A. JOINT STATEMENT OF LEGISLATIVE FACTS

What is Cannabis sativa or Cannabis (Marihuana)?

1. Cannabis sativa or marihuana is a plant that contains many chemical compounds and particularly a number of cannabinoids. The cannabinoid primarily responsible for the drugs physiological and psychological effects is Delta 9-Tetrahydrocannabinol (THC). The plant is unique in nature, grows in most climates and is found almost everywhere. It has been around for at least 12,000 years and has been cultivated for at least the last 5,000 years. It has been used as an ingredient in cloth, rope, paper and oils for industrial purposes such as paint and for medicinal purposes. It has been included in both the United States and British Pharmacopoeia as being useful for a number of medical purposes. It is not a “narcotic” in the sense of an opiate related substance. While its classification is not completely clear, it is known as a mild sedative and its effects are dose dependent. It is usually smoked and produces feelings of relaxation, elevation of mood and feelings of greater comfort and pleasure.

2. When smoked, the THC enters the systemic circulatory system and is distributed to the fatty tissues, including the brain. It then slowly diffuses from the tissue into blood and is then metabolised and excreted in urine and feces. The distribution phase lasts approximately 30 minutes and the elimination phase over several days. THC accumulates in neutral fat and in the liver, but not in the blood and brain. Due to slow elimination, THC’s metabolites can be present in urine for weeks after the last drug intake. These metabolites are non-active.

3(a). Recently, cannabinoid receptors have been identified in the human body andare most dense in certain areas of the brain. A putative endogenous ligand has been discovered that has been named “anandamide”. An endogenous ligand is a naturally occurring substance in the body that binds chemically within a biochemical system. Consequently, marihuana can now be classified according to the neuro-chemical system that it affects. The receptor sights affected are consistent with the known effects of marihuana.

3.(b). In ancient Sumer, hemp was called the "plant of forgetting worries" (1) and the "old men are young again" plant. (2) In Herodotus's "Nine Books of History", the founder of ethnography relates how the Scythians would "howl with joy" after enjoying a hemp "smoke-bath" in tents they made for the event. (3) Democritus - the "laughing philosopher" of ancient Greece - noticed that hemp based beverages promoted "immoderate laughter". (4) Arab doctors in the twelfth century advised that eating "a little" cannabis does help "against sorrow". (5) Tibetian pharmacopias state that hemp produces feelings of "elation". (6) In India, cannabis was called "the giver of delight" and the "soother of distress" from ancient times onward. (7) Linnaeus wrote that cannabis had the effect of "chasing away menancholy", making you "happy and funny".(8) More modern sources of evidence of an anti-depression effect in cannabis can be found in O'Shaughnessy - 1838 (9), Moreau - 1845, (10) Von Bibra - 1855 (11), the Indian Hemp Drug Commission Report - 1893-94 (12) and all subsequent major commissions of study, including La Guardia -1944 (13), LeDain - 1970 (14), Shaffer - 1972 (15) Ganja in Jamaica - 1976 (16) and the recent 1997 WHO report (17). According to the "Consumer Guide to Prescription Drugs", Prozac - a popular anti-depressant - has the following side effects:

> Abdominal cramps; anxiety; change in appetite; change in sexual drive; constipation; diarrhea; dizziness; drowsiness; dry mouth; gas; headache; insomnia; light-headedness; nausea; nervousness; reduced concentration; sweating; tremor; vomiting; chest pains; chills; cough; fever; frequent or painful urination; hives; painful or difficult breathing; palpitations; sinus infection; skin rash; sore throat; vision changes. (18)

Cannabis, on the other hand, has only two "side effects" from cannabis have been noted: cannabis "increases heart rate moderately", and "causes dilation of conjunctivas blood vessels". (19) Two other interesting facts regarding cannabis and depression: "Synhexyl" - on of the first synthetic cannabis pills - was first used in 1944 as "a new euphoriant for depressive mental states. (20), and "some psychiatrists are currently prescribing Marinol for depression". (21) According to Statistics Canada, there were about 393,000 males and 861,000 females suffering from depression, for a total of 1,254,000 estimated cases in Canada. (22)

(1) Faber, "Drogen im alten Mesopotamien - Sumer und Akkader", 1981, p.271 - as cited in Ratsch, "Marijuana Medicine", 2001, Healing Arts Press, p.82
(2) "The Epic of Gilgamesh", translated by N.K. Sandars, Pinguin, 1960
(3) Herodotus, "Nine Books of History", vol. 4 pp. 73-75, - as cited in Ratsch, p.57
(4) Emboden, "Ritual Use of Cannabis Sativa L." in "Flesh of the Gods" Furst, ed. 1990, p.219
(5) Mahsati, cited in Ratsch, p. 99
(6) Dash, "Illustrated Materia Medica of Indo-Tibetan Medicine", '87, p.347-cited in Ratsch, p.44
(7) Ratsch, "Marijuana Medicine", 2001, Healing Arts Press, p.37
(8) Linnaeus, "Herbationes Upsalienses", 1952 edition, p.41, as cited in "Nature & Nation", Koerner, 1999
(9) "…a great mental cheerfulness." O'Shaughnessy, "On the Preparations of the Indian Hemp, or Gunjah", originally published in "Transactions of the Medical and Physical Society of Bengal, 1838-40, reprinted in Mikuriya, "Marijuana: Medical Papers" 1973, p.20
(10) "…the face is covered in smiles…..it has been proposed by M. Moreau to take advantage of this reputed action, to combat certain varieties of insanity connected with melancholy and depressing delusions." On the Hashish or Cannabis Indica by Bell, 1857, reprinted in Mikuriya, "Marijuana: Medical Papers" 1973, p.42
(11) "…I was moved to laugh foolishly about the most unimportant matters." Von Bibra, "Plant Intoxicants", 1855 (1995 reprint Healing Arts Press), p.153
(12) "…Bhang is the Joy-giver, the Sky-flyer, the Heavenly-guide, the Poor Man's Heaven, the Soother of Grief…" J.M. Campbell, "On the Religion of Hemp," in Indian Hemp Drug Commission Report (Simla, India: 1892-4), 3: 250-2, reprinted in "The Book of Grass", Andrews & Vinkenoog editors, Grove, 1968, p.145
(13) "…a sense of well-being and contentment, cheerfulness and gaiety…" from "Mayor LaGuardia's Committee on Marijuana - The Marijuana Problem in the City of New York", 1944, cited from p 318, "The Marijuana Papers", David Solomon editor, Signet, 1968
(14) "Cannabis is an intoxicant and a euphoriant, and it generally acts as a relaxant." From the LeDain Commission, otherwise known as the "Interm Report of the Commission of Inquiry into the Non-Medical Use of Drugs" (my emphasis), p. 202, 1970
(15) "At low, usual 'social' doses, the intoxicated individual may experience an increased sense of well-being; initial restlessness and hilarity followed by a dreamy, care-free state of relaxation…" from "Marijuana - a Signal of Misunderstanding" … otherwise known as the "Shafer Commission" Signet, 1972, page 68
(16) "…It makes you feel happy…" from "Ganja In Jamaica" Rubin and Comitas, Anchor Books, 1976, p.127
(17) "There are also reports of an anti-depressant effect, and some patients may indeed use cannabis to 'self-treat' depressive symptoms (Gruber et, al, 1997), but these need to be better evaluated." World Health Organization, "Cannabis: a health perspective and research agenda" 1997, p. 29
(18) "Consumer's Guide to Prescription Drugs",1991, Home Health Handbook, p.188-89
(19) "Clinical and Psychological effects of Marijuana in Man", Weil, Zinberg, and Nelsen, 1968, reprinted in "Marijuana: Medical Papers" edited by T. Mikuriya, 1973, p.277-78
(20) "Great Book of Hemp", Robinson, 1996, p. 51

(21) "Review of the Human Studies of Medical Use of Marijuana", Gieringer, 1996
(22) www.statcan.ca/english/Pgdb/People/Health

4. Marihuana is not a toxic drug in that there are no known deaths from cannabis use and, unlike opiates, one cannot take an overdose that will cause death. There are approximately 40,000 deaths per year in Canada from tobacco, approximately 10,000 deaths per year from alcohol, and approximately 800 deaths from all other illicit drugs combined. However, these drugs (alcohol and tobacco) are not subject to criminal prohibition but other forms of Federal and Provincial legislation and policy.

> **Evidence of Dr. B. Beyerstein, in Caine Nov. 27, 1995, Appellants Record (AR) Vol.I p. 22 - 24;**
>
> **Evidence of Dr. H. Kalant, in Caine Jan. 30, 1997,AR Vol.V p. 795 – 799;**
>
> **Appellant Caine's Brandeis Brief Materials(Exhibit 18)– Abel, E.L. *Marihuana: The First 12,000 Years*, New York, Plenum Press, 1980; (Tab 14) and (Tab 21– Weil, A. and Rosen W., *Chocolate to Morphine: Undertaking Mind-Active Drugs*, Boston, Houghton Mifflin, 1985, Chapter 9;**
>
> **Robbe, H.W.J. *Influence of Marihuana on Driving*, pp.49-50, Institute of Human Pharmacology, University of Limberg, Maastricht (1994) – (Exhibit 40 in Caine), pp.49-50;**
>
> **Grinspoon, L. and Bakalar, J., *Marihuana: The Forbidden Medicine*, New Haven, Yale University, Yale University Press, 1993(Exhibit 18);**
>
> **Book of Miscellaneous Authorities, Tabs 1- 13**

Historical Use and Early Legal History

5. The *Opium and Drug Act* of 1911 was Canada's first narcotic prohibition legislation and contained no reference to cannabis sativa. In 1923, cannabis sativa was added to the Schedule of prohibited drugs under that Act. There was no discussion or debate in the House of Commons at the time of its inclusion. While it had been used for thousands of years in other cultures for recreational, medical and sacramental purposes and was introduced into European society in the mid 19th century and was the subject of numerous articles and books by prominent literary figures who experimented with the substance, there was little or no information known about the substance as far as by the Canadian authorities concerned at the time.

