budding or flowering; or
- (f) for an organization to possess cannabis.

#### Punishment

**(2)** Subject to section 51, every person that contravenes subsection (1)

- (a) is guilty of an indictable offence and is liable
  - (i) in the case of an individual who is 18 years of age or older, to imprisonment for a term of not more than five years less a day,
  - (ii) in the case of a young person, to a youth sentence under the *Youth Criminal Justice Act*, or

## PARTIE 1

# Interdictions, obligations et infractions

## SECTION 1

### Activités criminelles

#### Possession

**8 (1)** Sauf autorisation prévue sous le régime de la présente loi :

- a) il est interdit à tout individu âgé de dix-huit ans ou plus de posséder, dans un lieu public, une quantité totale de cannabis, d'une ou de plusieurs catégories, équivalant, selon l'annexe 3, à plus de trente grammes de cannabis séché;
- b) il est interdit à tout individu âgé de dix-huit ans ou plus d'avoir du cannabis en sa possession lorsqu'il sait qu'il s'agit de cannabis illicite;
- c) il est interdit à tout jeune d'avoir en sa possession une quantité totale de cannabis, d'une ou de plusieurs catégories, équivalant, selon l'annexe 3, à plus de cinq grammes de cannabis séché;
- d) il est interdit à tout individu d'avoir en sa possession, dans un lieu public, une ou plusieurs plantes de cannabis qui sont en train de bourgeonner ou de fleurir;
- e) il est interdit à tout individu d'avoir en sa possession plus de quatre plantes de cannabis qui sont ni en train de bourgeonner ni en train de fleurir;
- f) il est interdit à toute organisation d'avoir du cannabis en sa possession.

#### Peine

**(2)** Sous réserve de l'article 51, quiconque contrevient au paragraphe (1) commet une infraction et encourt, sur déclaration de culpabilité :

- a) par mise en accusation :
  - (i) dans le cas d'un individu âgé de dix-huit ans ou plus, un emprisonnement maximal de cinq ans moins un jour,
  - (ii) dans le cas d'un jeune, une peine spécifique prévue sous le régime de la *Loi sur le système de justice pénale pour les adolescents*,

(iii) in the case of an organization, to a fine in an amount that is in the discretion of the court; or

(b) is guilty of an offence punishable on summary conviction and is liable

(i) in the case of an individual who is 18 years of age or older, to a fine of not more than \$5,000 or imprisonment for a term of not more than six months, or to both,

(ii) in the case of a young person, to a youth sentence under the *Youth Criminal Justice Act*, or 10

(iii) in the case of an organization, to a fine of not more than \$100,000.

### Distribution

**9 (1)** Unless authorized under this Act, it is prohibited

(a) for an individual who is 18 years of age or older

(i) to distribute cannabis of one or more classes of cannabis the total amount of which is equivalent, as determined in accordance with Schedule 3, to more than 30 g of dried cannabis,

(ii) to distribute cannabis to an individual who is under 18 years of age, 20

(iii) to distribute cannabis to an organization, or

(iv) to distribute cannabis that they know is illicit cannabis;

(b) for a young person

(i) to distribute cannabis of one or more classes of cannabis the total amount of which is equivalent, as determined in accordance with Schedule 3, to more than 5 g of dried cannabis,

(ii) to distribute cannabis to an organization;

(c) for an individual 30

(i) to distribute one or more cannabis plants that are budding or flowering, or

(ii) to distribute more than four cannabis plants that are not budding or flowering; or

(d) for an organization to distribute cannabis. 35

(iii) dans le cas d'une organisation, une amende dont le montant est fixé par le tribunal;

b) par procédure sommaire :

(i) dans le cas d'un individu âgé de dix-huit ans ou plus, une amende maximale de cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines, 5

(ii) dans le cas d'un jeune, une peine spécifique prévue sous le régime de la *Loi sur le système de justice pénale pour les adolescents*, 10

(iii) dans le cas d'une organisation, une amende maximale de cent mille dollars.

### Distribution

**9 (1)** Sauf autorisation prévue sous le régime de la présente loi :

a) il est interdit à tout individu âgé de dix-huit ans ou plus : 15

(i) de distribuer une quantité totale de cannabis d'une ou de plusieurs catégories, équivalant, selon l'annexe 3, à plus de trente grammes de cannabis séché, 20

(ii) de distribuer du cannabis à un individu âgé de moins de dix-huit ans,

(iii) de distribuer du cannabis à une organisation,

(iv) de distribuer du cannabis, s'il sait qu'il s'agit de cannabis illicite; 25

b) il est interdit à tout jeune :

(i) de distribuer une quantité totale de cannabis, d'une ou de plusieurs catégories, équivalant, selon l'annexe 3, à plus de cinq grammes de cannabis séché, 30

(ii) de distribuer du cannabis à une organisation;

c) il est interdit à tout individu de :

(i) distribuer une ou plusieurs plantes de cannabis qui sont en train de bourgeonner ou de fleurir,

(ii) distribuer plus de quatre plantes de cannabis qui sont ni en train de bourgeonner, ni en train de fleurir; 35

d) il est interdit à toute organisation de distribuer du cannabis.

### Possession for purpose of distributing

(2) Unless authorized under this Act, it is prohibited to possess cannabis for the purpose of distributing it contrary to subsection (1).

### Defence — subparagraph (1)(a)(ii)

(3) It is not a defence to a charge arising out of the contravention of subparagraph (1)(a)(ii) that the accused believed that the individual referred to in that subparagraph was 18 years of age or older, unless the accused took reasonable steps to ascertain the individual's age.

### Defence — subsection (2)

(4) It is not a defence to a charge arising out of the contravention of subsection (2) of possessing cannabis for the purpose of distributing it to an individual referred to in subparagraph (1)(a)(ii) that the accused believed that the individual was 18 years of age or older, unless the accused took reasonable steps to ascertain the individual's age.

### Punishment

(5) Subject to section 51, every person that contravenes subsection (1) or (2)

(a) is guilty of an indictable offence and is liable

(i) in the case of an individual who is 18 years of age or older, to imprisonment for a term of not more than 14 years,

(ii) in the case of a young person, to a youth sentence under the *Youth Criminal Justice Act*, or

(iii) in the case of an organization, to a fine in an amount that is in the discretion of the court; or

(b) is guilty of an offence punishable on summary conviction and is liable

(i) in the case of an individual who is 18 years of age or older who contravenes any of subparagraphs (1)(a)(i), (iii) and (iv) and (c)(i) and (ii) — or subsection (2) other than by possessing cannabis for the purpose of distributing it contrary to subparagraph (1)(a)(ii) — to a fine of not more than \$5,000 or imprisonment for a term of not more than six months, or to both,

(ii) in the case of an individual who is 18 years of age or older who contravenes subparagraph (1)(a)(ii) — or subsection (2) if the possession was for the purpose of distribution contrary to subparagraph (1)(a)(ii) — to a fine of not more than \$15,000

### Possession en vue de la distribution

(2) Sauf autorisation prévue sous le régime de la présente loi, il est interdit d'avoir du cannabis en sa possession en vue de le distribuer d'une manière qui contrevient au paragraphe (1).

### Défense — sous-alinéa (1)a)(ii)

(3) Le fait pour l'accusé de croire que l'individu visé au sous-alinéa (1)a)(ii) était âgé de dix-huit ans ou plus ne constitue un moyen de défense contre une accusation fondée sur ce sous-alinéa que s'il a pris des mesures raisonnables pour s'assurer de l'âge de cet individu.

### Défense — paragraphe (2)

(4) S'agissant de la possession de cannabis en vue de le distribuer d'une manière qui contrevient au sous-alinéa (1)a)(ii), le fait pour l'accusé de croire que l'individu visé à ce sous-alinéa était âgé de dix-huit ans ou plus ne constitue un moyen de défense contre une accusation fondée sur le paragraphe (2) que s'il a pris des mesures raisonnables pour s'assurer de l'âge de cet individu.

### Peine

(5) Sous réserve de l'article 51, quiconque contrevient aux paragraphes (1) ou (2) commet une infraction et encourt, sur déclaration de culpabilité :

a) par mise en accusation :

(i) s'agissant d'un individu âgé de dix-huit ans ou plus, un emprisonnement maximal de quatorze ans,

(ii) s'agissant d'un jeune, une peine spécifique prévue sous le régime de la *Loi sur le système de justice pénale pour les adolescents*,

(iii) s'agissant d'une organisation, une amende dont le montant est fixé par le tribunal;

b) par procédure sommaire :

(i) s'agissant d'un individu âgé de dix-huit ans ou plus, pour une contravention à l'un des sous-alinéas (1)a)(i), (iii) ou (iv) ou c)(i) ou (ii) — ou au paragraphe (2) dans un autre cas que la possession de cannabis en vue de le distribuer d'une manière qui contrevient au sous-alinéa (1)a)(ii) — une amende maximale de cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines,

(ii) s'agissant d'un individu âgé de dix-huit ans ou plus, pour une contravention au sous-alinéa (1)a)(ii) — ou au paragraphe (2) dans le cas de la possession de cannabis en vue de le distribuer

or imprisonment for a term of not more than 18 months, or to both,

(iii) in the case of a young person, to a youth sentence under the *Youth Criminal Justice Act*, or

(iv) in the case of an organization, to a fine of not more than \$100,000.

### **Selling**

**10 (1)** Unless authorized under this Act, it is prohibited to sell cannabis, or any substance represented or held out to be cannabis, to

(a) an individual who is 18 years of age or older;

(b) an individual who is under 18 years of age; or

(c) an organization.

### **Possession for purpose of selling**

**(2)** Unless authorized under this Act, it is prohibited to possess cannabis for the purpose of selling it contrary to any of paragraphs (1)(a) to (c).

### **Defence — paragraph (1)(b)**

**(3)** It is not a defence to a charge arising out of the contravention of paragraph (1)(b) that the accused believed that the individual referred to in that paragraph was 18 years of age or older, unless the accused took reasonable steps to ascertain the individual's age.

### **Defence — subsection (2)**

**(4)** It is not a defence to a charge arising out of the contravention of subsection (2) of possessing cannabis for the purpose of selling it contrary to paragraph (1)(b) that the accused believed that the individual referred to in that paragraph was 18 years of age or older, unless the accused took reasonable steps to ascertain the individual's age.

### **Punishment**

**(5)** Subject to section 51, every person that contravenes any of paragraphs (1)(a) to (c) or subsection (2)

(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years; or

(b) is guilty of an offence punishable on summary conviction and is liable

d'une manière qui contrevient au sous-alinéa (1)a(ii) —, une amende maximale de quinze mille dollars et un emprisonnement maximal de dix-huit mois, ou l'une de ces peines,

(iii) s'agissant d'un jeune, une peine spécifique prévue sous le régime de la *Loi sur le système de justice pénale pour les adolescents*,

(iv) s'agissant d'une organisation, une amende maximale de cent mille dollars.

### **Vente**

**10 (1)** Sauf autorisation prévue sous le régime de la présente loi, il est interdit de vendre du cannabis ou toute substance présentée ou tenue pour tel :

a) à un individu âgé de dix-huit ans ou plus;

b) à un individu âgé de moins de dix-huit ans;

c) à une organisation.

### **Possession en vue de la vente**

**(2)** Sauf autorisation prévue sous le régime de la présente loi, il est interdit d'avoir du cannabis en sa possession en vue de le vendre d'une manière qui contrevient à l'un des alinéas (1)a) à c).

### **Défense — alinéa (1)b)**

**(3)** Le fait pour l'accusé de croire que l'individu visé à l'alinéa (1)b) était âgé de dix-huit ans ou plus ne constitue un moyen de défense contre une accusation fondée sur cet alinéa que s'il a pris des mesures raisonnables pour s'assurer de l'âge de cet individu.

### **Défense — paragraphe (2)**

**(4)** S'agissant de la possession de cannabis en vue de le vendre d'une manière qui contrevient à l'alinéa (1)b), le fait pour l'accusé de croire que l'individu visé à cet alinéa était âgé de dix-huit ans ou plus ne constitue un moyen de défense contre une accusation fondée sur le paragraphe (2) que s'il a pris des mesures raisonnables pour s'assurer de l'âge de l'individu.

### **Peine**

**(5)** Sous réserve de l'article 51, quiconque contrevient à l'un des alinéas (1)a) à c) ou au paragraphe (2) commet une infraction et encourt, sur déclaration de culpabilité :

a) par mise en accusation, un emprisonnement maximal de quatorze ans;

b) par procédure sommaire :

(i) in the case of an individual who contravenes paragraph (1)(a) or (c) — or subsection (2) other than by possessing cannabis for the purpose of selling it contrary to paragraph (1)(b) — to a fine of not more than \$5,000 or imprisonment for a term of not more than six months, or to both, 5

(ii) in the case of an individual who contravenes paragraph (1)(b) — or subsection (2) if the possession was for the purpose of selling contrary to paragraph (1)(b) — to a fine of not more than \$15,000 or imprisonment for a term of not more than 18 months, or to both, or 10

(iii) in the case of an organization, to a fine of not more than \$100,000.

### Importing and exporting

**11 (1)** Unless authorized under this Act, the importation or exportation of cannabis is prohibited. 15

### Possession for purpose of exporting

**(2)** Unless authorized under this Act, it is prohibited to possess cannabis for the purpose of exporting it.

### Punishment

**(3)** Every person that contravenes subsection (1) or (2)

(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years; or 20

(b) is guilty of an offence punishable on summary conviction and is liable

(i) in the case of an individual, to a fine of not more than \$5,000 or imprisonment for a term of not more than six months, or to both, or 25

(ii) in the case of an organization, to a fine of not more than \$100,000.

### Production

**12 (1)** Unless authorized under this Act, it is prohibited

(a) to obtain or offer to obtain cannabis by any method or process, including by manufacturing, by synthesis or by using any means of altering the chemical or physical properties of cannabis; or 30

(i) s'agissant d'un individu, pour une contravention aux alinéas (1)a) ou c) — ou au paragraphe (2) dans un cas autre que la possession de cannabis en vue de le vendre d'une manière qui contrevient à l'alinéa (1)b) —, une amende maximale de cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines, 5

(ii) s'agissant d'un individu, pour une contravention à l'alinéa (1)b) — ou au paragraphe (2) dans le cas de la possession de cannabis en vue de le vendre d'une manière qui contrevient à l'alinéa (1)b) —, une amende maximale de quinze mille dollars et un emprisonnement maximal de dix-huit mois, ou l'une de ces peines, 10

(iii) s'agissant d'une organisation, une amende maximale de cent mille dollars. 15

### Importation et exportation

**11 (1)** Sauf autorisation prévue sous le régime de la présente loi, il est interdit d'importer ou d'exporter du cannabis.

### Possession en vue de l'exportation

**(2)** Sauf autorisation prévue sous le régime de la présente loi, il est interdit d'avoir du cannabis en sa possession en vue de l'exporter. 20

### Peine

**(3)** Quiconque contrevient aux paragraphes (1) ou (2) commet une infraction et encourt, sur déclaration de culpabilité : 25

a) par mise en accusation, un emprisonnement maximal de quatorze ans;

b) par procédure sommaire :

(i) dans le cas d'un individu, une amende maximale de cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines, 30

(ii) dans le cas d'une organisation, une amende maximale de cent mille dollars.

### Production

**12 (1)** Sauf autorisation prévue sous le régime de la présente loi, il est interdit : 35

a) d'obtenir ou d'offrir d'obtenir du cannabis par quelque méthode que ce soit, notamment par fabrication ou synthèse ou par altération, par tout moyen de ses propriétés physiques ou chimiques;



(b) to alter or offer to alter the chemical or physical properties of cannabis by the use of an organic solvent.

#### Authorized alteration

(2) An individual may alter the chemical or physical properties of any cannabis that they are not prohibited by this Act from possessing. 5

#### Definition of *organic solvent*

(3) In paragraph (1)(b), **organic solvent** means any organic compound that is explosive or highly or extremely flammable, including petroleum naphtha and compressed liquid hydrocarbons such as butane, isobutane, 10 propane and propylene.

#### Cultivation, propagation and harvesting — 18 years of age or older

(4) Unless authorized under this Act, it is prohibited for an individual who is 18 years of age or older to cultivate, propagate or harvest, or to offer to cultivate, propagate or harvest, 15

(a) a cannabis plant that is from a seed or plant material that they know is illicit cannabis; or

(b) more than four cannabis plants at any one time in their dwelling-house.

#### Cultivation, propagation and harvesting — dwelling-house limit

(5) Unless authorized under this Act, if two or more individuals who are 18 years of age or older are ordinarily resident in the same dwelling-house, it is prohibited for any of those individuals to cultivate, propagate or harvest any cannabis plants if doing so results in there being more than four such plants being cultivated, propagated or harvested at any one time in the dwelling-house. 20 25

#### Cultivation, propagation and harvesting — 18 years of age or older — without authorization

(6) Unless authorized under this Act, it is prohibited for an individual who is 18 years of age or older

(a) to cultivate, propagate or harvest, in their dwelling-house, any cannabis plant that is more than 100 cm in height, not including any part of the plant that is not normally exposed to the air; 30

(b) to cultivate, propagate or harvest any cannabis plant at a place that is not their dwelling-house or to offer to do so; or 35

b) d'altérer ou d'offrir d'altérer les propriétés chimiques ou physiques du cannabis par l'utilisation d'un solvant organique.

#### Altération permise

(2) Tout individu peut altérer les propriétés chimiques ou physiques du cannabis dont la possession n'est pas interdite au titre de la présente loi. 5

#### Définition de *solvant organique*

(3) Pour l'application de l'alinéa(1)b), **solvant organique** s'entend de tout composé organique explosif ou hautement ou extrêmement inflammable, y compris le naphte de pétrole et les hydrocarbures liquides comprimés tels le butane, l'isobutane, le propane et le propylène. 10

#### Culture, multiplication ou récolte — individu âgé de dix-huit ans ou plus

(4) Sauf autorisation prévue sous le régime de la présente loi, il est interdit à tout individu âgé de dix-huit ans ou plus de se livrer aux activités suivantes : 15

a) cultiver, multiplier ou récolter toute plante de cannabis d'une semence ou d'une matière végétale qu'il sait être du cannabis illicite, ou offrir de le faire;

b) cultiver, multiplier ou récolter plus de quatre plantes de cannabis au même moment dans sa maison d'habitation, ou offrir de le faire. 20

#### Culture, multiplication ou récolte — limite par maison d'habitation

(5) Sauf autorisation prévue sous le régime de la présente loi, dans le cas d'une maison d'habitation où résident habituellement deux ou plusieurs individus âgés de dix-huit ans ou plus, il est interdit à l'un quelconque d'entre eux de cultiver, de multiplier ou de récolter des plantes de cannabis si cela a pour effet de porter à plus de quatre le nombre de plantes de cannabis qui y sont cultivées, multipliées ou récoltées en même temps. 25

#### Culture, multiplication ou récolte — individu âgé de dix-huit ans ou plus — sans autorisation

(6) Sauf autorisation prévue sous le régime de la présente loi, il est interdit à tout individu âgé de dix-huit ans ou plus de se livrer aux activités suivantes : 30

a) cultiver, multiplier ou récolter, dans sa maison d'habitation, toute plante de cannabis d'une hauteur de plus de cent centimètres, à l'exclusion de toute partie qui n'est pas habituellement exposée à l'air; 35

(c) to cultivate, propagate or harvest any living thing, other than a cannabis plant, from which cannabis may be extracted or otherwise obtained, or to offer to do so.

