

Combating Canada's Marijuana Grow Industry

Stronger Penalties and other Deterrents

A submission to the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-15, an Act to Amend the Controlled Drugs and Substances Act.

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INTRODUCTION

The City of Surrey, British Columbia appreciates the opportunity to comment on *Bill C-15 – An Act to Amend the Controlled Drugs and Substances Act*.

For more than five years, the City of Surrey has taken on a leadership role in finding ways to reduce the public safety threats associated with marijuana grow operations.

We support minimum mandatory sentences and harsher penalties for those who commit drug crimes, on the basis that they would provide a deterrent for those who are threatening the safety of Canada's communities through their involvement in the illegal marijuana trade.

This submission outlines our reasons for this position.

A GROWING PROBLEM

A climate of low risk and large reward has enabled Canada's marijuana trade to thrive, exposing communities to fire, violence and other risks that are endemic to marijuana grow operations.

With its estimated \$6-billion annual marijuana trade, British Columbia remains the country's hub for marijuana growing – although Ontario, Quebec and other provinces have seen increased activity over the years.¹ In B.C., the boom in the marijuana trade has been tracked to the period between 1997-2003, the subject years of a study conducted by the University of the Fraser Valley (UFV) in B.C.²

This study quantified for the first time the safety risks associated with grow operations, and was the basis for the city-led inspection initiatives that have emerged in recent years in B.C.

Trends in Marijuana Cases

In its review of all B.C. police marijuana files from 1997-2003, the UFV study found a sharp rise in the number of grow operations to be concurrent with a decline in consequences for those growing marijuana, in terms of investigations, seizures and sentencing.

During the study period, the number of marijuana cases brought to the attention of police in B.C. tripled, from 1,489 in 1997 to 4,514 cases in 2003. Also from 1997 to 2003, the quantity of plants seized per year more than doubled and the quantity of harvested marijuana more than tripled.

That growth trend was not limited to B.C., however. According to RCMP statistics,³ the number of marijuana plants seized across Canada between 1993 and 2007 increased eight-fold, from about 238,000 plants in 1993 to almost 1.9 million per year in 2007. During that same time frame, the

amount of marijuana seized grew almost seven-fold, from 7,314 kilograms to 49,918 kilograms. About 90% of the seizures occurred in the three provinces of B.C., Ontario, and Quebec, although some displacement of grow operations to the Prairies and the Maritimes has occurred.

Police response

While this growth was occurring, the UFV study showed that the ability of the police in B.C. to respond to grow operations was declining. While the number of tips to B.C. police about grow operations tripled from 1997 to 2003 (from 1,489 to 4,514), the percentage that received full investigations dropped from 91% to 52%. Correspondingly, the percentage of cases receiving only initial investigation increased from 2% in 1997 to 26% in 2003, and the percentage that received no action at all more than tripled, from 7% in 1997 to 22% in 2003.⁴

The penalty for growing marijuana also decreased from 1997 to 2003. The UFV study indicated that even when police discovered a grow operation during a search, more and more resulted in “no-case” seizures – that is, the grow operation was dismantled but charges against suspects were not pursued. No-case seizures almost tripled for large operations of 100 or more plants, from an average of 11% in 1997 to 32% in 2003. The increase was even greater for small operations with fewer than 10 plants, for which no-case seizures rose from 48% in 1997 to 82% in 2003. Similarly, the study showed a gradual drop in charges laid in grow operation cases. Charges were laid in 96% of grow operation cases in 1997, but by 2003, that had declined to 76%.

Sentencing

Even when they were convicted, few of these marijuana growers were sent to jail. The UFV study showed that from 1997 to 2003, an average of 16% of those convicted in B.C. marijuana cultivation cases were imprisoned. The percentage of convicted growers sent to jail dropped steadily each year, from 19% in 1997 to 10% in 2003. And those who did go to jail were generally released in three to eight months (the average jail term for marijuana cultivation from 1997 to 2003 was five months, including criminals with nine or more past criminal convictions). In all, only 7% of all convicted growers were sentenced to three months or more.

