

Title  
Bill C-10  
Patients who use cannabis for medicine

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Confidential but available upon request

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I rewrote the Controlled Drugs and Substances Act (CDSA) as if the proposed changes were put into effect. My results were the below four charts.

Trafficking Chart: Trafficking (includes reference to substance aka offer)

1	Organized Crime (3 or more people, one of which benefit from activities)	12 months
2	Convicted or served sentence for drug offence in the last 10 years	12 months
3	Done near school or public place where minors frequent	12 months
4	Less than 3 kg of cannabis (marihuana) (the entire amount of any mixture or substance, or the whole of any plant, that contains a detectable amount of the substance.)	No minimum
5	Less than 3 kg of cannabis resin (the entire amount of any mixture or substance, or the whole of any plant, that contains a detectable amount of the substance.)	No minimum

Production Chart

A	Production for Purpose of trafficking (cannabis oil, cannabis seeds, edibles, tinctures, etc but not cannabis (marihuana))	12 months
B	Production for Purpose of trafficking (cannabis oil, cannabis seeds, edibles, tinctures, etc but not cannabis (marihuana)) and aggravating factors apply	18 months
C	Production for Purpose of trafficking cannabis (marihuana) (6-200 plants)	6 months
D	Production for Purpose of trafficking cannabis (marihuana) (1-200 plants) and aggravating factors apply	9 months
E	Production (201-500 plants)	12 months
F	Production (201-500 plants) and aggravating factors apply	18 months
G	Production (500+ plants)	24 months
H	Production for Purpose of trafficking cannabis (marihuana) (501+ plants) and aggravating factors apply	36 months

Sentencing Chart

W	Money power or other benefit as motivation	Apply minimums
X	Compassionate medical purpose as a reason for contravening a section of the CDSA.	Apply minimums
Y	Individuals Charter challenge <u>possible</u> based on medical purpose	0 months
Z	If the offender successfully completes a program under subsection (4), the court is not required to impose the minimum punishment for the offence for which the person was convicted.	0 months

## Application of charts

1 person	EYZ
1 person to patient	2345 – ABE - XZ
1 person to another	2345 - ABEF - WXZ
2 or more family/friends grow for a patient	12345 – ABCDEF - XZ
3 or more family/friends grow for mutual benefit	12345 – ABCDEF - WZ
Compassion Club	12345 – ABCDEFGH - XYZ
Criminal Organization	123 – ABCDEFGH - WZ

(Reference Section production and trafficking)

## Review of the results of the chart

The proposed changes will further affect (criminalize) those who come to patient's aid (Good Samaritans) with mandatory minimums. It will further affect (criminalize) a patient for their method of preparation of cannabis and the patient community who share cannabis and its preparations with one another for compassionate reasons.

## Affect of Proposed amendment Bill C-10

### #1. Cannabis (marihuana) vs Cannabis

Patients who use medical cannabis are approved under the Marihuana Medical Access Regulations for Schedule II sub paragraph (2) Cannabis (marihuana). Yet a LARGE majority of the patients that this group represents make preparations (edibles, tinctures, etc) and use Cannabis resin. These preparations are also shared among patients, often for compassionate reasons. There is also a large community of patients sharing viable cannabis seeds. Patients also support compassion clubs and good Samaritans. All these activities are currently illegal but common.

Patients have letters from their doctor stating they require the activities for their medical purpose. Patients have applied to the health minister Ms. Leona Aglukkaq for authorization for the above activities but get no access. This lack of will by government and its departments to meet the demands of patients causes a failure of section 10 of the CDSA.

(Reference Cannabis (marihuana) vs Cannabis)

### #2. Number of plants and authorization to produce vs no authorization to produce

“Health Canada’s examination of the current available information suggests most individuals use an average daily amount of 1 gram to 3 grams of dried marihuana for medical purposes, whether it is taken orally, or inhaled or a combination of both.” Health Canada

When you apply the equations for calculating the number of plants grown as authorized by the MMAR to supply 2 grams a day (10 indoor plants) the result is the average patient needs more than 5 plants. Individuals or groups that produce and traffic for medical purposes still need the same amount of plants to meet the demand.

(Reference number of plants)

#3. Foresight: proposed amendments to CDSA, and proposed amendments to MMAR.

Health Canada plans to phase out personal production licenses and designated production licenses. Patients are opposed to this portion of the proposed amendments and believe bill C-10 in combination with the Health Canada proposed amendments will meet extremely stiff opposition from patients who have valid reasons for growing and a long history of launching charter challenges. Let us look at some of these proposed reasons for amendments to the Medical Cannabis Program and how similar they are to the proposed amendments to the CDSA.

(Reference foresight)

Proposed CDSA section 7(3)(b) and (c) and proposed MMAR amendments.

