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DRUG CONTROL LAWS IN CANADA

by L. KOS-RABCEWICZ-ZUBKOWSKI*

FEDERAL AND PROVINCIAL LEGISLATIVE POWERS

Criminal law and criminal procedure are within the exclusive legislative powers of the Parliament of Canada.¹ The protection of health from injurious substances and adulteration, both as a threat to health and as a species of fraud, have been held to be valid criminal law purposes.² There are two federal statutes which create criminal offences specifically in the field of drugs: 1) the Narcotic Control Act,³ and 2) the Food and Drugs Act.⁴

Provincial legislative powers also include the field of health,⁵ except as it pertains to "quarantine and marine hospitals."⁶ For example, all provinces have enacted statutes providing for "involuntary confinement of mentally disordered persons." In some of the provinces there are statutes for compulsory treatment of drug dependent persons.⁷

The Narcotic Control Act applies to those substances listed in the statutory schedule.⁸ The Governor in Council may, from time to time, amend the schedule by adding thereto or deleting therefrom any substance, the inclusion or exclusion of which, is deemed by him necessary in the public interest.⁹ The present schedule includes the opiate narcotics, including heroin, cocaine, and cannabis in all of its forms. Phencyclidine (PCP) was transferred in June of 1973 from schedule F of the Food and Drugs Regulations to the schedule of the Narcotic Control Act.

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1. British North America Act of 1867 (U.K.) 30 & 31 Vict., c. 3, § 91(27) [hereinafter cited as B.N.A.].

2. COMMISSION OF INQUIRY INTO THE NON-MEDICAL USE OF DRUGS, FINAL REPORT, at 915 (1973) [hereinafter cited as FINAL REPORT]; Standard Sausage Co. v. Lee, [1934] 1 D.L.R. 706 (1933), 4 D.L.R. 501; Rex v. Wakabayashi, [1928] 3 D.L.R. 226; Rex v. Perfection Creameries Ltd., [1939] 3 D.L.R. 185.

3. CAN. REV. STAT. c. N-1 (1970), amended 1972, § 2(1); proclaimed in force October 1, 1972 (Part II unproclaimed) [hereinafter cited as NARCOTIC CONTROL ACT].

4. CAN. REV. STAT. c. F-27 (1970) [hereinafter cited as FOOD AND DRUGS ACT].

5. B.N.A., § 92(7).

6. B.N.A., § 91(11).

7. E.g., Narcotic Drug Addicts Act of Manitoba, MAN. REV. STAT. c. N10.

8. NARCOTIC CONTROL ACT, § 2.

9. *Id.* at § 14.

The Food and Drugs Act is followed by schedules marked from A to H. Schedule A lists diseases, schedule B standards, schedules C and D substances to be sold in a safe place, schedule E those substances subject to control as to their safety, schedule F the substance the sale of which is prohibited (Thalidomide), schedule G "controlled drugs,"¹⁰ and schedule H "restricted drugs."¹¹ The Governor in Council also has the power to amend schedules G and H by adding or deleting any substance which is deemed necessary by him in the public interest.¹²

INTERNATIONAL CONVENTIONS

On October 11, 1961 Canada ratified the Single Convention on Narcotic Drugs of March 30, 1961.¹³ Canada is not a party to the Protocol Amending the Single Convention on Narcotic Drugs of March 25, 1972¹⁴ nor to the Convention on Psychotropic Substances of February 21, 1971.¹⁵

CONTROL OF THE AVAILABILITY OF DRUGS

The Narcotic Control Act

The controls called for by the 1961 Single Convention on Narcotic Drugs are provided in Canada primarily by the Narcotic Control Act¹⁶ and the Narcotic Control Regulations formulated pursuant to the Act.¹⁷ The Act prohibits unauthorized importing and exporting, trafficking, possession for the purpose of trafficking, simple possession of narcotics (i.e., opiate narcotics, including heroin, cocaine and cannabis) and cultivation of opium poppy or marihuana. The regulations establish a system of controls over the distribution and use of the drugs for medical or scientific purposes. The system consists of licensing, record-keeping, prescriptions, safeguards against loss or theft, reporting, inspections and auditing. A license is required from the Minister of National Health and Welfare to engage in the manufacturing or distribution of narcotics. A permit is required for the importation or exportation of narcotics and is valid only for the particular transaction for which it is issued. A licensed dealer may supply a narcotic drug only to another licensed dealer, a pharmacist, a practitioner (physician, dentist or veteri-

10. FOOD AND DRUGS ACT, § 33.

11. *Id.* at § 40.

12. *Id.* at § 38(2), § 45.