Instead, about a third of convicted growers in B.C. received conditional sentences from 1997 to 2003. According to the UFV study, conditional sentences almost tripled in those years, from 15% to 41%. And while conditional sentences often accompany other penalties, they were the most serious punishment in an average of 40% of the cases during the study period. Other dispositions reviewed in the study included probation (25% of cases), fines (42%), firearms prohibition order (34%), restitution (12%), community service order (5%) and conditional or absolute discharge (5%).

The result would have been much different in Washington State, where sentencing guidelines are in place. The UFV study noted that 49% of B.C.

growers convicted from 1997 to 2003 would have been sentenced to at least five years in jail in Washington State, and 77% would have been sentenced to at least three months (compared to 7% in B.C.).

Even in neighbouring Alberta, convicted growers were receiving harsher sentences than in B.C. between 1997 and 2003. Another study by the University of the Fraser Valley⁵ found that almost 34% of marijuana growers convicted in Alberta from 1997 to 2003 were sent to jail – more than double the percentage in B.C. in those years.

Public Safety Hazards

Where public safety is concerned, these trends are significant. The UFV study quantified, for the first time, the dangers associated with marijuana grow operations – most which exist in residential neighbourhoods. Fires, electrocution, structural hazards, mould and violence are among the public safety risks that grow operations bring to Canada's communities.

The UFV study showed that while grow operations were proliferating in B.C. from 1997 to 2003, so too were the associated fire risks. Some 419 indoor grow operations caught fire from 1997 to 2003, and within that time period, the incidence of fires at indoor grow operations grew from 3.1% in 1999 to 4.7% in 2003.

When data from the City of Surrey was examined for the study, it revealed that the likelihood of a grow operation catching fire was one in 22 – that is, a home with a grow operation is 24 times more likely to catch fire than a typical home. The study also showed that 8.7% of Surrey's 173 house fires in 2003 were directly attributed to grow operation electrical problems, and that the average value of property loss in grow operation electrical fires was nearly twice as high as for typical house fires in Surrey.

COMMUNITY RESPONSE

Faced with the knowledge of the risks associated with growing marijuana, Surrey was compelled to take action to protect its citizens. Focusing strictly on the public safety issue, the city initiated a multi-agency task force in 2004 that resulted in the creation of city-led public safety inspection programs in Surrey (known there as the Electrical and Fire Safety Inspection program) as well as a number of other B.C. communities. These programs allow cities to inspect and force the remediation of properties identified as grow operations.

Part of this effort involved a change in provincial legislation that gave B.C. cities a critical tool to detect grow operations – access to electricity consumption data (formerly not available due to the province's *Freedom of Information and Privacy Act*).

The city has also championed several other proposed initiatives aimed to deter the marijuana industry and the associated safety risks, including:

- The regulation of hydroponics shops, which sell the equipment required to grow marijuana indoors,
- The regulation of medical marijuana grow operations, which share the same safety hazards as criminal operations,
- Detection and surveillance technology, such as an electromagnetic radiation analyzer that can detect hydroponics equipment from a moving vehicle, and the use of long wave hyperspectral imagery to detect clandestine drug labs,
- Tax audits of illegal drug production income – maximizing existing Canada Revenue Agency audit programs through increased intelligence-sharing between police, communities and the CRA.

Measuring Success

The approach taken by Surrey has proven to be disruptive to its local marijuana grow trade, based on a study released in June 2009 by the University of the Fraser Valley.⁶ Commissioned by Surrey, the study revealed that Surrey experienced an 81% decrease in marijuana production (grow operations) from 2004 to 2008, compared to 67% in the rest of the Lower Mainland and 65% in the rest of British Columbia.

Further, while all B.C. jurisdictions saw a decline in overall marijuana files (including production, possession and trafficking) between 2004 and 2008, Surrey experienced the largest reduction in all categories – 68%, compared to 12% for the rest of the Lower Mainland and 45% for the rest of the province.