6. There were no recorded convictions for possession of marihuana until 1937 and the annual conviction rate over the next 20 years fluctuated somewhere between 0 and 12. There were no significant numbers of recorded convictions until the late 1960's. There was certainly no public health problem in existence in Canada in 1923 when it was first prohibited and arguably there has never been any public health problem from its consumption and use in Canada ever since. It appears that the writings of Emily Murphy, a crusading Edmonton, Alberta Magistrate was a significant influence in establishing prohibition. Commencing in 1920 she published a series of sensational and racist articles in McLean's Magazine on the horrible effects of marihuana use. These articles were later expanded into a book called ***The Black Candle*** which was published in 1922. Her information was derived primarily from correspondence with U.S. police officials which consisted of wild and outlandish claims for which there was absolutely no truth. In other words, a climate of irrational fear led to the imposition of criminal sanctions against marihuana.

7. A penalty of seven years imprisonment for simple possession existed right through the enactment of the first edition of our *Narcotic Control Act* in 1961 until the surge in popularity and significant increase in numbers of recorded offences in the late 1960's. It was not until 1969 that simple possession of marihuana was hybridized enabling the authorities to prosecute it on summary conviction instead of solely by indictment.

> ***Regina v. Clay*, unreported, August 14th, 1997, Ontario Court (General Division), File Number 3887F per McCart, J. at pp.7-8;**
>
> **Affidavit of Dr. P. James Giffen, sworn March 20th, 1997; Affidavit of Dr. L. Grinspoon, sworn March 26th, 1997, filed as part of the Application Record in *R. v. Clay*, *supra;***
>
> **Evidence in Caine of Prof. B. Beyerstein – Nov. 27, 1995 AR Vol I p. 22-33; Prof. N. Boyd - Nov. 28, 1995, AR Vol I p. 73-104, generally and in particular p. 73-83; Dr. H. Kalant - Jan. 31, 1997 cross examination, Vol IV p. 906, Sep 5,1997 cross examination, AR Vol VII p. 1105;**
>
> **Giffen, P.J., Endicott S., Lambert S., *Panic and Indifference – the Politics of Canada's Drug Laws – a Study in the Sociology of Law*,**

Canadian Centre on Substance Abuse, Ottawa, Ontario, 1991. (Exhibit 18–Book forming part of Appellants Brandies Brief materials at trial);

Robbe, H.W.J. *Influence of Marihuana on Driving*, Chapter 2, General Introduction, pp.13-16 – 2.1 History of Cannabis Use, Institute of Human Pharmacology, University of Limberg, Maastricht (1994) – (Exhibit 40 in Caine);

Hansard Record from the House of Commons (Exhibit 38 in Caine);

Appellants Caine's Brandeis Brief Materials(Exhibit-18 in Caine)
(Tab 2)Boyd, N. "The Origins of Canadian Narcotics Legislation: The Process of Criminalization in Historical Context", *8 Dalhousie Law Journal* 102
(Tab 3) - Bryan, M.C., "Cannabis Canada – a decade of indecision", Federal Legal Publications, Inc. (1980)
(Tab 8) - Oscapella, E., "Witch Hunts and Chemical McCarthyism: The Criminal Law and Twentieth Century Canadian Drug Policy", Ottawa, June 1993
(Tab 14) - Abel, E.L. *Marihuana: The First 12,000 Years*, New York, Plenum Press, 1980
(Tab 16) - Boyd, N. *High Society: Legal and Illegal Drugs in Canada*, Toronto, Key Porter Books, 1991, pp 9-11
(Tab19) - LeDain, G. *Cannabis: A Report of the Commission of Inquiry into the Non-Medical Use of Drugs*, Ottawa, Information Canada, 1972.

Crown Respondents Brandeis Brief Materials in Caine (Exhibit 5)
(Tab 19)- MacFarlane, *Drug Offences in Canada* (1986, 2nd ed.), Aurora: Canada Law Book Inc., pp. 1-39

Current Use – The Scope and Size of the So-Called Problem

8. Cannabis sativa or marihuana was rarely consumed in Canada until the 1960's. It has been estimated that somewhere between 4-5 million people have tried this substance. Consumption rates have varied from year-to-year with no apparent statistical relationship to increases or decreases in the severity of the law.

9. According to Dr. H. Kalant, the Federal government's only witness, the total current marihuana using population is estimated to be about 1 million Canadians or 4.2% of the total population aged 15 or older. Of that total group Dr. Kalant estimated

that 95% of them were low/occasional/moderate users for whom there were no significant health risks, so long as they were healthy adults and did not fall into one of the vulnerable groups, namely immature youths, pregnant women and the mentally ill. He estimated the remaining 5% to be chronic users for whom there is a significant health risk primarily from the process of smoking.

10. He defined a chronic user to be a person who uses 1 or more marihuana joints (cigarettes) per day. He agreed that 5% of the total current user population of 4.2% of the Canadian population is .21% or 1/5 of 1% which is roughly 30,000 people across Canada. He agreed that this was a very small group of people. Leaving aside potential harm to others from the acute effects of a user driving, flying, or operating complex machinery, Dr. Kalant confirmed that his concern in regards to this small group is the harm to their health as chronic users and that their use did not involve harm to others or significant harm to society as a whole. He also agreed that those chronic users could substantially reduce the health risks to themselves by using marihuana joints that were more tightly packed to reduce combustion temperatures, contained a filter, were not smoked down to the end (roach) and were not smoked by deep lung inhalation.

11. Dr. Kalant also testified that while there was no recognized public health problem forming the basis for the law in the first place, the increased use during the 1960's caused some concerns. However, this use was still not a significant health problem even at that time. It is not a significant public health issue at this time that requires intervention of the Federal government and it is a matter that can be dealt with locally and within each Province.

12. The ***Horizons 1994*** survey of alcohol and other drug use in Canada (Exhibits 46 and 47) confirms that in 1993 about 1 million Canadians (4.2%) age 15 or older reported use of marihuana in the past year and that use was highest in British Columbia and lowest in Saskatchewan. Dr. S. Peck, the Deputy Provincial Health Officer for the Province of British Columbia, charged with the responsibility under the Provincial *Health Act* to investigate any health hazards, testified that there was no information coming to

his office suggesting there was a significant health problem as a result of marihuana use in the Province of British Columbia. He said that he operated with local health boards and health officers and health officials across not only British Columbia, but other Provinces and organizations in Canada as well as on a global level. Marihuana use had not been brought to his attention as a significant health problem anywhere. He referred to the Annual Reports from the Provincial Health Officer from 1992, 1994, 1995 (Exhibits 11, 12, and 13) and confirmed that marihuana use or marihuana health problems were not referred to in any of those reports as representing any kind of significant health problem in this Province. He said there is not a lot of evidence to show that use is causing a great deal of harm in terms of hospitalisation or deaths or the poisoning of children. He referred to there being no evidence of a "burden of illness" either to the user or to others or society as a whole.

> ***Regina v. Clay*, unreported, August 14th, 1997, Ontario Court (General Division), File Number 3887F per McCart, J. at pp.8-9 and 12;**
>
> **Affidavit of Prof. B. Alexander, sworn March 25th, 1997; Dr. P. Erickson, sworn March 17th, 1997, filed as part of the Application Record in *R. v. Clay*, *supra;***
>
> **Evidence of Dr. B. Beyerstein in Caine- Nov. 28, 1995, in Chief, AR Vol I p. 49-53, Vol I 130-131; Mar. 11, 1996, AR Vol II p. 301, 317-319; Mar. 13, 1996, AR Vol III p. 404, 414;**
>
> **Evidence of Prof. Neil Boyd in Caine - Nov. 28, 1995 in Chief, AR Vol I p.84,86,88,92-97,106-11,115,117,127-128; Mar.13, 1996, AR Vol III p. 404, 414;**
>
> **Evidence of Dr. A. Connolly in Caine - Mar. 14, 1996 in Chief, AR Vol III p. 489-493, 522-526; Jan. 27, 1997, cross examination, AR Vol IV p. 555-557;**
>
> **Evidence of Dr. H. Kalant in Caine - Jan. 31, 1997 cross examinationAR Vol VI p.880, 889, 894-898, 907; Sep. 5, 1997cross examination.**
>
> **Evidence of Dr. S. Peck - Mar. 8, 1996 AR Vol II 159 p. 159, 168-170, 187,191, 196, 199, 201, 202, 204, 205-207, 230;**

Adlaf, et al Alcohol and other drug use (1994, ARF); Ontario Student Drug Survey (1995), ARF). Referred to by Prof. Boyd in Caine in re-examination, transcript, March 13 1997, AR Vol III p. 395;

***Annual Report* from the Provincial Health Officer, 1992 ; *Annual Report* from the Provincial Health Officer, 1994;*Annual Report* from the Provincial Health Officer, 1995 (Exhibit 11- 13 in Caine);**