Patients and supporting patient groups believe the potential for diversion of marihuana produced for medical purposes to the illicit market is already handled by the current section 5 of the CDSA with the understanding that it does not currently allow for good Samaritans.

Patients and supporting patient groups believe that risk of home invasion is based on the value of cannabis (marihuana) and would rather see laws deter criminals from invading homes for valuable assets as opposed to valuing cannabis based on morals.

Public safety risks including electrical and fire hazards, stemming from the cultivation of marihuana in homes is the same as the public safety risk of any unsafe cultivation of any plant in the home. Current regulations already control this aspect.

Public health risks due to the presence of excess mould and poor air quality associated with the cultivation of marihuana plants in homes should also apply to any plant or any situation that causes excess mould.

It is Patients and supporting patient groups experience that patients see the above as an arbitrary and discriminate reason for patients to stop growing in their homes as those risks can be properly mitigated or are already properly regulated. There is prescribed in the MMAR an inspector that one would assume assures patients are meeting the requirements of existing regulations. It is unknown in the patient community if an inspector has ever been employed by Health Canada to inspect a legal growers home.

Under the current MMAR a patient or their designated grower can get consent from a “third party” to grow on their “real” property.

Conclusion of both

It is striking how similar the reasons for proposed changes are. The experience of patients is that any of the dangers associated with producing and possessing cannabis can easily be mitigated and is in fact obviously preferred.

If we put these two proposed amendments and the past experiences of the patients together it is apparent to patients and supporting patient groups that Bill C-10 lacks foresight. The proposed changes further contribute to patients disrespect for the law. As a result sentencing under section 10 is increasingly contrary to its intended affect.

(Reference Foresight)

#### #4. Carrot or the stick (fabricating statistics)

##### Bill C-10

(5) If the offender successfully completes a program under subsection (4), the court is not required to impose the minimum punishment for the offence for which the person was convicted.

This kind of “science” is bad and will attribute to false addiction statistics. It is recommended that any person entering such a program be exempt from any database of statistics as there is great risk that freedom (the carrot) will promote perjury to avoid minimum sentences (the stick).

These “addiction” statistics must not be allowed as it will be reflected in medical practitioners decision making process for approving drugs for patients.

#### #5. Conflicting government approaches

It bewilders the patients and supporting patient groups that government is proposing scrapping the gun registry because it does not believe in keeping track of otherwise law abiding citizens and yet Bill C-10 contains no reference to scrap the Marihuana Medical Access Program which is also a database of keeping track of otherwise law abiding citizens including such intimate details as their health information and their doctors name.

#### Conclusion

Because patients and supporting patient groups use cannabis, a controlled substance, the CDSA affects us in a very meaningful way. The control of substances such as cannabis needs to have measures in place that reflect the Canadian public. In the experience of the patients and supporting patient groups it is an accepted fact that patients share other patients cannabis edibles, oils, etc and that no amount of sentencing will increase respect. Canadians grow for the medical purpose of mitigating their own symptoms with or without a license to do so. Canadians come to the aid of patients by growing medical cannabis for the patient with or without a license. Organizations come to the aid of patients by providing access to cannabis without a license. The common complaints of patients and lack of government action creates a lack of respect by the majority of members for the law.

Patients need the cannabis to be produced whether or not there is a valid authorization to produce. There are many examples of this but the most recent and perhaps significant example of this is court case R. v. Mernagh, 2011 ONSC 2121 (CanLII) where it was found doctors are a barrier to authorization.

There is a long history of patients that successfully launch charter challenges which enforces the determination of patients as a group. The Marihuana Medical Access Program is in turmoil (recent example Matt Mernagh Ontario supreme court case).

Patients and supporting patient groups is asking parliament take measures to make sure amendments abolish criminalization of these activities not make them more criminal. This bill will only increase incarceration for those who support access to cannabis and create court costs associated with continued charter challenges.

Patients and supporting patient groups will be more than happy to share their experiences with government and are requesting to speak as witnesses.

Patients believe the political will of government members is weak due to fear being labelled a supporter of medical cannabis or cannabis in general. Patients and supporting patient groups would

like to extend an invitation to any compassionate member of Parliament to become the patient's legal designated grower, or to provide legal consent to use the member of parliament's property so the patient or their designated grower can have a place to grow cannabis for the medical purposes of the patient as allowed by regulation. The expectation is that virtually no member of parliament will take on this task which will hopefully be a wake up call in the decision making process.

## Recommendations

In regards to how a patient is effected and will be affected by the CDSA and Bill C-10

Include MMAR amendments that recognize patients use cannabis and its preparations for their medical purpose.

Include CDSA amendments that recognize there are other valid reasons when considering sentencing and that judges need discretion to meet the needs of reality rather than the limits of Government imagination.

Include CDSA amendments that recognize the existence of good Samaritans.

