

Pot regulations violate Charter: Ontario court

BY JANE GADD
COURTS REPORTER

Canada's marijuana laws took another blow yesterday when the Ontario Superior Court ruled that Ottawa's regulations for medical users are unconstitutional because patients have no access to a legal supply of the drug.

In a case involving seriously ill Canadians and "compassion clubs" that provide them with marijuana to fight pain, nausea and weight loss, Mr. Justice Sidney Lederman said the federal government must pass regulations within six months to ensure medical users a legal supply or see its entire marijuana-possession law struck down.

"This has great implications for the everyday user as well as medical users," Joseph Neuberger, one of the lawyers representing patients, said in an interview.

"If they don't replace the regulations, then possession will be legal for anyone. We have to wait six months, but it's a great victory and we are very gratified."

Judge Lederman ruled that the patients' rights to life, liberty and security of the person under section 7 of the Charter of Rights and Freedoms were violated because they were forced to turn to the black market to obtain their medication.

"Access is compromised because there is simply no legal way for individuals with production licences to obtain the marijuana seeds required to grow marijuana," the judge wrote. "Consorting with criminal drug dealers strikes me as a relatively risky means of obtaining medicine."

Judge Lederman said it is up to Parliament to decide how to provide medical marijuana — whether through regulated distribution centres or by licensing compassion clubs.

The impugned Medical Marijuana Access Regulations were Ot-

tawa's attempt to respond to the Ontario Court of Appeal's 2000 ruling that the Controlled Drugs and Substances Act was unconstitutional because it failed to provide an exception for medical use of marijuana.

Epileptic Terry Parker, the winner in that case, was also one of the applicants in the case ruled upon yesterday.

He and nine other Canadians suffering from illnesses ranging from multiple sclerosis and cancer to hepatitis and AIDS argued that although the regulations made it legal for them to have marijuana, this was of little use when no legal source was available.

They also complained about the need for specialists' approval and lengthy paperwork to obtain an exemption from the law.

It is the second time this week that Ontario courts have given Ottawa's marijuana laws the thumbs down.

On Monday, an Ontario Court judge threw out a marijuana-possession charge against a Windsor youth after accepting a lawyer's argument that the appeal court ruling means it is no longer illegal for any Canadian to possess marijuana.

That ruling is under appeal, and Judge Lederman said he had not considered it in his decision on the medical-marijuana case.

The federal Department of Justice issued a guarded statement on Judge Lederman's ruling.

"Counsel are carefully reviewing the reasons in the decision and will advise the minister accordingly on the next step to take," department spokeswoman Dorette Pollard said yesterday.

Ottawa has 30 days to decide whether to appeal the ruling.

Justice Minister Martin Cauchon has pledged to introduce new legislation on marijuana this spring, including decriminalization of possession of small amounts for personal use.