13. 520 U.N.T.S. 151; 1964 CAN. T.S. No. 30; *corrigendum*, 557 U.N.T.S. 280, 570 U.N.T.S. 346, 590 U.N.T.S. 325.

14. U.N. Doc. E/CONF. 63/9., T.I.A.S. No. 6298.

15. U.N. Doc. E/CONF. 58/6.

16. CAN. REV. STAT. c. H-1 (1970).

17. SOR/61-344, Canada Gazette Part II of August 23, 1961, p. 1285 and subsequent amendments.

narian), a hospital, or another person authorized by the Act or Regulations to have possession of a drug.¹⁸

Pharmacists must not dispense any narcotic unless they have first received an order or prescription from a practitioner. They are required to keep records for each dispensation of narcotic substances.¹⁹ A practitioner must not prescribe, administer, give, sell or furnish a narcotic to a person or animal unless the person or animal is a patient under the practitioner's professional treatment, and the narcotic is requested for the condition for which the person or animal is receiving treatment. Practitioners must keep records in certain cases of drugs which they furnish for self-administration.²⁰ Hospitals must keep written records of narcotics received and dispensed by them.²¹ The Department of National Health and Welfare may authorize the purchase, possession and administration of narcotics for scientific purposes as well as for purposes of drug identification or analysis.²²

Generally speaking, under the Act and Regulations, the authorized possession of narcotics may apply to: licensed dealers, pharmacists, practitioners, hospitals, persons entitled to be in possession for purposes of research, drug identification or analysis, inspectors, policemen, members of the technical or scientific staff of a federal or provincial government department or university, when such possession is required for their employment, and persons who have in their possession drugs for their own use, when they have obtained the narcotics from a practitioner or pharmacist.²³

A person who has obtained a narcotic prescription is forbidden to seek or receive another prescription for a narcotic from a different practitioner without disclosing to that practitioner particulars of every prescription or narcotic that he has obtained within the previous thirty days.²⁴ Any violation of the Narcotic Control Regulations is punishable on summary conviction by a fine not exceeding \$500, or by imprisonment for a term not exceeding six months, or by both fine and imprisonment.²⁵

The Food and Drugs Act

The controls on availability called for by the 1971 Conven-

18. *Narcotic Control Regulations*, 4 to 22.

19. *Id.* at 23-27.

20. *Id.* at 38-41.

21. *Id.* at 42-44.

22. *Id.* at 47, as amended by P.C. 1972-1795, 24 August 1972, SOR/72-337, 28 August 1972.

23. *Id.* at 3.

24. *Id.* at 3(3).

25. *Id.* at 51.

tion on Psychotropic Substances are generally provided for in Canada by the Food and Drugs Act²⁶ and the Food and Drug Regulations. Part III of the Act deals with the "Controlled Drugs" and Part IV with the "Restricted Drugs."

Under the Act and Regulations, the restricted drugs are not legally available for general medical use. Essentially the same controls are applied to the restricted drugs as are applied to the drugs governed by the Narcotic Control Act.²⁷

Controlled drugs under Part III of the Food and Drugs Act are subject to essentially the same controls over their availability for medical and scientific purposes as those which govern narcotics under the Narcotic Control Regulations. These include the necessity of a license for manufacturers and distributors, import and export permits, the requirement of prescriptions, record-keeping, safeguards against loss or theft, reporting, inspections and auditing.²⁸ The main differences are that as a general rule a prescription for narcotics must be in writing, whereas it may be oral for controlled drugs. A pharmacist may not refill a prescription for a narcotic, whereas he may refill one for a controlled drug if the physician has given explicit instructions for this purpose in the prescription. Amphetamines and amphetamine-like drugs²⁹ are classified as "designated drugs."³⁰ Their use is confined to treatment of the following conditions in humans: narcolepsy, hyperkinetic disorders in children, mental retardation (minimal brain dysfunction), epilepsy, parkinsonism and hypotensive states associated with anesthesia. Their use in the treatment of animals is to be confined to the condition of depression of cardiac and respiratory centers.

*Administration of the Canadian Controls on Availability
for Medical and Scientific Purposes*

The Bureau of Dangerous Drugs (Health Protection Branch) of the Department of National Health and Welfare is responsible for administering the controls on the availability of narcotics, controlled drugs and restricted drugs for medical and scientific purposes.

Licensed dealers and pharmacists make regular reports to the Bureau with respect to their transactions in narcotics and

26. CAN. REV. STAT. c. F-27 (1970).

27. *Food and Drug Regulations*, J.01.033, as amended by P.C.-1972-1974, 24 August 1972, SOR/72-336, 28 August 1972.

