

The Current Approach to Cannabis Possession in Canada: Issues and Alternatives

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Introduction

Ganja, bud, green, weed, dope and pot: the endless list of terms for cannabis displays the popularity of this illicit substance. Cannabis is the most commonly consumed illegal drug around the world (Room, Fischer, Hall, Lenton, & Reuter, 2010, p.3). Marijuana use far surpasses other commonly known drugs such as opium and cocaine. In fact, 96% of countries report cannabis consumption; it is especially prevalent in Western nations such as Canada and the United States (Babor et al., 2010, p.28). Not only is it already the most highly consumed illegal drug, but the popularity of cannabis is expanding around the globe (Babor et al., p.29). The alternate state of pleasure provided by this psychoactive drug makes it a common choice for youth and young adults. Popular support for the drug displays changing attitudes in society (Room et al., p.73). However, despite liberal views by many members of the public and an ever-growing consumer market, cannabis continues to be criminalized by many nations. Canada and a large majority of other countries across the world prohibit the possession of cannabis. This criminalization is the result of multiple factors including international obligations and political platforms (Room, p.143). Policy makers suggest that the consumption of cannabis is harmful to the social good. Nonetheless, evidence demonstrates that the current criminalization in Canada has been ineffective to a great extent. When examining scientific research, it is clear that the government has failed to adequately consider the low level of harm cannabis poses to the health of citizens, especially in comparison to legal substances such as alcohol. Additionally, analyses of current policy practices demonstrate a failure to achieve the set out goal of

reducing the consumption of cannabis. Instead, criminalization has created further social issues. As society evolves it will be imperative for policy makers to consider reworking Canada's current legislation around the possession of cannabis, enabling citizens and the criminal justice system to benefit from the changes rather than being hindered.

Cannabis has had a long history of use by members of society both socially and, in some cases, for religious purposes (Room et al., 2010, p.49). In Canada and other western nations, the popularity of the drug emerged during the 1960s among youth (Room et al., p.4). Boyd (2013) points out that this surge in the use of marijuana was a result of the civil rights era creating a rebellious culture amongst young people (p.38). Evidence shows that there seems to be global trends associated with marijuana use; consumption increased in the 1970s, decreased during the 1980s and peaked once again in the 1990s (Babor et al., 2010, p.222-225). Today, statistics show that 40% of American adults have reported using cannabis in their lifetime. Furthermore, use usually occurs during late adolescence or early adulthood and dwindles off by the late twenties or early thirties (Room et al., p.5). Unlike other illicit substances, cannabis is readily available in many affluent countries. It is most often produced domestically because of the ease of growing the plant (Room et al., p.58). Illegal markets distributing and producing the drug do exist. However, cannabis is quite frequently obtained outside of these markets through personal social networks (Babor et al., p.73). Research suggests that the number of individuals distributing the drug has increased in recent years, likely due to the demand and popularity of the drug (Room et al., p.60). Cannabis obviously has a significant presence for

drug users, but the policies established by the Canadian government in response to the substance have been largely ineffective.

The Canadian Approach

Canada's *Controlled Drugs and Substances Act* (CDSA) outlines the prohibitions surrounding the production, distribution and possession of cannabis. Though this substance has been deemed illegal, there was no debate in the Canadian Parliament when this label was established in 1923 (Boyd, 2013, p.36). Gordon (2006) argues that criminalizing cannabis was the result of attempts to inhibit the spread of Caribbean culture in Canada (p.64). Others point to international obligations through the 1961 Convention on Narcotic Drugs as well as immense pressure from the American government (Babor et al., 2010, p.205). Regardless of why cannabis was initially criminalized, evidence reveals that the CDSA provisions on the possession of this substance have not been as efficient as the government might have hoped.

