

ALASKA LEGISLATURE COMMITTEE FILES, 2000-2000 / 2

11786 SENATE HEALTH, EDUCATION & SOCIAL SERVICES

❖ *The legal and political issues in an international perspective.* Canada is a party to various treaties and conventions on the production, trafficking and possession of psychoactive substances. It was important to assess how precise and binding these instruments are on domestic legislation. Also, these treaties and conventions are themselves part of a larger array of international instruments, especially on human and political rights; it was essential to determine the interrelationships between these instruments. Finally, drugs are an issue in international relations, in particular in relations between Canada and the United States. Although not legally binding, these factors may influence policy reorientations and will thus be interesting to look at. The key questions are:

- What are the main treaties and convention. in matters of drugs, their history and their provisions?
- What constraints, if any, do these treaties and conventions impose on Canada?
- Beyond treaties and conventions, what other aspects of international relations have implications for Canada in adopting a regulatory mode in matters of drugs?
- What are the regulatory approaches adopted by other countries, what are their impacts, and to what extent are they pertinent for Canada?

❖ *The ethical issues and Canadians' moral and behavioural standards.* Ethical issues and knowledge of the standards adopted by Canadians are also relevant in determining policy and legislative orientations. The key questions are:

- What are the ethical principles relevant to examining issues related to the production, use, consumption, circulation and control of drugs?
- What are the pertinent ethical principles in relation to the medicinal use of cannabis and the medical and psychological treatment of drug addiction and dependence?
- What are the current norms of behaviour of Canadians in relation to cannabis production, consumption, use and circulation?
- What are the norms of tolerance of Canadians?
- To what extent do ethical principles and norms of tolerance in the population accord?

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As can be seen, the undertaking was a vast one. In an attempt to answer these questions in the most effective and most economical manner possible, the Committee agreed to perform two tasks concurrently: conduct a research program and hear expert witnesses—complementary activities.

## Research program

Lacking both a research budget that would have enabled us to commission studies and a full-time research staff, we asked the Parliamentary Research Branch to produce syntheses and analyses of the relevant literature.[3] The research is divided into three major categories:

- ❖ Legal studies: analyses of case law and international conventions and treaties;
- ❖ Socio-criminological studies: analyses of the relationship between drugs and crime, of developments in denunciations, charges and sentences; cannabis use practices; economic aspects of drugs;
- ❖ Comparative studies: syntheses of public policies in certain countries.

We also received a synthesis of the literature on the physiological and psychological effects of cannabis.[4] Lastly, we commissioned a qualitative study on Canadians' opinions and attitudes by a public survey firm.[5]

In all, the Committee received 23 reports and benefited from summaries of work conducted in other countries, particularly through its attendance at international conferences.

## Expert Witnesses

Aware of the research program's limits, and particularly of the need to question some of the researchers whose work was cited in the studies conducted and to compare their analyses with those of other researchers and with the positions of other expert organizations (police forces, for example), we conducted a series of hearings of expert witnesses in Ottawa and certain other cities across the country.[6]

The hearings began on October 16, 2000 during the 36th Parliament and resumed on April 30, 2001, during the 37th. They ended on June 10 of this year with presentations from the principal departments responsible for illegal drug policy in Canada. As far as possible, the Committee maintained a rate of one hearing every two weeks.

In every case, the Committee asked the witnesses to prepare a written brief responding to specific questions. The Committee did not expect the experts to give their opinion or tell it what to think. The expert witness hearings were part of an effort to increase members' knowledge. Knowing that our ability to conduct studies was limited and acknowledging that research data were incomplete, if not contradictory, we wanted to take full advantage of this exceptional opportunity to clarify and better disseminate certain findings.

Who were these experts? How did the Committee select them? These are important questions to the extent that a certain number of stakeholders questioned the Committee's credibility as a result of certain choices it made. First, we wanted to cover each of the major fields of investigation. Consequently, we heard sociologists and lawyers, psychologists and physicians, police officers and criminologists. Second, we wanted to hear as many Canadian

experts as possible from those various research areas. Third, for the most part, we selected experts known for their publications in the field. The researchers included Professors Harold Kallant and Marie-Andrée Bertrand, who were closely involved in the work of the Le Dain Commission 30 years ago and researchers closely associated with such major institutes as the Ontario Centre on Mental Health and Addiction (the former Addiction Research Foundation) and the Canadian Centre on Substance Abuse. Lastly, we were interested in inviting experts who, in certain cases, could speak on behalf of major institutions such as the Canadian Medical Association, the Federation of Canadian Municipalities, the Canadian Association of Chiefs of Police and the Royal Canadian Mounted Police. It will be seen from a close look at the list of experts heard and the subjects of their presentations that they coincided with all our areas of concern.

When the hearings focused on the situation in other countries, we sought to strike a balance between those persons who could describe public policy and researchers whose work was recognized in their country and internationally. As the number and length of our hearings were limited, we had to make choices. At most we could hear four persons per hearing. As a general rule, we tried to choose a senior government official and three researchers.

One could also question our choice of countries heard: France, the Netherlands and Switzerland. We had initially intended to hear representatives from England, particularly because that country's public drug policies have been examined in many high-quality studies. Unfortunately, changes under way in there prevented us from holding those hearings. Similarly, we did not have enough time to hear from Sweden or Australia. However, we had the Parliamentary Research Branch prepare syntheses on each of those countries.

The case of the United States deserves particular attention. Chapter 20 describes American drug policy. However, at our hearings on the United States, which is much more complex and less monolithic than is often thought, we were unable to hear from those responsible within the U.S. government, although not for lack of trying. The Director of the prestigious National Institute on Drug Abuse (NIDA) had tendered his resignation a week before the scheduled date of the hearings, after accepting our invitation. And the Director of the Office of National Drug Control Policy in Washington declined our invitation. In short, we are dissatisfied at having been unable to hear the senior officials responsible for drug policy in the United States. Nevertheless, on June 10 2002, we held a private meeting with Dr. Hanson, the new Director of NIDA, and on June 11 we had an *in camera* meeting with Mr. Walters, the Director of ONDCP and some of his key advisors in Ottawa.

In all, the Committee held more than 40 days of public hearings in Ottawa and other Canadian cities, hearing more than 100 persons from all backgrounds.

One further note. It can be said that we did not handle the testimony of researchers and those of practising experts in the same way. That is true in part. To the extent that researchers presented data lending itself to critical review, containing verifiable data, which does not mean proof, on specific subjects, making it gradually possible to answer our empirical questions, we attached a certain degree of importance to them, which will be reflected in the passages cited throughout this report. The information from practitioners is not in itself any less significant or important in our view. However, the practitioners more often tended to express opinions than to present study data. They also did not have the same concern to give precise answers to the questions put to them. Those opinions are important, as are those of the Canadians whom we heard and who wrote to us, but they are nevertheless opinions, not cold hard data.

## **The challenge of synthesis**

Faced with this massive amount of information, the greatest challenge was to synthesize it. The scientific literature on all of the topics addressed, particularly those concerning the effects of cannabis and users and types of use, is abundant. Experts reported to us on their research and that of other researchers. The reports prepared at our request are full of information, and our research team stayed on the look-out for recent publications and attended various international scientific conferences. In short, the task was to make sense of all this data, which, in addition, contained contradictory information at times.

At the same time, the data on certain subjects are still fragmentary. This is the case of data on trends in the use of cannabis and other drugs in Canada (Chapter 6), on the specific nature of therapeutic applications of cannabis, evidence of which often does not go beyond the anecdotal (Chapter 9) and simply on police practices (Chapter 14) or the decisions of Canadian courts (Chapter 15).

Synthesizing this information thus also meant making choices. While fully respecting the diverse range of perspectives, we nevertheless had to draw conclusions, accepting that some of the conclusions might be preliminary and that they might be contradicted by subsequent research. It is in the very nature of science that it is constantly in motion, and we accept that state of affairs. As a result, we are aware that we have left ourselves open to criticism. So much the better, we might add, first, because criticism will stimulate public debate, second, because it will undoubtedly pique the curiosity of researchers, who will verify some of our findings empirically, thus improving the state of our present knowledge, and, third, because our choices will be made plain in light of the guiding principles that are outlined in the next chapter.

## **Taking opinions into account**

Public opinion is hard to grasp, first, because it does not exist in itself but is created by the manner in which the pollsters' questions are asked, by the manner in which the media report a debate, and by a broader context of representations the actual determinants of which are never precisely known.

Understanding public opinion on a complex subject such as drugs is not a simple matter such as discovering what type of laundry detergent respondents will buy at the supermarket. A seemingly simple question quickly becomes complex once Pandora's box is opened. A public opinion poll may ask the public whether they are in favour of decriminalizing cannabis. However, do we know whether every respondent understands the term "decriminalization" in the same way? The complex nature of this term is addressed in Chapter 21. Do we know whether respondents are for or against decriminalization for the same reasons? And once it has been determined that a majority is for or against it, do we know how that public policy choice would be implemented?

If it is the case, taking opinions into account is a necessity in a democracy. For us, taking

opinions into account meant we had two closely related responsibilities: first, it meant we had a duty to inform, indeed to educate, although we hope those who are offended by that term will pardon us for using it, but we are convinced that on public policy topics, which are societal issues, it is the duty of political leaders to transmit information that educates, not merely convinces. The level of knowledge about drugs, even about cannabis which is the best known drug, is often limited and wrapped up in numerous myths. Our second responsibility in taking public opinion into account was to go and discover it. We did so in three ways.

First, we publicized our work as widely and as openly as possible to enable everyone to learn about it and react to it. Many chose to do so by writing to us, although they were relatively few compared with the number of people in this country.

Second, we commissioned a qualitative public opinion study. The focus groups conducted across the country as part of that study are described in detail in Chapter 9.

Third, we held public hearings in various cities across the country (eight in all), thus enabling a certain number of citizens to come and tell us what they thought, what they knew and what they had experienced.

We are aware that informing and seeking public opinion also means having a hand in forming it. It is thus not a neutral activity.

### Interpreting in light of principles

All this knowledge, in the form of research and public opinion, still needs to be interpreted. Scientific knowledge is subject to constant verification. It at times contains contradictions, as will be seen in Chapters 7 and 8 in particular. Knowledge of public opinion necessarily remains fragmentary and evolving. Thus the importance of interpretation.

Beyond this, a public policy, as noted above, is not based on knowledge alone, no matter how rigorous. Guiding principles are necessary, principles that can permit an informed interpretation of data and assist in the establishment of conclusions. This is the subject of the next chapter, which will describe the method we used to determine our guiding principles and the principles themselves.

[1] Senate of Canada (2001) *The Proceedings of the Special Committee on Illegal Drugs*. Issue No. 1, page 23.

[2] Leduc, D., et al., (2001) *Federal Research on Illegal Drugs and Related Issues*. Ottawa: Library of Parliament; and Miller Chenier, N., & S. Norris (2002) *Territorial Research on Illegal Drugs and Related Issues*. Ottawa: Library of Parliament. Reports prepared for the Senate Special Committee on Illegal Drugs. Available at [www.parl.gc.ca/illegal-drugs.asp](http://www.parl.gc.ca/illegal-drugs.asp).

