

MEDICINAL POT LAW TAKES HIT

By SAM PAZZANO
Courts Bureau

Marijuana could be legal for everyone in Canada within six months unless Ottawa fixes its medicinal marijuana regulations or provides a legal source and supply to sick people, said one of the lawyers involved in the landmark Superior Court decision yesterday.

Justice Sydney Lederman declared the current Marijuana Medical Access Regulations (MMAR) unconstitutional, but gave the government an ultimatum: Fix the regulations or supply the pot itself by July 9.

"The government must be granted time to fix the MMAR or otherwise provide for a legal source and supply of the drug the MMAR authorizes seriously ill individuals to possess and produce, consistent with their (Charter) security rights," Lederman wrote in a judgment.

"But ultimately it is up to the government — and not the courts — to decide how to create an appropriate legal source and supply

Judge gives Ottawa 6 months to make sure patients can get access to grass

of marijuana.

"Access is compromised because there is simply no legal way for individuals with production licenses to obtain the marijuana seeds required to grow it. Even if it were somehow acceptable for individuals to rely on black market supplies to exercise their constitutional rights, the availability of this source cannot be ignored," Lederman wrote.

Lawyer Joseph Neuberger, who represented some of the applicants in the Charter chal-

lenge, said that "when six months expire, if the government repairs the regulations and permits safe access and supply to ill people, then the law is intact.

On the hook

"If they don't (do either of those options), the possession law is out the door."

He also said that if Ottawa "doesn't fix the regulations, it is on the hook to supply marijuana permanently.

"That's an onerous task and I sincerely doubt I'll do that."

Both Neuberger and lawyer Paul Barstein, who represented another applicant, agreed that it's unlikely that authorized marijuana users would be prosecuted in the next six months since the judge has suspended the quashing of the legislation for that time period.

"It's open to police to do it but gives Lederman's findings I can't imagine any judge or jury convicting a sick person who needs marijuana of this offense," Barstein said. "But

there is still a legal limbo of sorts for MMAR users. There is clear statement from a Superior Court judge that there is no legitimate way to get access to marijuana."

Still in breach

Neuberger also said he doubts that ill people who need pot for medicinal purposes but lack authorization will be prosecuted, "although they are still in breach of the law as it is."

Justice department spokesman Darroette Poland said their lawyers are "carefully re-

viewing the reasons in the decision and will advise the minister, Martin Cauchon, accordingly on the next step to take."

A Health Canada spokesman said his agency will be consulting with officials at the justice department once they have read the decision. Barstein said Lederman's ruling is another in a "series of landmark rulings... this may be the straw that breaks the camel's back."

Lederman was scathing in his criticism of the MMAR.

"Laws which put seriously ill, vulnerable people in a position where they have to deal with the criminal underworld to obtain medicine they have been authorized to take, violate

the constitutional right to security of the person," Lederman wrote in his judgement.

"The MMAR expose the applicants, who all have serious medical conditions, to further risk to personal safety. Not only do they face risks associated with consorting with criminals, and the possibility of prosecution... they have to deal with the uncertain quality of the (street) product."

"I have grave reservations about a regime which is supposed to grant legal access to marijuana while controlling its illicit use, but instead grants legal access by relying on drug dealers to supply and distribute the required drug."

Court decisions

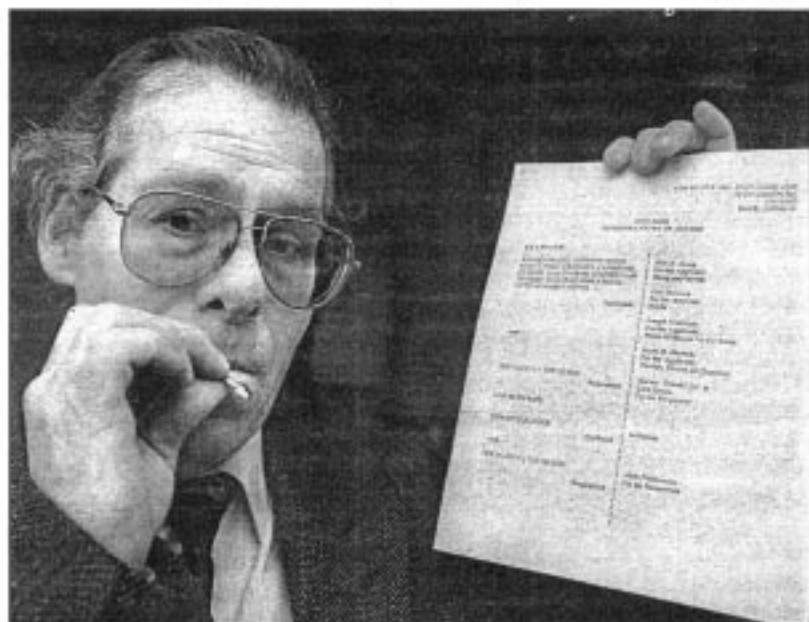
Recent rulings on marijuana:

■ Jan. 2, 2002: An Ontario judge throws out charges against a 16-year-old Windsor teen, after agreeing with a defence lawyer that there's no law in Canada prohibiting the possession of 30 grams of pot or less.