#### Cultivation, propagation and harvesting — young persons and organizations

(7) Unless authorized under this Act, it is prohibited for a young person or an organization to cultivate, propagate or harvest any cannabis plant or any other living thing from which cannabis may be extracted or otherwise obtained, or to offer to do any of those things.

#### Definition of dwelling-house

(8) For the purposes of this section, **dwelling-house**, in respect of an individual, means the dwelling-house where the individual is ordinarily resident and includes

(a) any land that is subjacent to it and the immediately contiguous land that is attributable to it, including a yard, garden or any similar land; and

(b) any building or structure on any land referred to in paragraph (a).

#### Punishment

(9) Subject to section 51, every individual who is 18 years of age or older who contravenes any of subsections (1), (4), (5) and (6) or any organization that contravenes subsection (1) or (7)

(a) is guilty of an indictable offence and is liable to a term of imprisonment of not more than 14 years; or

(b) is guilty of an offence punishable on summary conviction and is liable

(i) in the case of an individual, to a fine of not more than \$5,000 or imprisonment for a term of not more than six months, or to both, or

(ii) in the case of an organization, to a fine of not more than \$100,000.

#### Punishment — young person

(10) Every young person who contravenes subsection (1) or (7) is guilty of an indictable offence, or an offence punishable on summary conviction, and is liable to a youth sentence under the *Youth Criminal Justice Act*.

b) cultiver, multiplier ou récolter toute plante de cannabis, dans un lieu autre que sa maison d'habitation, ou offrir de le faire;

c) cultiver, multiplier ou récolter tout organisme vivant — autre qu'une plante de cannabis — dont le cannabis peut être extrait ou peut provenir de toute autre façon, ou offrir de le faire.

#### Culture, multiplication ou récolte — jeune ou organisation

(7) Sauf autorisation prévue sous le régime de la présente loi, il est interdit à tout jeune ou à toute organisation de cultiver, de multiplier ou de récolter toute plante de cannabis ou tout autre organisme vivant dont le cannabis peut être extrait ou peut provenir de toute autre façon, ou d'offrir de le faire.

#### Définition de maison d'habitation

(8) Pour l'application du présent article, **maison d'habitation**, en ce qui a trait à un individu, s'entend de la maison où il réside habituellement et vise notamment :

a) tout terrain sous-jacent de cette maison ainsi que tout terrain adjacent qui est attribuable à celle-ci, y compris une cour, un jardin ou toute parcelle de terrain similaire;

b) tout bâtiment ou toute structure qui se trouve sur un terrain visé à l'alinéa a).

#### Peine

(9) Sous réserve de l'article 51, tout individu âgé de dix-huit ans ou plus qui contrevient à l'un des paragraphes (1), (4), (5) ou (6) ou toute organisation qui contrevient aux paragraphes (1) ou (7) commet une infraction et encourt, sur déclaration de culpabilité :

a) par mise en accusation, un emprisonnement maximal de quatorze ans;

b) par procédure sommaire :

(i) dans le cas d'un individu, une amende maximale de cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines,

(ii) dans le cas d'une organisation, une amende maximale de cent mille dollars.

#### Peine — jeune

(10) Tout jeune qui contrevient aux paragraphes (1) ou (7) commet une infraction et encourt, sur déclaration de culpabilité par mise en accusation ou par procédure sommaire, une peine spécifique prévue sous le régime de

**Possession, etc., for use in production or distribution of illicit cannabis**

**13 (1)** It is prohibited to possess, produce, sell, distribute or import anything with the intention that it will be used to produce, sell or distribute illicit cannabis.

**Punishment**

**(2)** Every person that contravenes subsection (1)

**(a)** is guilty of an indictable offence and is liable to imprisonment for a term of not more than seven years; or

**(b)** is guilty of an offence punishable on summary conviction and is liable

**(i)** in the case of an individual, to a fine of not more than \$5,000 or imprisonment for a term of not more than six months, or to both, or

**(ii)** in the case of an organization, to a fine of not more than \$100,000.

**Use of young person**

**14 (1)** It is prohibited to use the services of, or to involve, a young person in the commission of an offence under subsection 9(1) or (2), 10(1) or (2), 11(1) or (2), 12(1), (4), (5), (6) or (7) or 13(1).

**Punishment**

**(2)** Every person that contravenes subsection (1)

**(a)** is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years; or

**(b)** is guilty of an offence punishable on summary conviction and is liable

**(i)** in the case of an individual, to a fine of not more than \$15,000 or imprisonment for a term of not more than 18 months, or to both, or

**(ii)** in the case of an organization, to a fine of not more than \$100,000.

**Sentencing**

**15 (1)** Without restricting the generality of the *Criminal Code*, the fundamental purpose of any sentence for an offence under this Division is to contribute to the respect for the law and the maintenance of a just, peaceful and

la *Loi sur le système de justice pénale pour les adolescents*.

**Possession, etc., pour utilisation dans la production ou la distribution de cannabis illicite**

**13 (1)** Il est interdit d'avoir en sa possession, de produire, de vendre, de distribuer ou d'importer toute chose dans l'intention qu'elle soit utilisée pour la production, la vente ou la distribution de cannabis illicite.

**Peine**

**(2)** Quiconque contrevient au paragraphe (1) commet une infraction et encourt, sur déclaration de culpabilité :

**a)** par mise en accusation, un emprisonnement maximal de sept ans;

**b)** par procédure sommaire,

**(i)** dans le cas d'un individu, une amende maximale de cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines,

**(ii)** dans le cas d'une organisation, une amende maximale de cent mille dollars.

**Assistance d'un jeune**

**14 (1)** Il est interdit d'avoir recours aux services d'un jeune dans la perpétration d'une infraction prévue aux paragraphes 9(1) ou (2), 10(1) ou (2), 11(1) ou (2), 12(1), (4), (5), (6) ou (7) ou 13(1) ou de le faire participer à la perpétration d'une telle infraction.

**Peine**

**(2)** Quiconque contrevient au paragraphe (1) commet une infraction et encourt, sur déclaration de culpabilité :

**a)** par mise en accusation, un emprisonnement maximal de quatorze ans;

**b)** par procédure sommaire :

**(i)** dans le cas d'un individu, une amende maximale de quinze mille dollars et un emprisonnement maximal de dix-huit mois, ou l'une de ces peines,

**(ii)** dans le cas d'une organisation, une amende maximale de cent mille dollars.

**Détermination de la peine**

**15 (1)** Sans qu'en soit limitée la portée générale du *Code criminel*, le prononcé des peines prévues à la présente section a pour objectif essentiel de contribuer au respect de la loi et au maintien d'une société juste, paisible et

safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

#### Factors to take into consideration

**(2)** If an individual is convicted of a designated offence, the court imposing sentence on the individual must consider any relevant aggravating factors, including that the individual

- (a)** in relation to the commission of the offence,
  - (i)** carried, used or threatened to use a weapon,
  - (ii)** used or threatened to use violence, or
  - (iii)** sold or distributed cannabis or possessed it for the purpose of sale or distribution, in or near a school, on or near school grounds or in or near any other public place usually frequented by young persons; and
- (b)** was previously convicted of a *designated offence*, as defined in subsection 2(1) of this Act, or a *designated substance offence*, as defined in subsection 2(1) of the *Controlled Drugs and Substances Act*.

#### Reasons

**(3)** If, in the case of an individual who is convicted of a designated offence, the court is satisfied of the existence of one or more of the aggravating factors enumerated in paragraphs (2)(a) and (b), but decides not to sentence the individual to imprisonment, the court must give reasons for that decision.

#### Drug treatment court program

**(4)** A court sentencing an individual who is convicted of an offence under this Division may delay sentencing to enable the individual

- (a)** to participate in a drug treatment court program approved by the Attorney General; or
- (b)** to attend a treatment program under subsection 720(2) of the *Criminal Code*.

sûre tout en favorisant la réinsertion sociale des délinquants et, dans les cas indiqués, leur traitement et en reconnaissant les torts causés aux victimes et à la collectivité.

#### Circonstances à prendre en considération

**(2)** Le tribunal qui détermine la peine à infliger à un individu condamné pour une infraction désignée est tenu de considérer toute circonstance aggravante pertinente, notamment le fait que cet individu, selon le cas :

- a)** relativement à la perpétration de cette infraction :
  - (i)** soit portait ou a utilisé ou menacé d'utiliser une arme,
  - (ii)** soit a eu recours ou a menacé de recourir à la violence,
  - (iii)** soit a vendu ou distribué du cannabis — ou l'a eu en sa possession en vue de le vendre ou de le distribuer — à l'intérieur d'une école ou près de celle-ci, sur le terrain d'une école ou près de ce terrain ou dans tout autre lieu public normalement fréquenté par des jeunes ou près d'un tel lieu;
- b)** a déjà été condamné pour une *infraction désignée* au sens du paragraphe 2(1) de la présente loi ou pour une *infraction désignée* au sens du paragraphe 2(1) de la *Loi réglementant certaines drogues et autres substances*.

#### Motifs du tribunal

**(3)** Lorsqu'un individu est condamné pour une infraction désignée, si le tribunal décide de n'imposer aucune peine d'emprisonnement, bien qu'il soit convaincu de l'existence d'une ou de plusieurs des circonstances aggravantes mentionnées aux alinéas (2)a) et b), il est tenu de motiver sa décision.

#### Programme judiciaire de traitement de la toxicomanie

**(4)** Le tribunal peut reporter la détermination de la peine à infliger à un individu condamné pour une infraction prévue par la présente section :

- a)** afin de lui permettre de participer à un programme judiciaire de traitement de la toxicomanie approuvé par le procureur général;
- b)** afin de lui permettre de participer à un programme visé au paragraphe 720(2) du *Code criminel*.

E-File Name: 2015-11-09SCQNearyS  
Appeal No.: CRM 84/14

IN THE COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
JUDICIAL CENTRE OF SASKATOON

BETWEEN

HER MAJESTY THE QUEEN

and

SEAMUS JOHN NEARY

Accused

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TRIAL  
Volume 1  
(Pages T1 - T197)

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November 9, 10, 12, 13 and 16, 2015  
February 5, 2016  
Saskatoon, Saskatchewan

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T1

1 Proceedings taken in the Court of Queen's Bench, Saskatoon, Saskatchewan

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2  
3  
4 November 9, 2015

Morning Session

5  
6 The Honourable Mr. Justice  
7 R. Smith

The Court of Queen's Bench  
for Saskatchewan

8  
9 W. McBride

For the Crown

10 C. Lavier

For the Accused

11 B. Stang

Court Clerk

---

12  
13  
14 **Discussion**

15  
16 THE COURT:

Morning, everyone.

17  
18 MR. MCBRIDE:

Morning, My Lord.

19  
20 MR. LAVIER:

Morning, My Lord.

21  
22 THE COURT:

Please, be seated. This is the matter of

23 The Queen v. Seamus Neary.

24  
25 Mr. McBride, you are here for the Crown.

26  
27 MR. MCBRIDE:

That's correct, My Lord. Good morning.

28  
29 THE COURT:

Mr. Lavier, you are here for the defence.

30  
31 MR. LAVIER:

Yes, I am. We're ready to proceed. We

32 have Mr. Neary present.

33  
34 THE COURT:

35 The record will note Mr. Neary is  
36 present. Please, be seated. Is there anything preliminary before I invite my clerk to  
37 arraign the accused?

38  
39 MR. LAVIER:

40 There is a -- just the modest things, My  
41 Lord. There are several admissions that my friend has prepared and that I have  
reviewed that we're prepared to make for the purpose --

T9

1 MR. MCBRIDE: Thank you, My Lord.

2  
3 Q MR. MCBRIDE: So, sir, there was more than yourself on  
4 the surveillance team on February 5th, then, after the --

5 A Yes.

6  
7 Q -- incident you just described?

8 A Yes, there was.

9  
10 Q Do you remember roughly how many officers were there at that time?

11 A At that time, I believe, there were upwards of seven or eight --

12  
13 Q Okay.

14 A -- plainclothes officers.

15  
16 Q All right. So you see this vehicle park on Temperance, as you indicated. And  
17 was that the extent of your observations of the vehicle or its occupants at that  
18 time?

19 A For my personal observations, yes, that's the extent.

20  
21 Q All right. So you were somewhere else. Did you remain in the same place or  
22 did you move -- go somewhere else, sir?

23 A I was within a block of it. But my responsibility at that point wasn't to make  
24 observations, it was more so just to document what was going on and make a  
25 decision as the file lead.

26  
27 Q Okay. I'm sorry as the file?

28 A Lead. I was the -- the lead of the file, I guess.

29  
30 Q Okay. So it's fair to say that you were the lead investigator in respect, at least,  
31 of this investigation?

32 A Yes.

33  
34 Q All right. So based upon what your team members were telling you, what do  
35 you understand happened then?

36 A What I learned at that point was both Vito Amico and Cody Watier exited their  
37 minivan, each carrying a black backpack. These backpacks did not appear to be  
38 filled with anything or full whatsoever, and entered the building on the corner  
39 of Temperance and Clarence, which is 1001 Temperance Street.

40  
41 Q All right. And did any of your surveillance team members follow them on

T10

1 foot?

2 A Constable Schmalz of the -- the drug unit followed them into the building and  
3 made observations within the building.

4

5 Q And was she relaying any information to you, sir, about what was happening?

6 A At the time she didn't advise me of anything. That came the next day when I  
7 learned some things about the building.

8

9 Q Okay. Did there come a time when these two individuals you describe, Mr.  
10 Watier and Mr. Amico, emerge from the building?

11 A Yeah. They came out of the building, I believe it was 3:15 in the afternoon  
12 approximately.

13

14 Q All right.

15 A When they came out, they were observed to have backpacks that were  
16 described to me as bulging. Basically, they were full backpacks that weren't  
17 full when they went into the building. So it appeared as though they had picked  
18 up a large quantity of something.

19

20 Q All right. And do you recall which officer would have conveyed that  
21 information to you, sir?

22 A Constable Rainville of the surveillance unit.

23

24 Q Okay. As a result of receiving that information, sir, did you make any  
25 decisions?

26 A Yes. From there, I guess, based upon the totality of our grounds and everything  
27 we had observed throughout the investigation, I had the belief that they had  
28 just done a pickup of a large quantity of cannabis marihuana and instructed a  
29 patrol officer to make a traffic stop and arrest the two individuals for  
30 possession for the purpose of trafficking.

31

32 Q To your knowledge, sir, did that happen?

33 A It did, yes.

34

35 Q Okay. Do you know where?

36 A It happened -- I believe it was Balmoral Street and Spadina Avenue (sic), just  
37 along the river.

38

39 Q Okay. Okay. So the vehicle became mobile before it was stopped?

40 A Yeah. We allowed it to drive away from the building and then it was stopped  
41 by a patrol.

T11

1 Q All right. Did you observe that, sir?

2 A I -- once patrol had it stopped and another officer went up to it, that's when I  
3 arrived to where the stop happened and both of the occupants had been  
4 removed from the vehicle.  
5

6 Q I'm sorry, say again.

7 A Both of the occupants were already out of the vehicle when I got there.  
8

9 Q All right. And what did you do, sir, when you arrived at the scene?

10 A After seeing that both of the males were securely under arrest, I went up to the  
11 minivan and searched it incident to arrest, based on the belief that they were in  
12 possession of marihuana for the purpose of trafficking. Inside the vehicle I  
13 found the two black backpacks that were observed on them when they went  
14 into and out of the apartment building. And I searched both backpacks and  
15 both of them had a large quantity of cannabis marihuana in heat sealed plastic  
16 bags.  
17

18 Q Do you recall how many bags in each backpack?

19 A In each backpack, no, I don't.  
20

21 Q Okay. Did there come a time when you learned the weights of that quantity of  
22 marihuana?

23 A Yeah. Once we concluded the file that evening, I was informed that the total  
24 quantity from those backpacks was approximately 7 pounds.  
25

26 Q Okay. Was that with or without packaging, sir; do you know?

27 A I believe that was with packaging.  
28

29 Q Okay. Thank you. Did you take possession of the marihuana, sir?

30 A I did, yes.  
31

32 Q All right. And you described it as being in heat sealed packages?

33 A Yeah. Like those -- basically, like those FoodSaver plastic bags where you  
34 have the -- the heat seal.  
35

36 Q Okay. And in terms of size, how did they compare, one to the other?

37 A Most of the individually sealed portions of them were consistent with each  
38 other, so approximately the same size.  
39

40 Q Okay. Was there anything else in the backpacks of note, sir?

41 A No, nothing that I noted.

T12

1 Q Okay.

2

3 THE COURT: Excuse me, Mr. Neary, are you standing  
4 for a reason?

5

6 THE ACCUSED: Oh. Just my back's a little sore, that's all.  
7 Do you want me to sit down?

8

9 THE COURT: No, no. No, no. If your back's sore, you  
10 can stand for that. Fine.

11

12 THE ACCUSED: Okay.

13

14 THE COURT: Carry on. Sorry to interrupt.

15

16 MR. MCBRIDE: No problem at all.

17

18 Q MR. MCBRIDE: All right, sir. Was there anything else of  
19 note that you would have -- and you described this vehicle -- I'm sorry, you  
20 described the vehicle as a van. Do you remember the make and model?

21 A I believe it was a Ford Freestar belonging to Vito Amico's mother.

22

23 Q All right. So you would have taken possession, I take it, at that time of the --  
24 the backpacks and the contents?

25 A Yes.

26

27 Q Do you remember what you did with them at a later point in the investigation?

28 A I placed them into my locked locker at the police station and eventually turned  
29 them over to, I believe, Constable Nave.

30

31 Q All right. So based upon the arrest, sir, did you take other investigative steps?

32 A That evening?

33

34 Q At any point from that point forward.

35 A The next day when we came back to work we decided that we would possibly  
36 look into the supplier of the large quantity of marihuana that we found on those  
37 two individuals. Up until that point, we didn't have any information about who  
38 they were getting supplied by and hadn't taken any steps into that investigation.  
39 So we started with, basically, the information we had seen on February 5th,  
40 and this is now February 6th. The first thing that we noted was through  
41 Constable Schmalz's observations that the individuals Watier and Amico were

T13

1 on the second floor and would have come from one of the suites on the second  
2 floor of 1001 Temperance Street. At that time, I believe we only knew that  
3 there were six suites on the floor and didn't know which suite in particular was  
4 of interest as of yet. So from there we had narrowed it down to six possible  
5 suspected suites.