***Alcohol and Drug Use Results from the 1993 General Social Survey*, Report prepared for the Studies Unit, Health Promotion Director at Health Canada, January, 1995 by Eric Single, Joan Brewster, Patricia McNeil, Jeffrey Hatcher and Katherine Trainer (Exhibit 47 in Caine);**

***Horizons 1994* "Alcohol and other Drug Use in Canada" by Eric Single, Ann McLenan and Patricia McNeil (Exhibit 46 in Caine);**

***Exposing Marihuana Myths: a Review of the Scientific Evidence* by Zimmer and Morgan (Oct. 1995), Claim #s 1, 10, 14 (Exhibit 6 in Caine);**

MacFarlane, *Drug Offences in Canada* (1986, 2nd ed.), Aurora: Canada Law Book Inc., pp. 1-39 (Exhibit 11 in Caine);

***The Adolescent Health Survey*, Province of British Columbia (Exhibit 14 in Caine);**

***National Alcohol and other Drugs Survey* (1990), Health and Welfare Canada (Exhibit 15 in Caine);**

Chapter 4, *Licit and Illicit Drugs*, Addiction Research Foundation CCSA/ARF 1995 Canadian Profile (Exhibit 16 in Caine);

***Licit and Illicit Drugs in Canada* (1989) Health and Welfare Canada, Part II, "Illicit Drug Use" (Exhibit 17 in Caine);**

Report of the Task Force into Illicit Narcotic Overdose Deaths in British Columbia, Office of the Chief Coroner, Ministry of the Attorney General, September 6, 1994, in particular pp.85-94(Ex.19 in Caine)

Appellant Caine's Brandeis Brief Materials Exhibit 18
(Tab 1) - Boyd, N. "The Question of Marihuana Control: Is De Minimis Appropriate, your Honour?", *24 Criminal Law Quarterly* 212, 1982
(Tab 2) - Boyd, N. "The Origins of Canadian Narcotics Legislation:

The Process of Criminalization in Historical Context", *8 Dalhousie Law Journal* 102
(Tab 3) - Bryan, M.C., "Cannabis Canada – a decade of indecision", Federal Legal Publications, Inc. (1980)
(Tab 7)- Nadelmann, E. et al., "The Harm Reduction Approach to Drug Control: International Progress", New Jersey, April 1994;
(Tab 8) - Oscapella, E., "Witch Hunts and Chemical McCarthyism: The Criminal Law and Twentieth Century Canadian Drug Policy", Ottawa, June 1993
(Tab 13) - "Submission on Bill C-7 the Controlled Drugs and Substances Act", National Criminal Justice Section of the Canadian Bar Association (May 1994)
(Tab 14) - Abel, E.L. *Marihuana: The First 12,000 Years*, New York, Plenum Press, 1980
(Tab 16) - Boyd, N. *High Society: Legal and Illegal Drugs in Canada*, Toronto, Key Porter Books, 1991, pp. 106-107
(Tab 17) - Erickson, P.G., *Cannabis Criminals*, Toronto, Addiction Research Foundation, 1980
(Tab 19) - LeDain, G. *Cannabis: A Report of the Commission of Inquiry into the Non-Medical Use of Drugs*, Ottawa, Information Canada, 1972.
(Tab 20) - LeDain, G. *Final Report of the Commission of Inquiry into the Non-Medical Use of Drugs*, Ottawa, Information Canada, 1972.

Crown Respondent's Brandeis Brief Materials in Caine (Ex. 5)
(Tab 2)- Kalant and Goldstein, "Drug Policy: Striking the Right Balance" (1990)

The Impact of the Law on Individuals and Rates of Use

13. It has been estimated that by the 1990's over 600,000 Canadians have received criminal records for cannabis related offences. In recent years, convictions for cannabis possession have fluctuated between 29,119 (1989) and 35,587 (1984), and on average 2,128 individuals/year have been incarcerated for possession of cannabis (note: disposition statistics for marihuana possession have not been published by the government since 1985). Between 1977-1985, 93% of all cannabis convictions have been for simple possession and the majority of all narcotics convictions have been for cannabis-related offences.

14. In 1990, convictions for possession accounted for 50% of all drug related convictions compared to 44% in 1981. In 1990, the most recent statistics for

convictions, 33% of the convictions for possession resulted in custodial sentences. Health and Welfare Canada statistics also show that only a very small proportion of marihuana users face any consequences from the criminal justice system as a result of their use. Only a very small number of declared users are confronted by the criminal justice system and they are disproportionately members of disadvantaged groups. American studies report similar findings.

15. The use of marihuana increased dramatically commencing in 1966 and appeared to peak around 1979. Use then appeared to decrease until about 1990 when a further increase was noted, particularly among youths. However, the 1993 *General Social Survey*, a report prepared for the Studies Unit, Health Promotion Directorate of Health Canada, reported that the current rate of use in 1993 was about 1 million Canadians or 4.2% of those age 15 and older. This is apparently a reduction in use from 6.5% to 4.2% since 1990. User rates today remain substantially lower than those recorded in the late 1960's and early 1970's. Use among 12-17 year olds in 1992 was 8% compared to 24% in 1979. Use among 18-25 year old was 23% in 1992 compared to 46.9% in 1979. Most adolescents cease use after a few years.

16. Throughout this time, or at least since 1969, the potential penalty for conviction of simple possession of marihuana on summary conviction has remained essentially the same. In other words, rates of use appear to go up or down regardless of the state of the law. Notwithstanding this extensive use over this extensive period, there does not appear to be any significant health or other consequences that have manifested themselves in Canadian society as a result of this use.

17. In the Netherlands where marihuana use has been de facto decriminalized since 1976 there has been no dramatic escalation in use and rates of use are far below those of the United States of America which maintains the most punitive approach towards this substance.

Affidavit of Prof. B. Alexander, sworn March 25th, 1997; Prof. N. Boyd, sworn April 1st, 1997, filed as part of the Application Record in *R. v. Clay*, *supra*

Evidence of Prof. B. Beyerstein in Caine– Nov. 28, 1995, AR Vol p. 51-53;

Evidence of Prof. Neil Boyd in Caine Nov. 28, 1995, AR p. 79-87, 91-94, 104-107, 115-116,126-128; Mar. 13, 1996, re-examination, AR Vol III p. 395-397;

Evidence of Dr. A. Connolly in Caine - Mar. 14, 1996, AR Vol III p. 524-525;

Evidence of Dr. H. Kalant in Caine - Jan. 30, 1997, AR Vol V p. 865-869; AR Vol VI 889,895-898; AR Vol VII p. 1061-1062, 1102;

Evidence of Dr. Peck in Caine - Mar. 8, 1996, AR Vol II p. 193-198;

Alexander, B.K., *Peaceful Measures, Canada's Way out of the 'War on Drugs"*, University of Toronto Press, 1990, Chapter 3;(Ex.18 in Caine)

Zimmer and Morgan, *Marihuana Myth, Marihuana Facts: a Review of the Scientific Evidence*, Lindesmith Centre, New York and San Francisco (1997);(Ex.39 in Caine).

***Horizons 1994* "Alcohol and other Drug Use in Canada" Research publication for the Studies Unit, Health Promotion Directorate, Health Canada and the Canadian Centre on Substance Abuse, by Eric Single, Ann McLenan and Patricia McNeil (Exhibit 46 in Caine);**

***Alcohol and Drug Use Results from the 1993 General Social Survey*, Report prepared for the Studies Unit, Health Promotion Directorate, Health Canada, January, 1995 by Eric Single, Joan Brewster, Patricia McNeil, Jeffrey Hatcher and Katherine Trainer (Exhibit 47 in Caine);**

***The Adolescent Health Survey*, Province of British Columbia, Chapter 10 "Substance Use and Abuse" (Exhibit 14 in Caine);**

***National Alcohol and other Drugs Survey* (1990), Health and Welfare Canada, Part 2, Other Drugs (Exhibit 15 in Caine);**

Chapter 4, *Licit and Illicit Drugs*, Addiction Research Foundation CCSA/ARF 1995 Canadian Profile (Exhibit 16 in Caine);

***Licit and Illicit Drugs in Canada* (1989) Health and Welfare Canada, Part II, "Illicit Drug Use" (Exhibit 17 in Caine);**

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(Tab 1) - Boyd, N. "The Question of Marihuana Control: I De Minimis Appropriate, your Honour?", *24 Criminal Law Quarterly* 212, 1982
(Tab 3) - Bryan, M.C., "Cannabis Canada – a decade of indecision", Federal Legal Publications, Inc. (1980)
(Tab 4) - Erickson, P.G. and Fischer, B. "Canadian Cannabis Policy: The Impact of Criminalization, the Current Reality and future Policy Options", Toronto, Addiction Research Foundation, 1995.
(Tab 8) - Oscapella, E., "Witch Hunts and Chemical McCarthyism: The Criminal Law and Twentieth Century Canadian Drug Policy", Ottawa, June 1993
(Tab 10) - Smith, R., "Prohibition isn't working – some legislation will help", *British Medical Journal*, Volume 211, 23-30 December 1995.
(Tab 13) - "Submission on Bill C-7 the Controlled Drugs and Substances Act", National Criminal Justice Section of the Canadian Bar Association (May 1994)
(Tab 16) - Boyd, N. *High Society: Legal and Illegal Drugs in Canada*, Toronto, Key Porter Books, 1991, p. 78 in particular pp. 79, 81-82, 99;
(Tab 17) - Erickson, P.G., *Cannabis Criminals*, Toronto, Addiction Research Foundation, 1980
(Tab 18) - Apap et al., *Questioning Prohibition* (1994), Brussels: IAL International Antiprohibitionist League, particularly at pp. 271, 275
(Tab 19) - LeDain, G. *Cannabis: A Report of the Commission of Inquiry into the Non-Medical Use of Drugs*, Ottawa, Information Canada, 1972- see particularly Chapter 6 "Conclusions and Recommendations, pp.265-310 and summary of recommendations at pp.301-302, 310;
(Tab 20) - LeDain, *Final Report of the Commission of Inquiry into the Non-Medical Use of Drugs*, Ottawa, Information Canada, 1973.