Cannabis and its derivatives are found in Schedule II of the *Controlled Drugs and Substances Act*. The drug does have a less severe punishment available in comparison to other substances. Under s. 7(2), the production of cannabis is an indictable offence punishable for a term of no more than seven years; other illicit substances have a maximum life sentence. The possession of the drug can be charged as an indictable or summary offence with a fine not exceeding one thousand dollars. Although more leniency has been provided in regards to cannabis, the prohibition of the drug still accounts for at least half of arrests under the CDSA (Room et al., 2010, p.83). Gordon (2006) suggests that the provisions in the legislation allow for an increase in police powers (p.66). This results in small-time dealers and individuals in possession for personal use to be targeted (Gordon, 2006, p.74). Due to the significant number of people charged with possession of marijuana, fines are more commonly imposed by courts rather than jail time (Room et al., p.66). In addition, conditional sentencing has also become a common diversion practice (Room et al., p.83). Nonetheless, these alternatives still produce a

great burden on individuals and the criminal justice system. For persons who carry a criminal record for cannabis possession and distribution, there are many barriers to employment, stigma and strain on social relationships (Room et al., p.66). The use of conditional sentencing widens the net of who may come in contact with police and continues to produce the stigma of being associated with the criminal justice system (Room et al., p.80). The experiences within Canadian courts also demonstrate the inefficiency of the current approach to cannabis. In *R. v. Redhead* the accused has three previous charges for trafficking marijuana. As pointed out by the British Columbia Court of Appeal, Mr. Redhead's past experiences with the criminal justice system did not deter or rehabilitate him in any way. In *R. v. Evers*, the accused lacked remorse for producing marijuana and she explicitly stated that she intended to continue her grow operation in the future. Nevertheless, the trial judge did not feel the need to impose jail time on Evers. In fact, the fine that was levied on the accused at trial was unlikely to be pursued for collection by the Crown. The approach outlined in the CDSA creates unfair targeting, unnecessary arrests and causes the public to view police powers negatively (Room et al., p.73-74). Rather than arbitrarily prohibiting the possession of marijuana, the government should consider scientific research on the actual effects the substance has on the health of Canadians.

Effects of Cannabis Use

In *R. v. Malmo-Levine; R. v. Caine*, the Supreme Court of Canada declared the prohibition of cannabis as an issue of public health and safety. The majority ruled that peace, safety, order and health all justified criminalization of the possession of marijuana. In addition, the prohibition was viewed by the court as a way of protecting vulnerable groups, such as pregnant women and schizophrenic individuals, from the negative effects of the drug. Although the court's ruling was seemingly beneficial to society, the reasons provided by the judiciary display the current lack of knowledge around the actual harms of cannabis. Evidence shows that the drug has historically been used in religious practices

because of the sense of relaxation and sensory distortion it provides (Room et al., 2010, p.16). About ten percent of individuals who consume the drug become dependent, a rate that is extremely low in comparison to other illicit and legal drugs (Room et al., p.5). In fact, Room et al. (2010) point out that tobacco, a drug that is licit and readily available to Canadians, has a dependency rate of 32% (p.24). Over dosing on marijuana is an extremely rare occurrence. Nonetheless, a high dosage can impair one's immune system (Room et al., p.17-18). Those who are dependent can face both cardiovascular and respiratory issues such as chronic bronchitis. In addition, research suggests that high levels of cannabis use can be linked to lung and prostate cancer (Room et al., p. 27). Room et al. (2010) found that addiction treatment admission rates in Canada were greatest for cannabis users (p.70). However, the researchers caution that this may be a result of referrals from the criminal justice system and an increased awareness of the harms associated with the drug (Room et al., p.71). Despite of the negative effects of high levels of cannabis use, it is vital to acknowledge the fact that most individuals do not become dependent on the drug. Rather, most will experiment with cannabis use only a few times in their life (Room et al., p.50). Of course, the short term effects of marijuana also have negative consequences. Reactions are delayed when one is under the influence of cannabis which makes operating a motor vehicle dangerous. Still, in comparison to the legal substance of alcohol, this level of risk is relatively low (Room et al., p.17). Indeed, cannabis is a minimal risk drug even when factoring in both alcohol and tobacco (Room et al., p.40). Like all drugs, cannabis use has negative outcomes. However, the evidence shows that this does not justify the prohibition for the possession of the drug. Legal substances can be more damaging and addicting than cannabis is capable of being, but it is still criminalized in Canadian society. Instead of focusing on the evidence and promoting the health and well-being of Canadians, the prohibition on the possession of marijuana leads to further harm for users.

