

# **Cannabis Law Reform: Still a Role for Decriminalization ?**

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**#Decrim**

# Disclosure

No funding:

- Tobacco
- Alcohol
- Pharma
- Cannabis
- Illegal drug cartels

# A Tale of Two Models

- CAMH Framework 2014
- decriminalization vs legalization
- Canada: legalization with strict regulation



# Rand Report, 2015

- does not recommend specific model
- merits & perils of 12 models
- do not rush from prohibition to commercial legalization



Caulkins, Kilmer, Kleiman, MacCoun, et al. *Considering Marijuana Legalization: Insights for Vermont and Other Jurisdictions.*

“When you come to a fork in the road, take it”

- high rate of cannabis use & associated health, social problems
- prohibition has not prevented escalation
- creates other problems
- both legalization & decriminalization have merits & perils
- neither alone will solve the problem

Is a hybrid model feasible ?

First, some preliminary  
questions...

How long will it be before  
Canadians can legally purchase  
cannabis for recreational use ?

Short answer: a long time

Long answer...

# Federal Legislative Process

- |   |                               |                             |
|---|-------------------------------|-----------------------------|
| 1 | 1 <sup>st</sup> Reading (HoC) | Repeat 1-5 (Senate)         |
| 2 | 2 <sup>nd</sup> Reading       |                             |
| 3 | Committee Stage               | Royal Assent (GG)           |
| 4 | Report Stage                  |                             |
| 5 | 3 <sup>rd</sup> Reading       | Licensing (prod'n & retail) |



# Challenges for Legalization

- no evidence public health gain
- public support 69% (43% support; 26% smwt)
- 57% have concerns, questions, unsure  
(Nanos, May-June, 2016)
- regulatory complications
- 13 provinces & territories
- municipalities
- more time



# Complex: Not Just *Pros* & *Antis*

1. medicine
2. human rights/social justice
3. law & order
4. public health/patient safety
5. redirect to more serious crime



# Complex: Not Just *Pros* & *Antis*

6. pleasurable self-indulgence
7. revenue from crime to legal business
8. competition for drug-using markets
9. taxation
10. program funding



# International Drug Treaties

- The Single Convention on Narcotic Drugs of 1954, as amended by the 1972 Protocol
- The United Nations Convention against Illicit Traffic in Narcotic Drugs & Psychotropic Substances of 1988
- The Convention on Psychotropic Substances of 1971 ?

(Room 2012, p129)



## To summarize...

- complex legislative process
- public health impact uncertain
- public support moderate; concerns
- complex issues; many disparate agendas
- legislative compromise not easy
- international intrigue (treaties)

**This could take a while !**

# More specifically, how long ?

- Justin Trudeau: could take up to “a year or two” (CBC News, October 1 2015)
- “...up to four years...”  
(Rehm, CAMH, Nov 9 2015)
- legal retail late 2019
- Why is that a problem ?

# A lesson from the ER: First, stop the bleeding

- approx. 59 K criminal charges/yr for possession (Cotter, et. al., 2015)
- at least 22 K criminal records
- 4 yrs = approach 100 K
- SDoH: legal, travel, career/employment, housing, financial, health

Have you been convicted of a criminal offence?

Yes **x** No

# Will criminalization of possession continue after legalization?

- adults use contraband cannabis ?
- adults under legal age ?



# Impact of criminal record on your patients/clients?

- improve social stability ?
- facilitate recovery ?
- disrupt, impede progress ?



# Prohibition sustain contraband trade ?

- Yes, by definition

Prevailing orthodoxy:

- supply under control of criminals
- profits retained by organized crime
- users, “our kids” exposed to illicit market & criminals
- other more dangerous illegal drugs
- other forms of criminal activity

# Would decriminalization sustain contraband trade ?

- Yes

Worst scenario:

- proceeds support large criminal organizations
- involved in other criminal activities
- exploitive & violent ones

# Dialing up the orthodoxy...

*“Every day, our kids turn to dealers, gangs and criminals to buy marijuana, putting them in harm’s way.”*

- accessed from [www.Liberal.ca](http://www.Liberal.ca) Nov 2 2016



# The research evidence...

- Erickson
- Korf
- Coomber & Turnbull
- Bouchard
- Wilkins and Sweetspur

# Cannabis users

- very few buy from dealers by vocation or part of large crime syndicate
- buy small amounts from friends, family members, other close acquaintances

(Erickson et.al, 2013; Korf, et. al, 2008; Coomber & Turnbull 2007)



# Cannabis users & other drugs

- most do not use other illegal drugs
- do not progress to use other drugs



(evidence cited by Crepault, 2014)

# Cannabis sellers

- only small amounts
- not other drugs
- not involved in violent drug trade

(Korf, et. al, 2008)