28. *Food and Drug Regulations*, Part G.

29. Amphetamine, benzphetamine, methamphetamine, phenmetrazine, and phendimetrazine as well as their respective salts.

30. *Food and Drug Regulations*, Part G, Order-in-Council P.C. 1972-3049, 19 December 1972, SOR/73-17, 21 December 1972.

controlled drugs. Practitioners and hospitals also report their administration of methadone. The records and inventory of all those who are required to keep records by the Narcotic Control Regulations and Food and Drug Regulations are subject to unannounced inspection and audit.³¹ There are numerous provisions in provincial laws governing the availability of drugs for medical purposes, for example, pharmacy acts which stipulate which drugs may be distributed only by pharmacists.

OFFENCES

Possession

For the purposes of the Narcotic Control Act³² and the Food and Drugs Act³³ possession means possession as defined in the criminal code:

- a) a person has anything in possession when he has it in his personal possession or knowingly
 - (i) has it in the actual possession or custody of another person, or
 - (ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and
- b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.³⁴

Section 3 of the Narcotic Control Act states:

- (1) Except as authorized by this Act or the regulations, no person shall have a narcotic in his possession.
- (2) Every person who violates subsection (1) is guilty of an indictable offence and is liable
 - a) upon summary conviction for a first offence, to a fine of one thousand dollars or to imprisonment for six months or to both fine and imprisonment, and for a subsequent offence, to a fine of two thousand dollars or to imprisonment for one year or to both fine and imprisonment; or
 - b) upon conviction on indictment, to imprisonment for seven years.

Section 41 of the Food and Drugs Act concerning restricted drugs (strong hallucinogens) differs from Section 3 of the Narcotic Control Act only as to the maximum punishment upon indictment (a fine of five thousand dollars or imprisonment for

31. There are about 200 licensed dealers in narcotics, about 250 licensed dealers in controlled drugs and about 4700 pharmacies. The Bureau receives notice of over three million prescriptions a year. FINAL REPORT at 81.

32. NARCOTIC CONTROL ACT, § 2.

33. FOOD AND DRUGS ACT, § 40.

34. CAN. REV. STAT. c. C-34, § 3(4).

three years or both). Simple possession of controlled drugs is not an offence.

Both Acts provide that evidence of drugs can be proved by a certificate of an analyst.³⁵ The party intending to produce a certificate of an analyst must give to the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate.³⁶ The party against whom a certificate of an analyst is produced may, with leave of the court, require the attendance of the analyst for the purposes of cross-examination.³⁷

In order that possession may be qualified as an offence the accused must know that he has the drug in his possession.³⁸ The burden of proving that an exception, exemption, excuse or qualification prescribed by law operates in favour of the accused, is on the accused. The prosecutor is not required, except by way of rebuttal, to prove that the exception, exemption, excuse or qualification does not operate in favour of the accused, whether or not it is set out in the information or indictment.³⁹

Trafficking

Section 4 of the Narcotic Control Act states:

- 1) No person shall traffic in a narcotic or any substance represented or held out by him to be a narcotic.
- 2) No person shall have in his possession any narcotic for the purpose of trafficking.
- 3) Every person who violates subsection (1) or (2) is guilty of an indictable offence and is liable to imprisonment for life.

Similar provisions apply to controlled drugs (amphetamines and barbiturates)⁴⁰ and to restricted drugs (strong hallucinogens)⁴¹ under the Food and Drugs Control Act. The maximum punishment in the Food and Drugs Act is: (a) upon summary conviction imprisonment for eighteen months; or (b) upon conviction on indictment imprisonment for ten years. The prosecution has the right of choice of procedure. Traffic in the Narcotic Control Act means: (a) to manufacture, sell, give, administer, transport, send, deliver or distribute, or, (b) to offer to do

35. NARCOTIC CONTROL ACT, §§ 2, 13; FOOD AND DRUGS ACT, §§ 2, 25(3).

36. *Id.* at § 9(3); § 30(3).

37. *Id.* at § 9(2); § 30(2).

38. FINAL REPORT at 942; *R. v. Beaver*, [1957] S.C.R. 531, 118 Can. Crim. Ca. 129; *R. v. Peterson*, 1 Can. Crim. Ca. (2d) 197 (Alta. C.A.); *R. v. Burgess*, [1970] 3 Can. Crim. Ca. 268 (Ont. C.A.); *R. v. Custeau*, 6 Can. Crim. Ca. (2d) 179 (Ont. C.A.); *R. v. Blondin*, 2 Can. Crim. Ca. (2d) 118 (B.C.C.A.).