The LeDain Commission – The Report of the Canadian Commission of Inquiry into the Non-Medical Use of Drugs

18. In response to the highly publicised media reports of youthful cannabis use, and in response to the large numbers of young people being subjected to criminal sanctions, the Federal Government appointed a Commission of Inquiry in 1969 headed by Commissioner Gerald LeDain ("the LeDain Commission") to report on the non-medical use of drugs. After almost four years of public hearings and research, the majority of

commissioners concluded that simple possession of marihuana should not be a criminal offence.

19. The LeDain Commission arrived at many conclusions concerning drug use in Canada. With respect to cannabis in particular, the Commission concluded that:

i. cannabis is not a "narcotic";
ii. few acute physiological effects have been detected from current use in Canada;
iii. that few consumers (less than 1%) of cannabis move on to use harder and more dangerous drugs;
iv. that there is no scientific evidence indicating that cannabis use is responsible for other forms of criminal behaviour;
v. at present levels of use, the risks or harms from consumption of cannabis are much less serious than the risks or harms from alcohol use, and
vi. that the short term physical effects of cannabis are relatively insignificant and there is no evidence of serious long term physical effects.

Regina v. Clay, unreported, August 14th, 1997, Ontario Court (General Division), File Number 3887F per McCart, J. at pp.13, 16 and 17;

Affidavit of Dr. P. James Giffen, sworn March 20th, 1997; Prof. M. Andrée-Bertrand, sworn March 17th, 1997, filed as part of the Application Record in _R. v. Clay_, _supra;_

Evidence of Prof. N. Boyd in Caine, Nov. 28, 1995, AR Vol I p. 88; Prof. B. Beyerstein, Nov. 27, 1995, AR Vol I p. 18-19;

Appellant Caine's Brandeis Brief Materials (Exhibit 18)
(Tab 16) - Boyd, N. _High Society: Legal and Illegal Drugs in Canada_, Toronto, Key Porter Books, 1991, in particular the Chapter "The Illegal Smile", pp. 78-107, in particular pp. 81, 82
(Tab19) - LeDain, G. _Cannabis: A Report of the Commission of Inquiry into the Non-Medical Use of Drugs_, Ottawa, Information Canada, 1972-see particularly Chapter 6 "Conclusions and Recommendations, pp.265-310 and summary of recommendations at pp.301-302, 310;
(Tab 20) - LeDain, _Final Report of the Commission of Inquiry into the Non-Medical Use of Drugs_, Ottawa, Information Canada, 1973.

Other Commissions both Before and Since

20. The conclusions reached by the LeDain Commission are consistent with virtually every other commission of inquiry appointed by other governments around the world

both before and since. The following government sponsored reports have recommended decriminalization of cannabis in light of their finding that cannabis-use does not cause either sufficient harm or social problems to justify resorting to the criminal sanction:

- ***1894 Indian Hemp Commission***, The commission has come to the conclusion that the moderate use of hemp drugs is practically attended by no evil results at all.

- ***1925, Panama Canal Zone Report*****,** The influence of [marihuana]...has apparently been greatly exaggerated...There is no evidence...that it has any appreciably deleterious influence on the individual using it.

- ***1944 La Guardia Report (U.S.)*****,** There [is] no direct relationship between the commission of crimes of violence and marihuana... and marihuana itself has no specific stimulant effect in regard to sexual desires. The use of marihuana does not lead to morphine or cocaine or heroin addiction.

- ***1969 British Wootten Report*****,** [We] intended to present both sides of the controversy...But once the myths were cleared, it became obvious that the case for and against was not evenly balanced. By any ordinary standards of objectivity, it is clear that cannabis is not a very harmful drug.

  The association in legislation of cannabis and heroin...is inappropriate and new legislation to deal specifically and separately with cannabis...should be introduced as soon as possible...Possession of a small amount of cannabis...should not be punished by imprisonment....Sale or supply of cannabis should be punishable...with a fine not exceeding £100, or imprisonment for a term not exceeding four months.

- ***1970, the Canadian LeDain Commission Report*****,** Physical dependence to cannabis has not been demonstrated and it would appear that there are normally no adverse physiological effects...occurring with abstinence from the drug, even in regular users.

  Since cannabis is clearly not a narcotic we recommend that the control of cannabis be removed from the Narcotic Control Act...The Commission is of the opinion that no one should be liable to imprisonment for simple possession.

- ***1972, National Commission on Marihuana and Drug Abus*****e**, There is little proven danger of physical or psychological harm from the experimental or intermittent use of natural preparations of cannabis...Existing social and legal

policy is out of proportion to the individual and social harm engendered by the drug.

Marihuana's relative potential for harm to the vast majority of individual users and its actual impact on society does not justify a social policy designed to seek out and firmly punish those who use it...Existing social and legal policy is out of proportion to the individual and social harm engendered by the drug.

- ***1972, the Dutch Baan Commission,*** Cannabis does not produce tolerance or physical dependence. The physiological effects of the use of cannabis are of a relatively harmless nature.

  The current law does not respect the fact that the risks of the use of cannabis cannot be equalled to the risks of the use of substances that are pharmacologically much more potent...This hurts the credibility of the drug law, and the prevention efforts based on the law are made untrustworthy.

- ***1977, Commission of the Australian Government***, One of the most striking facts concerning cannabis is that its acute toxicity is low compared with that of any other drugs...No major health effects have manifested themselves in the community.

  Legal controls [should] no [be] of such a nature as to...cause more social damage than use of the drug...Cannabis legislation should be enacted that recognises the significant differences between...narcotics and cannabis in their health effects...Possession of marijuana for personal use would no longer be a criminal offence.

- ***1982, National Academy of Sciences Report***, Over the past 40 years, marijuana has been accused of causing an array of antisocial effects including...provoking crime and violence,...leading to heroin addiction,...and destroying the American work ethic in young people. [These] beliefs...have not been substantiated by scientific evidence.

  The advantages of policy of regulation include...the savings in economic and social costs of law enforcement..., better controls over the quality and safety of the product, and, possibly, increased credibility of warnings about risks.

- ***1994, Australian National Drug Strategy Committee***, Australia experiences more harm...from maintaining cannabis prohibition policy than it experiences from the use of the drug...We conclude that cannabis law reform is required in this country.

- ***1995 Dutch Report***, Cannabis is not very physically toxic...Everything that we now know...leads to the conclusion that the risks of cannabis use cannot...be described as “unacceptable”.

  It has been demonstrated that the more or less free sale of ...[marijuana] for personal use in the Netherlands has not given rise to levels of use significantly higher than in countries which pursue a highly repressive policy...Dutch policy on drugs over the last twenty years...can be considered to have been successful.

  Affidavit of Prof. H. Albrecht, sworn April 21st, 1997; Prof. M. Andrée-Bertrand, sworn March 17th, 1997, filed as part of the Application Record in *R. v. Clay*, *supra*

  Zimmer and Morgan, *Marihuana Myths, Marihuana Facts: a Review of the Scientific Evidence*, Lindesmith Centre, New York and San Francisco (1997), pre-p.1, p. 150 (Exhibit 39 in Caine)

Other Jurisdictions – the Law and Legal Developments

21. Jurisdictions which have decriminalized cannabis use have not seen an exponential growth in rates of consumption. For the most part, consumption rates remained stable after decriminalization. Numerous jurisdictions have decided to decriminalize the use of cannabis, including Holland, Spain, Italy, 11 American States, South Australia and the Australian Capital Territory.

22. In the **Netherlands**, de facto decriminalization of cannabis has existed since 1976. In that year, the Dutch government amended the 1976 *Opium Act* to distinguish clearly between hard and soft drugs. A policy of non-enforcement of the law in relation to cannabis has existed ever since. Marihuana can be openly purchased in coffee shops throughout the country. The consumption of cannabis has not significantly increased since 1976. While rates of use were not clearly known prior to 1976 and did go up slightly after 1976, there has been no dramatic increase in use and rates of use remain substantially lower than the United States. Current high school student use in the Netherlands is estimated at 5.4% whereas it is estimated at 29% in the United States which maintains the most stringent prohibitionist approach. This practice of non-enforcement of the criminal law was formalized in 1995 by inclusion in the Public

Prosecution department guidelines so long as the conditions set out in those guidelines are met.

23. In **Germany** in 1994 the German Supreme Court assessed the constitutionality of criminalizing cannabis use and concluded that, in light of the insignificant harm resulting from cannabis use, the state's failure to implement a policy of non-prosecution for personal possession could violate the German constitution. Apparently German public prosecutors have been given a discretion to dismiss minor cases of drug possession unconditionally or on a condition that a fine be paid or that community service be completed. This discretion has been used to dismiss minor drug cases involving possession for personal use. Each German State has developed its own guidelines as to when it would be permissible to dismiss such drug cases.