[3] A complete list of the studies produced by the Parliamentary Research Branch is

provided in Appendix 3. All the research reports are available on line at the Committee's Web site: [www.parl.gc.ca/illegal-drugs.asp](http://www.parl.gc.ca/illegal-drugs.asp). The Committee wishes to express its appreciation of the work performed for it by the Parliamentary Research Branch.

[4] Wheelock, B. (2002) *The Physiological and Psychological Effects of Cannabis: A Survey of the Literature*. Document prepared for the Senate Special Committee on Illegal Drugs. (The Committee particularly wishes to thank Senator Rossiter, who made the preparation of this paper possible.)

[5] Léger Marketing (2002) *An Exploratory Study Among Canadians on the Use of Cannabis*. Montréal: author. Report prepared for the Senate Special Committee on Illegal Drugs. Available at [www.parl.gc.ca/illegal-drugs.asp](http://www.parl.gc.ca/illegal-drugs.asp).

[6] A complete list of the witnesses heard as well as subjects, places and dates is provided in Appendix 2. All the evidence and certain supplementary documents provided by witnesses are available on line at the Committee's Web Site.

### Chapter 3

#### Our guiding principles

What should public policy on illegal drugs consist of, policy here being understood in the strict sense of the word, as government through public debate and not party politics? As we are part of the Senate of Canada and therefore of Parliament, and having legislative authority, one might wonder why we ask ourselves the question. As legislators, are we not guided by the principles of good government, that is to say by public interest? In fact, what is public interest, and how is it determined? Does our position as Senators give us the *de facto* ability to say what is, or what should be, in the interest of Canada? We do not believe so.

When faced with social issues such as illegal drugs, we are like all Canadians, struggling with our beliefs, our knowledge, our values, our doubts and our myths. Our special access to some one hundred expert witnesses, our reading of numerous research papers and our discussions with dozens of people across the country have forced us to confront our preconceived ideas and images about drugs and to compare them with those of "others", and if not to change them, at least to refine them along the way. However, this is not sufficient to determine what is in the public interest. Experts, no more so than the many citizens we heard from, do not determine what is in the public interest. Studies show only the most superficial aspects of what Canadians think. In addition, when polls that are more sophisticated provide us with a more in-depth picture of public opinion, we will be no further ahead in trying to decide on the direction that public policy on cannabis should take. This is primarily because the greater good is not determined by polling to see which way the winds of public opinion are blowing, and also because, as is the case with our personal opinions, public opinion relies on unverified information, on preconceived ideas that are sometimes biased, and on values that are not always clear.

We heard quite frequently that the public policy decisions should be based on the future of our children, on the kind of society in which we wish to live and that we wish to leave them. Over the last two decades, Canadian society has implemented costly anti-smoking programs. Do we want to be in conflict with these by allowing the smoking of cannabis? Cannabis is a psychoactive substance that can impair certain cognitive abilities linked to learning in young people. Do we want to send the message that it is okay for them to take drugs?

Others said that the fundamental values of Canadian society, values of respect for people's rights and freedoms, of tolerance and openness towards diversity, were compromised by existing legislation on cannabis. They added that these laws are no longer in step with society, reflecting an inter-generational conflict between adults and youth, they bring about more harmful consequences than good, and on top of being ineffective they are iniquitous.

This is an issue of values, therefore, which opposes various ideas about public health, of community health, meaning both the physical well-being of people as well as of the entire community, of its moral fiber as well as the model of inter-relationships that it proposes. However, we do not all share the same values.

In the fragmented, disillusioned world in which we live, a world open to the sharing of cultures and of identities, albeit not always by choice, the issue of values is constantly at stake, and from this the very meaning of social life. Even the transcendental values that we all share, of sacred respect for life and of immanent justice, are not readily turned into public policy: abortion or capital punishment, for example. As for other values, such as freedom, truth or law, they are the subjects of constant debate in democratic societies and they are precisely the kinds of values that are at stake in a public policy on illegal drugs.

It has now been thirty years since the Royal Commission of Inquiry on the Non-Medical Use of Drugs, the Le Dain Commission, named for its Chairman, studied issues similar to those we are studying today. Its report on cannabis, whose scientific conclusions on the effects of the drug were generally accepted by all members of the commission, nevertheless led to ... three reports: a majority report by three of the members, and two minority reports. During our first day of public hearings, Professor Line Beauchesne presented the fundamental differences of opinion among the members:

The dissension stems primarily from different visions of the values that should underlie a drug policy. I will refer to the report to illustrate the three positions that can be taken on drug use.

The first position, based on legal moralism, is that advocated by Ian Campbell. This public policy approach founded on legal moralism justifies the current prohibition and resulting repression on the grounds that it protects common values. (...) Briefly put, the government is perceived as having the responsibility of establishing common values, which are then imposed on society with a view to achieving optimum social harmony. If everyone thinks the same way, then there will be fewer problems.

(...) The second position, held by the majority of the Le Dain Commission members, is based on legal paternalism. Public policy based on legal paternalism justifies current prohibitions on the grounds that the State has a responsibility to protect non-independent persons, particularly young persons.

(...)

When we come to the third position, that taken by Marie-Andrée Bertrand advocating the legalization of cannabis, this brings us around to the whole question of values (...). Legal liberalism implies that the government maintains some responsibility for preserving individual autonomy to the maximum extent possible. (...) A public drug policy based on legal liberalism is founded on the premise that the government's role is to maximize

opportunities for each individual to be a full citizen and to ensure that criminal law is never used. [1]

Moralism is an affirmation of a set of shared values. Paternalism is protection of the weak. Liberalism is maximization of the independence of citizens. These three categories do not include all of the possibilities: communitarianism, for example, represents another approach. In some areas of public policy, at certain times, these various approaches can co-exist. Nevertheless, each one expresses a different concept of the role of the State and of criminal law, and the roles of science and ethics in the choices that must be made.

Having examined each of these subjects, we have elected to set down the guiding principles that clarify the concept we have of the roles that the state, criminal law, science and ethics must play in the development of a public policy on cannabis. These principles will then help us in our analysis of the information resulting from the research and current practices in Canada, and most of all, influence our recommendations. In this way, the reader will have the benefit of our attempts to make explicit the principles which all too often remain implicit, therefore giving the opportunity to all to take us to task for inconsistency, or to voice their disagreement with our conclusion, because they do not share these principles. We feel this exercise has the virtue of being both clear and transparent.

In order to assist our preparations for this work on the guiding principles, we asked four Canadian academics, well known both in their respective fields and for their independence, to prepare issue papers on each of the four main themes: governance, criminal law, science and ethics.[2] We strongly encourage Canadians to read these texts, which are of an exceptional richness and quality. We will use these texts freely, without pretending to render the complexity of their thinking, but neither will we simply echo their sentiments. Just as we did not ask witnesses to tell us what to think, but rather to share their knowledge with us while being as rigorous and as precise as possible, whether their knowledge comes from research or from experience, so we asked for issue papers and not for answers to our questions. We must formulate our own responses to the illegal drug issues before us, and that is what is expected of us.

We will begin with a reflection on ethics. We feel that such an examination, insofar as it affects the very bedrock of our values, as it imposes a requirement for communication and dialogue[3], is the cornerstone upon which the other guidelines are based. Our principles dealing with governance – that is to say the role of the State – and with criminal law as a tool for achieving social conditions, then, hinge on this ethical concept. We will conclude with thoughts on the role of science, or more specifically of knowledge.

### **Ethics, or the principle of reciprocal autonomy**

Let us assume that science, with supporting evidence, had shown the harmfulness of a given drug – say tobacco – and that it is a “cause” of serious, indeed fatal illnesses. To what extent are doctors, judges, and in the end, the State, authorized to go to ensure that people do not smoke? What limits are there on intervention? This is the question posed by ethics, more specifically the ethics of “health”. Should we simply ban tobacco and punish both its

users and its producers? Should we educate people through prevention campaigns? Should we discourage smokers through their pocketbooks, for example with a surtax for the hospital care that their habit could make necessary?

We see that ethical reflections take us through what is, through the realm of facts, to the realm of what should be, of what would be desirable. Moving therefore from recognized facts (that cigarettes "cause" lung cancer) to standards (the majority recognizes that smoking is harmful), but, more important than standards, to values (health is the greater good) and finally to the means of passing on and above all implementing these values (smoking is forbidden and subject to a fine). At any of these steps, one could speak out and say just a minute, I do not agree. I do not agree with the statement of fact: what is the basis of what studies support this "finding", one might ask. I do not agree with the standard: even though a public opinion poll may show that most people believe cigarettes cause lung cancer, is that reason enough to put an end to the debate? I do not agree with the established values: freedom is the greater good and not health - what is the use of being in good health under a totalitarian regime? Finally, disagreeing with the means chosen to implement the value - it being unacceptable to ban cigarettes under the pretext that they cause cancer because the means is disproportionate to the fact.

Anyone who has followed the debates on cannabis to any degree will have drawn a parallel. Because cannabis "causes" health problems (both physical and moral), the standard states that its use is "dangerous" and, under the banner of public health values (and of the protection of the most vulnerable: children, adolescents, etc.), its production, manufacture, sale and use, etc. will be prohibited. This is the basis of the existing public policy.

As Professor Malherbe reminds us, this way of setting out the cannabis problem - as in fact is true for other substances - encourages us to rethink our ideas on health, medicine and science. Moreover, going one step further, it obliges us to consider the issue of risk and of life itself in society.

We live in a risk-taking society, but in a paradoxical manner. On the one hand, we place great value on risk-taking: venture capital, risk management, putting no limits on success. We see this as much in the appreciation of certain kinds of political or corporate decisions, as in the emulation of certain kinds of risky activities, such as Formula 1 racing, paragliding, and other extreme sports. On the other hand, we are becoming intolerant of risks of life in society, of the risks that others represent to our individual lives. It is a search for safety, both individually and collectively, vis-à-vis the smalltime crook or the terrorist. Risk would be in conflict with safety and security as illness would be in conflict with health.

Between these two apparently opposed attitudes towards risk, a subtle change in connotation slips in and partly explains the paradox. In the first sense (risks we like to take or will accept others taking), the issue is clearly risk. Here, risk is seen as being positive, and offers a number of options: when faced with this kind of risk, the person can decide to forge ahead, to wait, or to give up. In any case, there is a broadening of possibilities, therefore of autonomy, an extension that is no doubt linked to the admiration these people elicit, which is also tinged with envy as we observe this action that our position as "mere mortals" rarely permits us. The shift in meaning happens with the second sense, which does not relate to our ideas on safety but rather of danger. Safety is a collective and individual good, as in food or occupational safety. Danger, on the other hand, is usually a loss or a limitation of freedom of action: when faced with danger, most of us stop, and withdraw from the scene. In this sense, danger reduces the range of autonomy. Therefore, it is not safety that is in conflict with risk, but rather danger.<sup>[4]</sup> The distinction is fundamental, because it refers us to the degree-whether real or perceived-to which we control our own existence. We sense that the "crazy Canuck" bombing down the slopes is at least in relative control of the risks

he is taking; danger is different in that it implies loss of control.

We are collectively learning how to manage this risk/danger equation. The "risk" here, if one can put it this way, is thinking of risk as a kind of acquired individual autonomy and of danger as a limitation of this very autonomy by "the other", bringing about in its wake withdrawal, intolerance, and concisely, fear. For if risk is the source of intense pleasure, danger generally gives rise to fear. If risk points to the improvement of the means that allow me to be more in control of my safety, danger points to threats coming from the outside, chiefly from the 'other', over which I have little control.