39. NARCOTIC CONTROL ACT, § 7; FOOD AND DRUGS ACT, § 36 (controlled drugs), § 44 (restricted drugs).

40. FOOD AND DRUGS ACT, § 34.

41. *Id.* at § 42.

anything above mentioned.⁴²

As to the controlled drugs⁴³ and restricted drugs⁴⁴ traffic means to manufacture, sell, export from or import into Canada, transport or deliver, without authority. "Sell" includes to offer for sale, have in possession for sale, or distribute.⁴⁵

In the case of simple possession, the substance in question must be a prohibited drug. However, for the offence of trafficking, it is sufficient that it be a substance represented or held out by the accused to be a narcotic.⁴⁶ The offence of trafficking may be committed even when the accused was not in possession of the drug.⁴⁷

Possession for the Purpose of Trafficking

A trial for the possession of drugs for the purpose of trafficking is in two stages. At first the trial proceeds as in the case of a simple possession. After the close of the case for the prosecution, and after the accused has had an opportunity to make full answer and defence, the court must make a finding as to whether or not the accused was in possession of the drug. If the court finds that the accused was not in possession of the drug, he shall be acquitted. If the court finds that the accused was in possession of the drug, he shall be given an opportunity of establishing that he was not in possession of the drug for the purpose of trafficking, and thereafter the prosecutor shall be given an opportunity of adducing evidence to establish that the accused was in possession of the drug for the purpose of trafficking. If the accused establishes that he was not in possession of the drug for the purpose of trafficking, he shall be acquitted of the offence of possession for the purpose of trafficking but: 1) in the case of a narcotic under the Narcotic Control Act, and 2) in the case of a restricted drug under the Food and Drugs Act, he shall still be convicted of the offence of simple possession.⁴⁸ In the case of the controlled drugs there is no offence of simple possession and therefore, if the accused establishes that he was not in possession of the controlled drug for the purpose of trafficking, he shall be acquitted.⁴⁹

Thus, the proof of unauthorized possession results in a rebuttable presumption of intention to traffic. It is not quite clear

42. NARCOTIC CONTROL ACT, § 2.

43. FOOD AND DRUGS ACT, § 33.

44. *Id.* at § 40.

45. *Id.* at § 2.

46. NARCOTIC CONTROL ACT, § 4(1); FOOD AND DRUGS ACT, §§ 34, 42.

47. FINAL REPORT at 943; *R. v. Vickers*, [1963] 43 W.W.R. 238, (B.C.C.A.); *R. v. Wells*, [1963] 2 Can. Crim. Ca. 279.

48. NARCOTIC CONTROL ACT, § 8; FOOD AND DRUGS ACT, § 43.

49. FOOD AND DRUGS ACT, § 35.

whether it is sufficient that the accused raises by the evidence on his behalf a reasonable doubt, or whether he must supply proof which carries on a balance of the probabilities.⁵⁰ The latter alternative seems to be more in conformity with the presumption of innocence⁵¹ and with the right to a fair hearing in accordance with the principles of fundamental justice.⁵²

Importing and Exporting

A specific offence of importing and exporting does not exist as to the controlled drugs and restricted drugs. Under the Food and Drugs Act importing and exporting is within the definition of traffic.⁵³

The Narcotic Control Act creates a separate offence of importing or exporting any narcotic, and provides for the sanction of a minimum of seven years of imprisonment and a maximum of imprisonment for life.⁵⁴ This is one of the rare cases where there is a severe minimum punishment in Canadian law. The sentence to imprisonment for life does not bar a parole. The National Parole Board may grant parole to an inmate, subject to any terms or conditions it considers desirable, if the Board considers that: 1) in the case of a grant of parole other than day parole, the inmate has derived the maximum benefit from imprisonment, 2) the reform and rehabilitation of the inmate will be aided by the grant of parole, and 3) the release of the inmate on parole would not constitute an undue risk to society.⁵⁵ In principle, where the term of imprisonment is not a sentence for life or a sentence of preventive detention (in case of habitual criminals⁵⁶ or dangerous sexual offenders⁵⁷) the portion of the term that an inmate shall ordinarily serve before parole may be granted is one-third of the term imposed, or seven years, whichever is the lesser. Where the sentence of imprisonment is for life, that portion is seven years minus the time spent in custody from the day the inmate was arrested and taken into custody in respect of the offence for which he was sentenced to imprisonment for life to the day the sentence was imposed.⁵⁸ Notwithstanding the foregoing, where in the opinion of the National

50. *R. v. Appleby*, 3 Can. Crim. Ca. (2d) 354 (S.C.C.).