Consequences of Criminalizing the Possession of Cannabis

Policy makers rationalize the tough on crime approach to cannabis as a way of preventing use through deterrence as well as interference with distributors and producers. Room et al. (2010) state that this justification cannot be upheld; an increase in arrests under the CDSA has not led to a decrease in the use of marijuana (p.69). On the contrary, the number of distributors and consumers has increased in recent years (Room et al., 2010, p.60). Rather than preventing the use of this illicit substance, the current prohibitions expose users to illegal markets. Room et al. (2010) note that the cannabis illegal markets do not have the same level of violence as those of other illicit substances (p.61). Nonetheless, exposure to these environments as a way of obtaining cannabis leads to the potential for the introduction to harder drugs such as opium and cocaine (Room et al., p.33). In *R. v. Malmo-Levine; R. v. Caine* the dissenting Justice Arbour stated that criminalizing the possession of cannabis punishes those who pose little risk to society and violates their right to liberty under s.7 of the *Charter*. Justice Arbour went on to argue that the harmful effects of marijuana do not justify the prohibition of the possession of this drug. Additionally, the idea of protecting "vulnerable groups" in society is illogical as imprisoning them for cannabis possession does not assist them in any way. Though the majority of the Supreme Court of Canada did not agree with Justice Arbour's views, his argument is consistent with the research evidence surrounding this societal issue.

Policy Alternatives

Criminalizing the possession of cannabis is harmful to Canadians. The government may consider looking to other countries as a way of modifying the current system and diminishing the unnecessary damage to citizens found in possession of cannabis. Though the substance is generally criminalized around the globe, there are examples of nations that have worked to minimize the risks and consequences associated with prohibiting the possession of the drug. One of the best known

examples comes out of the Netherlands. This European nation famously takes a *de facto* legalization approach to cannabis (Room et al., 2010, p.92). Although the drug is still deemed illegal, personal use of marijuana is tolerated (Room et al., p.92). Cannabis is made available through 'coffee shops'. These dispensaries help prevent consumers from being exposed to illegal markets (Room et al., p.94). It is important to take into account that, even with this *de facto* legalization in place, the Netherlands has a lower rate of cannabis use than the United States (Babor et al., 2010, p.32). This evidence demonstrates that the legalization of marijuana will not necessarily lead to an increase in use among citizens. However, the approach taken by the Netherlands is not without its downfalls. Issues arise out of the supply of and demand for cannabis. Confusion occurs due to the fact that the drug is still illegal; the production of the substance often continues to come from illegitimate, criminal sources (Room et al., p.95).

Another means taken on by Spain and Portugal is the *de jure* legalization of the possession of cannabis. This scheme allows for personal use quantities to be carried and consumed by citizens (Room et al., p.97). The formal legalization of possession for personal use helps to ensure that an individual's rights and liberties are not violated by the state's prohibition of drugs. Nevertheless, this approach also has disadvantages when considering the illegal production and trafficking of illicit substances.

A third method is the decriminalization of the possession of cannabis. This system was adopted in Western Australia. Rather than criminalizing the substance, fines are imposed as a way of preventing the stigma of the criminal justice system (Room et al., p.66). Studies show that this civic approach does not lead to an increase in use (Room et al., p.112). Additionally, those who were subject to fines, as opposed to the criminal justice system, had suffered fewer negative consequences in relation to employment and personal relationships (Room et al., p. 114). The main criticism directed to this process is that people from disadvantaged groups, such as the indigenous population and visible minorities, are often burdened financially by the

imposition of fines (Room et al., p.116). Members of the middle and upper classes do not feel the same level of impact if they are found to be in possession of marijuana. If this method were to be taken on, considerations would have to be made as to where the money from the imposed fines would be streamed (Room et al., p.127). Also, thought would have to be put into how to avoid net widening by authorities.

Each of these approaches has advantages and implications that the Canadian government may wish to consider in reformulating the current legislation on the possession of cannabis. However, even with these examples in place, Canada's international obligations need to be kept in mind to determine what kinds of changes, if any, policy makers can actually implement.