- typically small operations
- net annual income of individuals < \$3,000

(Wilkins and Sweetspur, 2007)





# Relationship to Unemployment

- cannabis cultivation & cannabis purchases for resale
- shortage of local legal employment



(Bouchard et. al. 2009; Wilkins and Sweetspur, 2007)

# The cannabis business

- only portion occurs within large int'l crime syndicates (Senate, 2002)



# Another perspective: Social supply

*“Supply of this nature has been argued to be sufficiently different to ‘dealing proper’ to justify a different criminal justice approach in relation to it. This has been argued to be particularly true regarding **social supply** among young people who use substances such as cannabis.”*

(Coomber and Turnbull, 2007)

# Lawyer's perspective ...

*“Almost all of the clients in that industry are not what the public would characterize as criminals. They are just guys who are in financial trouble, they heard of this thing, and they decided to take the risk. And then they get caught, and you have to deal with a potential criminal record.”*

- Toronto lawyer Steven Tress, quoted in U of T's Varsity Magazine, April 1, 2016

# A more balanced view...

- not just large drug cartels
- not just dangerous criminals
- disconnected cottage industry
- independent & otherwise law-abiding people supporting themselves
- existing demand in community for product many think should not be illegal

# ... of the contraband trade

- risk takers
- desperate ?
- resourceful by necessity ?
  
- context to claim that decriminalization keeps proceeds with criminals

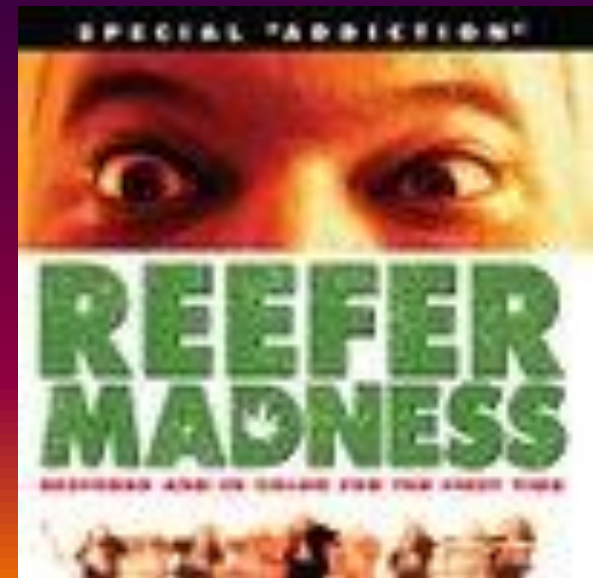
# Internationally

- links to crime exaggerated
- independent of cartels
- small in size, modest in revenue
- otherwise law-abiding, non-violent
- active in community
- welcome chance to be part of legal trade

(Capler et al 2016)

# Reefer madness re-purposed?

- fear-based, inaccurate information to sustain prohibition & prevent reform
- now used to discredit decriminalization
- plays well in election
- falters upon scrutiny
- dial down the fear





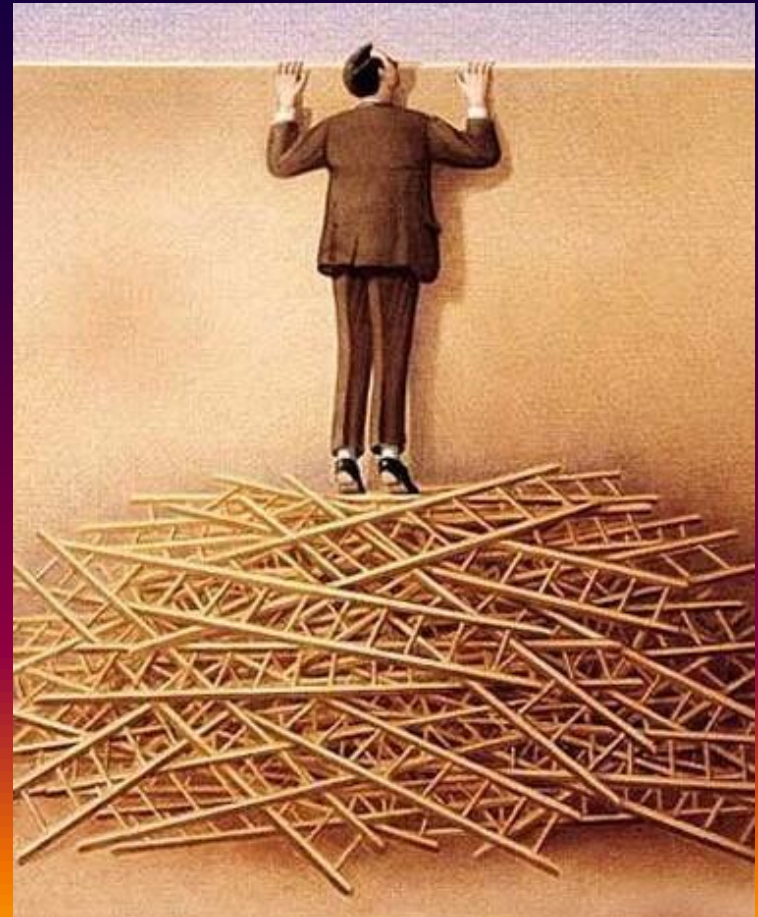
# Acceptable interim step

- continued existence of contraband trade within decriminalization not ideal
- acceptable interim step to prevent criminal records & adverse impact on SDoH
- important part of public health approach