51. CAN. REV. STAT. Appendix III, § 2(f) (1970).

52. *Id.* at § 2(e).

53. FOOD AND DRUGS ACT, § 33 (controlled drugs), § 40 (restricted drugs).

54. NARCOTIC CONTROL ACT, § 5.

55. CAN. REV. STAT. c. P-2, § 10(1) (1970).

56. Crim. Code § 688.

57. *Id.* at §§ 687, 689.

58. *Parole Regulations*, § 2(1), established by P.C. 1960-681, as amended by P.C. 1964-1827 of December 3, 1969 and by P.C. 1973-1432 of June 3, 1973.

Parole Board special circumstances exist, the Board may grant parole to an inmate before he has served that portion of his sentence of imprisonment required to have been served before a parole may be granted.⁵⁹

Cultivation

Section 6 of the Narcotic Control Act states:

- 1) No person shall cultivate opium poppy or marihuana except under authority of and in accordance with a license issued to him under the regulations.
- 2) Every person who violates subsection (1) is guilty of an indictable offence and is liable to imprisonment for seven years.
- 3) The Minister may cause to be destroyed any growing plant of opium poppy or marihuana cultivated otherwise than under authority of and in accordance with a license issued under the regulations.

Conspiracy and Accessories

Under the criminal code everyone who conspires to commit an indictable offence under the Narcotic Control Act and Food and Drugs Act is guilty of an indictable offence, and is liable to the same punishment as that to which an accused who is guilty of that offence would be liable.⁶⁰ Conspiring is a distinct offence from the offence planned by it.

All provisions of the criminal code on aiding and abetting,⁶¹ counselling or procuring another person to be a party to an offence,⁶² accessory after a fact,⁶³ attempts,⁶⁴ counselling, procuring or inciting another person to commit an indictable offence which is not committed,⁶⁵ also apply to narcotic and drug offences.

Juvenile Delinquency

Offences under the Narcotic Control Act and Food and Drugs Act committed by juveniles (the upper age limit for juvenile delinquents varies from under sixteen to under eighteen years, depending on the province) constitute an offence called "delinquency."⁶⁶ However, in cases of an indictable offence where the child is over the age of fourteen years the juvenile court may, in its discretion, order the child to be pro-

59. *Id.* at § 2(2).

60. *Crim. Code* § 423.

61. *Id.* at § 21.

62. *Id.* at § 22.

63. *Id.* at §§ 23, 421.

64. *Id.* at §§ 24, 421.

65. *Id.* at § 422.

66. *Juvenile Delinquents Act*, *CAN. REV. STAT. c. J-3*, §§ 2, 3 (1970).

ceeded against by indictment in the ordinary courts.⁶⁷ The latter option is used in exceptional cases.

PROPOSED AMENDMENTS

On May 29, 1969 the Government of Canada appointed, under Part I of the Inquiries Act, the Commission of Inquiry into the Non-Medical Use of Drugs.⁶⁸ The order in council, P.C. 1969-1112, explained the reasons of appointment as follows:

The Committee of the Privy Council have had before them a report from the Minister of National Health and Welfare representing:

That there is growing concern in Canada about the non-medical use of certain drugs and substances, particularly, those having sedative, stimulant, tranquillizing or hallucinogenic properties, and the effect of such use on the individual and the social implications thereof;

That within recent years, there has developed also the practice of inhaling of the fumes of certain solvents having an hallucinogenic effect, and resulting in serious physical damage and a number of deaths, such solvents being found in certain household substances. Despite warnings and considerable publicity, this practice has developed among young people and can be said to be related to the use of drugs for other than medical purposes;

That certain of these drugs and substances, including lysergic acid diethylamide, LSD, methamphetamines, commonly referred to as "Speed", and certain others have been made the subject of controlling and prohibiting legislation under the Food and Drugs Act, and cannabis, marijuana, has been a substance, the possession or trafficking in which has been prohibited under the Narcotic Control Act;

That notwithstanding these measures and the competent enforcement thereof by the R.C.M. Police and other enforcement bodies, the incidence of possession and use of these substances for non-medical purposes, has increased and the need for an investigation as to the cause of such increasing use has become imperative.

The terms of reference of the Commission were set out as follows:

That inquiry be made into and concerning the factors underlying or relating to the non-medical use of the drugs and substances above described and that for this purpose a Commission of Inquiry be established, constituted and with authority as hereinafter provided.

- (a) to marshal from available sources, both in Canada and abroad, data and information comprising the present fund of knowledge concerning the non-medical use of sedative, stimulant, tranquillizing, hallucinogenic and other psycho-

67. *Id.* at § 9.