6  
7 The next person I spoke to was Constable Landry whose position I actually  
8 was filling in the drug unit. And he informed me that -- or sorry, I learned from  
9 him that he had a source into drug trafficking in the city of Saskatoon and that  
10 source had some information about a drug trafficker in the building on the  
11 corner of Temperance Street and Clarence Avenue, the building that I believed  
12 to be the same one our individuals went into. The information provided to me  
13 there was consistent with what we had seen and also involved a person who  
14 was believed to be a drug trafficker in Saskatoon, a marihuana trafficker with  
15 the first name of Seamus who was in his 20's and had blond hair. So with that  
16 information, again, that was consistent -- and it -- sorry. With the information  
17 with the building itself, it was consistent with what we had seen. Up to that  
18 point we had no information about a Seamus.

19  
20 From there I did a query on the SIMS system, which is our Saskatoon  
21 Information Management System, the -- the main system that we use as police,  
22 of the building. And I, in particular, was paying attention to suites that were on  
23 the second floor as a target for what I was looking for. With regards to those  
24 suites, I noted that a male by the name of Seamus Neary was listed as living in  
25 suite 205 of 1001 Temperance Street. The name matching the one that we had  
26 learned from the source. 205 is a suite on the second floor in that building and  
27 was consistent with what Constable Schmalz had seen. I then also queried the  
28 SGI system, which is our -- our Saskatchewan Government Insurance website  
29 that gives us information about registered owners of vehicles, driver's licence  
30 information such as that. The information I gleaned from there was that, once  
31 again, Seamus Neary was registered to be living in suite 205 of 1001  
32 Temperance Street.

33  
34 And finally -- I guess, the final piece of information that we used to determine  
35 that that was, in fact, the suite that our -- Mr. Watier and Amico went into was  
36 later in the day, Constable Schmalz once again went into the building to  
37 determine suite numbers that were possibilities for ones that the individuals  
38 came out of, Mr. Watier and Mr. Amico, and was able to narrow it down to  
39 suites 203, 204, 205 or 206. So it was a narrower, I guess, assortment of rooms.  
40 It went down from six to four, one of which was 205, the same suite that  
41 Seamus Neary was registered to live in on two different data bases.

T14

1 Q Okay. As a result of learning all of that, did you take any other steps in your  
2 investigation, sir?

3 A Yeah. So with -- with everything that I learned -- excuse me -- about suite 205  
4 with Seamus Neary being in there, the same name as the individual who was  
5 identified as a drug trafficker in Saskatoon, I believed that Seamus Neary  
6 himself would have trafficked the marihuana to Mr. Watier and Mr. Amico  
7 and, furthermore, would have been in possession for the purpose of trafficking  
8 of marihuana. Based on my experience and training that drug traffickers will,  
9 after trafficking, still have product on them for sale, as it is a business, as well  
10 as some proceeds of crime from the sale of the -- the controlled substance. As a  
11 result, I drafted a Section 11 search warrant under CDSA or the *Controlled*  
12 *Drugs and Substances Act*, which was then endorsed by Judge Agnew of the  
13 provincial court at 5 PM on February 6th.  
14

15 Q All right. Did you assemble a team, sir, to execute that search warrant?

16 A Yeah. I guess, it should be noted that while I was drafting the warrant we put  
17 surveillance on the building itself, I guess, to maintain, as best we could,  
18 continuity with the places to be searched. After the search warrant was  
19 endorsed I created a search team and we had a quick brief at 5:55 PM in the  
20 evening. I believe that team was Constable Brown, Constable Volk, Constable  
21 Campbell, Constable Nave and Constable Schmalz and myself. Each individual  
22 was provided with the opportunity to review the warrant and our goal was to  
23 make entry into suite 205 of 1001 Temperance Street shortly after.  
24

25 Q All right. And did you, in fact, execute the warrant, sir?

26 A Yes. At 6:04 PM on February 6th Constable Schmalz knocked at the door and I  
27 believe Mr. Neary opened the door. And at that point our team made entry with  
28 the search warrant and Mr. Neary was arrested from the suite.  
29

30 Q Were you present, sir, while the entry was obtained?

31 A Yes. I believe I was fourth person in.  
32

33 Q All right. You described a person named Mr. Neary. Is that person in the  
34 courtroom today?

35 A Yes, he is.  
36

37 Q Can you point him out for us and tell us what he's wearing, please?

38 A The gentleman over here in the suite with the -- the poppy on his chest and the  
39 white dress shirt.  
40

41 THE COURT:

Accused is identified.

T15

1 MR. MCBRIDE:

Thank you, My Lord.

2  
3 Q MR. MCBRIDE: Did you have a particular role with  
4 respect to the search, Constable?

5 A As the file lead, I didn't do any searching. But at 6:09 PM I read Mr. Neary his  
6 rights directly from my notebook for the charges of possession for the purpose  
7 of trafficking of marihuana as well as possession of proceeds of crime. At that  
8 time, I -- after reading him his rights, it appeared to me that he understood  
9 them by his responses and wanted to speak to a lawyer.

10  
11 Q All right.

12 A From there I had him escorted out of the suite and taken to detention by  
13 Constable Burrows and I allowed the other officers from the search team to  
14 continue their search and instead I went back to the police station to continue  
15 working on the file and process Mr. Neary and any documentation needed.

16  
17 Q All right. While you were in the residence there, other than Mr. Neary, did you  
18 encounter anyone else?

19 A No, there was no one else.

20  
21 Q So you were in a -- or residence -- it's an apartment building or an apartment  
22 suite, I take it?

23 A Yes.

24  
25 Q How long were you there, sir?

26 A I would say about a half-an-hour.

27  
28 Q And you went back to the headquarters building to deal with Mr. Neary. And  
29 did you learn anything else from your investigators on scene while you were  
30 dealing with Mr. Neary or around that time?

31 A Prior to leaving, I noted there were two vehicle keys hanging on a -- I guess, a  
32 key holder near the side of the door to exit the suite. Those keys themselves  
33 were for a Ford vehicle and a Volkswagen vehicle, but I couldn't identify what  
34 -- any particular make or model it would be -- or model, I guess.

35  
36 Q You -- you could identify the vehicles they fit from the keys themselves?

37 A I couldn't, sorry. I could only identify that it was for a certain make. So either a  
38 Volkswagen or for a Ford.

39  
40 Q And, again, I'm sorry, sir. You could tell that just by looking at the keys or was  
41 that something you found out later?



T16

1 A No. I could tell that by looking at them. They had the emblems on them.

2  
3 Q Okay. All right. Why was that significant to you?

4 A To me it was significant because it meant that Mr. Neary was in possession of  
5 various vehicles. And since those vehicles were in his possession I believed  
6 that they may have evidence in them that would afford further evidence  
7 towards the charges of possession for the purpose of trafficking or proceeds of  
8 crime. Things such as documentation, further drugs, packaging, anything such  
9 as that.

10  
11 Q All right.

12 A So when I exited the building I just did a quick scan of the area and I found a  
13 Ford Focus in the parking lot of 1001 Temperance Street, as well as a  
14 Volkswagen Jeta across the street to the south.

15  
16 Q Okay. Now, did there come a time when you received further information from  
17 the searching officers about items of significance that they had stumbled  
18 across?

19 A Yes. Once I got back to the station I was processing the documents. I received  
20 a phone call from, I believe, Constable Landry of the drug unit informing me  
21 that there was a receipt in the suite for a storage unit at Besco Self Storage  
22 located at 302 105th Street East in Saskatoon. That receipt would have had --  
23 excuse me -- would have had Mr. Neary's name on it but we weren't able to  
24 identify whether or not it was still an active suite, based on the receipt, as it  
25 was from the past. So from that, I made efforts to determine whether or not Mr.  
26 Neary had an active storage locker at Besco Self Storage in Saskatoon. Prior to  
27 going to the storage unit, I quickly had a conversation with Mr. Neary in  
28 detention informing him of the steps of our investigation and advising him as  
29 to why he wasn't being allowed a phone call to a lawyer at that time.

30  
31 After doing that, I went to the Self Storage location on 105th Street and spoke  
32 to an employee there. I gave information to that employee with regards to the  
33 drug investigation that we were doing and simply asked if I could see a rent  
34 role or ledger listing everyone who has a locker currently active in the facility.  
35 After viewing the ledger, I was able to see that a male by the name of Seamus  
36 Neary had a storage locker labelled E208, which is just one of the, I guess,  
37 indoor lockers that they have there, labelled as such. I confirmed that the name  
38 was exactly same as Mr. Neary, the one we had under arrest, and therefore had  
39 a belief that it was, in fact, still his. On the rent roll itself, it indicated to me  
40 that Mr. Neary had opened the account or had gotten this locker beginning July  
41 17th of 2013 and it was paid in full up until February 16th of 2014, which

T17

1 would have been approximately ten days after our search warrant was  
2 conducted in the residence.

3  
4 Q All right. And what did you do after learning that information, sir?

5 A After determining that we believed him to have a storage locker in his  
6 possession, I drafted another Section 11 CDSA search warrant, *Controlled*  
7 *Drugs and Substances Act*, to grant us authority to search the locker labelled  
8 E208 at Besco Self Storage, as well as the two vehicles that I noted out front,  
9 the Ford Focus and the Volkswagen Jeta.

10  
11 Q And when did you present that application, sir?

12 A I presented that application to Justice -- Justice of the Peace Wandler and it  
13 was signed at 11:30 PM on February 6th.

14  
15 Q All right. And did you have occasion to search or cause to be searched the  
16 vehicles and the storage locker?

17 A The first thing I did was bring the warrant to be viewed at Temperance Street  
18 by the gang unit officers that were there to do the search. I believe it was  
19 Constable Volk and Constable Rhodes. They conducted the searches of the  
20 vehicles while I then took the search warrant south to Besco Self Storage to  
21 gain entry into unit E208. With me there was Constable Schmalz and  
22 Constable Nave of my drug unit.

23  
24 Q What time did you arrive, sir?

25 A Just prior to midnight.

26  
27 Q And how long did your search take then?

28 A We gained entry into the -- into the locker itself right at midnight using a key  
29 that was seized from the residence at 205 1001 Temperance Street, Mr. Neary's  
30 suite. The key itself was for -- I don't remember the brand, but it's, like, a  
31 Mastercraft padlock type-of-thing which we were then able to open the door.  
32 And inside of the -- the suite itself at midnight we found various bags of  
33 clothing and other things laying around. But I did note two particular bags in  
34 there, one was a large black garbage bag. One that, like, a -- a contractor or,  
35 you know, a landscaper would use for, you know, grass or, you know, common  
36 things you'd throw away. In that bag there were multiple heat sealed plastic  
37 bags filled with cannabis marihuana, each of them having a specific quantity  
38 heat sealed for what appeared to me, based on my experience, a particular  
39 weight.

40  
41 Q All right. Maybe I'm going to get you to go into a little more detail, sir, if you

T18

1 don't mind. Where did you find these various bags of marihuana and could you  
2 give us the details surrounding that and -- and what you observed; all right?

3 A Okay. The locker itself, I believe, was a 5 by 10 locker; 5 foot by 10 foot  
4 locker, so it wasn't very big. All the clothing and everything else appeared to  
5 be stored towards the back of the locker itself. I believe the black bag was just  
6 on the floor in from the entry a little ways to the right and the white bag, I  
7 believe, was on the floor to the left a little ways into the entryway. So both of  
8 them -- I guess, I would say probably at least 5 feet into the locker, but both  
9 were on the floor.

10

11 Q Okay. How close were they, one to the other?

12 A I guess, they would have been within 3 feet of each other.

13

14 Q Okay. In the white bag, what did you observe?

15 A The same -- I would say the packaging consistent with what was also in the  
16 black bag of cannabis marihuana, heat sealed into various quantities in what  
17 appeared to be the same packaging and, I guess, methods used as the other  
18 bags.

19

20 Q Do you remember quantities of packaging in each of the white bag and the  
21 black garbage bag?

22 A Each bag in particular I don't remember, but I believe the total quantity seized  
23 from that locker at that time was 59 58 grams; 5,958 grams of marihuana or  
24 just under 6 kilograms.

25

26 Q All right. And you can't say how much was in one bag versus the other at this  
27 point?

28 A Well, the white bag was significantly smaller than the other one. So without a  
29 quantity I couldn't tell you that, but it's of much -- much lesser amount in the  
30 white bag than the black bag.

31

32 Q Okay. Thank you. It's my understanding that some other officers were more  
33 responsible for exhibits than yourself; is that right?

34 A Yes, correct.

35

36 Q Okay. Do you remember who was taking care of the exhibits at the locker?

37 A Constable Nave, I believe, was in charge of the exhibits with Constable  
38 Schmalz who was taking photos.

39

40 Q Was there anything else of significance that you noted in the locker, sir?

41 A The one thing I did note was there was a -- a couple pieces of ID sitting on the

T19

1 floor. This ID was for an individual, I believe, from Texas. His name was  
2 Cornelius Travoy, T-R-A-V-O-Y. The one piece of ID was a birth certificate  
3 and the other one was his driver's licence.  
4

5 Q If I can back you up just a little bit, sir. You indicated that you arrived at the  
6 locker and there was a padlock. You had a key at that time, sir?

7 A Yes. We had a key that was seized from Mr. Neary's suite.  
8

9 Q And who had that key, do you recall?

10 A I believe Constable Nave did.  
11

12 Q All right. And so this isn't a combination lock, you just insert the key and it  
13 pops open the --

14 A Yes.  
15

16 Q -- the lock itself?

17 A Yeah.  
18

19 Q All right. Do you recall how long you were at the storage locker doing your  
20 search, sir?

21 A I believe at 15 minutes after midnight on February 7th we secured the locker  
22 with the same lock and left the scene. So we were only there for 15 minutes.  
23

24 Q All right. Presumably you took the marihuana with you?

25 A Yes.  
26

27 Q All right. Did you take anything else, sir? Do you recall?

28 A I don't believe so. I think we took pictures of the identification and whatnot.  
29

30 Q As a result of locating this additional cannabis, what did you do with respect to  
31 Mr. Neary?

32 A At 1:40 in the morning on February 7th I visited Mr. Neary in cells and read  
33 him his *Charter* rights again, this time for possession for the purpose of  
34 trafficking of cannabis marihuana over 3 kilograms; possession of proceeds of  
35 crime for -- I believe a thousand dollars was seized in a bundle from his  
36 residence; possession of psilocybin mushrooms, a small quantity of that was  
37 seized from his residence; and trafficking of cannabis marihuana because at  
38 that point we had a belief that Mr. Neary had trafficked the marihuana to Mr.  
39 Watier and Amico the day before. And so that was at 1:40 in the morning I  
40 read him his rights again and he requested to speak to a lawyer and I provided  
41 him with a phone call to a lawyer of his choice, which to me was indicated to

T20

1 be Legal Aid. And he was placed on the phone at 1:43 AM.

2  
3 Once that was completed, I took him into an interview room and served him  
4 his notice to seek minimum punishment, which is a form relating to drug  
5 offences under the *Controlled Drugs and Substances Act*, which he understood  
6 and was placed in his property. I also served him -- or not served, showed him  
7 two *Controlled Drugs and Substances Acts* warrants that we used that date,  
8 copies of them, to search his residence, the two vehicles, and the locker. And  
9 both of those copies were placed in his property as well. And from there we  
10 just simply had a -- a conversation in detention prior to the scene being -- or  
11 the file being concluded.

12  
13 Q I'm sorry, say again. Prior to?

14 A The file being concluded. That was it for our night.

15  
16 Q All right. Thank you. You indicated, sir, and you may have covered this and  
17 sorry if I'm ploughing the same ground. You took the backpacks with the  
18 marihuana out of the van -- the Freestar van.

19 A Yes.

20  
21 Q And you maintain possession of them for some time before you turn them over  
22 to another officer?

23 A Yes. They -- they remained in my locked locker at the station until they were  
24 turned over.

25  
26 Q And do you recall who you gave them to?

27 A I believe I initially gave them to Constable Nave.

28  
29 Q Do you remember when that was, roughly?

30 A I don't have a note of it with me here. No.

31  
32 Q But at this point you have --

33  
34 MR. MCBRIDE: Sorry, go ahead.

35  
36 MR. LAVIER: Yeah. Sorry. I was just going to let the  
37 Court know is that continuity won't be an issue later in any event.

38  
39 THE COURT: Okay. Thank you.

40  
41 MR. MCBRIDE: I won't pursue that any further then.

T21

1 Q MR. MCBRIDE: Sir, the events that you described took  
2 place in -- in what city and in what province, please?

3 A In Saskatoon, Saskatchewan.  
4

5 Q Thank you, sir. Those are all the questions I have. My friend may have some  
6 questions for you.  
7

8 THE COURT: Mr. Lavier, you tell me, if you want a  
9 couple minutes before your cross, you will have it. If you're ready to go, go.  
10

11 MR. LAVIER: I'm ready to go but I may -- I may ask for  
12 a couple of minutes at the conclusion just to make sure I haven't missed anything.  
13 But --  
14

15 THE COURT: No problem at all.  
16

17 MR. LAVIER: Yeah. Okay.  
18

19 **Mr. Lavier Cross-examines the Witness**  
20

21 Q MR. LAVIER: Okay. You've shared with my friend  
22 already that this starts with you looking for drug trafficking activities of Cody  
23 Watier; is that correct?

24 A Yes.  
25

26 Q And you said that that happened in about December.

27 A The file itself was opened in December sometime of 2013.  
28

29 Q And you become more heavily involved in January/ February of 2014.

30 A Yes.  
31

32 Q And what's your role in that investigation?

33 A Initially I was simply a surveillance member. However, the person who was  
34 leading the file, Sergeant Lenius, was away for some time and the file was  
35 turned over to me in February.  
36

37 Q I see. So in terms of being a lead, you were a lead on Mr. Neary's investigation  
38 here.

39 A I was, yes.  
40

41 Q And similarly you did have some component of the role as lead on the other

T24

1 A M-hm. Correct.

2  
3 Q It's a living, breathing investigation and you're doing what you can when you're  
4 able to; correct?

5 A Yes.

6  
7 Q But you would have no reason to mislead the Court or anything. We can rely  
8 on your notes in terms of anything that you recorded as what you believed to  
9 be true at the time.

10 A Yes, correct.

11  
12 Q Okay. So what I put to you is that the communication that you received as the  
13 lead investigator was that as Mr. Amico and Mr. Watier are leaving the vehicle  
14 and going to the residence, the backpacks are noted as partially filled. Do you  
15 agree with me?

16 A I believe the word I was told was bulging.

17  
18 Q No, no. I'm -- now, I'm talking about leaving the vehicle and entering into the  
19 Temperance --

20 A Oh, sorry. Yes, partially.

21  
22 Q Partially filled.