Some concepts in medicine, and in science in general, add to this paradox when they address risk factors, such as when smoking is considered a risk factor for lung cancer. This is also the case with delinquency: dropping out of school is a risk factor as regards delinquency. Within these meanings, risk here becomes a danger factor, the ultimate danger, of course, being death (cancer). This mechanistic and causalist concept of prevention erases the fundamental difference between the body-machine we occupy and the body-subject we are, to use the distinctions proposed by Professor Malherbe. There is, in fact, no direct link between the "objective" characteristics of our environment (including the personal traits of genetic history, family and culture, etc.) and the subjective perception we have of ourselves and of our relationship with our environment. In other words, it is precisely why two children born in a similar environment, in the same era and friends from a very young age, will take two entirely different paths in life. We have a body with a genetic inheritance and pre-dispositions; what we do with it and how we interact with others and our environment is something else entirely. Just as there is no immediate transfer of the recognized fact to the norm, neither is there any direct translating my biopsychological make-up into actions and thoughts.

The scientific approach searching to identify a statistical "norm" – the correlation between two facts – does not take into account the fact that we are not all equal in the face of this risk/danger equation. What for some would constitute a risk – going down an icy mountain on skis – would represent a real danger for another.

[Translation] Despite all we think we know about addiction, a considerable number of well-informed subjects "happily continue committing suicide" through their dependencies. While health education is largely thwarted, and not only in the field of toxic substances, it is because human subjects are in fact subjects, that is to say "subjective" beings whose behavioural reactions are linked much more to the meaning they attach to their behaviours than to the objective mechanical-medical consequences which statistical analysis claims to define.

Some risks are no doubt worth taking for life to be worth the trouble of being lived, for it not to dissolve into a maniacal and fearful sequence of endless precautions (...). Lastly, what is most human (the most autonomy, we dare wonder): succumbing to fearful hypochondria and enclosing oneself in a cocoon of universal prevention (to the point of death by asphyxiation and loss of will) or living one's life through risks freely chosen and accepted. [5]

This is where the central position of the concept of autonomy comes in. Autonomy, however, is to be understood here in a critical manner as *reciprocal autonomy*, and not as autonomy where isolated individuals establish standards to their own liking. It should be

borne in mind that autonomy, etymologically speaking, means "establishing one's own laws". This is not a question of arbitrary legislation, created for oneself, but of laws that permit, whenever possible, the successful interaction with others, which is the very bedrock of society. This autonomy is based on the ability to recognize the existence, the difference, and the equivalence of the other, allowing one to assume solitude, finiteness and uncertainty, respectively, to then move on to practice solidarity, dignity and liberty in return.[6]

The "dependent" person is not autonomous, some would say. Indeed, in their dependency, the drug addict, the alcoholic and the inveterate smoker are not. Neither the emotionally dependent person nor the person addicted to gambling, money or sex is fully autonomous. Next comes the question of the extent to which the state or society can intervene to encourage the slow achievement of this autonomy, and how to go about it. What are the respective roles of collective governance and criminal law as mechanisms of this governance? How can science contribute to this emancipation?

In any case, we note Professor Malherbe's comment, that:

[Translation] (...) the fundamental problem of our civilization is not whether it is acceptable to prohibit the trade in cannabis derivatives or even their use, but rather not to repress the expression of anxiety when it arises and, even better, to invent new ways of taming it. On this point, it is useful to recall that every unjustified restriction, which adds to the already heavy burden of civilized individuals, can only increase their sense of being the object of some form of totalitarianism rather than the subject of their own destiny. From this standpoint, anti-drug campaigns seem decidedly like attempts to deny death rather than recognize its presence in collective and individual life. (...) In this respect, we agree with N. Bensaïd, who says that preventive medicine conceals our fear of death by making us die of fear. [7]

From this base ensues a definition of ethics as "*constant work, to which we can consent and which we perform with one another in order to reduce, as far as possible, the inevitable difference between our values as practiced and our values as stated.*"[8] With one another, indeed, thereby imposing constraints so that reciprocity and equivalence of the 'other' can be realized; this is the role of governance.

As a guideline, we will adopt the principle that an ethical public policy on illegal drugs, and on cannabis in particular, must **promote reciprocal autonomy built through a constant exchange of dialogue within the community.**

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#### Governance: maximizing the actions of individuals

We are social beings. It is a trivial assertion, however it must be stated because it means that *necessarily*, we always find ourselves in paradoxical situations where to a certain degree,

each person has the free will to make decisions, and makes free decisions for himself, while at the same time, in order to regulate interactions with others, rules are established, a normativity, that is more or less complex or more or less formal, as is appropriate. This is true of relationships between couples, families, in sports, and at work, as it is of relationships between citizens and the government. Self-governance – acquired through the arrival of liberal democracy – is never complete and inevitably yields in part to the governance of the community.

Governance is relatively easy to develop within simple relationships: within couples, families, or businesses. This is not to say that its practice is easy: anyone with any experience of relationships as a couple will be well aware of how difficult it can be to make implicit rules explicit, and to agree on the rules of a shared life. However, the standards that are established between friends, between lovers, between parents and children, are in fact a set of relatively simple rules, and most importantly, rules whose effectiveness does not require the intervention of other parties, except in the case of a break-up or of abuse.

In feudal, pre-modern or pre-democratic societies, the prevailing rules for even the simplest social relationships were stipulated from the outside: by the sovereign, the lord, the church representative, the father or forefather, the head of the business, each one could issue orders and expect to be obeyed, being all powerful in his domain. The establishment of normativity was largely done without the involvement of "subjects", without their consent, and without any input on their part; they were excluded from the power relationship. Over the centuries, during which our modern-day democracies were built, we have moved on to styles of governance of ourselves and others that allow people to participate more and more in the development of the rules of life, both personal and social. We have also moved on from a situation whereby each person's life was decided by his or her destiny, and limited to the narrow prospects dictated by the place of birth and status, to an "indeterminate" life situation, which is open to the building a personal identity and history.

These are therefore (1) changes in the sources of normativity and their operationalization in society, and (2) changes in our relationship to these norms. In the first case, we are slowly becoming involved in the external formalization of the sources of behavioural norms. As they no longer ensue from divine right, from the sovereign or the church prelate, they are built through the political manifestation of the will of the people. They are entrenched in national constitutions, in legal decisions (in British Common Law) or in legal codes (the Civil Code). It follows that the supra-legal normativity (inherited from divine right) or the infra-legal (not set out in law), lose both their symbolic value and their real influence on social relationships, to the benefit of legal rules that are registered according to a recognized and legitimate procedure in the social system by means of statutory provisions. Modern societies are legal societies, that is to say societies that base their management of relationships between people and between individuals, groups and institutions, on the rule of law. Never completely incorporated into the legal system, other sources of normativity have not disappeared completely but the pre-legal or infra-legal sources of normativity are less apparent, and sometimes less legitimate.

With this change of source comes a change in operation: while the sovereign or the church representative could convict, or even execute, without challenge to the legitimacy or rationality of their decision – except by risking the same fate – the means of expressing the will of the people, setting it out in the legal system, is now in the hands of judges and the legal system entirely. The legal establishment of norms is set in motion either by the public authority provided in the legislation (civil and criminal cases, for example) or by citizens themselves (private and civil lawsuits) and is put in effect primarily by the courts. Remedies exist, and most importantly, these remedies are theoretically the same for, and accessible to,

one and all.

The relationship that a person has to the norms, and through this to all aspects of social life, is the third change. Choice and uncertainty have both increased, to the point that, today, the connection is not so much to the other person, but to the risk represented by being in contact with them. Normativity in and of itself is no longer considered inevitable, nor even a duty. Without being rejected, social normativity is called into question based on personal experience and worldview. The gap between the subject of the norm and the norm itself seems to be widening, while conflict resolution models are being made more formal.

Through the conjunction of these processes, governance becomes more and more instrumental. The mechanisms of formal normativity, i.e. lawyers, judges and the courts, sometimes take on a greater importance than the actual substance of the norms themselves: the immediate personal question is whether I have access to the recognized mechanisms of conflict resolution, or if, through my condition or my actions, I am excluded in one way or another. In other words, the means is replacing the end, the rule of law is replacing the requirement for a connection to the other, which is the very basis of normativity and of social life itself.

Modern societies are therefore faced with a series of sometimes paradoxical injunctions. Collective governance must: (1) allow social relationships to be regulated in the most orderly but least restrictive manner possible, (2) give expression to the norms and values shared by the community and (3) give each person the opportunity to define themselves in relationship to these norms and values. How can these seemingly obvious opposites be reconciled?

Based on Professor Taylor's work[9], we can say that there are two central spheres or preferred means of governance: the governance of relationships with others, and the governance of the self. The governance of collective relations is obviously part of the traditionally recognized areas of intervention of the state, even if the form and substance change. On the other hand, governance of the self does not come immediately or systematically under the jurisdiction of the state.

### Collective governance

The state is far from the only source of normativity. But the fact that democratic states must act in accordance with the law and that most public policies come in the form of legislative texts, produces a kind of short-circuit whereby the source of law and the state appear as one.

Yet, as Professor MacDonald rightly points out, if the actions of the state are subject to the rule of law, the legal sphere is not limited to the State. In all known societies, rules have always been established for the governance of the self and of collective relations. They are implicit or explicit, formal or informal, all-encompassing or limited in their application, codified or recorded in the collective memory, extensive or limited to certain spheres of activity. In every case, whatever the nature or specific form of the rules, they serve to express for members of the community the conditions of collective life. They deal with marriage and parenthood, the ways in which one respects the life and property of others, as well as the connections to the invisible and the beyond. They take the form of prescriptions and bans, are implemented by the bishop or the mullah, by the king or his representative, or by the judge. Much as we might like to believe, we in modern times have not invented the codification of laws because the first legal code goes back to Hammurabi, the King of

Babylon. In Roman law, Justinien was the first to suggest a code of laws, not to mention the Ten Commandments "handed down" to Moses.

In this sense, we agree with Professor MacDonald as concerns legal pluralism, according to which there are multiple sources of normativity and therefore of rules of action that are not exhausted by formal legislation. This is the distinction between law and "juridicity". As we mentioned above, juridicity can be derived as much from the family as from business, from school as from the trade union, from political parties as from religion. In this sense, juridicity "is the business of subjecting action to rules-based governance". [10]

Juridicity, of course, co-exists with other ways of governing individual and community actions: the brute exercise of power and war are examples of other forms. One of the main differences, however, between juridicity and other forms comes from the nature and the origin of its legitimacy. The establishment of legal rules of action involves a form of consent, if not of active participation, in the development and implementation of the rule, qualities that are not needed nor sought out in the case of domination by a tyrant or an occupying army.

The development of a formal juridicity, in the form of legal texts passed by legislative assemblies prescribing both objective and subjective rights, is at the very heart of modernity. It is in fact around these kinds of issues that the more specific question of the role of the State arises: when and to what extent should formal legal rules be developed, and how should they be enforced?

Modern societies are unique in that they have, amongst other things, given precedence to the formal rule of law over other sources of juridicity as regards the governance of social relationships, established the need for these formal laws to be adopted and implemented by legislative and executive arms of the State, and set up arbitration systems in the form of courts of law born of the State but having an arm's length relationship with the former two.