An earlier 2007 study of Surrey's program had also indicated that, under the right circumstances, inspection programs could be very successful in preventing grow operations from re-establishing.⁷ The research findings indicated that prior to 2006, grow operations addressed through the inspection program re-established 13% of the time and those addressed by the RCMP re-established 4% of the time. After Surrey introduced its Controlled Substances Property Bylaw in 2006 – which included the imposition of substantial financial penalties – the number of post-inspection re-establishments dropped to 0% and post-criminal re-establishments dropped to 1%.

MOVING FORWARD

The Senate is now considering a law that would include minimum mandatory sentences and harsher penalties for drug crimes. This is an important step in the efforts to reduce the public safety threats associated with growing marijuana.

As evidenced by Surrey's results, strategic deterrents can be successful in making growing marijuana appear to be a less attractive undertaking. In

addition, targeted efforts taking place across Canada have clearly had some effect on the marijuana trade.

However, the potential rewards available to those involved in marijuana production continue to be a strong attraction. According to the RCMP, most crime groups in Canada are involved at some level of the marijuana trade;⁸ B.C.'s Organized Crime Agency has estimated that organized crime groups control 85% of B.C.'s marijuana trade. Marijuana has become a form of currency for crime groups, and is widely traded in the U.S. for guns, cocaine, MDMA (Ecstasy) and illegal tobacco⁹. The RCMP believes up to 80% of B.C.'s marijuana is exported to the U.S.¹⁰

Motivated to protect this lucrative enterprise, the criminals behind the marijuana trade continue to adapt and change their approach in order to thwart each new measure that is introduced. It is a complex and evolving problem that requires action from all levels of government and a variety of deterrents – including greater consequences.

CONCLUSION

The greater threat of increased penalties would serve as a strong deterrent to not only criminals currently involved in the marijuana trade, but to those weighing the risks of getting involved. The potential rewards will not seem so attractive in light of the real potential for a jail sentence or other severe consequence.

Minimum mandatory sentences are not only fair – in that they ensure those convicted of drug crimes receive the same treatment in courts across the country – but they will also provide a much-needed balance to the potential rewards of criminal activity. These and other deterrents must be put into place to prevent further growth in Canada's marijuana industry.

¹ *Drug Situation in Canada – 2001 and 2007*, written by the RCMP Criminal Intelligence Directorate (2002/2008).

² *Marihuana Growing Operations in British Columbia Revisited 1997-2003*, by Dr. Darryl Plecas, Aili Malm, and Bryan Kinney (2005), The Centre for Criminal Justice Research at the University of the Fraser Valley.

³ RCMP Criminal Intelligence Directorate (2002/2008).

⁴ Plecas *et al.* (2005).

⁵ *Marihuana Growing Operations in Alberta 1997-2004*, by Darryl Plecas and Jordan Diplock (2007), The Centre for Criminal Justice Research at the University of the Fraser Valley.

⁶ *Police Statistics on Marijuana Drug Files in Surrey, the Lower Mainland, and the rest of British Columbia 2004-2008: A Comparative Analysis* (2009) Dr. Darryl Plecas, Dr. Irwin Cohen, Tara Haarhoff, & Amanda McCormick. University of the Fraser Valley.

⁷ *An Alternative Response Model to Marijuana Grow Operations: The Electrical Fire and Safety Investigation Initiative as a Case Study* (2007), Parvir Girn, School of Criminology and Justice, University of the Fraser Valley, B.C.

⁸ Information in this paragraph from: RCMP Criminal Intelligence Directorate (2008); *Eliminating Residential Grow Operations – An Alternative Approach*, by Surrey Fire Chief Len Garis (2005); and the Organized Crime Agency of British Columbia's Annual Report (2001).

⁹ Comments by RCMP "E" Division Deputy Commissioner Gary Bass at a May 2, 2008 Consultation Workshop to Eliminate Use of Hydroponic Equipment in Marijuana Grow Operations (2008); and RCMP Criminal Intelligence Directorate (2008).

¹⁰ Garis (2005).