23 A Yes.

24  
25 Q Is that -- is that correct? And you put that right in your notes that it was  
26 communicated to you that the backpacks were partially filled.

27 A Yes.

28  
29 Q Okay. So there's no indication these are empty backpacks whatsoever.

30 A No. And through our conversations I believe it's more like a -- a sagging  
31 backpack that had something in it.

32  
33 Q Okay. Okay. Now, let's go back to Mr. Watier. As part of your lead, your  
34 understanding and also part of your observations prior to taking lead was that  
35 Cody Watier was believed to be trafficking or otherwise entrenched in the drug  
36 trade.

37 A Yes, he was.

38  
39 Q Okay. And -- and you have that in your notes somewhere that you actually --  
40 those are the words, entrenched in the drug trade. I can probably locate them  
41 for you if you like?

T27

1 Q The evidence of the search warrant on Mr. Watier's residence.

2 A Well, from that, the further the charges of production of cannabis resin,  
3 possession of cannabis resin, and I think just a little bit more evidence with  
4 regards to him being in possession for the purpose of trafficking of marihuana.

5  
6 Q And -- and you located score sheets. Your team located score sheets at that  
7 residence?

8 A Again, I don't recollect that so I don't want to say yes or no at this point. But if  
9 I saw --

10  
11 Q Okay.

12 A -- some of the documentation. Again, I didn't -- I didn't prepare too much for  
13 the -- the seizures from that file for this file.

14  
15 Q Okay. So you don't know if -- if any score sheets or -- or baggies were located  
16 either way?

17 A I -- I just wouldn't want to guess.

18  
19 Q Okay. What about cell phones? Do you have any recollection of cell phones  
20 located at --

21 A I believe -- I believe we got cell phones roadside when we did the traffic stop.

22  
23 Q Okay. Okay. All right. Now, I'll direct your attention to the Besco unit. First of  
24 all, if I understand this correctly, there are a number of bags that are towards  
25 the back of the storage unit; is that fair?

26 A Yes.

27  
28 Q And was there also -- do you recall seeing a bed or any other furniture there  
29 leaning up against the wall?

30 A I think there might have been a mattress. Maybe, like, a -- a twin size  
31 mattress --

32  
33 Q Okay.

34 A -- in and amongst all the -- the clothing and all that stuff.

35  
36 Q Sure. Okay. And in terms of the pictures that you took, you only took pictures  
37 of the marihuana seized; correct? And the -- so I'll go through a few things with  
38 you. So you took pictures of the marihuana from the storage unit.

39 A I wasn't in charge of taking photos. No.

40  
41 Q Okay. You observed photos that -- okay. So -- all right. Who -- who did take



T31

1 A Yes, correct.

2  
3 Q And in -- in this investigation, I understand, did you do that or did you not do  
4 that?

5 A No, we didn't.

6  
7 Q Okay. In terms of the sum total of cell phones, there was just the one cell  
8 phone found at the unit?

9 A I believe so.

10  
11 Q Okay. Now, Constable Gilbertson, if you have to go back to your notes, you  
12 can. But I want to suggest to you that on January 21st you observed Mr. Watier  
13 with what you believed to be three separate drug transactions. Does that ring a  
14 bell to you?

15 A Yeah. I believe we had surveillance on Mr. Watier that day and there are two  
16 meets in one parking lot and one meet at a different location.

17  
18 Q And, again, on February 4th, you had observations of activities consistent with  
19 drug trafficking. And I want to be fair to you, if you have to check your notes,  
20 you can.

21 A No. I recall that day. I wouldn't say they were consistent with drug trafficking,  
22 as we didn't conduct a stop on that date, but they were just suspicious, quick  
23 stops to various businesses and whatnot.

24  
25 Q Okay. But you believe them to be drug related stops.

26 A We had a belief, yes.

27  
28 Q Yeah.

29 A Or at least a suspicion for those stops that day. Yes.

30  
31 Q Yeah. Okay. Now, if you're not able to speak to this, it's okay. But do you  
32 recall inside the backpacks, how those were weighed in terms of the packages  
33 within the backpacks? Were they all the same weights, were they different  
34 weights?

35 A I personally didn't do any of the processing of the exhibits, but I believe they  
36 were in half-pound quantities.

37  
38 Q Okay. Did I see somewhere in your notes that you indicated that you believed  
39 there would be a low likelihood of violence on arresting Mr. Neary? Does that  
40 ring a bell to you?

41 A Yeah. Basically, simply through going through his history with us, I think the

T35

1 Q Okay. Okay. Now, in terms of the search warrants, in the information to obtain  
2 -- and I heard you testify to this as well. Is that you believed that there would  
3 be evidence afforded from the search of the vehicles at the residence; is that  
4 correct?

5 A Yes.

6  
7 Q And you -- I think I heard you testify documentation, further drugs or  
8 packaging; is that right? Is it what you believed would possibly be in there?

9 A I had a larger list of items. Yes. But those would be things in my mind that  
10 would stand in particular.

11  
12 Q And is it just like the laundry list of everything you'd be looking for in a drug  
13 investigation?

14 A It's things consistent with marihuana trafficking. So it wouldn't be this -- every  
15 drug is different, I guess, what -- was what I would say. So in certain  
16 individuals who are dealing in -- in different types of drugs, you would expect  
17 to find these things. As quite often vehicles are like their mobile offices.

18  
19 Q Sure.

20 A So, yes, I created a list of things that I expected to find or would think that a  
21 person would keep in their vehicle that would afford evidence to the offences.

22  
23 Q So in terms of both vehicles collectively, you'll agree with me that you did not  
24 locate any score sheets; correct?

25 A Correct.

26  
27 Q Now, I won't go through the laundry list. You found zero, nothing in either  
28 vehicle affording any evidence of drug trafficking; correct?

29 A Correct.

30  
31 Q Okay. Now, going back to the Besco Storage unit, you found some  
32 identification of Cornelius Travoy.

33 A Yes.

34  
35 Q Did you undertake any efforts to determine who he was?

36 A I had a conversation with Mr. Neary in detention, I believe, just after 2 in the  
37 morning on February 7th to try and determine who that was.

38  
39 Q And without going through any of the details of your discussion, I mean, what  
40 conclusions did you come about who that individual arrived at -- sorry. What --  
41 what did you think after speaking with him? Who -- who is Cornelius Travoy?

T39

1 THE WITNESS: Constable James Campbell.

2  
3 **JAMES CAMPBELL, Sworn, Examined by Mr. McBride**

4  
5 THE COURT CLERK: I'll get you to spell your first and last  
6 name for the record. You may be seated.

7  
8 THE WITNESS: J-A-M-E-S, surname's spelled C-A-M-P-  
9 B-E-L-L.

10  
11 THE COURT CLERK: Thank you.

12  
13 Q MR. MCBRIDE: You can remain standing or you can be  
14 seated. Whatever -- whatever is your pleasure, sir.

15 A I'm fine.

16  
17 Q You're a member of the Saskatoon City Police Service; is that correct?

18 A I am.

19  
20 Q How long have you been a member, sir?

21 A I've been engaged and counting special time since September, 2003.

22  
23 Q Is counting, I'm sorry?

24 A Special constable time.

25  
26 Q Oh, I'm sorry. Okay. And I'm going to direct your attention, sir, to a very  
27 specific date, February the 6th, 2014. Were you on duty that day?

28 A I was.

29  
30 Q I understand you were tasked to assist a drug unit in an investigation.

31 A Yes.

32  
33 Q Do you recall what you were tasked to do, sir?

34 A We were called to have a briefing with SIDEST members in regards to a search  
35 warrant they were preparing for an apartment building on Temperance Street.

36  
37 Q All right. You used a word we may not all be familiar with. SIDEST, what  
38 does that stand for?

39 A Saskatoon Integrated Drug Enforcement Street Team.

40  
41 Q All right. And do you recall the address that this warrant was to be executed at?

T40

1 A 20 -- 205 1001 Temperance.

2  
3 Q All right. Did you get assigned a specific duty to perform when you got there,  
4 sir?

5 A Yes. After -- reviewed the warrant members told me and my partner, Constable  
6 Brown, to take up guard duty on the doors to the building that faced Clarence.  
7

8 Q All right. And did you recall what time you would have arrived at this location,  
9 approximately?

10 A Around 6:00.  
11

12 Q And that's --

13 A Six PM.  
14

15 Q Six PM. All right. And did you, in fact, take up a security position?

16 A I did.  
17

18 Q All right. Did there come a point, sir, where your tasks were changed?

19 A Yes. We were notified over the air by Constable Nave that entry had been  
20 made into the apartment and that the subject had been taken into custody and  
21 that we were to go up to the second floor to assist with anything they required  
22 there.  
23

24 Q All right. When you got to that floor, sir, did you encounter anybody who  
25 appeared to be an occupant?

26 A Yes. Mr. Neary was sitting on the couch.  
27

28 Q All right. And is that person present in court?

29 A Yes. Sitting right there.  
30

31 MR. MCBRIDE: I wonder if he could be --

32  
33 THE COURT: Yeah.

34  
35 MR. MCBRIDE: That's fine, My Lord.

36  
37 THE COURT: Yes, the accused has been identified.

38  
39 MR. MCBRIDE: Thank you, My Lord.  
40

41 Q MR. MCBRIDE: Was there anybody else in the suite, sir?

T41

1 A Several police officers that had made entry.

2

3 Q Anybody else who appeared to be an occupant?

4 A No.

5

6 Q All right. So what direction were you given to assist at that point, sir?

7 A Constable Nave and Constable Gilbertson told me that I would be searching  
8 the kitchen area of the apartment.

9

10 Q Okay. I'm sorry, sir, we have a bit of a hiss in the air. I'm having a bit of  
11 difficulty hearing you.

12 A Okay.

13

14 Q I wonder if you could just -- if you could project your voice just a little more  
15 than you ordinarily would.

16 A Sure.

17

18 Q So is that the only area that you had dealings with that day, sir?

19 A Yes, it was.

20

21 Q All right. Let's walk through what you did when you got into the kitchen, if  
22 you don't mind, please.

23 A Okay. I walked into the kitchen, I drew a quick map in my notebook, just a  
24 layout of the kitchen. And I started -- there's a stove in the corner. I, basically,  
25 started in the stove cupboards moving from bottom to up and searching around  
26 to the fridge area on the left hand side as you're looking into the kitchen.

27

28 Q Rough dimensions of this area, sir?

29 A Oh, I'm terrible at this. Maybe --- maybe 12 by 12.

30

31 Q All right. Let's walk through what you encountered as you were walking or  
32 searching through the kitchen.

33 A Okay. I started, not too much around the -- the fridge area and the -- there was  
34 a sink right next to the fridge. Moved into, sort of, a counter space area that had  
35 some cupboards above it, immediately adjacent to the fridge. There was a -- a  
36 pill bottle with unmarked capsules that had some white crystalline substance in  
37 it. I'm not a drug expert, I asked Constable Nave there. He said to seize it and  
38 that he would deal with it. On the counter immediately below that cupboard  
39 there was a -- a couple small marihuana buds and some -- I'd describe them as  
40 crumbs as well as a black digital scale. I put -- plugged the digital scale in and  
41 it was fully operational and it lit up. I didn't measure anything on it but

T42

1 everything lit up and everything appeared to be working.

2  
3 Q Sorry to interrupt you, sir. Is there a brand name on the scale that you noticed?

4 A Fuzion I believe it was called --

5  
6 Q Okay.

7 A -- with a Z. Carried on to my left. There was a -- an Express Post bag in the  
8 fridge with what appeared to be steroid containers and a cap needle. There was  
9 a stack of money on top of the fridge, fifty 20 dollar bills with an elastic band.  
10 And then there was a cupboard immediately above the fridge and inside that  
11 there was a -- like, a cookie can with a friction lid, and it had a baggie of what  
12 appeared to be psilocybin mushrooms as well as a small baggie of marihuana.  
13 And then I believe there was also a -- in that cupboard above the work area  
14 there was a bag of what appeared to be steroid capsules, various substances  
15 like that.

16  
17 Q If I could just do a little bit of backtracking, sir. When you say you seized these  
18 items --

19 A Yes.

20  
21 Q -- would you have physically taken possession of them?

22 A Yes, I did. I gathered everything together, documented in my notebook as I  
23 found them, what time I found them. And then Constable Nave came to me  
24 shortly after 7 and all of those items were turned over to Constable Nave.

25  
26 Q Okay. I want to direct your attention back to that digital scale, sir. Was there  
27 anything else found in that immediate area?

28 A Some marihuana buds, there was some crumbs around it. Oh, and there was a  
29 baggie, like, a Ziploc baggie that had some, like, crumbs inside of it, like  
30 marihuana residue.

31  
32 Q What size of bag, sir?

33 A I don't recall exactly. It was a Ziploc one so it had the teeth not, like, the -- the  
34 friction lock on it.

35  
36 Q Sure. Freezer size bag or a sandwich?

37 A Yeah, around there I think.

38  
39 Q All right.

40 A It's --

41

T47

1 A I was a member of the Saskatoon Integrated Drug Enforcement Street Team.

2  
3 Q And that's SIDEST, I take it for the acronym.

4 A That's correct.

5  
6 Q Okay. Were you on duty on February 6th, 2014?

7 A I was.

8  
9 Q And were you assigned any tasks that day, sir, in relation to a search?

10 A On that day I was in conversation with Constable Gilbertson and learned that  
11 he was in the process of achieving a search warrant for an address to conduct a  
12 search for a drug investigation. I was asked to conduct surveillance of this  
13 address until the time that the search warrant was drawn up and approved.

14  
15 Q What time did you arrive at the address, sir?

16 A Approximately 3:00 in the afternoon.

17  
18 Q And what address was that?

19 A 205 1001 Temperance Street.

20  
21 Q So you say you're involved in surveillance, sir. Is this vehicular surveillance or  
22 on foot?

23 A It was just monitoring the -- the come and go of the residence itself.

24  
25 Q So you remained outside of the building; is that fair?

26 A I did remain outside of the residence.

27  
28 Q Did there come a time, sir, when a search warrant did arrive for that location?

29 A Yes. I gained entry with the group of investigators at approximately 6:05 PM.

30  
31 Q Did you have occasion to review the warrant before you went in, sir?

32 A I did.

33  
34 Q All right. And what were you -- general terms, what were you supposed to be  
35 looking for during the course of that search?

36 A Our investigation was relating to drug investigations, so we were looking for  
37 drugs.

38  
39 Q Specific substance in mind, sir?

40 A Marihuana.

41

T48

1 Q Okay. I'm sorry, you indicated you got in at 6:05 PM?

2 A That's the time that I entered the residence. Yes.

3  
4 Q In terms of people that could be deemed to be occupants, how many people  
5 would you have encountered as you entered?

6 A There was only one occupant.

7  
8 Q All right. And do you know who that person is?

9 A Yes. Seamus Neary.

10  
11 MR. MCBRIDE: I think my friend has conceded identity,  
12 My Lord, so I won't go through that any further.

13  
14 THE COURT: Yes. I --

15  
16 MR. MCBRIDE: Thank you.

17  
18 THE COURT: That's -- that's done.

19  
20 Q MR. MCBRIDE: Was there anybody else besides Mr.  
21 Neary in the apartment when you entered, sir?

22 A No.

23  
24 Q Did you get a specific task to perform in relation to the search once you were  
25 inside the -- the residence?

26 A I was tasked to assist in the search of the residence.

27  
28 Q And were you assigned a particular area to search out, sir?

29 A Initially I was assigned the living room area in the northwest corner. I didn't  
30 find anything in that area relating to -- to drugs.

31  
32 Q Were you given another area to search at that --

33 A I proceeded to search the west wall area, close to the -- in-between the -- the  
34 kitchen and the living room.

35  
36 Q All right. Did you find anything of interest there, sir?

37 A Yes. There were some banking documents with Seamus Neary's name on it and  
38 a filing cabinet beside a desk.

39  
40 Q And did you locate anything else, sir?

41 A I did locate a green iPhone on that desk shortly thereafter.



T51

1 Q MR. MCBRIDE: And just so that I pronounce the name  
2 correctly. I mess it up every time. I do apologize. It's Constable Ehalt; right?

3 A That's correct.  
4

5 Q Thank you, sir. You're a member of the Saskatoon Police Service?

6 A I am.  
7

8 Q And how long have you been a member, sir?

9 A Just over 12 years.  
10

11 Q All right. I'm going to take your memory back if -- if you can, please, to early  
12 February of 2014. What unit were you attached to at that time?

13 A Street Gang Unit.  
14

15 Q All right. And my understanding on February the 6th, 2014 you were asked to  
16 assist another unit?

17 A That's correct, yes.  
18

19 Q And what unit were you asked to assist, please, sir?

20 A SIDEST, the drug unit.  
21

22 Q Do you remember -- do you know what the acronym stands for?

23 A Yeah. Saskatoon Integrated Drug Enforcement Street Team.  
24

25 Q Okay. And were you given a specific task to do when you were assisting this  
26 unit, sir?

27 A I was assisting in executing -- executing a search warrant and subsequently  
28 searching.  
29

30 Q Okay. Were you briefed by anybody?

31 A I was. I believe it was Constable Gilbertson.  
32

33 Q And what was the residence of interest at that time, sir?

34 A Suite 205 at 1001 Temperance Street.  
35

36 Q And did -- did you actually come into possession of the search warrant? Did  
37 you see a copy of it?

38 A Yes, I did. And I reviewed it.  
39

40 Q Okay. And in very broad terms, sir, what did the warrant authorize you to  
41 search for?

T52

1 A Looking for drugs, bank statements, any documents pertaining to other --  
2 documents in general, banking documents, keys, anything with regards to drug  
3 trafficking.  
4

5 Q Okay. And were you given a specific task once you were inside the unit, sir?

6 A Yeah. I was tasked with searching specific locations.  
7

8 Q Okay. Were you present when entry was made into the suite?

9 A Yes, I was.  
10

11 Q And how did entry get in? How was entry made? I'm sorry.

12 A Through the front door after knocking on the door. I was, I believe, the third  
13 person in line. And door was knocked on advising that the -- the person came  
14 to the door; Mr. Neary. He was subsequently placed under arrest by a fellow  
15 officer, Constable Nave, and entry was subsequently made advising that it was  
16 a search warrant.  
17

18 Q All right. And I think you had indicated you had specific areas that you were  
19 directed to search, sir?

20 A Yeah. I -- subsequent to that I ended up searching a bathroom, front entryway  
21 and what would be described as a pantry area.  
22

23 Q All right. Let's talk with the bathroom. Did you find anything of interest at that  
24 location, sir?

25 A No, I did not.  
26

27 Q And how about the front entryway?

28 A Yes, I did.  
29

30 Q What did you find there?

31 A Right at the front doorway there was five sets of keys and also in the front  
32 entryway there's a large closet. Inside that closet I found a large bag of  
33 suspected cannabis marihuana which I -- I only estimated the weight to be  
34 approximately one pound. And inside of that bag was two separate bags.  
35

36 Q If you are able and if you recall, can you tell us about the packaging of that  
37 marihuana?

38 A Yes. There was a large bag. Inside of that bag there was two separate bags of  
39 suspected cannabis marihuana, which I believed to be cannabis marihuana and  
40 just packaged individually that way.  
41

T53

1 Q Anything unique about the bags on the inside, sir?

2 A Not that I recall.

3

4 Q Okay. And when you say small bags, is that like -- like a sandwich bag?

5 A I would -- if -- if I'm estimating it being a pound, it would be two half-pound  
6 bags.

7

8 Q Did you have occasion to look at the keys, sir, before you turned them over to  
9 anyone?

10 A I did.

11

12 Q And what did they appear to be, just generally?

13 A Most -- well, it was interest to me that I noted was that it appeared to be several  
14 vehicle keys.

15

16 Q All right. So these were on separate rings all on one location?

17 A Yes. There was multiple other keys on there which I didn't actually know  
18 which -- what they might belong to.

19

20 Q Okay. No problem. What became of the marihuana and the keys that you  
21 located, sir?

22 A I subsequently turned those over to the exhibit officer, Constable Nave.

23

24 Q All right. I think you had indicated as well you were directed to do a search of  
25 the pantry area.

26 A That's correct.

27

28 Q And did you locate anything of interest there, sir?

29 A Yeah. I located some old rental documents for a storage locker. I observed two  
30 copies that I subsequently took seizure of. And I also located a -- a cheque  
31 book for CIBC.