This formality of the law, or to be more precise, the legal normativity found in the legislative texts passed by the State, in no way signifies the disappearance of the other forms of normativity. Here Professor MacDonald gives us a relevant example of this:

For example, activity that the official criminal law sanctions and stigmatizes may be rewarded and valued in certain other normative communities. In socio-economically impoverished neighbourhoods where economic opportunities are limited, the manufacture and sale of illicit drugs may be an attractive means of escaping poverty. For those who are successful in the enterprise, the consequent advancement in social standing may more than offset the potential harms visited by criminal sanctions. Similarly, in an international context, in countries where the raising of traditional crops which are capable of being converted into illicit drugs is an indigenous cultural activity, and where conditions of poverty are such that the attendant economic benefits are necessary for subsistence, the criminal law (whether domestic or international) has little purchase. [11]

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In other words, juridicity is not exhausted in the formal law, and the role of the State is not limited to the processes of passing, enforcing and arbitrating formal legislation.

## Governance of the self

Historically, juridicity has often been equated with moral standards, or has tried to model itself on them. These standards could come from religion, from philosophy, from an ethic, or a universal theory of nature as in Plato. In every case, they tried to say what constituted the "good life", how to conform one's life with the immanent rules of life, ending the cycle of reincarnations, or avoiding eternal damnation. In every case as well, the good life corresponded more or less to "life" in the most abstract sense, that is to say the focus was not so much on the destiny of the individual, but on that of the community, the group, the clan.

It is only as of the second half of the second millennium, during what we refer to as the Age of Enlightenment, that individual life slowly began to register as a primary concern in the governance of the community. This major change resulted in what Taylor calls "ordinary life", that of the "average sensual man", at the heart of which we find his connection to the world and his manner of connecting with it through the agency of family and work, being suddenly recognized. Having had no means by which to participate in the development of juridicity in general until then, the "citizen" acquired some legal authority and right to active participation (to simplify things, we could give as an example the right to vote), not only as a member of the community but as a whole and unique individual.

Up until that time, communities had a juridicity that was largely based on relationships with others, granting strong objective rights (the right to life: you shall not kill; the right to property: you shall not steal; etc.), with a weak cognitive component: while admitting that it continues (unfortunately one might add), to pose certain problems (take racial or sexual inequality) even throughout the twentieth century, - accepting respect for life as a universal norm has not met with great opposition. It is in this sense that we speak here, particularly following Pires' work discussed in the following section, of norms with weak cognitive components. These fundamental norms, which certain philosophers of law have said are natural laws, do not require a strong empirical justification. The same cannot be said of other norms concerning conduct such as homosexuality, abortion... or taking drugs. These norms are an issue of what we might call subjective rights that relate to individual behaviours that express personal choices achieved through a consensual exchange and thus being of little or less direct concern to the community. This is why we could say this is an issue of norms with a strong cognitive component: in order to be imposed as negative laws, that is to say as constraints or prohibitions, these standards need an exogenous justification drawn from the external knowledge of juridicity itself.

In this way, parallel to the process of legal formalization of the norms of governance in the community described in the preceding sub-section, the modern individual has acquired more and more room for governance of the self. This space is no longer, as in the past, entirely dictated by the determinations stemming from one's birth in a given place, in a given family, with given genetic "baggage". Except in some totalitarian regimes, neither is this space for the governance of the self entirely subjected to collective or religious rules. This space consists of a vast area of uncertainty that, in part, precisely explains why it is sometimes called "disenchantment with the world", or more prosaically "loss of sense" or "lack of values". In fact, we would say that neither comes into play, so much as a process of slow and hesitant reinvention of social life, in and through new ways of relating as individuals.

## The role of governance

Governance is part of both the spheres of collective governance of the State and of

governance of the self. If the State's chosen vehicle is formal law, the passing of legislation does not exhaust all the possibilities in terms of collective governance. Moreover, governance of the self is the slow discovery – in the strong sense of the term – of the juridicity that underlies human action.

Professor MacDonald addresses the issue eloquently:

How ought law and legal institutions to be deployed to achieve the symbolic governance of human agency in a manner that facilitates the just achievement of individual and collective human purposes? [12]

The issue brings us back to the purposes of community governance, which is to facilitate human relationships and self-realization, with a minimum of interference in such a way as to stimulate individuals' discovery of the source of normativity rather than having it dictated by an external body. It is not the responsibility of State governance to ensure either the health or the happiness of its citizens. It is, however, its duty to ensure that the rules that it enacts and the way in which they are carried out do the least possible harm to the individual's ability to develop his or her own moral code. Not a single morality, or at least a morality for everyone, as the majority position of the Le Dain report maintained, but a facilitation of access to morality for citizens, morality here being understood in the sense of the ethical discovery of fundamental laws regarding relationships with others, as Professor Malherbe pointed out.

Professor MacDonald proposes a definition of governance that is drawn from the work of the Law Reform Commission, which gives guidance: the goal of governance is freedom, and not control. It is a question of defining the goals of society through policies and action programs that are then implemented through systems and processes and upheld by actors, allowing for the encouragement and affirmation of human action. The law, vehicle of choice of governance, does not seek instrumental purposes of simple expressiveness of rules or limitations passed for and on behalf of citizens, but a reciprocal process of building social relationships through which people, citizens and governments, can constantly adjust their expectations in terms of behaviour.

**We therefore accept as a guiding principle for governance that all of the means the State has at its disposal must work towards facilitating human action, particularly the processes allowing for the building of arrangements between collective government and governance of the self.**

### **Criminal law and the limits of prohibition**

During the course of this report, we will have plenty of opportunity to describe the degree to which criminal law is at the very heart of any discussion of illegal drugs. It has come to the point that debates between those we refer to as prohibitionists on the one hand, and liberalists on the other, have overshadowed all other considerations. The Italian sociologist

Pareto (1848-1923), quoted by Professor Pires in his issues paper, said of human beings that even if we would like to believe that we are rational, we are above all argumentative beings, that is to say that we want "to give a logical aspect to behaviours that do not have the substance thereof." [13] In the context of the debate on cannabis, this sentiment takes on its fullest meaning: both sides hurling their arguments at the other, claiming they are recognized "truths".

Any discussion on the role and the place of criminal law as concerns illegal drugs, here being a question of cannabis, in effect poses questions regarding principles of the appropriateness of turning to criminal law. In general, both sides are quick to escape this stringent argument on the principles to turn to justifications. As is true of both sides, justification has nothing to do with the mechanism itself, being the criminal law, but with the target, being cannabis. The result is the litany of "proofs" of the effects of cannabis. For some, the effects are significant enough to "justify" turning to the criminal law, and to list the risks associated with the use of cannabis: addiction, learning difficulties, delinquency, and impaired driving. For others, these same risks are so minimal, or are already covered by other criminal legislation (driving under the influence), that they do not justify the use of the criminal law. Whatever the case may be, the debate is no longer in relation to the principles but on justification.

This reflection on the role of criminal legislation is specifically intended to bring us back to principles of the appropriateness of turning to criminal law. The central issue is to attempt to identify the criteria that will help us decide in what circumstances society can—or must—turn to criminal law. It must then be determined if these criteria justify the use of the criminal law in relation to cannabis.

### Requirement for distinctions

Raising the question as to whether or not the use of criminal law as concerns cannabis is justified necessarily brings us back to a primary observation: the use of criminal law is not justified in all cases, but, in some cases, it must be. This observation is supported by three findings: (1) that most social relationships are regulated without the use of criminal law; (2) that certain behaviours are forcibly within the sphere of criminal law; and (3) that certain behaviours legislation has criminalized, at certain points in time, have since been excluded from this domain. The possibility of including or excluding human actions from the sphere of criminal legislation rests on the ability to make distinctions.

However, a significant difficulty arises as soon as this principle of distinction is accepted *in practice*, and not simply in theory. Once an act has been recognized as being a "crime", it becomes part of the body of what defines all offences: behaviours against society. According to the internal logic of criminal law, the only eligible distinction would *precede* the decision to incorporate a behaviour into the law or not. If the behaviour at issue is one that goes against the common good, it is a crime. Otherwise, it would be an uncivilized act, perhaps even an immoral one, but certainly not a crime. Once such a decision is taken, the only remaining distinctions to make would be with respect to form: the kind of procedure to follow and the severity of the punishment according to the nature of the offence.

Everything is done as if there were no positive distinctions made within criminal law between offences, as if the distinction was made only from the outside, before making the act an offence. In fact, distinctions between types of offences do exist. These are the distinctions made by Professor Pires, between standard prohibited behaviours and "two-sided" prohibited behaviours. It is more usual to distinguish between "victimless" crimes

and crimes "with victims", but this categorization is incorrect. On the one hand, under criminal law, the victim is all of society. There are certainly individual victims, but by some kind of extension, the harm has in fact been done to all of society. This would explain the principle of deterrence, in criminal legal theory: by punishing a guilty party, we try to dissuade all those who might be tempted to behave in the same way.

On the other hand, this categorization brings us back to a single aspect, the subject of the offence, losing view of the other processes by which criminal law distinguishes between different kinds of offences. In this way, another kind of distinction that is intrinsic to criminal law falls under the modes of justification. A decision to criminalize homicide does not require, as Professor Pires stresses, the undertaking of comparative studies in order to determine if one kind of murder is more or less harmful than another to the victim. The cognitive component is weak: here, there is no need to turn to external arguments to justify the criminalization. The act, in and of itself – this is the concept of *malum in se* – is enough to establish the legitimacy of the criminal standard. There is no such thing when the issue is drugs: since the beginning of prohibition, external justifications were needed regarding the harm caused by drug use. These subjects of criminalization have a strong cognitive component, in that they require a higher level of justification.

The distinction between kinds of prohibitive behaviours is therefore an analytical tool that is necessary in order to understand and think about the role of the criminal law as concerns drugs. What then are the criteria we can use in order to make these distinctions? This is the goal of the following sub-section.

### **Criteria for distinction**

Professor Pires proposes seven criteria allowing for distinctions to be made between the various kinds of prohibitive behaviours in criminal law.

#### **Seven criteria to distinguish between offences**

Nature of the offence

Is this an issue of a conflict or an exchange?

Capacity of the law for discernment

Can the law see a victim and distinguish them from the deviant?

Referentiality

Is the actor able to appreciate the consequences of his actions on another person?

Limitation on natural liberty

Is it possible that there could be limitation of the freedom of the person to act?

### Justification of the offence

Must the law turn to outside knowledge in order to justify the enacted standard?

### Application of the law

Does application of the law require any active intervention?

### Effects of the law

Can the effects of applying of the law compromise the standard?

We will briefly examine these, one at a time.

### The nature of the offence

In order for there to be an offence, harm must have been done, which brings us to the victim. As we said above, in the broadest sense, criminal law sees society as the ultimate victim of any offence. The direct victim of an assault or theft is a witness, in the technical sense of the law. However, at a concrete level, the law recognizes direct victims. In certain cases, the concept of victim falls somewhere between the two: it is the neighbourhood or the surrounding area, for example, in the case of nuisance caused by solicitation for the purposes of prostitution. However, these nuisance situations are themselves at the limit of criminal law, in a sort of gray area between standard offences and two-sided offences.