24. In **Spain**, a 1995 amendment to the Spanish *Penal Code* requires proof of a subjective intent to traffic or facilitate drug use by others. Possession of an illicit drug for personal use is not subject to any criminal or administrative sanction.

25. In **Italy**, criminal sanctions are being replaced for possession and use by administrative sanctions. Italian law apparently provides an exemption for possession, purchase and import for personal use while still keeping the drug user under administrative control.

26. Since 1987 in **South Australia** and 1992 in the **Australian Capital Territory**, simple possession and use has been effectively decriminalized by an "expiation" scheme. Under these schemes the police have the option to issue an expiation notice to anyone caught with a specified amount of cannabis instead of charging that person with a criminal offence. Such a notice allows the offender to pay a small fine and avoid being saddled with a criminal record. While small scale possession and cultivation remains a criminal offence, they are no longer penalized as such. In South Australia, a person can possess up to 100 grams of cannabis and 20 grams of cannabis resin and

up to 10 cannabis plants. In the Australian Capital Territory, the amount is 25 grams in possession or up to 5 plants being cultivated.

27. In **Colombia** on May 5th, 1994, the Constitutional Court of the Republic of Colombia declared that the prohibition against possession for personal use was unconstitutional according to the Colombian Constitution.

28. In the **United States of America**, 11 states have in effect decriminalized simple possession. In Alaska, such possession was decriminalized as a result of a Court case on the basis of a right to privacy guaranteed by the State Constitution. This enabled adults to possess marihuana in their home for personal use. It is still illegal to possess it elsewhere. However, in Alaska, Maine, Minnesota, Mississippi, Nebraska and Oregon, possession of small amounts are treated as a civil violation rather than a crime. It is treated like a minor traffic offence. In California, New York and North Carolina, possession of a small amount is deemed to be a misdemeanour. In Ohio it is a minor misdemeanour and in Colorado, a petty offence.

29. Apparently there are no criminal penalties for marihuana possession and use in **Switzerland** and **Ireland** and the police generally ignore small scale dealers if they conduct business in a way that does not disrupt public order. Since the hearing of this appeal below, there have been additional changes in the application of the cannabis laws in Belgium, Denmark, and the United Kingdom, favouring increased tolerance.

> ***Regina v. Clay*, unreported, August 14th, 1997, Ontario Court (General Division), File Number 3887F per McCart, J. at pp. 8-11;**
>
> **Affidavit of Prof. H. Albrecht, sworn April 21st, 1997; Prof. E. Single, sworn March 25th, 1997; Prof. D. Riley, sworn March 8th, 1997; Prof. B. Alexander, sworn March 25th, 1997, all filed as part of the Application Record in *R. v. Clay*, *supra;***
>
> **Evidence of Prof. Neil Boyd in Caine, Nov. 28, 1995, AR Vol I pp. 118-124;**
>
> **Book of Miscellaneous materials**
>
> **Judgment of German Constitutional Court on cannabis, March 9th, 1994; Tab .**

Prof. Dr. jur. Lorenz Böllinger, *Symbolic Criminal Law without Limits, Commentary on the Cannabis decision of the German Federal Constitutional Court;*Book Tab .

In re: Alexandre Sochandamandou, Constitutional Court Sentence number C-221/94 ref: record number D-429, May 5th, 1994, Plenary Session of the Constitutional Court of the Republic of Colombia;(Tab .)

Zimmer and Morgan, *Marihuana Myth, Marihuana Facts: a Review of the Scientific Evidence*, Lindesmith Centre, New York and San Francisco (1997)(Exhibit 39 in Caine);

Appellant Caine's Brandeis Brief Materials (Exhibit 18-Tab 18) - Apap et al., *Questioning Prohibition* (1994), Brussels: IAL International Antiprohibitionist League

Recent Legislative History, Developments and Practices

30. As a result of the conclusions and recommendations of the LeDain Commission, in the 1970's, every political party in Canada promised some form of decriminalization.

31. In 1972 the government of Prime Minister Trudeau, through then Health Minister John Munro introduced amendments to the *Criminal Code* to allow for the imposition of an absolute or conditional discharge (see s.730 of the *Criminal Code of Canada*). This was intended to enable a person convicted of simple possession of marihuana to be deemed not to be convicted if not contrary to the public interest and in the accused's interests. The intention was to enable the individual to avoid receiving a criminal record. However, at the time the *Criminal Records Act* still applied, as did the *Identification of Criminals Act* and the scheme did not live up to its expectations at least in relation to the offence of simple possession of marihuana.

32. Then in 1975 the Trudeau government introduced Bill S-19 which would have made simple possession of marihuana prosecutable on summary conviction only and, by virtue of a Senate amendment, a person obtaining an absolute or conditional discharge would have been deemed to have obtained a pardon. This was another effort to avoid the consequences of a criminal record for such conduct. However, this proposal died on the order paper.

33. In 1980, the Liberal government under Trudeau promised once again, in its Throne speech, to reduce the penalties for marihuana use. Then Justice Minister Jean Chretien made similar promises. Nothing happened.

34. Then, in 1993, Bill C-85 was introduced by the Conservative government, but was not passed before they were defeated in an election. The Liberal government that came to power reintroduced the Bill in 1994 as C-7 and later it was continued as C-8 and ultimately this Bill became law in the form of the *Controlled Drugs and Substances Act* proclaimed May 14th, 1997. In the period leading up to passage of the Bill, it was referred to the Standing Senate Committee on Legal and Constitutional Affairs which concluded that decriminalization would be the best course of action to take. However, that Committee, in its official recommendation to Parliament stopped short of making such a recommendation. Instead, it advised the government that the LeDain Commission's findings should be revisited and that the government should study whether or not decriminalization would lead to increased use and abuse. A House of Commons Standing Committee on Health was set up to undertake a review of Canada's drug policies, however, that Committee's mandate does not stipulate that it should revisit the LeDain Commission findings, nor is it required to expressly explore any issues specific to cannabis use.

35. The *Controlled Drugs and Substances Act* essentially provides the same old penalties upon summary conviction that have existed since 1969. If the amount involved is under 30 grams, then the offence is only prosecutable on summary conviction. This removes the applicability of the *Identification of Criminals Act* so that a person does not have to be fingerprinted or photographed. However, a person will still receive a criminal record under the *Criminal Records Act* unless he or she obtains an absolute or conditional discharge. Consequently, the inapplicability of the *Identification of Criminals Act* simply makes the criminal record hard to trace.

36. Apparently neither Bill C-85, nor C-7 or C-8 which culminated in the new *Controlled Drugs and Substances Act* originated within the caucus or cabinet of either

the Conservative or Liberal governments. Rather, the Bills originated through the bureaucracy and it is suspected as a result of pressure from the United States government on our bureaucracy to modernize our drug laws in line with the 1988 Vienna Convention on Psychotropic Substances. Consequently, while politicians in our country were promising to decriminalize and their political parties were passing resolutions to that effect, they proceeded to do the opposite.

37. Interestingly, while our politicians and our bureaucracies were continuing to say one thing and do another, it was the police and the judiciary that observed the relative harmlessness of simple possession of marihuana in relation to other offences coming before the courts. Consequently it is now not unusual for the police to not charge and simply confiscate the substance and warn the individual. If someone is charged, diversion is now available and in urban areas charges of simple possession are rarely proceeded with apparently as a result of government policy that involves a weighing of the cost of proceeding versus the amount involved and the person's record and factors of that kind. In rural areas charges are still proceeded with from time-to-time, but absolute and conditional discharges or minimal fines in the area of $100 are not unusual.

> **Affidavit of Dr. P. James Giffen, sworn March 20th, 1997; E. Oscapella, sworn March 21st, 1997, filed as part of the Application Record in *R. v. Clay*, *supra;***
>
> **Evidence of Prof. Neil Boyd in Caine, Nov. 28, 1995, AR Vol I p. 89, 95, 102-105;**
>
> **Appellant Caine's Brandeis Brief Materials(Ex.18-Tab13)"Submission on Bill C-7 the Controlled Drugs and Substances Act", National Criminal Justice Section of the Canadian Bar Association (May 1994)**

Physical or Mental Harm to the Health of the User

38. The conclusions reached by the LeDain Commission with respect to medical harms have not been refuted by any subsequent scientific study that has been generally accepted in the scientific community. All subsequent major commissions and

government reports have come to essentially the same conclusions and have even eliminated earlier medical concerns.

39. **The 1994 Australian National Drug Strategy Report on the Health and Psychological Consequences of Cannabis use** concluded:

(a) That the acute effects or immediate effects of marihuana consumption result in cognitive impairment, especially of attention and memory for the duration of the intoxication. There is some psychomotor impairment and probably and increased risk of accident if an intoxicated person attempts to drive a motor vehicle or operate machinery. Naïve users may experience anxiety, dysphoria, panic and paranoia. There is an increased risk of low birth weight babies if cannabis is used during pregnancy, but this birth weight becomes normal by the end of the first year and is of no known consequence. Those who are vulnerable because of personal or a family history of psychosis have an increased risk of experiencing psychotic symptoms.

In other words, pregnant women and the mentally ill or those with a family history of mental illness should not smoke cannabis. No one should smoke cannabis and drive, fly or operate complex machinery. Naïve users should be careful and if they choose to smoke should do so with experienced users and in an appropriate set and setting. Even during the late 1960's and 1970's when use was at its highest in Canada, the Narcotic Addiction Foundation of British Columbia observed users experiencing marihuana panic attacks, but there were very few of them and counselling was all that was required to rectify the problem. Experienced treatment directors at the time did not see marihuana use as a public health problem, but rather a popular issue that diverted resources and attention from other more serious drug problems in the community, such as alcohol. The criminalization of marihuana caused more harm than the drug itself.