32

33 Q And did you have occasion to look at it at all?

34 A I briefly looked at it, I observed it was for past rental and I believed that it  
35 might hold some evidentiary value to believe that there might be a current  
36 storage rental. So I turned them over to Constable Nave for them to  
37 (INDISCERNIBLE).

38

39 Q Okay. But in respect to the bank account, sir, did you have a chance to look at  
40 that cheque book?

41 A Yes, I did.

T54

1 Q And did it appear to be in anybody's name?

2 A Yeah. Mr. Neary's name.

3  
4 Q Okay. And what became of all those items, sir? That would be the rental  
5 documents and the bank account cheque book.

6 A Oh, those were turned over to the exhibit officer, Constable Nave.

7  
8 Q Did you find anything else of significance, sir, during that search?

9 A No, I did not.

10  
11 Q Is that the extent of your involvement with this investigation?

12 A Yes, it was.

13  
14 Q Okay. Thank you, sir. That's the all the questions I have.

15  
16 THE COURT:

Thank you, Mr. McBride.

17  
18 Cross-examination, Mr. Lavier?

19  
20 **Mr. Lavier Cross-examines the Witness**

21  
22 Q MR. LAVIER: The only place that you located anything  
23 of evidentiary value was at the front entrance where the marihuana was found,  
24 was one place; correct?

25 A That's correct.

26  
27 Q And where the document was located; is that correct?

28 A That's correct.

29  
30 Q And in terms of the rest of your own personal search, nothing of evidentiary  
31 value was obtained by you.

32 A By myself, correct.

33  
34 Q Okay. In terms of proximity of these bags of marihuana, where exactly are they  
35 situated within the residence?

36 A Front entryway in the closet area.

37  
38 Q Okay.

39 A The closet had -- I don't remember if it had doors on it, but it was on a shelf to  
40 the right side of the closet, sort of, higher up on the shelf.

41

T58

1 THE COURT CLERK: Okay. Just spell your first and last name  
2 for the record.

3  
4 THE WITNESS: Linda, L-I-N-D-A, Schmalz, S-C-H-M-  
5 A-L-Z.

6  
7 THE COURT CLERK: You may be seated if you wish.

8  
9 Q MR. MCBRIDE: Sit or stand as you choose. But I will ask  
10 you, we've got this hissing in the courtroom. If you could remember to keep  
11 your voice up it would be appreciated. And you're a member of the Royal  
12 Canadian Mounted Police; is that correct?

13 A I am.

14  
15 Q How long have you been a member?

16 A Just shy of 11 years.

17  
18 Q All right. It's my understanding, ma'am, there was an investigation that  
19 preceded the one into the accused here that was ongoing for some time.

20 A Yes, that's correct.

21  
22 Q And you became involved in that investigation on or about February 5th of  
23 2014?

24 A That was the culmination of that particular investigation.

25  
26 Q Okay. Had you been involved with the investigation prior to that?

27 A I have.

28  
29 Q Okay. Surveillance mostly?

30 A Yes, that's correct.

31  
32 Q Okay. I'm going to focus, though, on February the 5th if it's okay. You were  
33 involved in surveillance on that day at what location, please?

34 A I was watching 103 Chan Crescent.

35  
36 Q All right. Did there come a time when you moved to a different location?

37 A Yes. We followed the vehicle through surveillance where it approached and  
38 stopped near 1001 Temperance Street.

39  
40 Q Okay. Which vehicle were you looking at, ma'am?

41 A It was -- I'd have to refer to my notes if I could?

T59

1 Q Okay. Is it in your own handwriting?

2 A They are.

3

4 Q Were they made close to or at about the time of the events that they describe?

5 A Yes.

6

7 Q Do you need them to refresh your memory?

8 A I do.

9

10 MR. MCBRIDE: May she refer, My Lord, from time-to-  
11 time?

12

13 THE COURT: Of course. Of course.

14

15 MR. MCBRIDE: Thank you.

16

17 THE COURT: As and when -- as and when you need to,  
18 Constable.

19

20 THE WITNESS: Thank you.

21

22 A Okay. Vehicle with the Sask marker 993 Juliet, Bravo, Uniform.

23

24 THE COURT: What kind of vehicle?

25

26 THE WITNESS: I believe it was a minivan.

27

28 Q MR. MCBRIDE: Make and model just by chance? Do you  
29 have it? That's okay.

30 A No. It would likely be on the -- the notes for that particular day of our  
31 surveillance report.

32

33 Q Okay. That's fine. You followed that vehicle for -- you said from Chan  
34 Crescent to which address on Temperance Place?

35 A It -- it went to other areas but it ended up ultimately on Temperance Street near  
36 1001 Temperance Street.

37

38 Q All right. And did you have an eye on the vehicle at that time?

39 A I did.

40

41 Q All right. And tell us about your observations at that point, please.

T60

1 A At that point, two males exited the vehicle. They were parked east bound or  
2 facing east bound on the south side of the street across from 1001 Temperance  
3 Street. That building is on a corner. So on the corner of Temperance -- and I'm  
4 not sure what that intersecting street is off by heart. But they did -- the two  
5 males exited the vehicle, both carrying backpacks which appeared to be  
6 relatively flat, and they entered the building 1001 Temperance Street.

7  
8 Q All right. Did you know who these people were?

9 A We had been surveilling two males, Cody Watier and Vito Amico.

10  
11 Q And were that -- those were the two people that you were seeing that day?

12 A Yes.

13  
14 Q All right. Tell us what they did, please.

15 A At that point in time they entered the -- the -- the building. I --

16  
17 Q Which one, sorry?

18 A 1001 Temperance Street.

19  
20 Q Okay.

21 A I stated I would go in on foot so I got out of my vehicle and went around and  
22 buzzed my -- buzzed a -- just someone's apartment, random apartment number.  
23 It was 203 that I buzzed randomly and then they buzzed in without any  
24 conversation.

25  
26 Q They, sorry?

27 A The person at 203 buzzed me in without asking me who I was.

28  
29 Q Okay.

30 A I did enter the building, took a peek around and went up onto the second -- in-  
31 between the second and third floors. When I reached the second floor I noted  
32 that the person -- a person had opened the door of 203 and was looking back  
33 and forth, up and down the hallway and then they stepped back inside their --  
34 their unit. I ended up -- I couldn't see our targets at all within the building so I  
35 positioned myself at the south end of the -- the floor in-between 2 and 3. There  
36 was open stairwells -- a stair well at the end on the south end of the building  
37 with, what I would describe as, open metal steps. And in-between each of the  
38 levels there was a small platform area. There was also a window facing  
39 southward out to where I could the -- their actual vehicle that they had just  
40 departed from. And so I awaited there and -- for -- to hear any movement  
41 coming out of a particular apartment.

T61

1 Q Okay. So at this point, you haven't seen the two people inside the building  
2 since you had entered?

3 A No.  
4

5 Q All right. Did that change, ma'am?

6 A Yes. Shortly thereafter I heard noise, a door opening, closing, voices. I peeked  
7 down. I could tell it was coming from the second floor so I peeked down a bit  
8 from where I was standing on that landing. And where I saw the two males was  
9 approximately in the mid-hallway region and they were walking southbound  
10 towards myself.  
11

12 Q Okay. Could you identify them at that point?

13 A Yes.  
14

15 Q Who were they?

16 A They were Cody Watier and Vito Amico.  
17

18 Q Okay. What did they do?

19 A At this point in time they were carrying their backpacks but they looked  
20 considerably fuller. They exited the building out the south door and -- well,  
21 like, went down to the main floors and exited out of the south door and got into  
22 their vehicle and departed.  
23

24 Q You could see all of this?

25 A I did.  
26

27 Q Okay. And what did you do after that, after you saw them depart?

28 A As they departed, I -- I was in contact with one of the other officers, advised  
29 them of what I was seeing and notified them and I -- after they got in their  
30 vehicle and pulled away, I departed the building, got back into my vehicle and  
31 joined back in on surveillance.  
32

33 Q All right. Did you hear what became of this vehicle or the two occupants?

34 A Yes. Before I was able to catch up on surveillance they were arrested -- I  
35 believe it was on Balmoral Street that they were stopped, near Spadina and  
36 Balmoral.  
37

38 Q All right. And did you have occasion to come up and assist in the arrest?

39 A I did. After the fact, I maintained the vehicle while awaiting it to be seized and  
40 towed.  
41



T62

1 Q Okay. Did there come a time later when you received some exhibits from  
2 another officer in relation to that arrest?

3 A Yes. Part of that same shift but on into the next day, so it would have been the  
4 early morning hours of the 6th of February, I took possession of two  
5 backpacks, the two backpacks that were seized from Watier and Amico. I took  
6 possession of those backpacks from Constable Gilbertson at -- I believe it was  
7 0318.  
8

9 Q All right. That's the next morning of February the 6th, you said?

10 A Yes.  
11

12 Q All right. And are -- on the table in front of us two items. I wonder if you have  
13 seen those before and can tell us if you are familiar with them?

14 A Yes. Those are the backpacks that I took possession of from Constable  
15 Gilbertson from --  
16

17 Q All right. I wonder if you wouldn't mind stepping down into the well, ma'am,  
18 please, and we'll have to work our way through the contents of those.  
19

20 MR. MCBRIDE: I don't know if we want to move a  
21 microphone closer or not, My Lord.  
22

23 THE COURT CLERK: This one, I think, will pick her up.  
24

25 MR. MCBRIDE: All right. Thank you.  
26

27 THE COURT CLERK: If you just want to just move it up a little.  
28

29 Q MR. MCBRIDE: All right. Have you labelled those in any  
30 way?

31 A Yes. These are exhibits number 24 and 25.  
32

33 Q And do you know from where they came other than from Constable  
34 Gilbertson?

35 A These were the backpacks that were seized from Vito Amico and Cody Watier  
36 which they had been carrying into the apartment building.  
37

38 Q All right. So they -- they resemble the -- the two --

39 A Yes.  
40

41 Q -- that you had said -- seen? All right. Thank you. I wonder if we could start

T70

1 Q All right. Okay. Would you mind having a seat back in the witness box,  
2 please? Thank you.

3  
4 THE COURT: You can stand or sit, Constable.  
5 Whatever you prefer.

6  
7 THE WITNESS: Thank you.

8  
9 Q MR. MCBRIDE: So as I understood you before, when  
10 these individuals that you had identified as Mr. Watier and Mr. Amico had left  
11 Temperance, you were not able to catch up to their vehicle before they were  
12 arrested?

13 A That's correct.

14  
15 Q Okay. Did you encounter them again?

16 A They were still on scene when I arrived on the scene. They were in the process  
17 of being taken to holding by uniformed members.

18  
19 Q All right. Than you. So it would have been later the next morning, then, that  
20 you would have processed exhibits in 3 and 4?

21 A That's correct. Well, yeah, early in the -- that next morning.

22  
23 Q Okay. So --

24 A Same shift.

25  
26 Q I'm sorry?

27 A The same shift.

28  
29 Q Sure. What time did your shift end on February the 6th then?

30 A 0500.

31  
32 Q All right. You came back to work that same day?

33 A That's right.

34  
35 Q And were you tasked to do anything on that day?

36 A Yes. I went to the building 1001 Temperance and gained access to the building  
37 again and looked at the layout of the second floor.

38  
39 Q All right. And did that assist you in any way?

40 A Yes. It provided information towards a search warrant.

41

T71

1 Q Okay. So what did you look for when you went back to this building?

2 A I was looking for the general layout, stairs, approach to the area, the second  
3 floor layout and as well as the location of the apartment number 205.

4

5 Q Okay. Why was 205 of concern to you?

6 A Information had been received with regard to that being possibly the particular  
7 address in question where Mr. Amico and Mr. Watier had attended.

8

9 Q All right. So going back to your observations from the previous day, could you  
10 tell which apartment these individuals had emerged from?

11 A No. As I said, when I -- I heard voices and -- but didn't -- and heard a door  
12 opening and closing. But from my stance I was elevated above the second floor  
13 somewhat and at the end. So I did not actually lay eyes on them until about --  
14 they were mid -- in the -- in the mid-hallway.

15

16 Q All right. And they were walking towards you by this point?

17 A Yes.

18

19 Q Okay.

20 A So they had come from further down but I couldn't see which door.

21

22 Q Did you have any other dealings with anybody associated with that building at  
23 that time?

24 A That morning?

25

26 Q At that time that you were there?

27 A No.

28

29 Q All right. Did you eventually get a key for this building?

30 A Yes. After that, I attended to the real estate board, which was the property  
31 management company for that building, to obtain an actual master key to the --  
32 the building.

33

34 Q All right. So that would just open the exterior doors?

35 A That's correct.

36

37 Q All right. Did you get a key to the apartment itself?

38 A No.

39

40 Q All right. All right. At some point, ma'am, did you later learn that a search  
41 warrant had been issued for this location?

1 A That's right.

2  
3 Q All right. And how did you find that out?

4 A Through working with my fellow teammates.

5  
6 Q All right. Did you get a copy of the warrant or did you view a warrant or  
7 view --

8 A I --

9  
10 Q -- a copy of the warrant? I'm sorry.

11 A I did view a copy of the warrant.

12  
13 Q Okay. And just in general terms, what were you supposed to be looking for  
14 when you went in there?

15 A Anything to do with marihuana, paraphernalia, any documentation that might  
16 show sales or such.

17  
18 Q Sure. Okay. Did you participate in the search?

19 A I didn't.

20  
21 Q Okay. What became of the key that you had for the outside of the building?

22 A I returned it several days later to the property management.

23  
24 Q Did your search team members have to use it?

25 A No, they didn't.

26  
27 Q Okay.

28 A Oh, pardon me. To the -- yes.

29  
30 Q 205?

31 A Yeah. Not to 205, no. Just to the main building.

32  
33 Q Which building are you referring to? I'm sorry.

34 A To the --

35  
36 Q To the exterior of the --

37 A -- to the exterior of the building. Yes.

38  
39 Q Okay. I'm sorry, my mistake. I'm sorry, I didn't mean to confuse you there.

40 A Yeah.

41

T73

1 Q I'll try to stay on track with you. All right. So they did not need that key to get  
2 into the building?

3 A We did use that --

4

5 Q Okay.

6 A -- key to get into the building. Yes.

7

8 Q I'm sorry. All right. And you were not part of the search team for this location.

9 A No.

10

11 Q All right. Did you assist in the investigation later on?

12 A I did.

13

14 Q And what did you do then?

15 A After reading the warrant, although not part of that search, I did do the -- the  
16 knock at the apartment door of 205, whereas --

17

18 Q When was that? I'm sorry.

19 A To get into the apartment door at 205.

20

21 Q Okay. So you were part of the search team?

22 A I knocked on the door. The accused answered the door and the -- the rest of the  
23 search party went from there, announced search warrant, he was arrested. But I  
24 did not actually take part of the search.

25

26 Q I see. Okay. I'm sorry. So you'd have been -- left at some point. Did there come  
27 a point in time when you received information about another location that  
28 might be of interest?

29 A Yes. There was some keys that were located within the residence as a result of  
30 the search warrant and one of them was believed to be -- belonged to a locker.

31

32 Q Okay. Did you find out anything more about it or did members of your team  
33 find anything more about that?

34 A Yes. There was -- that it was a locker -- I can't ascertain as to how the  
35 information came about.

36

37 Q No, that's fine.

38 A But it was determined that it was at a unit owned by Besco Storage on 105th  
39 Street in the Sutherland area.

40

41 Q All right. And did you become aware of the fact that a warrant was issued for

T74

1           that location?

2       A I did.

3

4       Q Did you review that warrant?

5       A I did.

6

7       Q Did you all go along with the search team on that occasion?

8       A Yes, I did. And I had actually had the keys in my possession and I unlocked the  
9       unit E208 at Besco Storage.

10

11      Q Okay. What do you remember about the key?

12      A It had a grey rubber covering on the top part of the key.

13

14      Q Okay. Who did you get the keys from?

15      A Constable Nave.

16

17      Q All right. What kind of lock was on the door at Besco Storage?

18      A With Besco Storage there's a main lock --

19

20      Q Right.

21      A -- which the -- the owner of the -- or manager of the unit, whichever, had been  
22        contacted. He came and opened that main building. The building is shaped,  
23        kind of, like in a large U-shape. And once inside the -- that unit, then there are  
24        -- are numerous storage units within -- inside of the building. And those --  
25        those units have -- individual units have padlocks on them. So --

26

27      Q Okay.

28      A -- the padlock that --

29

30      Q Okay. Can I back you up just a little bit? You said it's a U-shaped unit. So is  
31        that -- are they three distinct wings then? Is that what you're referring to?

32      A Yes. A corridor, and on each side of the corridor there is -- there's lockers. And  
33        along the back side of that particular building seemed to be more elongated  
34        than -- it wasn't, like, an equilateral U -- U-shape.