What is remarkable is that the criminal law cannot take all three levels into account at the same time. If it recognizes the direct victim, then society becomes invisible. If it considers the neighbourhood, it becomes even more evident that it can no longer recognize a direct victim or society as a whole. Finally, and above all, if it takes the perspective of society as a whole, then it loses sight of not only the direct victim, but what is more, it loses its specificity. In effect, in the latter case, one could say that civil law also protects society: without respect for sales contracts and debts, society would go down the drain.

It is therefore not only the harm caused, nor even the presence of a victim that gives certain acts their criminal character, but the fact that they bear witness to conflict, abuse of power, infringement of one social actor upon another. Obviously, civil law also serves to resolve conflicts, from which comes the need for more criteria.

### Capacity of the law for discernment

Is the law able to differentiate a victim from a perpetrator? In the case of standard prohibited behaviours, it generally can. For example, the victim of a homicide can clearly be distinguished from the perpetrator. Of course, there are exceptions to these standard scenarios, for example, where the victims themselves face criminal charges. A case in point would be where a victim of sexual assault is convicted of contempt of court for refusing to testify against her attacker.

When faced with two-sided prohibited behaviours, criminal law is hard-pressed to distinguish the victim from the perpetrator. Or, it finds the perpetrator to be the victim that must be protected from himself. Consequently the perpetrator becomes the victim of his/her own behaviour.

Alternatively, cognisant of the limitations and difficulty involved in punishing the victim - for example, a prostitute - criminal law shifts from the phenomenological world (the facts) to a different mode of reasoning. It moves from an analysis-based mode of reasoning (evidence enabling deduction) to one based on consequentialism or teleology (the goals underlying behaviour). For instance, criminal law justifies its intervention by the need to protect children. Consequently, it loses, and causes us to lose, sight of the (ultimately inexplicable) reasons why the offence was brought before the courts in the first place.

### **Referentiality**

This term refers to the capacity of perpetrators of the offence to recognize –despite “explanations”, denial or other self-justification methods - the harm caused to others by their actions. Even in case of some borderline standard prohibited behaviours, such as cruelty to animals, the perpetrator of the offence – who, for example, has hanged his neighbour’s dog from a tree – may recognize the harm caused by his/her action to the animal’s owner. The criminal act in the case of two-sided prohibited behaviours may be self-destructive, but is not motivated by maliciousness towards others, since it does not create a direct relationship with others. Indeed, the sociologist A. Ehrenberg raises the issue of the absence of a relationship with others exhibited in all types of drug use when interpreted as a form of withdrawal from the world. However, this is already beyond the issue of criminal law into to the realm of political discussion on democracy.

### **Limitation on natural liberty**

We shall deal only briefly with this issue here since it is discussed at greater length later. Suffice it to say, however, that the law places special restrictions on what Kant called the “unfettered freedom of action”: criminal law restricts an individual’s liberty to take the life or property of others. Consequently, it institutes specific rights and freedoms, i.e. the right to enjoy life and property. Fundamental problems arise where the law seeks to restrict the very rights and freedoms that it provides. A case in point is prostitution, where the law seeks to restrict the very right to enjoy one’s own body and the freedom provided for by the law.

### **Justification of the offence**

Criminal law very seldom uses external sources to justify the criminalization of offences. A good example to illustrate this is our original homicide scenario. Criminal law does not refer to sociology, anthropology, history, economics or medicine to establish the various effects of different types of homicides and various ways of taking life. The same rationale can be applied to sexual assaults, theft, fraud, etc. The cognitive component in the justification process is weak. The rationale underpinning the standard prohibited behaviour is deeply rooted in the social relationship. It is quite clear that any society even considering legalizing homicide would become untenable and would cease to be a society at all. Consequently, our society does not question the validity of the criminalization of homicide. The sole issue that

arises in some countries, but which was addressed in Canada a long time ago, is the sentence society imposes on murderers.

Quite the opposite situation exists for two-sided prohibited behaviours. They require empirical demonstration and justification with a strong cognitive component. As one might expect, this issue is central to any debate on drugs. Indeed, this report accords a great deal of importance to this matter.

Below professor Pires deals with this issue in graph form.

As professor Pires points out, the criterion here is not to establish whether there is consensus or "dissensus" on the criminal standard or on the terms relating to the type and

possibility of democratic debate but rather to determine whether the source of the legitimacy of the standard is endogenous or exogenous. In the case of standard prohibited behaviours, the source is endogenous. In the case of two-sided prohibited behaviours, it is exogenous. However, the criminal law creation process remains the same, i.e. democratic debate resulting in the adoption of enabling legislation. It is for this reason that it is all too easy to lose sight of the fact that the two types of offences are not in fact of the same nature.

[Translation] The important point to remember is that all two-sided prohibited behaviours to which this criterion applies exhibit certain specific problems. (i) They all have a more precarious, more ideological or more fragile endogenous basis because they are not rooted in a concrete, conflictual deviance and because the norms are not sufficiently detached from certain forms of (purely moral or religious) knowledge or are not sufficiently unaffected by knowledge of facts. (ii) They are therefore more subject to a process of selection from the available knowledge and to the actual value of the knowledge that we select or that is available to us in respect of them at a particular point in time. That means that a critical and serious examination of the knowledge is of crucial importance. (iii) They are, to all intents and purposes, more polemical and subject to public debate at a particular point in time, and more likely to be based on major cultural or cognitive misapprehensions. [14]

### **Application of the law**

In the vast majority of cases involving standard prohibited behaviours, offences are brought to the attention of the police by way of a complaint. Complaints to the police most often involve theft, sexual assault and homicide. Indeed, approximately 90% all offences that come to the attention of the police do so through complaints. In the case of two-sided prohibited behaviours, close to 100% of offences are discovered pro-actively.

One might point to the increase in complaints from people living near cannabis plantations in British Columbia. However, these people's complaints perhaps deal either with the very real danger of fire – since the illegal nature of cannabis production forces producers to illegally tap into electricity lines – or with pressure on them from criminals to keep quiet – also because producers are forced to operate illegally.

The pro-active application of the criminal law in the case of two-sided prohibited behaviours has harmful consequences, including social and human costs but also the possibility of discriminatory application of the law or police corruption. This raises the question of whether the endogenous basis of the offence warrants these consequences.

### **Effects of the law**

The effects of the law stem, to a certain extent, from the previous criterion and all the others before it. This criterion relates to the legitimacy of the standard. The difficulties and criticism arising from pro-active police action, changes in social normativity or in the knowledge base, make the law counter-productive, which, in turn, raises questions *sui generis* as to its basic tenets and legitimacy.

We have compiled Professor Pires' suggested criteria under three headings. Each criterion includes an "action-related" and a "law-related" element, which can be used in distinguishing between various criminal offences.

**Nature of the offence.** The action here refers to the relationship between the "victim" and the "perpetrator", i.e. are they in a conflict or exchange-type situation? The law-related criterion focuses on establishing whether criminal law is able to distinguish between the victim and the perpetrator.

**Justification.** The action in this case is to determine whether perpetrators are able to recognize the harm caused to others by their actions. The legal aspect of the equation deals with determining the basis of the legitimacy of the standard.

**Operativity.** The action relates to identifying whether the application of the appropriate standard is triggered by the victim or witness or whether pro-active action is required by law-enforcement agencies. The legal side of the equation is to establish whether the enforcement of the standard could potentially sabotage itself.

It is our view that the analysis of *Criminal Code* offences based on these three criteria addresses the fundamental issue of whether limiting the liberty of an individual to act is justified in the criminal law. It is for this reason that we are less concerned about the criteria themselves than about the result of the application of these criteria to the criminal law standard.

### Application to illegal drugs issues

Are illegal-drug-related offences two-sided prohibited behaviours under criminal law? Undoubtedly so.

The offence created implies an exchange-type situation and it is relatively unimportant whether the subject of the transaction is a prohibited substance or not. It is deemed to be a consented exchange between two parties. In the case of cannabis use – or the personal use of the opium or cocaine that just happens to be growing in my garden, - no exchange with another party takes place. Nevertheless, possession is prohibited in Canada, as is use in certain other countries.

Criminal law is hard pressed to find a victim. With respect to impaired driving endangering the lives of others, the *Criminal Code* contains a provision for the punishment of an individual operating a vehicle under the influence of any substance. The argument that cannabis poses enforcement difficulties is not valid. The same difficulties apply to driving under the influence of prescription drugs. What about the issue of children? It is difficult to see how cannabis use harms children, except where an "uncontrolled" market, brought about either by a lack of regulations or by the current illegality of cannabis fostering illegal markets, does cause harm to children.

In relation to referentiality, a user or even a seller does not see himself or herself as causing harm to others. At least, this is the case for cannabis derivatives. Of course, a situation where "grass" is mixed with other substances and adulterated substances are sold to users is reminiscent of the era of prohibition and is one of the reasons why prohibition was scrapped. To justify behavioural standards and the offence, criminal law has to refer to external sources over which – and the interpretation of which – it exerts no control.

The operativity of the standard raises both application problems and on-going questions as to the legitimacy of the standard itself.

On the whole, the legal basis of the criminal law is weak where the prescribed standard (1) does not concern a relationship with others and where the characteristics of the relationship do not create a victim and a perpetrator able to recognize his/her actions; (2) has to find its justification outside fundamental social relationships; and (3) results in a form of enforcement, the harmful effects of which, undermine and challenge the very legitimacy of the law. (Where criminal law is involved in these issues, the very standard prescribed by the law makes the perpetrator the victim and tries to protect him from himself, which it can do only by producing a never-ending stream of knowledge, which remains constantly out of his reach.)

This analysis indicates to us that **only offences involving significant direct danger to others should be matters of criminal law.**

### Science or approximate knowledge

The public is generally willing to leave the choice of control methods to the interaction between health care experts and government agencies because they recognize that the drug is being used essentially for their well-being and they rely on expert knowledge to decide the best way to protect that.

(...)

Therefore, in formulating social policy on non-medical use, you must consider not only at the harm done by the law or at the harm done by the drug, but as far as possible a full cost/benefit analysis of drug use and the control measures, and any change in control measures that you may contemplate. This is a matter for all of society to decide - not for experts to decide as a matter of scientific knowledge. [15]

From the very outset of the Committee's proceedings, we have been aware that knowledge - even science-based, is not of itself a sufficient basis for the development of public policy on illegal drugs, in particular cannabis. One might be tempted to think that a Special Committee on Illegal Drugs - in this case, cannabis - should base its conclusions and recommendations solely on knowledge. However, no amount of knowledge alone could determine public policy. There are several reasons for this.