(b) **The 1994 Australian National Drug Strategy** concluded that the major health and psychological effects of chronic heavy cannabis use, especially daily use over many years, remained uncertain. There are no significant concerns with respect to the

low/occasional/moderate adult healthy user. On the evidence the Australian report concluded that the major probable adverse effects on chronic heavy cannabis users appear to be:

> "(i) Respiratory disease is associated with smoking as the method of administration, such as chronic bronchitis, and the occurrence of histophathalogical changes that may be precursors to the development of malignancy;
> (ii) Development of a cannabis dependence syndrome, characterized by an inability to abstain from or to control cannabis use;
> (iii) Subtle forms of cognitive impairment, most particularly of attention and memory, which persist while the user remains chronically intoxicated, and may or may not be reversible after prolonged abstinence from cannabis."

(c) The Australian report concluded as follows with respect to possible adverse effects on chronic heavy users, which remain to be confirmed by further research:

> "(i) An increased risk of developing cancers of the aero digestive tract (i.e. oral cavity, pharynx, and esophagus);
> (ii) An increased risk of leukemia among offspring exposed while in utero;
> (Iii) A decline in occupational performance marked by underachievement in adults in occupations requiring high-level cognitive skills and impaired educational attainment in adolescents;
> (iv) Birth defects occurring among children of women who used cannabis during pregnancies;"

(d) In addition, the Commission identified traditional high risk groups such as immature adolescents with a history of poor school performance whose educational achievements may be limited by cognitive impairments or those who start using at an early age progressing to heavy use and dependence; and

(e) Women of child-bearing age as previously mentioned as well as persons with pre-existing injuries or diseases such as heart problems, respiratory problems, other drug dependencies and schizophrenia or at least those who are at increased risk of precipitating or exacerbating schizophrenic symptoms.

40. It must be emphasised and repeated that apart from the acute effects, none of these concerns exist for the low, occasional or moderate user that comprises 95% of the marihuana consuming population in Canada. The chronic effects apply only to the chronic heavy user estimated by the government witness, Dr. Kalant in this case to be 5% of the marihuana consuming population or approximately .21% of the Canadian population as a whole or roughly 30,000 people across the country.

41. Dr. H. Kalant, chaired the **Joint Addiction Research Foundation-World Health Organization (ARF/WHO) scientific meeting on Adverse Health and Behavioural Consequence of Cannabis Use which was reported on in 1981.** He is also the Chair of a **Committee of the World Health Organizations (WHO) Program on Substance Abuse (PSA)** which has a report in preparation entitled "**Health Implications of Cannabis Use**". That Committee was formed at the request of a number of World Health Organization member States for further information on the health implications of cannabis and on a call by the 1992 World Health Assembly for further studies on the use of cannabis. The project commenced in 1993. The committee has yet to complete its report apparently because there is dissension as to the policy implications of the report, either in its ranks or from those to whom various drafts have been circulated on a broad basis. According to Dr. Kalant's testimony, the Committee received critical comments from individuals on all sides of the question, but rumour has it that it is the National Institute on Drug Abuse (NIDA) from the United States of America that is seeking to suppress the report as it might undermine the United States' legal and social policy in relation to cannabis use.

Crown Respondent Brandeis Brief Materials in Caine Exhibit 5, Tab 1

42. The World Health Organization, notwithstanding a request from the Court, declined to provide a copy of the draft so that the most up-to-date evidence could be considered by the Court.Dr. Kalant kindly provided us with a complete set of references. Dr. Kalant also testified that he did not expect any surprises from the report in the sense of any additional acute or chronic effects that might give cause for concern in terms of

harm to users. On the contrary, he testified that the current Committee did not think that the possible adverse effects in chronic heavy users of an increased risk of leukemia among offspring exposed while in utero would warrant mention as a seriously entertained risk today. Similarly, it was his view that the Committee would not consider as significant the risk to pregnant women who smoke at the time of conception developing birth defects to their child. In summary, Dr. Kalant testified here that apart from the concerns with respect to acute effects in conjunction with driving or flying, etc., the major significant health threat, apart from concerns to the high risk groups of immature adolescents, pregnant women and the mentally ill, is to the chronic heavy user developing significant respiratory diseases as a result of smoking. This has everything to do with pyrolisis and nothing to do with THC, the active ingredient in marihuana. In addition, he was of the view that this significant risk could be significantly reduced in the chronic heavy user by smoking a more tightly packed cigarette with a filter and by not smoking it down to the very end and by not taking deep lung inhalations.

Crown Respondent Brandeis Brief Materials in Caine Exhibit 41Supplementary list of references of Dr. Kalant .

43. Dr. Kalant also testified in the case of ***R. v. Hamon*** in October 1991, which was later upheld in the Quebec Court of Appeal. He testified here that since ***Hamon***, there have been a number of significant scientific developments reviewing and updating our scientific knowledge with respect to cannabis. Some of these reports and studies are as follows:

(i) The review of the scientific evidence by Professor Zimmer and Dr. Morgan entitled *Marihuana Myths and Marihuana Facts*;

(ii) The 1994 study by Gruber and Pope which found no convincing evidence that marihuana causes serious psychiatric problems;

(iii) The study by Kouri and Pope in 1985 which found no difference in psychiatric problems when heavy marihuana users were compared with infrequent users;

(iv) The Australian or Hall report and its review of recent scientific literature;

(v) The Robbe studies in the Netherlands on driving while under the influence of marihuana;

(vi) The 1993 U.S. National Highway and Transportation Safety study examining the influence of marihuana on drivers;

(vii) A study by Slicker in 1992 which looked at organic changes in the brain and found no residual neuro-pathology or detectable bio-chemical differences;

(viii) Study by Kouri and Pope in 1995 establishing the lack of any symptom or syndrome known as the amotivational syndrome;

(ix) The New South Wales and Sydney reports examining marihuana dependency issues.

44. It follows that most of these developments also post-date the decision of Dorgan, J. of the British Columbia Supreme Court in ***R. v. Cholette*** of March 23rd, 1993.

45. With respect to the findings of fact made by Justice McCart in ***R. v. Clay***, Dr. Kalant testified as follows:

(a) That the occasional to moderate use of marihuana by a healthy adult is not ordinarily harmful to health, even if used over a long period of time;

(b) There is no conclusive evidence demonstrating any irreversible organic or mental damage to the user, except in relation to the

lungs and then only to those of a chronic, heavy user such as person who smokes at least 1 and probably 3-5 marihuana joints per day;

(c) There is no evidence demonstrating irreversible, organic or mental damage from the use of marihuana by an ordinary health adult who uses occasionally or moderately;

(d) Cannabis use does cause alteration of mental function and as such should not be used in conjunction with driving, flying or operating complex machinery;

(e) There is no evidence that cannabis use induces psychosis in ordinary healthy adults who use occasionally or moderately and in relation to the heavy user, the evidence of marihuana psychosis appears to arise only in those having a predisposition towards such a mental illness;

(f) Cannabis is not addictive to healthy adults who use moderately or occasionally. There is an issue of potential dependence in heavy users, but marihuana is not a highly reinforcing type of drug, like heroin or cocaine and consequently physical dependence is not a major problem;

(g) There is no causal relationship between cannabis use and criminality;

(h) There is no evidence that marihuana is a gateway drug and recent studies involving the release of dopamine in animal studies and the release of cortico releasing factor when under stress in animal studies do not support the gateway theory;

(i) Cannabis use does not make people aggressive or violent, but on the contrary it tends to make them passive and quiet;

(j) There have been no deaths from the use of marihuana;

(k) There is no evidence of an amotivational syndrome, although chronic use of marihuana or many other substances could decrease motivation;

(l) Consumption in so-called “decriminalized states” does not increase out of proportion to states where there is no decriminalization;

(m) Given our current state of knowledge about the effects of marihuana use on health, the health related costs of marihuana use are very, very small in comparison with those costs attributable to tobacco and alcohol consumption;

(n) The harm to health or potential harms to health discussed relate to harm to the marihuana user and not to others or to society as a whole. Harm to health is essentially a problem for the chronic user;

(o) There is general medical support for the availability of therapeutic cannabis use;

(p) One of the major probable adverse effects of marihuana social and legal policy is the law itself, including its negative effects on the ability of scientists to carry out the scientific investigations required;

(q) The use of the terms “use” and “abuse” can be misleading and the term “abuse” is particularly difficult to apply in the context of marihuana use;

(r) Past claims about marihuana and its use have been exaggerated and its public image as an extremely dangerous drug is not well-

> founded. There is no governing logic in the use of criminal law to prevent the use of marihuana and the health care concerns can be dealt with at a local, regional or provincial level and are not of such a magnitude as to warrant federal intervention.

46. With respect to the most recent **New South Wales Report**, which is one of the first studies of long-term marihuana use, Dr. Kalant testified that this study interviewed 268 marihuana users and 31 non-using partners and family members with a profile of the average interviewee being a regular marihuana user since the age of 17, smoking for 19 years with 94% of them smoking at least twice a week and 60% smoking daily with typical quantity being 2 joints a day. The report found no more evidence of psychological disturbance or other problems such as anxiety or depression in the marihuana users than in the general public. The report concluded that cannabis use does not cause schizophrenia in those who do not have a predisposition for it. Respiratory problems were higher among this group than the general population, but 86% of them used marihuana and were also current or former tobacco smokers. The study was funded through the Commonwealth Department of Health National Drug Strategy.