35

36      Q Okay.

37      A It was more elongated on the back side.

38

39      Q M-hm. And that's where this particular locker was located?

40      A Yes. On the back side of the unit.

41

T75

1 Q Okay. And you managed to open the padlock with the keys. And were you able  
2 to get inside of the unit?

3 A Yes, we were.  
4

5 Q Okay. What did you discover when you went inside the unit?

6 A Inside the unit it was approximately 4 feet wide, 8 feet deep and there was  
7 some bags and I believe a suitcase and on the floor some numerous items. I  
8 didn't search the area because it was of small physical area. There was just one  
9 officer that went in and -- and conducted the search of that area.  
10

11 Q Okay. Who was with you then?

12 A Constable Nave and Constable Gilbertson.  
13

14 Q And do you recall who did the searching?

15 A Constable Nave.  
16

17 Q All right. And did you find anything of interest to your investigation?

18 A Yes. He located a large black garbage bag that was full of bags of marihuana  
19 packaged with large Ziploc bags inside of vacuum sealed bags.  
20

21 Q All right. I understand you took some pictures; is that correct?

22 A Yes. There was also a white plastic bag that had more marihuana packaged in  
23 that way as well.  
24

25 Q All right. I'm going to show you a booklet of a couple of photographs and ask  
26 you to -- have you seen those before?

27 A Yes.  
28

29 Q Where have you seen those before?

30 A These are photos that were taken -- the first one is taken on the floor in the  
31 hallway of Besco Storage. And it was the marihuana that was seized in the  
32 black plastic bag that you can see in the upper right hand corner of that photo.  
33 And then the -- on the upper left hand corner is a white plastic bag, kind of,  
34 like a kitchen style garbage bag. And there was more marihuana in there as  
35 well.  
36

37 Q Who took the photo?

38 A I did.  
39

40 Q All right. And does it depict the events or the items that are seen accurately?

41 A Yes.

T76

1 Q I see that there's another photograph there. Can you tell us about that one,  
2 please?

3 A Yes. And this photo is one that was taken at our detachment with the total  
4 amount of the -- believe the ones that were in the white garbage bag were also  
5 taken out. And this is on the floor in our office. The blue at the top is actually  
6 the -- our lockers at the -- at the top of the building -- or the top of the photo  
7 there.

8  
9 Q Which building is that?

10 A This is the old Saskatoon Police Service building, the one that was located  
11 downtown.

12  
13 Q Did you take that picture as well?

14 A Yes.

15  
16 Q And does it accurately depict the items that are shown there?

17 A Yes, it does.

18  
19 Q So in the first photograph, then, if I can get you to go back to that one.

20 A M-hm.

21  
22 Q How many bags in total do we see?

23 A One, two, three, four, five, six, seven, eight, nine, ten -- eleven bags.

24  
25 Q Eleven bags? Okay. And then the second photograph?

26 A One, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve -- thirteen  
27 bags.

28  
29 Q All right.

30  
31 MR. MCBRIDE:  
32 please, My Lord?

So if that could be the next exhibit,

33  
34 THE COURT:  
35 from storage locker.

P-5, booklet of photos of items seized

36  
37 **EXHIBIT P-5 - Booklet of photos**

38  
39 Q MR. MCBRIDE: When you were dealing with backpacks  
40 and the contents, ma'am, at -- at some point you become what's called an  
41 exhibit officer; is that correct?



T93

1 Q Roughly. Or if you'd like to refer to your notes, by all means, you can refer to  
2 your notes.

3 A I actually don't think it will be in this notebook.  
4

5 Q Okay.

6 A I think it was in December, yet, of 2013.  
7

8 Q Okay.

9 A I'd -- I really don't know. I'd have to check and I don't have those notes with  
10 me.  
11

12 Q You'd agree with me that other than in February 5th/6th, around that time, you  
13 didn't make any observations in all of the times that you were observing Mr.  
14 Watier where he was with Mr. Neary? You agree with me?

15 A Yes, I would.  
16

17 Q Yeah.

18 A Yeah.  
19

20 Q Okay. And you were part of the team that was investigating Mr. Watier starting  
21 in December, sometime, of 2013?

22 A That's correct.  
23

24 Q And to your knowledge, the name Seamus Neary did not come up at any time,  
25 that you can recall, up until the 5th or 6th of February.

26 A That's correct.  
27

28 Q Okay. Now, let's go back to the Besco unit. You were standing out in the hall,  
29 so your vantage point -- it sounds like, wasn't perfect.

30 A True.  
31

32 Q Were you able to see the location of the bags of marihuana?

33 A As I said, there was -- it was all in a large black bag. I remember seeing the  
34 black bag, but as far as for exactly what was -- where it was in position --  
35

36 Q Sure.

37 A -- no.  
38

39 Q Okay. Now, you know how there's a little smaller white bag?

40 A Yes.  
41

T94

1 Q To your recollection, is that white bag separate or is that inside the larger black  
2 bag?

3 A I don't recall.  
4

5 Q Okay. And from your vantage point, how far from the door is the big black bag  
6 of marihuana?

7 A Well, the hallway's right there and it's 4 by 8, 8 feet deep. So not -- somewhere  
8 in relation there. As I said, I wasn't -- I don't -- I didn't go inside, specifically.  
9

10 Q Okay.

11 A So I don't recall the actual --  
12

13 Q Fair enough.

14 A -- location of the bag.  
15

16 Q This might be a tough question. In terms of the markings -- and if you don't  
17 remember, it's okay. What I'd like to put to you is that none of the bags of  
18 marihuana located at Mr. Watier's residence had the PC markings on it. Do you  
19 recall if that's -- I don't know if you do or not.

20 A I don't.  
21

22 Q Yeah. Okay. Fair enough.  
23

24 MR. LAVIER: My Lord, I'd like to take ten minutes, if I  
25 can, and just consult with my client. If you prefer, I can -- I can consult with him  
26 quickly and see if there's anything else he'd like me to address. But --  
27

28 THE COURT: Why don't you just consult with him  
29 now. Is that all right?  
30

31 MR. LAVIER: Yeah.  
32

33 THE COURT: Sure. Take your time.  
34

35 MR. LAVIER: Thank you very much, Officer.  
36

37 THE COURT: Thank you, Mr. Lavier.  
38

39 Is there any re-exam, Mr. McBride?  
40

41 MR. MCBRIDE: No. Thank you very much, My Lord.

T100

1 Q MR. MCBRIDE: And, sir, because of the acoustics, if you  
2 wouldn't mind just projecting your voice just a little louder than you ordinarily  
3 would. I know you're soft spoken. You're a member of the Royal Canadian  
4 Mounted Police; is that correct, sir?

5 A That's correct.

6  
7 Q You hold the rank of constable.

8 A Yes.

9  
10 Q How long have you been a member, sir?

11 A April 2006.

12  
13 Q Okay. Ten years, roughly?

14 A Yeah, ten years.

15  
16 Q And I'm going to take your memory back, sir, to February of 2014. What unit  
17 were you assigned to at that time?

18 A The Saskatoon Drug Integrated Drug Unit.

19  
20 Q Okay. And in the early part of February -- of on the 4th, 5th, and 6th, sir, I'm  
21 going to take your attention back to that. Were you involved in some  
22 surveillance at that point?

23 A Yes.

24  
25 Q And who were the individuals of interest to you at that point?

26 A Well, on -- on the 6th -- are we talking about there?

27  
28 Q Fifth and sixth, sir.

29 A On the 5th it was a couple of fellows by Amico and Watier, was their names  
30 they -- they went by.

31  
32 Q And were you involved in surveillance on February the 5th, sir?

33 A Yes.

34  
35 Q And where did you take up surveillance initially?

36 A I took up surveillance in the area of, I believe, Chan Crescent and -- and  
37 Silverwood in an area of Silverwood in Saskatoon.

38  
39 Q Okay. Was there a particular vehicle of interest that you remember?

40 A I haven't prepared specifics --

41

T101

1 Q That's fine.

2 A -- exactly on the file, unfortunately, but I believe it was a van.

3 Q Okay. And was anybody else on the surveillance team with you, sir?

4 A Yes. There would have been members of the Integrated Drug Unit with me.

5

6 Q Did that vehicle that you described go mobile at some point?

7 A Yes.

8

9 Q And where did it end up, please, sir?

10 A It went to an area off Clarence on an area of Temperance -- Temperance Street.

11

12 Q All right. And were you able to see the vehicle or the persons in it?

13 A No.

14

15 Q All right. I'll let you describe what happened from that point forward. So the  
16 vehicle has arrived, it stopped there. What's the next thing that happens from  
17 your perspective?

18 A My perspective is -- I guess, a term that I would use in the unit is I was sitting  
19 on the periphery, or we call it sitting in the weeds, with not having an eye but  
20 monitoring the radio. One of our constables followed. I believe it was  
21 Constable Schmalz followed the individuals into an apartment complex and  
22 was able to call those individuals away from the complex as well.

23

24 Q What does that mean, sir?

25 A When they departed, when they left --

26

27 Q Okay.

28 A -- I was on the phone with her, you know, for officer safety reasons, of course.  
29 And she -- she, if I recall correctly, just said they're leaving. And I was able to,  
30 via radio, inform the person that -- that had the eye, which I did not have the  
31 eye on them.

32

33 Q Did you have some interaction with those individuals at some point after that,  
34 sir?

35 A They were -- we were given direction to make the arrest of -- of those two  
36 individuals. It was down along the river. I can't remember the cross street  
37 exactly. And -- and we did so; we made -- did a traffic stop and made the arrest  
38 of them, of those two individuals in the van.

39

40 Q All right. Were you involved in the arrest, sir?

41 A Briefly, yes. I was in the -- the tail end of that arrest. I wasn't directly involved

T102

1 with the actual traffic stop of them but I showed up shortly after.

2  
3 Q And do you remember the person you dealt with?

4 A Again, I can't remember specifically. It was one of the boys I dealt with and  
5 brought them back to the vehicle, verbally arrested them, and then they were --  
6 they were taken and read by somebody else, not me.

7  
8 Q All right. Keeping our attention on that same day, sir, did you have further  
9 involvement with this file? I'm sorry, let me take you to the next day. I'm sorry.

10 A Okay.

11  
12 Q Did you have involvement with this file the next day, February 6th?

13 A The next day we sat up in the area of -- on -- on Temperance. Constable  
14 Gilbertson was drafting up a warrant to -- for -- for an apartment that -- that  
15 one of the members saw the -- their names never stay -- Watier and Amico  
16 coming out of. And we were just waiting to execute that warrant. I was on part  
17 of a team that was going to execute the warrant.

18  
19 Q Did you have an assigned duty in respect to that search there?

20 A I did. I was assigned as exhibit officer for that one.

21  
22 Q Did you see a copy of the search warrant before you entered, sir?

23 A I did.

24  
25 Q Okay. And you had occasion to review it?

26 A Yes, I did.

27  
28 Q All right. Can you tell us how your search team got access to this apartment?

29 A Constable Schmalz went to the door and knocked. Myself and other individuals  
30 of the team were just right around the corner, just -- just shortly out of sight.  
31 When the door was opened we just announced our presence as police officers  
32 and -- and briskly walked towards him and arrested him.

33  
34 Q Okay. Do you remember the suite?

35 A Specifically, I mean, it's written on everything I had. It's 205.

36  
37 Q Okay. And you said you arrested him. Which person did you arrest at that  
38 time?

39 A Seamus.

40  
41 Q And do you know the last name?

T103

1 A Neary.

2  
3 Q All right. Did you encounter any other persons around the suite or inside the  
4 suite, sir?

5 A No.

6  
7 Q Okay. So you indicated you were the person that was tasked with exhibits. Did  
8 you actually physically seize anything? Were you assigned to go to a certain  
9 area and -- and look around and collect items?

10 A I did not seize anything out of the apartment. No.

11  
12 Q Okay. And -- but you did end up with a number of items in your possession; is  
13 that correct?

14 A Correct.

15  
16 Q And how did that happen?

17 A Investigators that were searching would locate an item and would -- would --  
18 would hand it to me to seize it. And then I would, you know, put it in an  
19 evidence bag and hold continuity of it and so on.

20  
21 Q All right. And you, as well, recorded what you had taken on what's called a  
22 drug exhibit control form; is that correct?

23 A Correct.

24  
25 Q And that's written in your own handwriting?

26 A Correct.

27  
28 Q And, effectively, that was your notes with respect to the items that were  
29 seized?

30 A Correct.

31  
32 Q All right. Do you need to refer to it from time-to-time to refresh your memory?

33 A I do.

34  
35 MR. MCBRIDE: My Lord, if he could from time-to-time?

36  
37 THE COURT: No problem. Whenever you need to.

38  
39 THE WITNESS: Thank you, My Lord.

40  
41 Q MR. MCBRIDE: All right. I'm going to direct your

T104

1 attention, sir, to what you've labelled as police exhibit number 1 on your drug  
2 exhibit form. Do you have that item with you today?

3 A Yes, I do.

4  
5 Q Could you produce it for me, please? No, just the -- the item that's  
6 (INDISCERNIBLE).

7 A Item number one?

8  
9 Q Yes, sir.

10 A Okay. Item number one is -- I have it as miscellaneous documents. It's --

11  
12 THE COURT CLERK: (INDISCERNIBLE).

13  
14 Q MR. MCBRIDE: How did that ever come to be in your  
15 possession, sir?

16 A That item was found by Constable Landry and at a time of 1840, and it was  
17 located in a filing cabinet beside the desk.

18  
19 MR. MCBRIDE: If it pleases the Court, My Lord, can that  
20 be the next one on exhibit?

21  
22 THE COURT: That will be P-7, financial records in  
23 CIBC folder.

24  
25 **EXHIBIT P-7 - Financial records in CIBC folder**

26  
27 MR. MCBRIDE: Thank you, My Lord.

28  
29 Q MR. MCBRIDE: Sir, the next set I'm -- of interest to us  
30 today, I'm going to direct your attention to what you have described as police  
31 exhibit number 4. Do you have that item with you today?

32 A Yes, I do.

33  
34 Q And what is that item? Can you describe what you're handing me?

35 A Yes. Exhibit number 4 is a black Fuzion scale with some Ziploc bags. And it  
36 was found by Constable Brad Campbell at a time of 1920 on the kitchen  
37 counter.

38  
39 Q All right. Did you check to see if this thing was functioning, the scale?

40 A No, I did not. I can't say that I did.

41

T105

1 Q Okay.

2  
3 MR. MCBRIDE: If it pleases the Court, My Lord, could  
4 that be the next Crown exhibit, P --

5  
6 THE COURT: P-8, Fuzion scale.

7  
8 **EXHIBIT P-8 - Fuzion scale**

9  
10 MR. MCBRIDE: Thank you, sir.

11  
12 Q MR. MCBRIDE: I'm going to direct your attention, sir, to  
13 some cash. I understand it is on your report; is that correct?

14 A Correct.

15  
16 Q But you don't have that with you today.

17 A I do not.

18  
19 Q All right. Do you know the total amount of cash that you would have taken  
20 possession of?

21 A I have marked down on my exhibit ledger a bundle of cash, 50 times 20 dollar  
22 bills.

23  
24 Q All right.

25 A Again, it was found by Constable Brad Campbell at a time of 1923 and it was  
26 on top of the fridge.

27  
28 Q Thank you.

29  
30 MR. MCBRIDE: My Lord, we have been avoiding  
31 entering cash into exhibits. If it pleases the Court, we're not going to do that.

32  
33 THE COURT: I think that's a good idea.

34  
35 MR. MCBRIDE: Thank you, sir.

36  
37 Q MR. MCBRIDE: If I could direct your attention, sir, to the  
38 next item of concern, the police exhibit number 9. Do you have that item with  
39 you today?

40 A Yes, I do. I --

41



T106

1 Q What is it, please?

2 A Exhibit number 9 is marihuana, 452 grams of marihuana. It was located by  
3 Constable Ehalt at a time of 1942 and it was located in the closet.  
4

5 MR. MCBRIDE: All right. I wonder if that can be the next  
6 exhibit, My Lord. That would be P --  
7

8 THE COURT: P-9.  
9

10 MR. MCBRIDE: -- nine.  
11

12 THE COURT: P-9 will be bag with 452 grams of  
13 marihuana.  
14

15 **EXHIBIT P-9 - Bag with 452 grams of marihuana**  
16

17 MR. MCBRIDE: I apologize for the odour, My Lord.  
18

19 THE COURT: I think that's my clerk suffering the most.  
20

21 Q MR. MCBRIDE: You had occasion to deal with that later,  
22 is that correct, in terms of weighing it and doing whatever else --

23 A Correct.  
24

25 Q -- you needed to do? All right. Next item of concern, Constable, is exhibit --  
26 police exhibit P10. Do you have that item with you today, please?

27 A Yes, I do.  
28

29 Q And what is it?

30 A It's assorted keys.  
31

32 Q How did you come to be in possession of those?

33 A It was found by -- or located by Constable Ehalt at a time of 1947 and it was by  
34 -- found by the front door.  
35

36 MR. MCBRIDE: All right. If that could be the next Crown  
37 exhibit, please, My Lord?  
38

39 THE COURT: P-10, assorted keys found in the  
40 accused's apartment.  
41

T107

**EXHIBIT P-10 - Assorted keys found in accused's apartment**

Q MR. MCBRIDE: And the next item of concern, Constable, is what you have labelled exhibit -- police exhibit P11. Do you have that -- or sorry. Police exhibit 11, number 11. Do you have that with you today?

A Yes, I do.

Q Tell us what that is, please.

A This is a storage invoice. Also have written there in a cheque in the back. So this --

Q Two items then?

A Two items were seized as one. Yes.

Q All right.

A Again, it was located by Constable Ehalt at a time of 1947 and the location it was found was in a storage room in apartment.

MR. MCBRIDE: Again, My Lord, if it pleases the Court, could that be the next Crown exhibit? And it'd be the two items, the storage invoice and a blank series of cheques.

THE COURT: P-11, storage invoice and blank cheques.

**EXHIBIT P-11 - Storage invoice and blank cheques**

MR. MCBRIDE: Thank you, My Lord.

Q MR. MCBRIDE: Let's go back to P-9, please, Constable. How did it look -- I'm sorry.

MR. MCBRIDE: (INDISCERNIBLE).

THE COURT CLERK: (INDISCERNIBLE).

Q MR. MCBRIDE: This appears to be in a police exhibit bag; correct?

A Correct.

Q How did it look when it was first turned over to you, sir?

A I believe it was in Vacu packed bags, Vacu-sealed bags at the time of getting it.

T108

1  
2 Q Do you recall how many?

3 A Two, I believe.  
4

5 Q And just looking through a bag I see a pink and purple line there.

6 A Right. There was a -- I believe the marihuana was in a Ziploc bag and then  
7 another separate Ziploc bag, both put in a Vacu-sealed-type bag.  
8

9 Q Okay. So were there -- am I understanding you correctly, there's two packages,  
10 then, in the Ziploc bags?

11 A Correct.  
12

13 Q Did you weight those separately, sir?

14 A I did.  
15

16 MR. MCBRIDE:  
17 Lord.

I think that's part of the admissions, My

18  
19 THE COURT:

Very good.  
20

21 Q MR. MCBRIDE: I just want to see if I'm understanding  
22 you correctly. Ziploc bags are on the interior followed by a vacuum seal on the  
23 outside.