**Social Determinants of Health**

# Using resources wisely

- not to excuse serious crime
- deploy enforcement/ justice resources where they will do most good to protect people from harm



# The most societal good

- impaired driving
- adulteration with harmful substances
- other violent, exploitive criminal activity



# Does decriminalization pose a danger to public health?

- a well-established track record
- over decades & various jurisdictions
- no increase: availability, use, problems (Single 1989; Single et al 2000; Room et. al., 2010)
- fewer social problems (criminal records)
- savings in enforcement, justice system costs
- conditions will not worsen; improve overall
- legalization – no record; an experiment

# What is the Purpose of Fines in Decriminalization ?

- form of punishment , not a deterrent
- when less public support, appease law & order advocates; provide revenue source
- but inequitable for economically disadvantaged
- contribute to public health or social justice?
- decriminalization is still punitive

# We can fix decriminalization

## Fix #1: Non-punitive decriminalization

- no fines for simple possession
- no enforcement interventions

# Other Jurisdictions

- few references in literature to non-punitive decriminalization models

Victoria & Western Australia, 2000:

- “cautions” instead of penalties  
(Single et. al., 2000; Room et. al., 2010 p82)
- “fully legalizing possession for personal use but not sales” (Caulkins, et. al., 2015)
- US District of Columbia did just that in 2016

# Alaska's interesting history



- 1975: decriminalized cannabis possession
- \$100 fine
- 1982: eliminated the fine – non-punitive decriminalization (Edge & Andrews, 2014)
- 2015: legalized sale for recreational use



# Support in Canada ?

- Health Canada, 1995 Survey: 70% favoured “...fine only or complete decriminalization...” (Fischer, in Erickson, 1997)
- expect more support with continued liberalized attitudes
- CPHA 2016, Toronto, “Future of Drug Policy in Canada”: major issue raised with Federal Health Minister Jane Philpott

# How long might decriminalization take ?

- decriminalization less onerous, time-consuming than legalization with regulatory challenges
- remove from CD&S Act
- but could still take some time to formalize
- users exposed to prosecution

# We can fix it, quickly

## *Fix #2: De facto decriminalization*

- don't change laws
- just enforcement practices
- guidance available from other jurisdictions  
(eg Netherlands)

(Room et. al., 2010 p92)

# Public Prosecutions Act

- Murray Rankin, MP for Victoria BC
- former Univ Victoria law professor
- Vice-Chair, Govnt's Standing Committee on Justice & Human Rights
- AG could direct enforcement agencies to stop prosecuting possession small quantities
- introduced bill June 13, 2016
- rejected by AG Jody Wilson-Raybould

# International support persists

## United States:

- 21 states decriminalized cannabis possession
- most recent: Illinois, May 2016
- 14 of those have not legalized

## Other Countries:

- 32 - some form of decriminalization for recreation (only Uruguay has legalized)

# Hybrid Model: Stepped Sequence

## Step 1

- immediate decriminalization
- non-punitive - no fines
- end criminal records for possession
- impact on social determinants of health
- *de facto*, if necessary/expedient

# Hybrid Model: Stepped Sequence

## Step 2

- work on legalization with strict regulation
- thoughtfully & patiently
- priority on public health

“...there are no **beer** emergencies...”

Debate on liberalization of access to alcohol  
- Catherine Zahn, CAMH, 2012

“There are no **recreational cannabis** emergencies either.”



# Legalization Objectives

- learn from experience regulating existing drug industries (alcohol, tobacco, pharma)
- priority: minimize risk to public health & safety
- realize reasonable revenue objectives

# Take Home Messages

- decriminalization viable complement
- quickly relieves a social injustice
- buys time to get legalization right
  
- Canada should promptly implement *de facto*, non-punitive decriminalization as first step in cannabis law reform

# Write to your Govn't

- [cannabis@canada.ca](mailto:cannabis@canada.ca)
  - [Hon.Jane.Philpott@Canada.ca](mailto:Hon.Jane.Philpott@Canada.ca)
- 1) decriminalize asap
  - 2) go slowly with legalization
  - 3) make health protection the priority

# Want more ?

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*Drug Promotion, Problems, Policy*

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