47. Field studies in **Greece, Costa Rica and Jamaica** generally support the idea that marihuana is a relatively safe drug – not totally free from potential harm, but unlikely to create serious harm for most individual users or society."

48. Finally, it should be recalled that the editors of the prestigious medical journal, the **Lancet** in an editorial on November 11th, 1995 concluded "the smoking of cannabis, even long term, is not harmful to health. ...Cannabis per se is not a hazard to society but driving it further underground may well be."

> ***Regina v. Clay*, unreported, August 14th, 1997, Ontario Court (General Division), File Number 3887F per McCart, J. at pp. 11 and 13;**
>
> **Affidavit of Dr. J. Morgan, sworn April, 1997; Dr. L. Grinspoon, sworn March 26th, 1997; Dr. H. Lehmann, sworn March 26th, 1997; Dr. D. Riley, sworn March 8th, 1997; Dr. P. James Giffen, sworn March 20th,**

1997; E. Oscapella, sworn March 21st, 1997, all filed as part of the Application Record in *R. v. Clay*, *supra;*

Evidence of Dr. A. Connolly in Caine, Mar. 14, 1996, AR Vol III p. 491-493, 525-526;

Evidence of Prof. Neil Boyd in Caine, Nov. 28, 1995, AR Vol Ip.98-99,107-112,117;Vol.IIIp.360-361,365,370,371,377;

Evidence of Prof. Beyerstein Nov.27- 28,March 8,11-14,1996 Vol I p. 12-67,130-152,;Vol II p.241-243,280-304. 316-324,332-355,Vol III p. 404-441,445-483;

Evidence of Dr. A. Connolly, Mar. 14, 1996, Jan. 27, 1997 AR Vol III p. 488-527;Vol IV p. 529-570.

Evidence of Dr. H. Kalant in Caine, Jan.29-31, Sep. 4, 5, 1997; AR Vol V p. 776-877; Vol VI 878-1058; Vol VII p.1061-1117;

EvidenceofDr.J.Morgan in Caine,Jan.24,28,29,1995,ARVol.IV,573-709; Vol.V p710-733;

Evidence of Dr. Peck in Caine, Mar. 8, 1996 ,Vol.II p.155-230;

***R. v. Hamon*(1993),85 C.C.C.(3d)490(Que.CA).**

***R. v. Cholette,* unreported, March 23rd,1993 Victoria Registry # 64964(BCSC).**

Kassirer, J., "Federal Foolishness and Marijuana", *The New England Journal of Medicine*, January 30, 1997 p. 366;Book of Miscellaneous authorities;

New South Wales Report (Exhibit 51in Caine);

***Health Implications of Cannabis Use* (Exhibit 45 in Caine);**

Appellant Caine's Brandeis Brief Materials Exhibit 18.
(Tab 6) - Kouri, E. et al., "Attributes of Heavy. Occasional Marijuana Smokers in a College Population", Massachusetts, Society of Biological Psychiatry, 1995
(Tab 12) – "Deglamorising cannabis",*TheLancet*,Volume 346, Number 8985
(Tab 13) - "Submission on Bill C-7 the Controlled Drugs and Substances Act", National Criminal Justice Section of the Canadian Bar Association (May 1994)
(Tab 21) - Weil, A. and Rosen W., *Chocolate to Morphine: Undertaking Mind-Active Drugs*, Boston, Houghton Mifflin, 1985, Chapter 9.

Crown Respondents's Brandeis Brief Materials in Caine, Ex.5.
(Tab 1) – Fehr an Kalant, *Report of an ARF/WHO Scientific Meeting*

***on Adverse Health and Behavioural Consequences of Cannabis Use* (1981), Toronto: ARF Books**

Harm to the Health of Others or to Society as a Whole

49. Although the total social, medical and economic costs if any of cannabis-use have not been fully calculated, the Canadian Centre on Substance Abuse has calculated the total cost of alcohol, of tobacco and of all illicit drug use. The cost of tobacco use is almost 9 times greater than the total cost of all illicit drug use and the cost of alcohol use is almost 7 times greater than the total cost of illicit drug use. Dr. Kalant, for the Crown agreed with the findings of Dr. Eric Single's study for the Canadian Centre on Substance Abuse that the cost to Canadian society in economic terms from health costs, etc. would be very minimal from marihuana use in comparison with use of alcohol and tobacco. He testified that health related costs of marihuana use would be very, very small in relation to alcohol and tobacco. Dr. Peck, the Deputy Provincial Health Officer for the Province of British Columbia charged with the responsibility under the *Health Act of British Columbia* to investigate health hazards in the Province and who operates with local health boards, health officers and health officials not only within British Columbia but in other Provinces and organizations throughout Canada and internationally was unaware of any significant health problem in the Province of British Columbia from marihuana use. He was at pains to try and find some significant health problems or costs. He concluded that given the widespread use of marihuana, there is not a lot of evidence to show that it is causing a great deal of harm in terms of hospitalisation or death or poisoning in our society and if it is put in perspective in relation to other causes of health problems in our society, there is really no evidence of a burden of illness and cost to society at all.

50. The major significant concerns in terms of harm to others arises from the acute effects in conjunction with driving, flying or operating complex machinery or being involved in any conduct in which one's ability is impaired and when that conduct might significantly impact upon the health and lives of others. That this is an accepted and a legitimate basis for State or government interference to prohibit driving, flying or

operating other types of equipment or machinery at a time when one's ability to do so is impaired by a drug of any kind, is appropriately the subject of a criminal prohibition. Such a legitimate and proportionate prohibition is now contained in s.253 of the *Criminal Code* (see subsequent submissions under "Public Safety").

51. However, the fears and concerns with respect to marihuana use and driving appear to have been overstated or exaggerated and the most recent conclusions emanating from the Robbe study in the Netherlands are somewhat reassuring and are as follows:

- Current users of marijuana prefer THC doses of about 300 μg/kg to achieve their desired 'high'.
- It is possible to safely study the effects of marijuana on driving on highways or city streets in the presence of other traffic.
- Marijuana smoking impairs fundamental road tracking ability with the degree of impairment increasing as a function of the consumed THC dose.
- Marijuana smoking which delivers THC up to a 300 μg/kg dose slightly impairs the ability to maintain a constant headway while following another car.
- A low THC dose (100 μg/kg) does not impair driving ability in urban traffic to the same extent as a blood alcohol concentration (BAC) of 0.04g%
- Drivers under the influence of marijuana tend to over-estimate the adverse effects of the drug on their driving quality and compensate when they can; e.g. by increasing effort to accomplish the task, increasing headway or slowing down, or a combination of these.
- Drivers under the influence of alcohol tend to under-estimate the adverse effects of the drug on their driving quality and do not invest compensatory effort.
- The maximum road tracking impairment after the highest THC dose (300 μg/kg) was within a range of effects produced by many commonly used medicinal drugs and less than that associated with a blood alcohol concentration (BAC) of 0.08g% in previous studies employing the same test.
- It is not possible to conclude anything about a driver's impairment on the basis of his/her plasma concentrations of THC and THC-COOH determined in a single sample.

The authors of the study recommended future research into a number of areas. Additional studies, including some conducted after Robbe, include those by the U.S. National Highway Transportation Safety Administration (1983, 1992, 1993); the University of Adelaide and Transport South Australia report (1998), the University of Toronto report (1999) and the U.K. Transportation Research Laboratory (2000) which all suggest that cannabis has the effect of making drivers slower and more cautious, if anything. These reports are collected online at: www.cannabisculture.com/news/driving

52. As a result of the Robbe study and other studies, Morgan and Zimmer in reviewing the scientific evidence on this issue concluded as follows:

> "There is no compelling evidence that marijuana contributes substantially to traffic accidents and fatalities. At some doses, marijuana affects perceptions and psychomotor performance – changes which could impair driving ability. However, in driving studies, marijuana produces little or no car-handling impairment – consistently less than that produced by low to moderate doses of alcohol and many legal medications. In contrast to alcohol, which tends to increase risky driving practices, marijuana tends to make subjects more cautious. Surveys of fatally injured drivers show that when THC is detected in the blood, alcohol is almost always detected as well. For some individuals, marijuana may play a role in bad driving. The overall rate of highway accidents appears not to be significantly affected by marijuana's widespread use in society."

53. In those countries and States where there is effective or de facto decriminalization of simple possession, there is no indication of increased impaired driving or emergency room admissions or that marihuana use is a significant factor in motor vehicle accidents.

54. There is simply no evidence to indicate that the use of marihuana by one person might be harmful to another in close proximity or nearby by way of "second hand smoke" or other deleterious effects. No studies have apparently been conducted and no complaints received. Normally, others are present with the consent of the user and are voluntary participants. Further, the amount of smoke engendered by a marihuana cigarette is substantially less than that of a regular cigarette smoker.