24 A Right.  
25

26 Q Thank you. Any markings, sir, on those -- any of those packages that caught  
27 your attention?

28 A Some of the packaging has -- well, I guess, specifically with this it had Hindu.  
29 It -- it appeared to me that it -- it was written -- Hindu written on the  
30 packaging. I have in my notes that the top of the bag was taped together. You  
31 could see some writing under it. When we cut the tape off the bag and opened  
32 the bag wide, it's -- that's the writing we found in black marker and it said  
33 Hindu.  
34

35 Q So is that writing on the vacuum sealing or is it on one of the --

36 A On the Vacu-sealing.  
37

38 Q Thank you. It's my understanding, sir, later the same day, perhaps into the next  
39 day, you also were involved in another search --

40 A Correct.  
41

T109

1 Q -- in relation to this file.

2 A That's correct.

3

4 Q And what was the location, sir?

5 A I believe it was 105th Street. It was a storage facility.

6

7 Q All right. And, once again, was this a warranted search, sir?

8 A It was a warranted search, yes.

9

10 Q And did you see the search warrant for this location?

11 A I did.

12

13 Q All right. And do you know who got the search warrant?

14 A Constable Gilbertson.

15

16 Q Okay. You had occasion to review it before you went into the storage locker?

17 A Yes, I did.

18

19 Q And when you went over to the storage locker, sir, did you bring anything with  
20 you from the search of the apartment on Temperance?

21 A Did I have -- well, I had the exhibits with me. But I -- I had keys that Constable  
22 Schmalz came and --

23

24 Q (INDISCERNIBLE).

25 A -- took -- took into her possession.

26

27 Q Sorry, say again.

28 A Constable Schmalz came and took the keys into her possession.

29

30 Q And when was that?

31 A If I can refer to my notes for an exact time?

32

33 Q Sure.

34 A At a time of 2240 Constable Schmalz took control of exhibit number 10 is  
35 what I have in my notes, which is the keys.

36

37 Q All right. When did you get them back, sir?

38 A I can't say. I didn't make any documentation of when I got the keys back but at  
39 some point in the evening I would have gotten them back and processed them  
40 in the exhibits.

41

T110

1 Q So between the two of you, one or the other had P10 when you went to the  
2 storage locker?

3 A Correct.  
4

5 Q And when you got to the storage locker, sir, do you know which number the  
6 locker was?

7 A Locker E208 is the number I have on my exhibit ledger.  
8

9 Q I notice you're referring to a paper, sir. Is that a direct exhibit control form?

10 A It is. Yes.  
11

12 Q Is it in your own handwriting?

13 A It is.  
14

15 Q And would you need to refer to it from time-to-time to assist your memory?

16 A I do, yes.  
17

18 MR. MCBRIDE: My Lord, if it pleases the Court, may he  
19 refer to it from time-to-time.  
20

21 THE COURT: No problem. Any time you need to,  
22 Constable, go ahead.  
23

24 THE WITNESS: Thank you, My Lord.  
25

26 Q MR. MCBRIDE: All right, sir. So we're arriving at this  
27 location. There's multiple storage lockers, I take it?

28 A Yes.  
29

30 Q And how did you get into the outer facility?

31 A We waited for the owner to show up and -- and let us into the facility. We were  
32 directed to the storage locker, I believe, which was on the invoice. And I  
33 believe Constable Schmalz utilized the key to open up the storage locker.  
34

35 Q Do you remember which key out of this bundle of keys that she would have  
36 used?

37 A I do not. No. I --  
38

39 Q Okay. Were you present when the locker door was opened, sir?

40 A Yes.  
41

T111

1 Q All right. And describe the interior of this -- just the dimensions of this  
2 particular locker.

3 A As far as feet, it was a small bedroom. It wasn't very big at all. It had assorted  
4 items that I can vaguely remember (INDISCERNIBLE).  
5

6 Q Okay. What caught your attention as the door was opened?

7 A There was a black garbage bag. I just remember the top being open and I  
8 looked inside, saw what was obvious as Vacu-sealed packages of marihuana.  
9

10 Q All right. Was there anything else in the black bag, sir?

11 A There was a -- well, the only thing that was in the bag was bags of marihuana.  
12 There was a separate white bag of marihuana. And I believe there was two  
13 Vacu bags of marihuana in the white bag.  
14

15 Q Okay. Anything else in the black bag besides the marihuana?

16 A No.  
17

18 Q Okay. And I see this item here. Is this the black bag that you encountered, sir?  
19 Is that --

20 A It is, yes.  
21

22 Q Okay.

23 A That's the black bag.  
24

25 Q (INDISCERNIBLE) police exhibit number on there? (INDISCERNIBLE).  
26 Okay. (INDISCERNIBLE). Now, how much marihuana, sir, did you find  
27 inside this large black bag?

28 A There was approximately 13 pounds.  
29

30 Q Okay. And if you wouldn't mind stepping into the well, please, sir. I see there's  
31 a number of items that are spread out in front of us and I'm going to ask you to  
32 walk through each one and identify them, please.

33 A Okay.  
34

35 Q And if you wouldn't mind saying it close to that microphone.

36 A Yes. Yeah.  
37

38 Q All right. And I'll return to my microphone, sir, so we can get recorded.  
39 Appears to be a number of bags of green plant material, sir. Do you -- sorry.  
40 Go ahead.

41 A We're not going through weights or anything. I don't need my --

T112

1  
2 Q No, we don't need to worry about weights.

3 A No? Okay. Right on. Yeah.  
4

5 Q Do you recognize those items, first of all?

6 A Yes. Yes, I do.  
7

8 Q All right. Where do you recognize them from?

9 A These -- this was the marihuana that was seized that I processed and weighed  
10 that came from the black bag from the storage locker.  
11

12 Q All right. And could you walk us through what -- what you found, sir?

13 A Okay.  
14

15 Q How many in total did you say? I'm sorry.

16 A Well, I have them labelled, each bag, 1(a) through to 1(m). So 13 bags of -- or  
17 individual bags of marihuana.  
18

19 Q Okay. I wonder if you could produce the first bag, sir, and that you labelled as  
20 (a). All right. Was that the way you found it, sir?

21 A The way that I found it, it was packaged similar to the other one where there  
22 was Ziploc bags inside it and then the -- you can see the Ziploc bag here and  
23 then the Vacu-Seal bag around that; two packages inside.  
24

25 Q All right. Thank you.  
26

27 MR. MCBRIDE: Madam Clerk, I wonder if that could be  
28 -- we're up to 12(a)?  
29

30 If that could be 12(a), My Lord, so they stay consistent from the police exhibits to  
31 court exhibits.  
32

33 THE COURT: Okay. So we're going to mark each bag?  
34

35 MR. MCBRIDE: Yes, we are, My Lord.  
36

37 THE COURT: All right. Okay. Just elicit something  
38 from the witness and we'll just say, hey, we'll mark them all 12(a) to (m).  
39

40 MR. MCBRIDE: If that works, My Lord, that's fine.  
41

T113

1 THE WITNESS: That's correct.  
2  
3 MR. MCBRIDE: There is a reason for having them  
4 separately noted, My Lord. So --  
5  
6 THE COURT: Oh, all right. It will become clear to me  
7 at some point.  
8  
9 MR. MCBRIDE: It -- it will, My Lord. Sorry about that.  
10  
11 THE COURT CLERK: So are they in order  
12 (INDISCERNIBLE)?  
13  
14 THE WITNESS: They are, yeah. (a), (b), all the way  
15 down.  
16  
17 THE COURT CLERK: It's fine if we do that, My Lord, then?  
18  
19 THE COURT: Yeah. Actually, why don't we do that  
20 later.  
21  
22 THE COURT CLERK: Okay. We've got --  
23  
24 THE COURT: But we'll mark all of -- each bag will be  
25 marked P-12 (a), (b), (c), et cetera, et cetera, to -- should take us to P-12(m).  
26  
27 **EXHIBITS P-12 (a, b, c, d, e, f, g, h, i, j, k, l, m) - Individual bags of marihuana**  
28  
29 MR. MCBRIDE: Thank you, My Lord.  
30  
31 Q MR. MCBRIDE: Now, sir, you -- before we go further. I'm  
32 sorry. I'm going to show you what's been entered as Exhibit P-5 in these  
33 proceedings, sir. Okay. Can have a look at those. Do you recognize anything in  
34 the photographs in P-5?  
35 A Well, just -- I notice that that was the packaging in which it -- the marihuana  
36 came in.  
37  
38 Q All right. So that's what it looked like at what point, sir?  
39 A That's -- would have been how it was put inside the black bag --  
40  
41 Q All right.



T114

1 A -- just like that.

2  
3 Q Okay. And how many -- maybe, it's not a fair question. Can you tell me how  
4 many are bags -- or packages appear to be set out on the floor there?

5 A There's about -- there's about 11 that visual and then the white bag.

6  
7 Q There's another photograph, sir. Do you recognize that? Did you see that at any  
8 point in the investigation?

9 A Yes. Yeah.

10  
11 Q And where did you see that?

12 A That's how it was laid out for a photograph at -- on the floor of the -- the office.

13  
14 Q And where was the office, sir?

15 A At the -- at our -- our drug office at the Saskatoon Police Service.

16  
17 Q Okay. And how many packages do you see there?

18 A Thirteen.

19  
20 Q So to the best of your recollection, sir, in these two photographs, do they depict  
21 accurately the marihuana as you initially seized it before you started  
22 processing?

23 A Yes.

24  
25 Q With respect to those packages, sir, was there anything on them that caught  
26 your attention?

27 A Yeah. There was some packaging that had, again, some black marker on it with  
28 some markings that said PC or PCX.

29  
30 Q And do you recall which ones of Exhibits 12(a) through 12(m) have those  
31 markings?

32 A To clarify, I have written down exactly which ones have -- have them written  
33 down.

34  
35 Q So you made notes of that?

36 A I did, yes.

37  
38 Q And you need to refer to your notes to refresh your memory?

39 A If I can, please?

40  
41 Q Certainly.

T115

1 A So Exhibit 1(a), which is here, it has the markings of PC on it.

2  
3 Q And where were the markings, sir? On which part of the packaging?

4 A On the Vacu-Seal part of the bag.

5  
6 Q All right. Thank you.

7  
8 THE COURT: And does that mean something to you,  
9 Constable Nave?

10  
11 A It -- it can. It -- it can mean certain -- in my experience in dealing with drug  
12 investigations, it can mean, potentially, the strain of -- of the -- of the  
13 marihuana, potentially; where the marihuana was coming from; or it could be,  
14 potentially, who the marihuana is destined to go to. Could be grouped in such a  
15 fashion that PC is going to a certain somebody or held for somebody and  
16 something like that.

17  
18 Q MR. MCBRIDE: All right. Let's walk through each of the  
19 remainder, sir. And if you could do the same thing, if you could hold up the  
20 package, identify which package you're talking about and the letter in it you  
21 see; all right?

22 A Okay.

23  
24 THE WITNESS: Do you want me turn this to speak him,  
25 would be fine?

26  
27 THE COURT CLERK: (INDISCERNIBLE).

28  
29 A Okay. The next package is 1(g) --

30  
31 THE WITNESS: Right here. Sorry.

32  
33 THE COURT CLERK: (INDISCERNIBLE).

34  
35 A One (g), which, again, has the markings of PC on it.

36  
37 Q MR. MCBRIDE: And, again, where -- on what part of the  
38 packaging was that lettering?

39 A Written on the Vacu-Seal part of it.

40  
41 Q Okay.

T116

1 A Next package would be 1(j), and this particular one had PCX written on it.

2  
3 Q And, again, on what part of the packaging, sir, was that?

4 A It's written on the Vacu-Seal part of it.

5  
6 Q If you could, mind showing the Court, please, sir?

7  
8 MR. LAVIER: And that was 1(j), sir?

9  
10 THE WITNESS: Yes. Yes, sir.

11  
12 A The next package would be 1(l). One (l) had markings as well as PCX on the  
13 Vacu-sealed portion of the -- of the bag. And the next one would be marked as  
14 1(m). This one, as well, had PCX written on the bag.

15  
16 Q MR. MCBRIDE: And which bag was that, again, sir?

17 A On the Vacu-sealed part of it.

18  
19 Q So, I'm sorry, I lost count. Out of the 13 bags total, how many had some sort of  
20 marking on them, sir?

21 A There were five bags out of the black garbage bag from the storage facility and  
22 then -- sorry -- and then, of course, the -- the one from the Temperance  
23 apartment that had Hindu written on it.

24  
25 Q All right. Thank you. Sir, if you wouldn't mind, I'll get you to take your seat  
26 again. I think you, sir, you had mentioned there was both a black bag and a  
27 white plastic bag. Do you have the white bag with you today, sir?

28 A It's --

29  
30 Q That's fine.

31 A I don't think so. No, I -- I didn't look through the -- and see it in there when I  
32 pulled them out.

33  
34 Q Would you mind having a look through the black bag, then, sir, please?

35 A No.

36  
37 Q It wasn't kept?

38 A No.

39  
40 MR. MCBRIDE: I guess, if that could be the next Crown  
41 exhibit, My Lord. That would be P-13, please, the black bag from --

T117

1  
2 THE COURT: P-13, black bag which held the  
3 marihuana at the Besco Storage facility.  
4

5 **EXHIBIT P-13 - Black bag**  
6

7 MR. MCBRIDE: Thank you.  
8

9 Q MR. MCBRIDE: You may have addressed this already,  
10 sir, and forgive me if I'm ploughing old ground. Where did you say the white  
11 bag was in relation to the black bag?

12 A Inside the black bag.  
13

14 Q Do you know how long the search took at the storage locker, sir?

15 A Again, you know, without reflecting on my notes specifically, it didn't take  
16 very long. But I can't say specifically how long it took exactly.  
17

18 Q And once you have had the items that were of concern to you, could you tell us  
19 what you did then?

20 A Brought the -- the bag back to the office, Saskatoon Police Station, and just  
21 began to process them according to separation as they're presented to you today  
22 and their weights.  
23

24 Q All right. What became of the storage locker, sir?

25 A It was just locked up and we left.  
26

27 Q All right. Was the owner still there, do you recall?

28 A You know, that I can't say. I can't remember if he was still there or not or --  
29

30 Q Okay. No problem.

31 A -- if he just let us in.  
32

33 Q So we have the 13 items, sir. When you got back to the police station -- we've  
34 already got the weights recorded. Can you tell us, were they similarly packed  
35 from one to the other?

36 A Yes, they were.  
37

38 Q Can you talk about that for us, please?

39 A Yes. I believe there was only two packages that were packaged as a -- as a tube  
40 instead of more in a -- in a square, sort or, type packaging, a rectangle-type  
41 packaging. They seemed to be more packaged in a longer tube. I think there

T118

1 was two packages that were --

2

3 Q Two packages like that? Sorry, I didn't understand what you said.

4 A The -- yeah. Yes. The photos would reflect that as well. It shows the pictures  
5 there.

6

7 Q All right. So, again, if I can return you to P-5. Can you show us what you're  
8 talking about to as the rectangular?

9 A Yeah. So just -- there was two tube-type Vacu-Seal-type bags and the rest were  
10 -- or, I guess, it looks like -- might even be three there.

11

12 Q All right.

13 A But the -- the -- the distinction was every -- every one was packaged very much  
14 the same, exactly, except for the ones that were in a tube packaging; Vacu-  
15 sealed the same.

16

17 Q How were they different?

18 A I don't believe they were different in any way other than appearance of  
19 packaging. Their weights were very consistent throughout the --

20

21 Q I guess, my concern was, was there any difference on the inside packaging on  
22 the elongated --

23 A No.

24

25 Q -- tubes?

26 A No.

27

28 Q All right. So let's walk through that again, sir. So we have the outside Vacu-  
29 Seal that you're speaking of. What would be on the inside of each of those  
30 items?

31 A The Ziploc bags and larger Ziploc bags.

32

33 Q All right. And how many in each?

34 A Well, like I said, I believe there was two in each Ziploc bags and then the  
35 Vacu-Seal bag over that.

36

37 Q Okay. I appreciate, sir, that you had minimal involvement with respect to the  
38 arrest of Mr. Watier and Mr. Amico, but did you ever have occasion to see the  
39 exhibits that were seized from them?

40 A I -- I definitely would have seen them. I didn't make notes to seeing -- seeing  
41 the exhibits. And reflecting back to my report, I made a -- the correlation of



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# House of Commons Debates

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OFFICIAL REPORT  
(HANSARD)

**Thursday, September 22, 2011**

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Speaker: The Honourable Andrew Scheer

(1305)

[Expand]

**Ms. Joyce Bateman (Winnipeg South Centre, CPC):**

Mr. Speaker, I would like to ask my hon. colleague a question on her comments.

I understand from her comments that the Canadian Paediatric Society has approved our bill, the bill that is front of the House as we speak. I am very concerned that she is worried about that, because these are the front-line doctors. These are the people who see children hurt. These are the people who see the ravages of abuse. They see the ravages of sexual abuse on young children.

I am thrilled that the Canadian Paediatric Society is supportive of this bill, because their members are the first line and are able to see that.

Could my hon. colleague please explain why she is concerned with their support? They are the front-line people who see the hurt done to young people.

[Expand]

**Ms. Kirsty Duncan:**

Mr. Speaker, I thank the member for her comments.

I will be very clear. Everyone in this House and everyone in Canada wants our most vulnerable, our children, protected.

I will be very clear that the Canadian Paediatric Society has expressed disapproval for the bill and wants the emphasis to be on rehabilitation and reintegration. I think it is really important for that point to be brought out.

I also think it is important to bring evidence here again. I want to bring out that the recent statistics and other surveys simply do not show that we are in a crime wave. Attempted murders are at their lowest levels in 30 years. There has been a 15% drop in auto theft. That is continuing a downward trend that started in the mid-1990s, and last year there were 15,000 fewer youth crimes, a drop of 7%.

Alan Young, a law professor at York University, said that the Conservative vision for criminal justice ran its course 30 years ago. He said they had been there, done it, tried it and failed.

[Expand]

**Mrs. Shelly Glover (Parliamentary Secretary to the Minister of Finance, CPC):**

Mr. Speaker, I am pleased to speak today at the second reading debate on Bill C-10, An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts.

Part 2 of the bill proposes sentencing amendments to the Criminal Code and the Controlled Drugs and Substances Act. Clause 34 of the bill, within part 2, proposes to restrict the availability of conditional sentences in the same manner as was advanced in former Bill C-16, which had received second reading and had been referred to the Standing Committee on Justice and Human Rights but had not yet been studied when it died on the order paper at the dissolution of the 40th Parliament.