■ Sept. 10, 2002: A Nova Scotia Supreme Court judge rejects a request by an inmate to have medical marijuana in prison to treat chronic neck pain.

■ Dec. 11, 2000: An Alberta judge rules the law prohibiting the cultivation of marijuana is unconstitutional because it doesn't allow for medical use of the drug.

■ July 31, 2000: Three judges of the Ontario Court of Appeal rule the prohibition of marijuana possession in the Controlled Drugs and Substances Act is unconstitutional. They give Parliament a year to amend the marijuana laws.



TERRY PARKER holds up a copy of the ruling on medical marijuana. The epileptic smokes pot to block his seizures.

Ottawa mum on drug mine

The status of a government-approved marijuana crop in Flin Flon, Man., is a closely guarded secret, says the city's mayor.

Mayor Dennis Ballard said yesterday that Health Canada is reluctant to share any information on the underground pot mine, which is approved by the government for medicinal use.

"I don't know much of anything about the mine other than what I've read in the paper," he said yesterday.

Health Canada awarded a five-year, \$3.7-million contract to Prairie Plant Systems in 2000 to grow 400 kilos of marijuana annually in an underground mine in Flin Flon.

In November, a Health Canada official said a second crop was being tested with the hope it would lead to clinical trials. A small amount of the first crop, grown last year, had to be destroyed because it contained spores and fungus.

— Sam MacIsaac

YOU SAID IT

Should marijuana be legalized?
Asked by
Hinari Eckstein

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ADAM GONTIER, 23
Musician

"It should be legalized. It would cause a lot less problems and it seems like too much time is wasted on small amounts of it when time could be spent on more serious issues."



KAREN COLEMAN-HAMKER
Church by assistant

"No. Unless for medicinal purposes, I have a friend with MS and I saw how it helped her physically. But, for anything else, I don't agree with it being legalized."



BRAD WALST, 20
Musician

"If the government can control it then they can make a lot of money if it can be sold legally, like liquor. It would add push it off the streets."



CHRIS BURT, 21
Gas station worker

"It wouldn't bother me either way. People would do it regardless of (the law) and it's just a diversion for the Liberals to take the attention away from the fact that they are a bunch of screw-ups."



TRACY MacKAY, 42
Educational assistant

"Yes, it would allow the police to focus on other crimes like gun control, or more serious drug problems — like cocaine."



STEVE CLELLAND, 38
Schedule manager

"Yes, it removes the criminal element if it's taxed and controlled, it's also a lot less harmful than alcohol."

Lawyers, clients on a high over ruling

By GRITCHEN DRUMME
and JASON TCHIR
Toronto Star

Lawyers and their clients who persuaded a judge to strike down the medicinal marijuana regulations as unconstitutional were high on yesterday's "hot" landmark ruling.

"Canada rules, that's for sure," Warren Hitzig, an applicant in the constitutional challenge, said. "I'm very surprised, extremely ecstatic. The judge made a historic decision. I would not have wanted to be in his shoes."

for medical users to use the unconventional measures they had to use," said Hitzig, a founder of the Toronto Compassion Centre, which sold medicinal pot to about 1,500 terminally ill people until it was raided last year. He and three others still face charges.

"We're very gratified by the decision," lawyer Joseph Neuberger said. "It addresses the concerns that we highlighted and puts real pressure on the government to now put into place a regime that does provide them with access to and (a) safe supply of medicinal marijuana. If they don't comply,

then possession is lawful and they're no longer subject to criminal law."

Neuberger was one of four lawyers who successfully argued before Justice Sydney Lederman that the Marijuana Medical Access Regulations violated constitutional rights.

But epileptic Terry Parker "wasn't thrilled" by the ruling. In 2000, the Ontario Court of Appeal backed Parker's right to smoke pot for medicinal purposes and gave Ottawa a year to revise the law. "I've been waiting for this decision for a long time," said Parker, who smokes

pot daily to block his seizures. "It disturbs me, 2,400 to 4,800 people die from epilepsy. We need this immediately."

"This is the strangest decision we have to date about the climate of the day with regard to decriminalization," said lawyer Leora Shornick. Shornick said Lederman is saying "the Marijuana Medical Access Regulations are ineffective, and that's probably the best signal we've received so far from a higher court about possibly decriminalizing the entire regime."



WARREN HITZIG
Ecstatic over decision

The judge said it's unconstitutional

medicinal marijuana

for medical users to use the unconventional measures they had to use

pot daily to block his seizures

Ecstatic over decision