Firstly, the process of knowledge development is ongoing. This process is by definition a continuing study of the unknown. The pursuit of knowledge, in view of the scale and complexity of the task, is always approximate - or, as the French anthropologist Claude Lévi-Strauss would have put it, cobbled-together. To search for knowledge is to acknowledge our ignorance of fundamental questions, which by definition remain open-ended. According to Professor de Koninck:

[Translation] It is appropriate for us to celebrate the ignorance we have at last discovered because it is now part of our known ignorance (ordinary ignorance, in the classical vocabulary), as opposed to unknown ignorance (twofold ignorance) - thanks to neuroscience, oceanography, astrophysics, but also to depth psychology, the history of religion (to cite only two of the advanced "humanities") and to other disciplines which have particularly progressed in our era. We must celebrate it with the wonder and puzzlement which are still the necessary prerequisite of all discovery. [16]

This situation might seem ironic, since never at any other time has such a wealth of information been produced - in all areas of human culture but also specifically on the issue of drugs - than in the modern era. So much knowledge has been gained in fact, that experts, such as economists, sociologists, criminologists, psychologists, and geneticists have become necessary players in the whole public policy justification process. It is only thanks to the ability of a team of scientists to successfully influence decision-makers that the greenhouse effect and the global warming phenomena have been acknowledged as real and that action has been taken to protect our environment. Governments' macro-economic decisions will be explained to the public on the nightly news by a senior economist. Where urban violence occurs or a serial killer is on the rampage, psychologists and criminologists are brought in to explain what is taking place, or to justify the thrust of criminal policy. The mass production of information and reference to experts in policy development give the public decision-making process at least credibility, if not legitimacy. Consequently, people who feel disenfranchised or even disillusioned by what they perceive as the disparity between the real world and the world presented to them in the media, will feel less inclined to challenge political decisions which are based on the "authority of knowledge". Information is becoming knowledge, the learned are becoming experts and politicians, (who are increasingly allergic to independent reflection on principles and fundamental issues), have come to rely on this handy army of "experts", who are ever ready to proffer advice.

However, information is not knowledge. Indeed, knowledge cannot be reduced to mere information. The Internet teems with information, but no one would dare contend that all of it could be deemed knowledge.

Secondly, the knowledge production process is fragmented and, like modern life itself, has difficulty addressing the issue of meaning. No better knowledge is produced with the addition of academic disciplines all studying issues through the lens of their own field of expertise than is produced when one of these disciplines works in isolation. The promotion of inter-disciplinary and trans-disciplinary approaches will remain as meaningless as calls for a social "partnership", until there is genuine resolve to grasp the issues of meaning and comprehension. Prestigious institutes such as NIDA may have huge research budgets and conduct research, which in itself, is both fascinating and useful, but they function as if their sole goal were to demonstrate the bio-psychological mechanisms of "drug addiction" and the dangerous abuse that results from the consumption of "drugs of abuse", as they call them.

However, the reasons for particular practices cannot be reduced to the sum of their constituent parts, or a jumble of re-enactments. Remarkable knowledge about cell mechanisms and genetics does not provide answers to the ethical and political issues raised by cloning. In the same way, knowledge about the mechanisms of the atom and nuclear fission did not provide answers to the issue of the manufacture and use of nuclear weapons. The highly abstract and math-based discipline of economic "science" is so far removed from reality that it is no longer able to explain the gulf that exists between nations or

between extravagant wealth and human misery.

Researchers seem more concerned with mathematical equations and abstractions, and as a result, fail to ask fundamental questions. Their fields of knowledge are patchy and highly compartmentalized and there often remains a confusion between knowledge, information and technology. To ask fundamental questions, is to link issues and to re-acknowledge the complex nature of these issues in an attempt to identify the underlying reasons. There are on-going debates between scientists and philosophers over linking issues and over the shift towards an integrated knowledge base of human beings.[17]

Thirdly, this raises the whole issue of the so-called "learned idiot" "experts".

[Translation] Idiots is the right word (from the Latin *idiota*, meaning "ignorant person", borrowed from the Greek *idiōtēs*, of the same meaning, as opposed to *pepaideumenos*, "cultivated man"). What is unfortunate is that their unearned reputation as experts extends all the more the influence of this "idiocy" in societies such as ours where "science" exercises a magic power and "that power appears increasingly legitimized by 'learned' experts," as Jacques Testart notes. "Indeed, the expert provides reassurances and citizens are reluctant to decry the absurdity or cynicism of a political decision approved by 'the most qualified experts'." [18]

We are not trying to take issue with science but rather to challenge the difficulty scientists have in reflecting on their research. It is one thing to conduct cutting-edge research on specific issues, but it is quite another to claim to use the resultant fragmented knowledge to provide "explanations". It is yet another to attempt to provide answers that science is quite simply not able to provide. It is one thing to conduct studies of the behaviour of laboratory rats, which have been administered a dose of Delta 9-THC (the principal active component in cannabis), but it is quite another to claim that this type of experiment is useful in understanding cannabis use and its effects on human beings. It is still another issue to contend that this research can provide an answer to cannabis public policy-related issues.

Drug use is a social action and forms part of a particular individual's behavioural pattern and as such, cannot be reduced to mere neuro-psychological mechanisms. It might be useful to understand the mechanisms involved but this knowledge alone will not explain the reasons underlying drug use in our society.

Fourthly, the colonization of the mind by the authority of experts-acting as mediators between politicians and the community – equates to the dangerous colonization of social sciences by natural sciences. This is nothing new. This process began in the 19th century but significantly accelerated during the 20th century. The most significant manifestation of this process is the ever-closer links between psychology and neuro-science. Consequently, a transposition of methods and problem-approach systems has taken place. As a result, human sciences have now taken on a quantitivist-reductionist approach, which in turn has led to a knowledge crisis. A sample of 100 young people chosen at random to undergo a battery of psychological tests aimed at determining why they use cannabis will provide apparently serious anecdotal research and a series of correlations, which are unlikely to

reveal the reasons behind drug use.

In some academic and decision-making circles, it is fashionable to refer to "evidence-based" policies. By this, we mean policies based on "scientific" evidence of approaches that work. One of the most striking examples of this approach was the Crime Reduction Strategy implemented in the United Kingdom in 1998 by the then newly-elected Labour government. Under this scheme, considerable money was earmarked to support those crime prevention initiatives that studies had shown to be effective with the goal of reducing various types of crime by a specified percentage over a five-year period.[19] Despite this scheme, the United Kingdom is currently facing a crime "crisis", in part because crime rates have risen, and the Crime Reduction Strategy is a shambles.

It is tempting to ask how the outcome could have been any different. Social engineering strategies in areas such as population control and crime prevention date back to the 19th century and have rarely provided tangible results. These initiatives, which are built on one or two "formulae", themselves drawn from a small number of controlled experiments, do not take account of the complex nature of the modern world, with its ever-growing, increasingly fluid and intangible interdependent and multi-level relationships. Is it in an attempt to flee this reality that we seek refuge in the mathematical abstraction of correlations between supposedly predictive variables?

The Committee's report - especially the second part - has put great emphasis on research-based knowledge. This focus is an attempt to do justice to the knowledge that has been developed over the past few decades. We considered it important and indeed necessary to give it detailed consideration. Indeed, the Committee recommends that the drive for knowledge acquisition on specific issues that we deem to be important be continued.

We do not claim, however, to have answered the fundamental question of why people consume psychoactive substances, such as alcohol, drugs or medication. We were indeed surprised, given the quantity of studies conducted each year on drugs, that this area has not been covered. It is almost as if the quest for answers to technical questions has caused science to lose sight of the basic issue!

Scientific knowledge cannot replace either reflection or the political decision-making process. It supports the process. Indeed, we consider that its greatest contribution to public drug policy is in doing so. Our guiding principle is that **science, which must continue to explore specific areas of key issues and reflect on overarching questions, supports the public policy-development process. No more, but no less.**

## Conclusions

One of the greatest challenges for modern societies is to collectively invent new forms of social life and community belonging that stretch beyond the tools of formal law. As individuals with objective and subjective rights, people can participate fully in the development - we would even go as far as to say the conquest - of the collective project of creating a society. It is no longer sufficient just to develop legislation and for people to automatically accept this legislation just because it was democratically decided by

Parliament. We need to promote ethical participation - through discussion - in the development of collective and individual governance. The groups from civil society, whether they oppose the "behind-closed-doors" globalization process or support promoting fair and sustainable development, are asking how we can collectively develop a joint-participation normativity process, in which collective governance and individual governance are mutually supportive.

This discussion brings us to the conclusion that **public policy on illegal drugs, specifically cannabis, ought to be based on an ethic of reciprocal autonomy and a resolve to foster human action. It ought to defer to criminal law only where the behaviour involved poses a significant direct danger to others. It ought to promote the development of knowledge conducive to guiding and fostering reflection and action.**

[1] Professor Line Beauchesne, witness appearing before the Special Committee on Illegal Drugs, Senate of Canada, Second session of the Thirty-sixth Parliament, October 16, 2000, Issue 1, pages 33-36.

[2] They are: R. Macdonald, Professor of Public and Constitutional Law, McGill University, *The Governance of Human Agency*; A.P. Pires, Professor of Criminology, University of Ottawa, *Legislative Policy and "Two-Sided" Crimes: Some elements of a pluridimensional theory of the criminal law*; T. de Koninck, Professor of Philosophy, University of Laval, *The Role of Knowledge and Culture in Public Policy on Illegal Drugs*; and J.F. Malherbe, Professor of Social Work, Université du Québec à Montréal, *The Contribution of Ethics in Defining Guiding Principles for a Public Drug Policy*. These texts are available on line at: [www.parl.gc.ca/illegal-drugs.asp](http://www.parl.gc.ca/illegal-drugs.asp).

[3] On this subject, see the work of the German sociologist and philosopher Jürgen Habermas, particularly *De l'éthique de la discussion*. Paris : Cerf. The author presents the process of ethical discussion as follows: Through debates, all participants must acknowledge that, in principle, each person participates fully, freely and equally, in the cooperative search for truth in which the unlimited strength of the best argument will carry the day. Practical discussion is considered as a demanding form of argumentative training of the will, which (...) must guarantee, through the universal presuppositions on communication, the fairness of all possible normative agreements negotiated under these conditions. (...) Furthermore, practical discussion is considered to be a process of inter-comprehension in which, due to its own nature, all participants ideally adopt a role. Therefore, the individual and ideal adoption of a role played by each person in particular and *privatim* is transformed into a practical public operation by all, intersubjectively and in common. (pages 18-19).

[4] There is an interesting discussion on the subject in Professor Pires: pages 41 *passim*.

[5] Malherbe, J.F. (2002) *op. cit.*, page 7.

[6] See Malherbe's discussion of the subject on pages 23-26.

[7] *Ibid.*, page 21.

- [8] *Ibid.*, pages 27-28.
- [9] Among others: Taylor, C., (1989) *Les sources du moi*. Montréal: Boréal..
- [10] MacDonald, *op. cit.*, page 24 of the English version.
- [11] *Ibid.*, page 25.
- [12] MacDonald, *op. cit.*, page 78.
- [13] Quoted in Pires, A.P. (2002), *op. cit.* page 8.
- [14] Pires, A.P., (2002) *op. cit.*, page 59.
- [15] Evidence by Dr. Harold Kalant, professor at the University of Toronto, before the Senate Special Committee on Illegal Drugs, Senate of Canada, first session of the thirty-seventh Parliament, issue no 4, pages 69 and 78.
- [16] De Koninck, T., (2002) *op. cit.*, page 25.
- [17] Based on a very eloquent exchange between a philosopher and a neurobiologist: Changeux, J.P. et P. Ricoeur (1998) *What makes us Think* (translation of: *Ce qui nous fait penser. La nature et la règle*. Paris: Odile Jacob), pages 77-78
- [18] De Koninck, T. (2002) *op. cit.*, page 6.
- [19] Chapter 20 discusses this issue in greater detail since the strategy includes a drug-related initiative.