Conditional sentences are an appropriate sentencing tool in many cases, but not when it comes to serious property crimes and violent offences. Conditional sentences became a sentencing option with the proclamation in September 1996 of Bill C-41, chapter 22 of the Statutes of Canada, 1995. They were created in recognition that many less serious offenders who would otherwise be sentenced to custody could remain among other members of society as long as they adhered to strict and appropriate conditions.

When first introduced, conditional sentences were available if the sentence imposed was less than two years of imprisonment, the offence for which the offender was sentenced was not punishable by a mandatory minimum penalty and the court was satisfied that allowing the offender to serve the sentence of imprisonment in the community would not endanger the safety of that community.

Shortly thereafter, a requirement was added to require the court to be satisfied that sentencing the offender to a conditional sentence of imprisonment would be consistent with the fundamental purpose and principles of sentencing set out in section 718 to 718.2 of the Criminal Code.

Where a conditional sentence is imposed, the effect is that the offender serves his or her sentence in the community with conditions, and sometimes with a condition of house arrest. This new sentencing option generated considerable debate following its creation because it was available at sentencing for any offences not punishable by a minimum sentence, including serious and violent offences, provided that the accused met all the above-mentioned prerequisites. Parliament intended that conditional sentences would be available to non-dangerous offenders who would have been, before the creation of conditional sentences, sentenced to a term of incarceration of less than two years for offences with no minimum term of imprisonment.

In 2000 this debate on certain controversial cases led the Supreme Court of Canada to examine the conditional sentence regime in *R. v. Proulx*. The court explained that a sentencing court must first find that a sentence of imprisonment of less than two years is appropriate before examining the other prerequisites to the availability of conditional sentences.

In other words, a conditional sentence is not on an equal footing with the rest of the sentencing options available at sentencing, because the court must be of the opinion that other non-carceral sentencing options, such as a probation order or a fine, would not adequately address the seriousness of the offence and the degree of responsibility of the offender. It is only in situations in which the court is of the opinion that the term of imprisonment should not be more than two years that a conditional sentence order may be considered, if the court is also satisfied that allowing the offender to serve the sentence in a community would not endanger public safety.

Over the years there has been a loss of public confidence in the appropriateness of conditional sentence orders because of the wide array of offences that received conditional sentences of imprisonment, including offences punishable by the highest maximum in the Criminal Code.

Our government responded to these concerns by tabling Bill C-9, An Act to amend the Criminal Code (conditional sentence of imprisonment) on May 4, 2006.

Bill C-9, in its original form, proposed to eliminate conditional sentences for offences prosecuted on indictment and punishable by a maximum sentence of 10 years or more. It was, and still is, the opinion of this government that offences prosecuted on indictment and punishable by a maximum term of imprisonment of 10 years, 14 years, or life are serious offences that should never, ever, result in a conditional sentence order.

(1310)

However, the scope of Bill C-9 was amended in committee to only capture offences that are punishable by a maximum sentence of 10 years or more and prosecuted on indictment, that are terrorism offences, organized crime offences, and serious personal injury offences as defined in section 752 of the Criminal Code.

The use of the term "serious personal injury offence" to restrict the availability of conditional sentences has not accomplished the objective of ensuring that conditional sentences are not available for serious crimes. In fact, this approach allows certain serious offences, punishable by a maximum of 10 years' imprisonment or more, such as robbery, to be eligible for a conditional sentence or house arrest.

As defined in section 752 of the Criminal Code, a serious personal injury offence has two components. First, it specifically includes the three general sexual assault offences in sections 271, 272 and 273 of the code. This is pretty straightforward. The second component of the serious personal injury offence does not provide the same certainty because it includes indictable offences involving the use or attempted use of violence against another person, or conduct endangering or likely to endanger the life or safety of another person, or inflicting or likely to inflict severe psychological damage on another person, and for which the offender may be sentenced to imprisonment for 10 years or



more. This calls for interpretation of whether an offence endangered the life or safety of another person or was likely to do so. For some offences this will be clear, but for others it will not be clear.

This government wants to clearly indicate the offences for which a conditional sentence is never an option. This is what the relevant amendments contained in the bill before us address. Rather than leaving it to individual courts to determine whether a particular offence qualifies as a serious personal injury offence, it clearly identifies all offences which should never be eligible for a conditional sentence. It removes all of that uncertainty.

Until the coming into force of Bill C-9 on December 1, 2007, sentencing courts only interpreted "serious personal injury offence" for the purpose of determining whether the threshold for a dangerous or long-term offender application had been met. That is from part XXIV of the Criminal Code. This is because the term had been enacted and defined for the dangerous and long-term offender provisions only.

Since Bill C-9 came into force, courts have had to interpret the definition of "serious personal injury offences" in the context of conditional sentences, a context which is quite different from that for dangerous and long-term offenders. For instance, in the 2009 decision by the Alberta Court of Appeal in *R. v. Ponticorvo*, the court held that serious personal injury in the conditional sentence context included the use, or attempted use, of any violence and was not restricted to only the use of serious violence. In so doing, the court applied a different interpretation than it had to the same term in the dangerous offender context in *R. v. Neve* in 1999.

In 2010 in *R. v. Lebar*, the Ontario Court of Appeal confirmed this approach and concluded that for the purposes of the availability of conditional sentences, Parliament created "a divide between crimes where violence is or is not used, not between crimes of serious violence and less serious violence". That is in paragraph 69 of the decision.

These cases illustrate there is considerable uncertainty about how the existing conditional sentence regime will be interpreted. This bill will provide the needed clarity and certainty to say which offences are not eligible for a conditional sentence. This will in turn prevent the need to wait for these issues to be finally resolved by the appellate courts, including perhaps the Supreme Court of Canada.

Another concern we have is that the definition of "serious personal injury offences" on its face does not cover most serious property crimes which could still be eligible for a conditional sentence. For instance, fraud, which is an offence punishable by a maximum sentence of 14 years, is a very serious crime that can have a devastating impact on the lives of its victims, yet, according to the definition of "serious personal injury offence", it is still technically eligible for a conditional sentence.

(1315)

I should note, however, that a recent amendment to the Criminal Code which is not yet in force provides for a mandatory sentence of two years when the value of the fraud exceeds \$1 million. In those cases a conditional sentence would not be available.

In addition, the current prerequisites to the availability of a conditional sentence do not exclude drug offences, such as the production, importation and trafficking of heroin, unless they are committed as part of a criminal organization and provided that they are punishable by a maximum term of imprisonment of 10 years or more and prosecuted on indictment.

However, as hon. members well know, this bill also includes the amendments that were proposed in former Bill S-10, which also died on the order paper at the dissolution of the last Parliament. It is proposed to create mandatory minimum penalties for certain drug offences which would make them ineligible for a conditional sentence.

It is my view that the current conditional sentencing regime fails to categorically make conditional sentences ineligible for many very serious crimes. Permitting the use of conditional sentences for some offences punishable by the highest maximum available in the code sends a message that certain offences punishable by a maximum of 14 years or life are less serious than others punishable by the same maximum. This is not the message this Parliament should be sending to Canadians.

Greater clarity and consistency is needed to limit the availability of conditional sentences and to protect Canadians from serious and violent offenders. In order to address these concerns, the proposed amendments contained in this bill would retain all the existing prerequisites for conditional sentences but would make it crystal clear which offences are

ineligible. Specifically, the reforms would eliminate the reference to serious personal injury offences in section 742.1 and would make all offences punishable by 14 years or life ineligible for a conditional sentence.

This would, for instance, make the offences of fraud, robbery and many other crimes clearly ineligible for a conditional sentence. It would also make offences prosecuted on indictment and punishable by a maximum term of imprisonment of 10 years ineligible for a conditional sentence if they: result in bodily harm; involve the import or export, trafficking and production of drugs; or involve the use of a weapon. It is the opinion of the government that where these circumstances are present, there is a need to emphasize the sentencing objectives of denunciation and deterrence and therefore eliminate the possibility of a conditional sentence.

In order to ensure that all serious crimes are caught, this bill also proposes a list of 11 specific offences prosecuted on indictment and punishable by a maximum sentence of 10 years that would be ineligible for a conditional sentence. These offences are: prison breach, criminal harassment, sexual assault, kidnapping, trafficking in persons, abduction of persons under the age of 14 years, motor vehicle theft, theft over \$5,000, breaking and entering a place other than a dwelling house, being unlawfully in a dwelling house, and arson for fraudulent purposes.

Some hon. members might notice there are three differences from the list that was contained in Bill C-16.

First, the offence of luring a child was taken out of the list of offences punishable by 10 years' imprisonment on indictment because clause 22 of the bill proposes a mandatory minimum penalty of one year on indictment and 90 days on summary conviction. Therefore, this offence would be ineligible for a conditional sentence.

The second change was the addition of a new motor vehicle theft offence described at section 333.1 of the Criminal Code. This addition would ensure consistency with the restriction on the availability of conditional sentences for theft over \$5,000.

Last, former Bill C-16 eliminated the possibility of house arrest for the abduction of a person under the age of 14 by a parent, guardian or person having the lawful care or charge of that person. The intention, however, was to target the abduction of a person under the age of 14 by a stranger. This has been rectified in the bill by replacing the reference to section 283 by a reference to section 281 in the list of offences punishable by a maximum sentence of 10 years' imprisonment and prosecuted on indictment that are ineligible for a conditional sentence.

(1320)

This government is committed to ensuring that conditional sentences are used the way they were originally intended to be used, and that is for less serious offences. I am confident the more appropriate use of conditional sentence orders will strengthen public confidence in the sanction and administration of justice.

I am the chair of the Conservative Party's law enforcement officers caucus, which is made up of 11 people from both the House of Commons and the Senate who have previous experience in police investigations, in corrections and in other law enforcement agencies. We stand together to support this bill, because we have seen first hand how detrimental these conditional sentences and many of the other aspects of the bill have been to our communities. We have seen the victims of these offences suffer terribly. We have been at the front line to say that we are sorry the system failed them.

We will not stand by and allow the system to continue to fail them. We are the police officers, the corrections officers and the law enforcement officers in this House. They do not exist in any other party. We stand together to support this bill.

I would ask, in fact on behalf of victims I would beg, members of the opposition to please support this bill to make sure that our streets and communities are safe. This is imperative to continue to live in the most incredible country in the world.

Mr. Speaker, I am happy to answer questions from members across the way, and I would implore them to think about the victims as they ask their questions.



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# House of Commons Debates

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(HANSARD)

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Speaker: The Honourable Andrew Scheer

(1745)

What is more, the court imposing a conditional sentence has to be satisfied that serving the sentence in the community will not jeopardize the safety of the community and that the sentence is consistent with the fundamental purpose and principles of sentencing.

It is important to note that the fundamental purpose of sentencing, as set out in section 718 of the Criminal Code, is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives: to denounce unlawful conduct; to deter the offender and other persons from committing offences; to separate offenders from society, where necessary; to assist in rehabilitating offenders; to provide reparations for harm done to victims or the community; and to promote a sense of responsibility in offenders.

The Criminal Code also informs us that a just sanction is a sanction that is proportionate to the gravity of the offence and the degree of responsibility of the offender. To achieve this, the courts take into consideration aggravating and mitigating factors in each case. Before describing the key aspects of the proposed changes, I want to provide some background on the provisions in the Criminal Code on conditional sentences.

Conditional sentencing came into effect in 1996, when the government wanted, among other things, to reduce excessive use of incarceration for less serious crimes. I repeat: less serious crimes. Moreover, the information document that accompanied these sentencing reforms states that the addition of conditional sentencing as a new form of sentencing means that offenders who have committed a less serious crime and who otherwise would be incarcerated can serve their sentence in the community under close supervision.

The limits that I mentioned earlier were established in order to guarantee that conditional sentences could be given only for less serious crimes, in keeping with the fundamental principles and purpose of sentencing. However, in the years following the creation of this type of sentencing, there has been a complete lack of consistency when it comes to determining when conditional sentencing is appropriate.

At the time, many court decisions gave a conditional sentence for serious and violent crimes. This contributed to the public's loss of faith in the justice system. Clearly, many people, and some provinces and territories, wondered whether the limits on conditional sentencing set out in the Criminal Code were sufficient.

In order to deal with this lack of consistency in conditional sentencing, this government introduced Bill C-9, An Act to amend the Criminal Code (conditional sentence of imprisonment) on May 4, 2006. This bill proposed the elimination of conditional sentencing for any indictable offence with a maximum prison sentence of 10 years or more. However, Bill C-9 was amended by the opposition parties to limit the ban on conditional sentencing to indictable offences with a maximum prison sentence of 10 years or more that constitute serious personal injury offences, terrorism offences or criminal organization offences. These amendments took effect on December 1, 2007.

The definition of serious personal injury was developed in the context of dangerous offenders, which is why this definition is found in part 24 of the Criminal Code. According to this definition, serious personal injury offences include any indictable offence, other than high treason, treason, first degree murder or second degree murder—punishable by at least 10 years in prison—involving the use or attempted use of violence against another person, or conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person.

(1750)

The second part of this definition is clearer, as it lists sexual assault, sexual assault with a weapon and aggravated sexual assault as serious personal injury offences.

It is important to understand that the opposition parties borrowed a term straight from the dangerous offender regime in order to put limits on a sentence that should only be applied to less dangerous offenders. That created two philosophical approaches for interpreting the definition of serious personal injury in the context of conditional sentencing.

Another issue with the definition of serious personal injury is that it only targets violent offences. The definition of serious personal injury cannot ensure that a conditional sentence will not be used in the case of serious fraud or theft over \$5,000.

The amendments in this bill will ensure that certain non-violent serious offences will still be treated as serious offences, thus avoiding the use of conditional sentencing. The amendments to the conditional sentencing regime proposed in this bill aim to establish clear benchmarks to allow for consistent use of conditional sentencing in order to respect Parliament's intention when it created this sentence.

That is why the bill proposes eliminating the reference to serious personal injury offences and restricting the availability of conditional sentences for all offences for which the maximum term of imprisonment is 14 years or life.

The same will apply to indictable offences punishable by a maximum of 10 years' imprisonment when they result in bodily harm, involve the import, export, trafficking or production of drugs or involve the use of weapons.

When an offence is committed under these circumstances, it is even more important to deter the offender and denounce the crime. This justifies restricting the availability of conditional sentences in such cases. It is possible however that the limits I just described do not cover all offences prosecuted by way of indictment and punishable by a maximum of 10 years in prison.

Therefore, the bill also proposes limiting the availability of conditional sentences for prison breach, criminal harassment, sexual assault, kidnapping, trafficking in persons, abduction of a person under 14, motor vehicle theft, theft over \$5,000, breaking and entering a place other than a dwelling-house, being unlawfully in a dwelling-house, and arson for fraudulent purpose.

As I mentioned at the beginning of my speech, there are technical differences between the changes proposed in this bill and those contained in the former Bill C-16.

For example, Bill C-16 proposed the abolition of conditional sentencing for the offence of luring a child, described in section 172.1. This is no longer on the list of offences that would not be eligible for conditional sentencing, since article 22 of this bill proposes a minimum punishment of imprisonment for a term of one year in the case of an indictable offence, or 90 days in the case of a summary conviction.

Another change from Bill C-16 is that the list of offences that are no longer eligible for conditional sentence includes the new offence of motor vehicle theft, described in section 333.1 of the Criminal Code.

The final change would correct an error that slipped into Bill C-16. That bill did not include the offence of abduction of a person under 14 by a parent or guardian. The intent was, however, to target the offence described in section 281 of the Criminal Code, which has to do with the abduction of a person under 14 by a stranger.

I want to reassure my colleagues that even though the reference in section 742.1 to serious personal injury offences is set to be eliminated, the changes in this bill will ensure that those who are convicted of sexual assault, sexual assault with a weapon and aggravated sexual assault will not be eligible if prosecuted by way of indictment.

(1755)

Note also that conditional sentencing will no longer be available for persons convicted of sexual assault against a person 16 or under since clause 25 of the bill proposes a minimum sentence of one year when the offence is prosecuted by way of indictment, and 90 days on summary conviction.

This government is addressing the concerns of Canadians who no longer want to see conditional sentences used for serious crimes, whether they are violent crimes or property crimes.

For the reasons I have just mentioned, I urge my fellow members of this House to unanimously support the proposed changes to the conditional sentencing system.

[Expand]

**Ms. Laurin Liu (Rivière-des-Mille-Îles, NDP):**

Mr. Speaker, I would like to thank the hon. member for his comments.

He said that the government is very attentive to Canadians' concerns, but we already know that this bill will cost us billions of dollars that could be invested in the education or health care systems. I think that the government is not very attentive to what is actually of concern to Canadians.

We know that this bill will criminalize and target the people who are already the most marginalized in society, such as youth and people with mental illness. We also know that the first nations represent 10.8% of the population of Canada but 18% of the population of federal prisons.

I would like to hear the hon. member's reaction to these figures, and I would like to know why he wants to pass a bill that will increase the overrepresentation of first nations people in federal prisons.

[Expand]

**Mr. Robert Goguen:**

Mr. Speaker, I would like to thank the hon. member for her question.

Certainly, many people who pass through in the penal system may not have the same mental capacity as an ordinary Canadian citizen. However, methods of defence are available for people who lack this capacity. In addition, it is important to remember that, as painful as it may be for the person who is incarcerated, the prison system has rehabilitation programs. In many cases, the problems that people in the system have were not identified at a young age. It is often once they enter the penal system that they are diagnosed with mental or other problems. In such cases, it is always possible to transfer them to another centre that can help them to become more productive members of society.

[English]

[Expand]

**Mr. Kevin Lamoureux (Winnipeg North, Lib.):**

Mr. Speaker, for a number of years I was the justice critic in the province of Manitoba. When Ottawa makes changes and brings in legislation, quite often it has a profound impact in terms of the budgets at the local and provincial levels governments. That impact is fairly profound on this bill. We have had great difficulty in terms of trying to come to grips with just how much Bill C-10 will cost the taxpayers and how much money the provinces will have to come forward with in order to compensate the bill.

When I was the critic, I was always pretty gung-ho on wanting to prevent crimes from happening. That meant taking those scarce resources and trying to invest them so that little Johnny, as opposed to getting involved in a gang activity, would be involved in a school activity.

Does the parliamentary secretary have a sense of how much money this will cost the different types of jurisdictions, or can he take this as notice and provide us information on how much, for example, it would cost the province of Manitoba to implement Bill C-10?

[Expand]

**Mr. Robert Goguen:**

Mr. Speaker, I was elected on May 2 and I am not aware, of the hundreds and hundreds of pages that were tabled, of the cost of these systems. I know, in speaking to the hon. minister, that there has been much co-operation between the provinces and the federal government. In fact, many of these bills have been on the order paper and have been debated. The provinces have asked for them to be put in place because they also want their streets to be protected.

I am sure the provinces could perhaps provide a more detailed look at what the cost would be. It appears from their willingness to co-operate that they are more than willing to see these measures put in place so that they, like us, will stand up for Canadians and protect them.