

# THE DETERRENTS

## Lax sentences blamed for proliferation of grow-ops

### NO MINIMUM PENALTY

BY NICHOLAS KÖHLER

It was the gunshots heard from the basement that first brought police in York Region to the home of a Vietnamese-born restaurant worker three years ago.

But it was the covered windows, extra ventilation ducts and melted snow surrounding the building that persuaded them to stay.

When the man, who would later be convicted of "producing a controlled substance," answered his door, police could smell the odour of the marijuana and spotted small plants in his hallway.

His grow operation, installed in the home's basement, consisted of 481 plants fed by 46 light sockets plugged into a hydro bypass that had milked Markham Hydro of \$4,039.

The man, who escaped Vietnam as a refugee at the age of 25 before arriving in Toronto, pleaded guilty to operating a grow-op and stealing electricity.

The judge described him during sentencing as "being in the same category of offenders that we often see on these drug-related charges: Asian, male, little or no criminal record, pleading guilty at an early opportunity ..."

And she handed down a conditional sentence (just under two years of house arrest), putting him in another category of Ontario grow-op offender: the two-thirds who are convicted but never see the inside of a jail.

According to a report produced in 2003 by the Ontario Association of Chiefs of Police, only a third of all Ontario grow-op

convictions between January, 2000, and June, 2003 — 777 people — went to jail, with the rest receiving conditional sentences, probation or fines. Those who were incarcerated were free after an average of 145 days.

That is compared to sentences in the United States, which are typically between 33 and 87 months in a federal institution, the report adds.

It is Canada's low sentences that police and criminologists say drive the proliferation of grow-ops such as that at the centre of Thursday's shootout in Alberta, which left four Mounties dead.

"There is virtually no sentencing, and organized crime groups have realized that and said, 'Let's take advantage of this,'" said Detective Staff Sergeant Rick Barnum of the Ontario Provincial Police's Drug Enforcement Section.

Canada's Controlled Drug and Substances Act stipulates no minimum sentence for running a grow-op and sets a maximum of seven years.

Sentences are based on a cocktail of factors, including the number of plants, level of sophistication, an established link to organized crime and whether the operation's location poses a risk to the surrounding community.

But missing from the equation, Prof. Plecas argues, is deterrence.

"It's basic psychology," said Prof. Plecas, who has just completed a seven-year study of the grow-op phenomenon, which he says is driven by "the profit that's associated to growth and the corresponding lack of consequence."

He said it is a fear among judges of having their decisions appealed that produces low sentences.

But lawyer Joseph Neuberger, whose Toronto firm, Neuberger Rose, enjoys a substantial practice in drug-related cases, says stiffer sentences are not the solution.

"I don't think people who are criminal are deterred by criminal penalties," he said.

Mr. Neuberger also said increased sentences may enhance the danger.

"If somebody is facing a life sentence on an offence, they are more likely to act desperate and pull a gun and try and kill somebody."

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