## Chapter 4

### A Changing Context

Our work is being conducted at a time in history, in a given historical period. That history is not simply a field external to us, something outside us, exercising no influence on what we do. It is closely bound up with our actions, influencing them in various subtle ways. At the same time, because we are living through and making that history, we do not have the necessary distance from it to reconstitute all its elements or to understand all its implications. However, to re-situate our work in its complexity and uncertainty, we have a responsibility to attempt to ascertain certain elements of this history-in-the-making. This brief chapter is an attempt to identify certain historical elements we think are relevant to our effort. We have identified six elements which we have divided into two spheres, international and national, recognizing that those two spheres necessarily interact with each other. The international elements are: the globalization of markets and the trend toward economic and even political integration; the spiralling increase in discourse on safety and the drug-crime equation; and the aspects of change becoming apparent in certain countries with regard to drug policies. The national elements are judicial activism, which is reflected in significant court decisions at least with regard to the therapeutic use of cannabis; the adoption of the National Strategy on Community Safety and Crime Prevention; and the fight against organized crime.

## **Changes in the international sphere**

The last two decades have witnessed significant changes in the international arena and in the structure of national states. The idea here is not to write the history of or to analyze this period. A few of those changes, however, have had a definite impact on drugs.

### **Globalization and integration**

Since the early 1980s, with market deregulation, we have witnessed a globalization of trade and a more significant degree of continental integration. The end of the Cold War and the disappearance of the Soviet Bloc, as well as the opening of China to capitalist markets, have merely increased the pace of these movements. As a result, we have seen, in particular, an increasing degree of integration of the European economy under the Maastricht accords and in the North American Free Trade Agreement between Canada, the United States and Mexico.

At the same time, rapid technological change, particularly through the Internet and satellite communications, has helped to further open borders, although in varying ways and to various degrees, depending on the level of development in the various countries, to the movement of goods and capital. Similarly, the increase in population flows and travel has led, at times by default or even against the will of certain states, to freer movement of people.

These changes have had a significant impact on the illegal drug markets. The opening of markets and borders has of course created new money laundering opportunities, while making it more difficult to monitor borders and transportation. However, we all too often forget certain effects of macro-economic policies governing global capital flows and expected structural adjustments, particularly in developing countries. One study produced for the United Nations International Drug Control Program clearly shows this.

Efforts to achieve (balance of payments) stability often aim to reduce the external deficit by reducing the level of domestic consumption. Macroeconomic stabilization often requires a reduction in expenditure by government and/or the private sector.

In situations of reduced money growth, an infusion of hard currency can bolster a country's foreign reserves, ease the hardship associated with expenditure-related policies, and moderate foreign indebtedness. Drug money could in this light be perceived as a potentially stabilizing force, a source of capital without the strings of conditionality attached. Clearly, there are "benefits" which accrue to countries which serve as reservoirs of the revenues from the international drug trade. [ ]

In addition, the trend toward the privatization of entire sectors of national economies, particularly in Eastern European countries after the fall of the Berlin Wall, but also in a number of Latin American and Asian countries, in an environment in which internal regulation measures are weak and bank credit tight, fosters the inflow of money from

organized crime particularly through the laundering of drug money. It has been observed moreover that the concentration of industrial production in those countries is not necessarily reduced following privatization, thus further favouring penetration by organized crime.[2]

Observers also too often forget the role of investors from the developed countries, where the push for deregulation and market liberalization originates. In those countries, as Campodónico has noted, "*(r)are indeed are prosecutions against drug traffickers or financial institutions of the industrialized world, which is precisely where most of the proceeds of drug trafficking are kept.*"[3] The result is a kind of dual discourse in which the necessity of liberalization of capital for multinationals makes it impossible to distinguish between clean and dirty money. The example of Peru developed by Campodónico and that of Russia examined by Keh show striking structural similarities.

The end of the Cold War also meant that the countries allied to the Soviet Bloc, or internal guerrilla groups, had to turn to other sources of financing. This is the analysis of the Geopolitical Drug Watch and its founder Alain Labrousse, who appeared before the Committee on May 28, 2001, citing the example of Kosovo:

What happened in Kosovo is a good example in this regard. The creation of the KLA was financed by intense heroin traffic from Istanbul. The heroin was sold in Switzerland to buy Kalashnikovs and handguns. They were more or less freely available and were stored in the Albanian part of Macedonia. [4]

And as though to make the connection with the perverse effects of liberalization and the involvement of macroeconomics, Mr. Labrousse wrote in an earlier book:

[Translation] According to estimates, drug trafficking in the world generates between 420 and 577 billion francs in business annually. The growing role that these funds play in the democratization and economic restructuring process is leading to an explosion in drug production and trafficking in Asia, Africa and the East. It is this windfall, drawn on by local powers of all kinds, that fuels nationalist, ethnic and religious conflicts in the Third World and countries of the former Communist Bloc. Drugs, an economic issue and a tool of power, are now a given in international relations. Apart from a few major traffickers, the banking systems of the rich countries, the IMF and the major international organizations are involved. [5]

Like other analysts, Mr. Labrousse observes that the developed countries are not immune to criticism since they "close their eyes" when their interests, particularly strategic and economic, are at stake.

[Translation] An incident occurred and was reported by the press when the international financial action group prepared a list of countries suspected of engaging in money laundering; it did not include either the Anglo-Norman island of Jersey or the Principality of Monaco, which surprised everyone. It was subsequently discovered that France and England had negotiated with each other to ensure neither appeared on the relatively

infamous list. [6]

This is also the case of European interests in Morocco and Africa more generally, as well as American interests elsewhere, in tax havens.

Chapter 1 of the 2001 report of the International Narcotics Control Board (INCB), a UN agency responsible for monitoring implementation of international drug control treaties, concerns the effects of globalization and new technologies. The agency writes that, apart from their "innumerable benefits" globalization and new technologies have had perverse effects: undermined cultural identities, political and social atomization, marginalization and growing poverty in certain sectors. According to the Board, *"these disparities are exploited by drug dealers and traffickers in their attempts to develop new markets. Moreover, in the course of the last decade, the growth in trade and financial activity has provided criminals with greater possibilities for concealing the illicit transfer of goods such as internationally controlled drugs and precursor chemicals and for disguising the proceedings therefrom."*[7] According to the report, drug traffickers use new technologies to enhance the effectiveness of product delivery and distribution, to protect themselves and their illegal activities and to commit conventional offences using new methods or to commit new types of offences.[8] Among other things, the Board also notes:

- The Inter-American Drug Abuse Control Commission noted for 1999-2000 that the Internet had become the most widely used medium for expanding the production of synthetic drugs in some countries of that region;
- According to the International Criminal Police Organization (Interpol), in 2000, over 1,000 Web sites world-wide offered to sell illicit drugs, mostly cannabis;
- Increasing recourse to electronic means of financial transfer, together with a massive growth in the volume and speed of monetary flows, lead to reduced capability for detecting illicit capital movements; and
- The Financial Action Task Force on Money Laundering (FATF) has warned that there are three characteristics of Internet use that could aggravate certain conventional money-laundering risks: ease of access, depersonalization of contact and rapidity of electronic transactions.[9]

In short, while the search for greater coherence, and indeed for better predictability of international markets, is highly promising, particularly as regards the developing countries, it also has untoward effects, regardless of all other geopolitical considerations. Moreover, these characteristics also afford "unexpected" benefits... for organized criminal groups.

### Difficulties of the security debate

Over the same period, in various Western countries, a preoccupation for domestic security has gradually arisen in response to the perceived or actual increase in crime and to the public's feelings of insecurity. The effects of this have been observed in election campaigns

based on law and order and in a shift toward measures considered repressive by some, such as zero-tolerance policies. [10]

With regard to drugs, this social discourse has had two main components. The first, starting in the early 1980s under Ronald Reagan's presidency, was the "war on drugs", which went far beyond U.S. borders. The second, starting in the late 1980s, an attitude increasingly emerged that equated drugs with crime.

The war on drugs made it possible to allocate unprecedented resources to the effort. It was at this time, it will be remembered, that Canada launched the first phase of its anti-drug strategy with a budget of \$210 million over five years. In its "war on drugs" the United States allocated 17 times that amount, increasing federal spending alone from \$100 million in the early 1970s to more than \$17 billion in 2002. The combined spending of the federal government and the states on the war against drugs was estimated at more than \$40 billion in 2002. [11] As a result, that war led to a quadrupling of the American prison population, from 500,000 inmates in the early 1980s to more than two million in the late 1990s.

During the 1990s, corrections constituted one of the fastest growing line items in state budgets. On average, corrections consumed 7 percent of state budgets in 2000. Today, it is costing states, counties and the federal government nearly \$40 billion to imprison approximately two million state and local inmates, up from \$5 billion in combined prison and jail expenditures in 1978. Twenty-four billion of that was spent on the incarceration of non-violent offenders. Despite the modest recent decline in state prison populations, the massive growth in state prisoners over the past two decades has meant that **one out of every 14 general fund dollars spent in 2000 was spent on prisons.** (...) The expansion of America's prisons has been largely driven by the incarceration of non-violent offenders. The percentage of violent offenders held in state prisons declined from 57 percent in 1978 to 48 percent in 1999. From 1980 to 1997, the number of violent offenders committed to state prison nearly doubled (up 82 percent), the number of non-violent offenders tripled (up 207 percent) while the number of drug offenders increased 11-fold (up 1040 percent). [12]

In Canada, as will be seen in Chapter 14, while the overall crime rate has been declining regularly in the past 10 years, the percentage of drug-related incidents has constantly increased, and the overall prison population has remained stable. There are even grounds to suggest that the percentage of inmates with addiction-related problems has in fact risen.

This discourse has resulted in a host of national and international measures, in particular increased policing powers in the war against drugs in various countries, a reinforced international police infrastructure, use of the war against drugs in international diplomacy and its reflection in UN proceedings, particularly at the United Nations' extraordinary session on drugs in 1998.

The other aspect of the debate is the drug-crime equation. For a significant proportion of citizens, drug use is associated with crime, when it is not simply reduced to one of its major causes. Witness the following comments:

We cannot continue to apply policies and programs that do not deal with the root causes of substance abuse and attendant crime. [13]

In countries that have adopted permissive policies toward drug use, violent crime and organized criminal activity have increased proportionately to the drug trade. [14]

The social harm from other illicit drugs (such as cannabis - ed.) presents a different picture. In some communities or neighbourhoods across the country, the harm caused to innocent victims of violent crime and property crime is very great. (...) This results from drug-addicted users committing crimes to get money to feed their habit. [15]

Deeply rooted in perceptions and attitudes, this belief, which is discussed later in Chapter 6, and which research data support only in part, has resulted in a series of measures including the creation of special drug treatment courts and the introduction of treatment orders for offenders with known dependence problems, the spread of urine testing programs in the work place and in prisons, as well as the remodelling of socio-community intake systems.