International Obligations

The international 1961 Convention on Narcotic Drugs has had a significant impact on Canada's current approach to cannabis possession. The Convention places the substance under Schedule I as an extremely harmful drug (Room et al., 2010, p.11). Babor et al. (2010) state that this classification was largely a result of heavy pressure from the United States to have cannabis added into the agreement (p.205). The World Health Organization (WHO) made attempts to move cannabis to Schedule IV of the convention, a class containing low risk drugs (Room et al., p.11). Research conducted by WHO suggests that marijuana does not have significant impacts on health in comparison to other drugs. Nonetheless, through influence from the United States Office of National Drug Policy, this reclassification was rejected without strong justification (Babor et al., 2010, p.24). The United States government claimed that moving cannabis to Schedule IV would cause tension among countries (Babor et al., p.214). Room et al. (2010) point out that without cannabis in the Convention, the war on drugs would not be viewed as a global level issue (p.9). The United States has played a leading role in keeping cannabis central to the war on drugs; this approach provides the nation with a platform for American policy (Babor et al., p.214).

In addition to the 1961 agreement, the United States government works to certify countries that comply with international agreements to criminalize cannabis. Failure to meet the standards set out leads to a loss of certification which threatens foreign assistance and funding in development (Babor et al., p.215). This immense pressure from the American government plays an imperative role in criminalizing cannabis in Canada. On a broader level, failure to comply with the convention would also cause the nation to be viewed as uncooperative globally (Babor et al., p.216). There would likely be major harm to international relations if Canada chose to legalize the possession of cannabis. Although views are changing around marijuana, it is unlikely that Canada, or any other nation, will challenge international obligations on its own. Room et al. (2010) point out that countries would have to work together to de-schedule cannabis from the Convention or work to create a new treaty altogether (p.129-136). If Canada were to follow the best available evidence on cannabis, the nation would challenge the current international law by legalizing the substance.

Considerations & Conclusions

The legalization of cannabis in Canada would assist in preventing the harms associated with the prohibition of the substance. Although crime will always exist, allowing people to freely consume the drug would significantly reduce unnecessary arrests and the stigma associated with illicit substances. The government would, however, need to put serious consideration into how cannabis would be produced and distributed. There would need to be strong regulation and systems in place to prevent illegal activity in the production of the substance (Room et al., 2010, p.103). Room et al. (2010) suggest adopting the model used for the distribution of tobacco (p.159). The government would need to work to limit advertisements, prevent minors from accessing the drug and regulate the potency and quantity of the substance (Room et al., p.171). Most importantly, there would need to be education on the harms associated with cannabis use. Babor et al. (2010) advise that the availability of social and health services are imperative to reducing crime,

disease and other dangers linked to drug use (p.242). Treatment has been shown to be more effective than punishment (Babor et al., 2010, p.252). With the legalization of cannabis, evidence-based treatment would be vital to put in place so that the health of Canadians could be protected (Babor et al., p.248). Programs in schools would provide a way of reducing use by youth. Focus on social skills for children and the management skills of teachers have been shown to be effective in deterring drug use (Babor et al., p.110-113). Programs for families surrounding communication have also been linked to reduced rates of marijuana consumption (Babor et al., p.114). Accessibility to such resources could help address the actual problems associated with cannabis use. The legalization of cannabis could be a positive step for Canadian society if the implementation is conducted thoughtfully by the government.

Cannabis is a commonly used drug around the world and its popularity is growing. Canada's current approach prohibits the possession of the substance. Although the government and judiciary claim that the criminalization is for the protection of citizens, this idea is not well justified. In comparison to other illicit and legal substances, cannabis poses a low risk to drug users. There are countries that have taken different approaches to the possession of the drug. *De facto* and *de jure* legalization as well as decriminalization are a few of the systems that have been established to accommodate the increasingly liberal views around cannabis. Nonetheless, international obligations and pressure from the United States has prevented Canada from legalizing the drug. If policy makers were to follow the current research on cannabis, the possession of the substance would be a lawful act. Legalizing cannabis could help reduce the harms that come out of prohibition. However, the government would have to consider factors such as regulation and education to ensure that the health and well-being of Canadians is kept in mind. As society becomes more accepting of cannabis and research demonstrates the low risks associated with the drug, Canada will need to seriously consider altering the current approach to cannabis possession.

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