68. Members: Gerald LeDain, Marie-Andrée Bertrand, Ian L. Campbell, Heinz E. Lehmann, and J. Peter Stein.

- tropic drugs or substances;
- (b) to report on the current state of medical knowledge respecting the effect of the drugs and substances referred to in (a);
 - (c) to inquire into and report on the motivation underlying the non-medical use referred to in (a);
 - (d) to inquire into and report on the social, economic, educational and philosophical factors relating to the use for non-medical purposes of the drugs and substances referred to in (a) and in particular, on the extent of the phenomenon, the social factors that have led to it, the age groups involved, and problems of communication; and
 - (e) to inquire into and recommend with respect to the ways or means by which the Federal Government can act, alone or in its relations with Government at other levels, in the reduction of the dimensions of the problems involved in such use.

The Commission conducted public hearings across Canada, and carried out research by full-time scientific personnel and outside researchers. Four reports have been published: Interim Report, Treatment Report, Cannabis Report and the Final Report of the Commission of Inquiry Into the Non-Medical Use of Drugs, the last dated December 14, 1973. The reports contain numerous recommendations⁶⁹ of the Commission, and also additional recommendations of Commissioner Marie-Andrée Bertrand⁷⁰ as well as those of Commissioner Ian L. Campbell.⁷¹ The volume of the four reports in question (the Final Report alone is 1148 pages) precludes any analysis of the same in the present short study.

Recommendations of the Commission as to cannabis resulted in the submission in the Parliament of Bill S-19, "An Act to Amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code." The said Bill was read a first time on November 26, 1974. Hon. Joan Neiman, Senator, moved the second reading of Bill S-19 in the Senate on December 5, 1974. She mentioned that there is one area in which all the commissioners of the LeDain Commission agreed in their recommendations—that the act of simple possession of cannabis should not be considered an offence. One member, Dean Ian Campbell, differed in his recommendations in some small degree only with regard to the simple possession of marihuana. The fifth member, Miss Marie-Andrée Bertrand, took an entirely different approach in recommending that the use of cannabis be legalized and controlled in a way similar to that employed for alcohol.

69. FINAL REPORT at 88-104.

70. *Id.* at 241-53.

71. *Id.* at 254-74.

The Government has accepted that cannabis sativa is not a narcotic, nor is it as potent a substance as heroin. For that reason, the bill removes it from the Narcotic Control Act, and places control on the substance in the Food and Drugs Act.⁷²

Hon. Joan Neiman recalled that Canada ratified the 1961 Single Convention on Narcotic Drugs, which contained an obligation to control cannabis and other drugs from both domestic and international standpoints. She stated that the Government remains firm in its intention not to legalize possession of cannabis in any form and, although the effect of the Bill S-19 will be to lessen the impact of the law for the offence of simple possession, the latter nevertheless will remain an offence. The bill is designed to continue to restrict availability and use of cannabis, but it will also provide a greater flexibility in the enforcement and administration of the law regarding the simple possession of it.⁷³ In her exposition Senator Neiman noted that in 1973 there were 18,603 convictions for simple possession of marihuana in Canada, and 19,929 convictions for trafficking, or possession for the purpose of trafficking. Roughly one-half of all convictions for possession concerned persons under the age of 20 years.⁷⁴ This is illustrated by the following tables, prepared by the Bureau of Dangerous Drugs, Health Protection Branch, Department of Health and Welfare.⁷⁵

Table of Known Cannabis (marijuana and hashish) users in 1973

	<u>M</u>	<u>F</u>	<u>Total</u>
Prior to 1962	84	15	99
First recorded in 1962	15	9	24
" " " 1963	50	29	79
" " " 1964	36	18	54
" " " 1965	100	39	139
" " " 1966	301	110	411
" " " 1967	1258	319	1577
" " " 1968	2370	460	2830
" " " 1969	4420	737	5157
" " " 1970	8701	1316	10017
" " " 1971	10610	1435	12045
" " " 1972	11175	1520	12695
" " " 1973 ⁷⁶	20623	2828	23251
TOTAL	<u>59743</u>	<u>8635</u>	<u>68378</u>

Age Groupings of New Users in 1973

	<u>M</u>	<u>F</u>	<u>Total</u>
Under 20	8465	1039	9504
20 - 24	8388	1075	9463

72. FOOD AND DRUGS ACT, §§ 47-57, (Part V entitled "Cannabis").

73. Debates of the Senate, Official Report, 1st Session, 30th Parliament, Vol. 123, No. 31, p. 355, December 5, 1974.

74. *Id.* at 355.

75. Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, February 4, 1975, 7:21.

76. *Id.* at 4:30. Of those arrested in 1973, 2,314 males and 118 females had previous cannabis records.

25 - 29	2171	305	2476
30 - 34	532	69	601
35 - 39	153	10	163
40 - 49	91	11	102
50 - 59	10	6	16
60 - 69	4	1	5
70 or over	—	—	—
Not known	809	112	921
TOTAL	20623	2628	2351

Persons Under 18 Years of Age Involved in 1973 Cases

AGE:	12	13	14	15	16	17	Total
M	3	11	59	261	853	1852	3039
F	—	1	9	41	99	243	393
TOTAL	3	12	68	302	952	2095	3432

Persons Involved in 1973 According to Their Nationality

	U.S.A.	Others
Male	1792	268
Female	269	38

*Statement Showing Convictions of the Following Drugs
From 1964-1973 Inclusive*

Year	Cannabis	Heroin	Methadone	Cocaine	LSD	MDA
1964	28	272	1	—	—	—
1965	60	266	6	3	—	—
1966	144	221	3	1	—	—
1967	586	348	19	—	—	—
1968	1429	279	23	2	—	—
1969	2964	310	15	1	—	—
1970	6270	383	14	12	1558	72
1971	9478	502	82	19	1558	325
1972	11713	923	81	44	1161	354
1973	19929	1290	43	123	970	792

It was estimated that there are probably 20,000 to 25,000 heroin addicts in Canada.⁷⁷ According to Narcotic Control Regulations⁷⁸ there were as of November 29, 1972, 455 practitioners in Canada with general authorization to use methadone in withdrawal and maintenance,⁷⁹ and according to the 1973 estimation about 1,500 dependents in methadone maintenance.⁸⁰

While primary responsibility for enforcement of the drug laws rests with the Royal Canadian Mounted Police (R.C.M.P.), local, municipal and provincial police agencies also have the right to enforce them. In 1969 and 1970 the drug problem in

77. *Id.* at 4:14, Dr. A.B. Morrison, Assistant Deputy Minister, Department of Health and Welfare, Health Protection Branch.

78. 16 May 1972, SOR/72-155.

79. FINAL REPORT at 978.

80. *Id.* at 164.

Canada reached such proportions that the R.C.M.P. encouraged other enforcement agencies to become more actively involved in drug enforcement.⁸¹ This resulted in a larger number of arrests, and some previously undetected offences came to the surface, and were entered into the statistics.⁸² It has been pointed out that the illicit cannabis traffic in Canada today is a multimillion dollar business; for example, the R.C.M.P., in 1974, seized in an Eastern Canada seaside cottage 1,765 pounds of hashish, and 78 pounds of liquid hashish inside a camper van. A one ton shipment of hashish would bring the importer a profit of \$1 million to \$1.5 million.⁸³

Bill S-19 establishes less severe penalties than those presently in effect. Thus, simple possession of cannabis will be a summary conviction and not, as at present, an indictable offence. The maximum penalty for the first offence will be a fine of not more than \$500, or in default of payment of the fine, an imprisonment of not more than three months, and for a subsequent offence \$1,000 and six months imprisonment respectively.⁸⁴ At present, under the Narcotic Control Act, the prosecution may choose between the summary conviction and conviction on indictment. The maximum penalties are: 1) upon summary conviction; (a) for a first offence, a fine of \$1,000 or imprisonment for six months, or both fine and imprisonment, and (b) for a subsequent offence \$1,000 and one year imprisonment; or 2) upon conviction on indictment, imprisonment for seven years.⁸⁵

Insofar as trafficking in cannabis, or possession of cannabis for the purpose of trafficking is concerned, Bill S-19 makes it possible to prosecute: 1) either by way of summary conviction procedure, the maximum sentence being a fine of not more than \$1,000, or imprisonment for a term of not more than eighteen months or both, or 2) by indictment, the maximum sentence being an imprisonment of not more than ten years.⁸⁶

A summary conviction allows for an earlier pardon as to the criminal record. An application for a pardon shall be examined in the case of a summary conviction when two years have elapsed since the termination of the sentence of imprisonment, or of the period of probation, or of payment of the fine. In case of indictable offences the corresponding period is five years. The

81. Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, February 12, 1975, J. Ross, Deputy Commissioner Criminal Operations, R.C.M.P., 6:6.

82. *Id.* Inspector G. Tomalty, Officer in Charge, Drug Enforcement Branch, R.C.M.P.

83. *Id.* at 6:6, J. Ross.