Regina v. Clay, unreported, August 14th, 1997, Ontario Court (General Division), File Number 3887F per McCart, J. at p. 12;

Affidavit of Prof. E. Single, sworn March 25th, 1997, filed as part of the Application Record in _R. v. Clay_, _supra;_

Evidence of Prof. B. Beyerstein in Caine, Nov. 28, 1995, AR Vol I p. 138-144; Vol II p. 286-293, Vol III p. 409-410, 446-447, 453-454;

Evidence of Prof. N. Boyd in Caine, Nov. 28, 1995, AR Vol I p. 98-124;

Evidence of Dr. H. Kalant, in Caine, Jan. 30, 1997, AR Vol V p. 776-778, 822-825, 845; Vol VI p. 969-983, 989, 1003; Vol VII p. 1065, 167, Vol VII 1090-1091, 1097;

Evidence of Dr. J. Morgan in Caine, Jan.28, 1997, AR Vol IV p. 691-697; Vol V p. 714-717, 750

Medical or Therapeutic Benefits of Cannabis

55. A growing body of evidence has re-emerged indicating that cannabis has significant medicinal value with respect to the treatment of glaucoma and as an anti-emetic to reduce nausea from chemotherapy (whether for AIDS treatment or for cancer treatment). In addition, there is evidence of cannabis' medical utility with respect to spasms, epilepsy and chronic pain. Prior to 1923, cannabis was contained in various medical products and in 1932 the prohibitory law was amended to allow pharmacists to provide small quantities of cannabis for various ailments. This provision was repealed in 1946; however, in recent years, there has been a renewed interest in the medical or therapeutic value of cannabis.

56. Marihuana has been shown to be effective in reducing nausea induced by cancer chemotherapy, stimulating appetite in AIDS patients, and reducing intraocular pressure in people with glaucoma. There is also appreciable evidence that marihuana reduces muscle spastically in patients with neurological disorders. A synthetic THC capsule is available by prescription, but it is not as effective as smoked marihuana for many patients. Pure THC may also produce more unpleasant psychoactive side effects than smoked marihuana. Many people use marihuana as a medicine today, despite its illegality. In doing so, they risk arrest and imprisonment.

57. While these cases have been proceeding through the courts there have been parallel developments occurring also in the courts in relation to the use of marijuana as medicine. On July 31st2000, the Ontario Court of Appeal decided the case of Terry Parker. The Court held that the law as it then stood under the Controlled Drugs and Substances Act (CDSA) was, insofar as providing access to marijuana for medical purposes, unconstitutional in that it caused a patient to choose between his liberty and his health and because the exemption provision gave the Minister of Health an absolute discretion with no criteria, and therefore it did not comply with principles of fundamental justice and violated section 7 of the Charter. The Court suspended the declaration of unconstitutionality for one year giving the Federal Government until July 31st2001 to amend the provision to try and make it constitutional. The Government responded with the **Marihuana Medical Access Regulations.P.C.2001-1146,SOR/2001-227,14 June,2001.**

58. These Regulations amended the existing Regulation that came from the Narcotic Control Act that permitted “Practitioners” to give, sell or prescribe etc any “narcotic” and now “controlled drug” to a patient for a medical condition that they are treating the patient for, by taking away this power- in relation to cannabis only- leaving it in for much more dangerous drugs, including “heroin”, which only needs the additional requirement that the patient must also be an in or out patient at a hospital. Doctors can now prescribe marihuana if the patient is terminally ill, but if it is for something else then one or more specialists need to be consulted, depending on the nature of the medical problem under consideration. Doctor’s support is not enough. The ministers office must be satisfied that the applicant meets the criteria in the Regulations and the patient needs an exemption before they can possess grow and use marihuana. They can also have a caregiver grow it for them but not for profit. A substantial number of exemptions have now been granted by the government and many more applications are pending. The medical profession is not happy being the gatekeepers in relation to use and purpose. Some experimentation is going on through the government here and abroad into creating medicines in alternative forms and in creating alternative delivery methods

to smoking. They are focussed on trying to create modern medicine from the plant to bring to market through appropriate government controlled programs designed to protect the Canadian consumer from dangerous drugs as medicine. Others are focussed on whole plant medicinal or natural heath product aspects of the plant and its various uses, including ointments, tinctures etc. Resolution of the question of the prohibition of simple possession in particular, but also in relation to possession for the purposes of trafficking (giving, transporting, or selling etc) would also solve the medical use issue because in the absence of prohibition on possession, patients could possess with or without their doctors involvement as they wished, and as they already can with any other natural herbal product. Products marketed as "medicine" manufactured from the plant would still be subject to government control by consumer protection regulation.

> ***Regina v. Clay*, unreported, August 14th, 1997, Ontario Court (General Division), File Number 3887F per McCart, J. at pp. 15-18;**
>
> **Affidavit of Dr. J. Morgan, sworn April, 1997; Dr. L. Grinspoon, sworn March 26th, 1997; R. Randall, sworn March 26th, 1997; Dr. P. James Giffen, sworn March 20th, 1997; N. Tapiero, sworn March 10th, 1997, all filed as part of the Application Record in *R. v. Clay*, *supra;***
>
> **Evidence of Dr. H. Kalant in Caine, Sep. 5, 1997, AR Vol VIII p.1090;**
>
> **Evidence of Prof. Beyerstein in Caine, Nov. 27, 1995, AR Vol I p. 22-24; Vol I p. 54-55; Vol II p. 347-348**
>
> **Evidence of Dr. J. Morgan in Caine, Jan. 27, 1997, AR Vol IV p. 599-612;**
>
> **Zimmer and Morgan, *Marihuana Myths, Marihuana Facts: a Review of the Scientific Evidence*, Lindesmith Centre, New York and San Francisco (1997), Exhibit 39 in Caine, p. 16;**
>
> **Grinspoon, L. and Bakalar, J., *Marihuana: The Forbidden Medicine*, New Haven, Yale University, Yale University Press, 1993.Exhibit 18 in Caine.**
>
> **R. v. Parker – insert Ont CA citation and maybe see also Wakeford etc**

Impact of Prohibition – Doing More Harm than Good

57. Dr. Kalant testified that one of the major probable adverse effects of marihuana legal and social policy is the law itself in terms of its impact on individuals and the negative effects that it has on the ability of scientists to conduct the research that they would like to in order to resolve some of the questions that they still have. He noted that some deaths in the drug field are because of prohibition itself. He agreed that some of the social problems relating to drug use are as a result of the social policy itself. That the law is doing more harm than good is one of the consistent underlying factors forming the basis for the recommendations of various commissions and inquiries to decriminalize simple possession of marihuana. Dr. Beyerstein testified that there is an emerging consensus amongst legal scholars, medical scholars, psychologists, sociologists and others, that not only has prohibition been counter-productive, but it has not reached its goals, has exacted a terrible price in various ways that make it really intolerable and that a harm reduction approach should be instituted in its place. The end effect is that the "criminal justice" approach exacerbates the health problems as well as making it more difficult for health professionals to gather reliable data to analyze and assist in understanding and solving the problem, if any.

58. It is submitted that the harm caused by the law of prohibition itself must be weighed in the balance against the lack of harm to 95% of the users, the mitigatable harm caused to the other 5% and the insignificant harm their conduct causes to others or to society as a whole.

Evidence of Dr. H. Kalant in Caine,Sep. 5,1997. AR Vol VII p. 1080; Vol VI p. 901-902;

Evidence of Prof. B. Beyerstein in Caine, Mar.8,1996, AR Vol II p. 233; Mar. 11, 1996, Vol II p.315;

Drug Prohibition in the U.S. Cost Consequences and Alternatives (Exhibit 21 in Caine);

Alexander, B.K., *Peaceful Measures, Canada's Way out of the 'War on Drugs"*, University of Toronto Press, 1990, Chapter 3 (Exhibit 18);

"Avoiding Folly" (Exhibit 24 in Caine);

Report of the Task Force into Illicit Narcotic Overdose Deaths in British Columbia, Office of the Chief Coroner, Ministry of the Attorney General, September 6, 1994 ,Exhibit 19 in Caine;

Evidence of Dr. Connolly in Caine, Jan. 27, 1997, AR Vol IV p. 526,547, 565;

***"*A Wiser Course: Ending Drug Prohibition", by the Committee on Drugs and the Law, *The Record of the Association of the Bar of the City of New York,* Volume 49, Number 5, June, 1994;Book of Miscellaneous materials.**

Appellant Caine's Brandeis Brief Materials Exhibit 18
(Tab 4) - Erickson, P.G. and Fischer, B. "Canadian Cannabis Policy: The Impact of Criminalization, the Current Reality and future Policy Options", Toronto, Addiction Research Foundation, 1995.
(Tab 7)- Nadelmann, E. et al., "The Harm Reduction Approach to Drug Control: International Progress", New Jersey, April 1994; (Tab 8) - Oscapella, E., "Witch Hunts and Chemical McCarthyism: The Criminal Law and Twentieth Century Canadian Drug Policy", Ottawa, June 1993(Tab 10) - Smith, R., "Prohibition isn't working – some legislation will help", *British Medical Journal*, Volume 211, 23-30 December 1995.
(Tab 16)- Boyd, N. *High Society: Legal and Illegal Drugs in Canada*, Toronto, Key Porter Books, 1991, pp. 9-11
(Tab 18) - Apap et al., *Questioning Prohibition* (1994), Brussels: IAL International Antiprohibitionist League
(Tab 21) - Weil, A. and Rosen W., *Chocolate to Morphine: Undertaking Mind-Active Drugs*, Boston, Houghton Mifflin, 1985, Chapter 9.
Crown Respondent's Brandeis Brief Materials in Caine.Ex.5.
(Tab 2)- Kalant and Goldstein, "Drug Policy: Striking the Right Balance" (1990)

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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