Individuals who enter addiction programs as a result of sentencing under the CDSA should not be considered valid statistics.

Remove possession of cannabis and it's derivatives from the CDSA.

Apply the same logic of gun registry to the medical marihuana access program.

## REFERENCES AND NOTES

### PRODUCTION AND TRAFFICKING

Production Chart notes

Aggravating factors for production

the person used real property that belongs to a third party in committing the offence

the production constituted a potential security, health or safety hazard to persons under the age of 18 years who were in the location where the offence was committed or in the immediate area;

the production constituted a potential public safety hazard in a residential area

the person set or placed a trap, device or other thing that is likely to cause death or bodily harm to another person in the location where the offence was committed or in the immediate area, or permitted such a trap, device or other thing to remain or be placed in that location or area.

Sentencing Chart notes

### Section 10 (4) CDSA

(4) A court sentencing a person who is convicted of an offence under this Part may delay sentencing to enable the offender

(a) to participate in a drug treatment court program approved by the Attorney General; or

(b) to attend a treatment program under subsection 720(2) of the Criminal Code.

## Section 720 (2) Criminal Code

(2) The court may, with the consent of the Attorney General and the offender and after considering the interests of justice and of any victim of the offence, delay sentencing to enable the offender to attend a treatment program approved by the province under the supervision of the court, such as an addiction treatment program or a domestic violence counselling program.

## CANNABIS (MARIHUANA) VS CANNABIS

### SCHEDULE II OF THE CDSA

1. Cannabis, its preparations, derivatives and similar synthetic preparations, including

- (1) Cannabis resin
- (2) Cannabis (marihuana)
- (3) Cannabidiol (2-[3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol)
- (4) Cannabinol (3-n-amy-6,6,9-trimethyl-6-dibenzopyran-1-ol)
- (5) Nabilone ((±)-trans-3-(1,1-dimethylheptyl)-6,6a, 7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one)
- (6) Pyrahexyl (3-n-hexyl-6,6,9-trimethyl-7,8,9, 10-tetrahydro-6-dibenzopyran-1-ol)
- (7) Tetrahydrocannabinol (tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol)
- (7.1) 3-(1,2-dimethylheptyl)-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran-1-ol (DMHP)

but not including

- (8) Non-viable Cannabis seed, with the exception of its derivatives
- (9) Mature Cannabis stalks that do not include leaves, flowers, seeds or branches; and fiber derived from such stalks

### CDSA

#### Exemption by Minister

56. The Minister may, on such terms and conditions as the Minister deems necessary, exempt any person or class of persons or any controlled substance or precursor or any class thereof from the application of all or any of the provisions of this Act or the regulations if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.

### MMAR

70. The Minister is authorized to import and possess viable cannabis seed for the purpose of selling, providing, transporting, sending or delivering the seed to

- (a) the holder of a licence to produce; or
- (b) a licensed dealer.

### CDSA

10. (1) Without restricting the generality of the Criminal Code, the fundamental purpose of any sentence for an offence under this Part is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in



appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

## NUMBER OF PLANTS

30. (1) In the formulas in subsection (2),

(a) “A” is the daily amount of dried marihuana, in grams, stated under paragraph 6(1)(c) or subparagraph 19(2)(d)(i), whichever applies;

(b) “C” is a constant equal to 1, representing the growth cycle of a marihuana plant from seeding to harvesting; and

(c) “D” is the maximum number of marihuana plants referred to in subsection 21(2) and paragraphs 29(2)(f) and 40(2)(g).

(2) The maximum number of marihuana plants referred to in paragraph (1)(c) is determined according to whichever of the following formulas applies:

(a) if the production area is entirely indoors,

$$D = [(A \times 365) \div (B \times 3C)] \times 1.2$$

where B is 30 grams, being the expected yield of dried marihuana per plant,

$$D = [(2 \times 365) \div (30 \times 3 \times 1)] \times 1.2 = 10$$

(4) If the number determined for D is not a whole number, it shall be rounded to the next-highest whole number.

## #3. FORESIGHT

Section 7 of the Act is amended by adding the following after subsection (2):

(3) The following factors must be taken into account in applying paragraphs (2)(a) to (b):

(a) the person used real property that belongs to a third party in committing the offence;

(b) the production constituted a potential security, health or safety hazard to persons under the age of 18 years who were in the location where the offence was committed or in the immediate area;

(c) the production constituted a potential public safety hazard in a residential area; or

From Health Canada Website proposed amendments to the MMAR:

the potential for diversion of marihuana produced for medical purposes to the illicit market;

the risk of home invasion due to the presence of large quantities of dried marihuana or marihuana plants;

public safety risks, including electrical and fire hazards, stemming from the cultivation of marihuana in homes;

public health risks due to the presence of excess mould and poor air quality associated with the cultivation of marihuana plants in homes;