84. FOOD AND DRUGS ACT, § 48.

85. NARCOTIC CONTROL ACT, § 3.

86. Bill S-19, § 7; FOOD AND DRUGS ACT, § 49.

inquiries are made by the National Parole Board, then the recommendation is submitted to the Solicitor General for Canada, and the latter refers the same to the Governor in Council who may grant a pardon.⁸⁷ The grant of pardon removes any disqualification to which the person convicted is subject, by virtue of any Act of the Parliament of Canada, or a regulation made thereunder.⁸⁸ The corresponding record should not be disclosed without the prior approval of the Solicitor General.⁸⁹ It was pointed out by Dr. Bette Stephenson, President of the Canadian Medical Association, that the vast majority of persons convicted for possession of cannabis did not apply for a pardon. Most of them were probably unaware of such a possibility.⁹⁰ The Canadian Medical Association was concerned that there be no major stigma attached to the individual who is found in possession of marihuana for personal use although the offender may be sentenced to a fine.⁹¹

The procedure in case of pardon usually takes about a year and sometimes up to two years.⁹² "A very infinitesimal number" of eligible persons applied for a pardon.⁹³ It was mentioned that inquiries preceding the granting of pardon cause a prejudice to the applicant, especially in smaller towns where in consequence of questioning of the local people about the applicant, the latter's possibly forgotten conviction, becomes the subject of gossip.⁹⁴ An automatic pardon after a lapse of say, one or two years was suggested in the cases of simple possession of marihuana.⁹⁵ An automatic deleting of a conviction from the criminal record is known in several countries.⁹⁶ Such an automatic deletion does not exclude a pardon prior to the lapse of the period required for an automatic deletion.⁹⁷ It should be noted that reference to such an erased conviction is forbidden.⁹⁸

The Canadian Medical Association considered that cannabis is harmful, and it did not suggest that simple possession should not be an offence. The Association stated, however, that simple possession should not be punishable by imprisonment but rather

87. Criminal Records Act, 18 & 19 Eliz. II, c. 40, § 4.

88. *Id.* at § 5.

89. *Id.* at § 6.

90. Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, February 11, 1975, 3:14.

91. *Id.* at 5:15.

92. *Id.* at 7:29, G. Depratto, Director of Policy, Planning and Evaluation, National Parole Board.

93. *Id.* at 7:29, Stevenson, Member of the National Parole Board.

94. *Id.* at 7:30, Senator Asselin.

95. *Id.* at 7:31, Senator Asselin.

96. *E.g.*, Act 784 & 799 of the French Code of Penal Procedure of December 31, 1957.

97. *Id.* Act 790.

98. *Id.* Act 799.

by a fine.⁹⁹ The present section 4 of the Narcotic Control Act establishes an indictable offence punishable by a maximum imprisonment for life (there is no minimum).

A similar flexibility is urged in the proposed sanctions for importing or exporting of cannabis; i.e., (a) upon summary conviction, imprisonment for a term of not more than two years, or (b) upon conviction on indictment, imprisonment for a term of not more than fourteen years, and not less than three years. However, the three year minimum, upon conviction on indictment, does not apply where the offender, after having been found guilty of the offence, establishes that he imported or exported the cannabis only for his own consumption.¹⁰⁰ The present section 5 of the Narcotic Control Act states that the offender is liable to imprisonment for life, but not less than seven years.

As to the cultivation of marihuana, Bill S-19 states that every person who violates subsection (1) is guilty of an offence and is liable; (a) upon summary conviction, to a fine of not more than one thousand dollars or to imprisonment for a term of not more than eighteen months or to both, or (b) upon conviction on indictment, to imprisonment for a term of not more than ten years.¹⁰¹ Thus, a more severe punishment is provided in Bill S-19 than is the case under section 6 of the present Narcotic Control Act in respect to a conviction for the offence of cultivation. Senator Neiman explained that the reason for this is that the Government is becoming increasingly aware of the ease with which people can now cultivate cannabis in their backyards or on their farms for the purpose of distribution for sale.¹⁰²

Finally, it may be added that the Canadian Criminology and Corrections Association debated for more than a year on the problem of decriminalization of the simple possession of marihuana, and after three votes ended up virtually in a deadlock.¹⁰³

99. Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, February 11, 1975, 5:5, 5:10, 5:11.

100. Bill S-19, § 7; FOOD AND DRUGS ACT, § 49.

101. Bill S-19, § 51.

102. Debates of the Senate, December 5, 1974, p. 356.

103. Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, March 18, 1975, 14:13, A.B. Whitelaw, C.C. President, Canadian Criminology and Corrections Association.