This association of drugs and crime sprang from fertile ground, for a number of reasons: changes caused by globalization and the realignment of the role of the state, which explain at least in part the increased social and economic inequalities between North and South, but also within countries, in the North and in the South; the increased insecurity of general living conditions following the 30 years, from 1945 to 1975, of unprecedented prosperity and employment security; divisions within communities caused by uncertainty and inability to manage mixed populations. For all these reasons the increase in "ordinary" crime (break and enter, car theft, vandalism and so on) has become the perfect metaphor for the insecurity of living conditions. Being an easy target that has considerable, very real impact on everyday life in neighbourhoods already subject to other social and economic problems, minor crime now elicited a stern, repressive response. Hence, in all Western countries, the number of prison terms and length of sentences increased starting in the mid-1980s. In addition to this collective security "crisis", there was a division between generations, as a result of which youths as a group came to be viewed as a source of concern, if not simply potential criminals. For example, during that period, Canada experienced an unprecedented increase in its reliance on detention for minors, placing it at the top of the list of industrialized countries in that regard. [16] Since young people are the principal drug users, the rest of equation was quickly established.

### **From anti-drug policies to drug policies**

However, the advent of AIDS in the 1980s helped to cast doubt on prohibitionist policies on illegal drugs. Toward the end of the decade, it was discovered that intravenous drug users had a high rate of HIV and other pathologies such as hepatitis. In fact, intravenous drug use was the second leading cause of infection among men, after homosexual and bisexual practices, and the second leading cause as well among heterosexual women. [17] Repressive policies, based on prohibition of use, do not make it possible to adequately inform users or to adopt risk reduction and preventive measures, such as needle exchanges or supervised injection sites. The increase in harm reduction practices in a number of countries would be based on this new reality.

The creation of agencies monitoring illegal drug use trends was another factor in the questioning of drug policies. Until the mid-1980s, the U.S.A., England and Australia were virtually the only countries with systems for regular and repeated epidemiological surveying of drug use trends in the population. Starting in 1993, the European Union developed its tools to monitor trends in use and policy responses with the establishment of the European Monitoring Centre for Drugs and Drug Addiction and its focal points in individual EU countries. This regular monitoring system showed, among other things, that drug use trends may not vary so much with public policies as with social, cultural and symbolic factors.

Lastly, some states began to question their public policies on the basis of impact assessment studies. That was the case in particular of Australia and Switzerland as well as certain American states. Apart from the often emotional rhetoric, it was discovered in those studies that, in addition to having little impact on drug use, policies had significant untoward effects and high economic costs. It was moreover the results of certain cost benefit studies that led California and other U.S. states to review their highly repressive approaches (involving, for example, automatic incarceration on the third offence, whatever it might be). [18]

While national legislation on illegal drugs, particularly cannabis, did not in fact change, there was nevertheless a distinct trend toward questioning practices, particularly legal practices, and seeking alternatives while still complying with the international conventions. That was the case of Spain, Italy, certain Australian states, Belgium and, more recently, Portugal and Switzerland.

## Changes in Canada

We have identified three major causes of change in Canada over the same period which have had at times paradoxical effects: the judicial activism resulting from the coming into force of the Canadian Charter of Rights and Freedoms in 1982, the adoption of the National Strategy on Community Safety and Crime Prevention and the fight against organized crime. Since we will be discussing each of these causes more fully in subsequent chapters of this report, we will only briefly sketch out the broader context here.

### Judicial activism

With regard to cannabis, there is undoubtedly no better example than the decision by the Ontario Court of Appeal in the *R. v. Parker*. [19] In that case, the Ontario Appeal Court considered the constitutional validity of the prohibition against marijuana under the *Controlled Drugs and Substances Act* in the context of its use for medicinal purposes. The Court unanimously held that Terrance Parker's allegations that the prohibition violated his fundamental rights under section 7 of the Canadian Charter of Rights and Freedoms were founded. Rosenberg J.A., writing for the majority, found that Mr. Parker needed marijuana to control the symptoms of his epilepsy and that the prohibition against marijuana possession was accordingly unconstitutional. The Court thus held that the statutory provision was null and void. However, they suspended the declaration of invalidity for one

year, thus giving the government time to amend the act accordingly. In July 2001, as a result of that decision, the government made regulations circumscribing the use of cannabis for medicinal purposes.

Other judicial decisions altered the applicability of drug legislation in various ways, particularly regarding police powers. Certain of these decisions are briefly reviewed in Chapters 14 and 15.

Generally speaking, it has been observed that, since the Charter came into force, the courts have played an increasingly significant role in Canadian political life, and the drug issue has not fallen outside the scope of this judicial activism. Moreover, a decision on the issue of the use of cannabis for non-medicinal purposes is to be rendered by the Supreme Court of Canada in the coming months.

### **A national crime prevention strategy**

In 1999, as a result of the work of the National Crime Prevention Council, the federal government introduced the National Strategy on Community Safety and Crime Prevention. The purpose of this national strategy, originally allocated an annual budget of \$35 million, which increased to approximately \$65 million this year, is to prevent crime through social development actions in the communities by taking action in particular on risk factors among children and youths. While the Strategy does not specifically mention prevention of drug use, a certain number of its projects and activities have focused on that issue in various ways.

The Centre has seen fit to fund two special drug treatment court pilot projects, in Toronto and Vancouver, for the purpose of preventing repeat drug abuse and related criminality. The Centre also supports an initiative of the Federation of Canadian Municipalities to introduce drug-free communities in a certain number of cities. It is also supporting the evaluation of alternative measures programs for youths accused of cannabis possession.

### **The fight against organized crime**

If there is one legal subject that has given rise to extensive public debate, led to the passage of new legislation granting greater powers to police forces and resulted in spectacular police operations and no less spectacular trials, it is organized crime, in particular criminalized motorcycle gangs in Quebec, the Italian-Canadian Mafia in Montreal and the Asian heroin rings on the West Coast.

In 1995, Parliament passed Bill C-95 granting police officers more effective tools for investigating and prosecuting individuals taking part in gang activities. Four years later, three problems led the government to propose amendments to the *Criminal Code* and other statutes: the problems involved in implementing the act, the growing influence of organized crime in Canada and the illegal activities committed by police officers in undercover operations. In 1999, in passing Bill C-51 (an omnibus bill amending the *Criminal Code*), Parliament granted immunity from prosecution to police officers who had to commit offences related to money laundering in the course of an investigation or in performing other duties. According to the government, the purpose of that amendment was to support police officers in the fight against organized crime and money laundering.

In addition, on October 19, 2000, the Sub-Committee on Organized Crime of the House of Commons Standing Committee on Justice and Human Rights tabled a report proposing a series of amendments that could be made to the *Criminal Code* to facilitate the fight against criminal organizations. The Sub-Committee began its work in April 2000, and, in view of the nature of the subject under study, its members decided at the outset to perform their work in camera. Among other things, the Committee recommended that the *Criminal Code* be amended in such a way as to group together all provisions concerning activities relating to organized crime in a specific part entitled "Organized crime, designated substance offences, gangs and money laundering". A number of the Committee's recommendations were incorporated into Bill C-24, which received Royal Assent in December 2001.

### A societal debate

These considerations of the global environment help put the drug issue in context. Always considered as a public security question, this issue more fundamentally concerns the upheavals societies are currently experiencing as a result of globalization. The place of drugs in those societies, which are shifting painfully from the modern to the post-modern world, attempting to reinvent society after individual destiny, so central to the cultural "revolutions" of the 1960s, has replaced family and collective destiny, raises questions about the boundaries of the individual and his relationship to others and about the very possibility of community given the significance of the individual. As the sociologist A. Ehrenberg has emphasized:

[Translation] (...) drugs appear as the condenser of uncertain responsibility. For democratic societies, it is the opportunity for a consideration of the limits of private freedom, that is to say of the tension between minimum contact with one's self, without which one cannot enter into relations with others, and minimum distance from self, without which one cannot make a society. [20]

In another way, this is also what B. Alexander said in a brief he submitted to the Senate Committee:

Because western society is now based on free-market principles which mass-produce dislocation, and because dislocation is the precursor to addiction, addiction to drug use and to other substitute life styles within western society is not the pathological state of a few, but, to a greater or lesser degree, the general condition. Because free-market society increasingly provides the model for globalization, addiction is becoming more and more prevalent everywhere on earth (...). [21]

As may be seen, the drug issue cannot simply be raised in terms of criminalization or decriminalization because it refers to much deeper societal issues relating to the role of government of the self in a context in which political government of the community is changing, and to the relationship between the two. Reducing the drug issue to a question of more or less repressive or more or less liberal criminal legislation is to rule out broader questions and to play the game of the particular interests of institutions which have every interest in reducing the figure of the addict to that of the "other", the deviant, the pathological case, and drugs to mere illegal drugs, where... the faces of drugs are many and diverse. As the International Narcotics Control Board states in its 2000 report, trafficking in licit psychoactive drugs and their increased use are, in many respects, much more disturbing phenomena than the illegal drug market. There is a great risk that we will mistake the tip of the iceberg for the iceberg as a whole and allow ourselves to drift away on notions as simplifying as they are dangerous for a true public policy on drugs.

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**CANNABIS : OUR POSITION FOR A CANADIAN PUBLIC POLICY**

**REPORT OF THE SENATE SPECIAL COMMITTEE ON ILLEGAL DRUGS**

**VOLUME II : PART III**

*Chairman: Pierre Claude Nolin*

*Deputy Chairman: Colin Kenny*

**SEPTEMBER 2002**

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**Glossary of key terms**

**Abuse**

Vague term with a variety of meanings depending on the social, medical and legal contexts. Some equate any use of illicit drugs to abuse: for example, the international conventions consider that any use of drugs other than for medical or scientific purposes is abuse. The Diagnosis and Statistical Manual of the American Psychiatric Association defines abuse as a maladaptive pattern of substance use leading to clinically significant impairment or distress as defined by one or more of four criteria (see chapter 7). In the report, we prefer the term excessive use (or harmful use).

**Acute effects**

Refers to effects resulting from the administration of any drug and specifically to its short term effects. These effects are distinguished between central (cerebral functions) and peripheral (nervous system). Effects are dose-related.

**Addiction**

General term referring to the concepts of tolerance and dependency. According to WHO addiction is the repeated use of a psychoactive substance to the extent that the user is periodically or chronically intoxicated, shows a compulsion to take the preferred substance, has great difficulty in voluntarily ceasing or modifying substance use, and exhibits determination to obtain the substance by almost any means. Some authors prefer the term addiction to dependence, because the former also refers to the evolutive process preceding dependence.

**Agonist**

A substance that acts on receptor sites to produce certain responses.

### **Anandamide**

Agonist neurotransmitter of the endogenous cannabinoid system. Although not yet fully understood in research, these neurotransmitters seem to act as modulators, THC increasing the liberation of dopamine in nucleus accumbens and cerebral cortex.

### **At-risk use**

Use behaviour which makes users at-risk of developing dependence to the substance.

### **Cannabinoids**

Endogenous receptors of the active cannabis molecules, particularly 9-THC. Two endogenous receptors have been identified: CB1 densely concentrated in the hippocampus, basal ganglia, cerebellum and cerebral cortex, and CB2, particularly abundant in the immune system. The central effects of cannabis appear to be related only to CB1.

### **Cannabis**

Three varieties of the cannabis plant exist: *cannabis sativa*, *cannabis indica*, and *cannabis ruderalis*. *Cannabis sativa* is the most commonly found, growing in almost any soil condition. The cannabis plant has been known in China for about 6000 years. The flowering tops and leaves are used to produce the smoked cannabis. Common terms used to refer to cannabis are pot, marihuana, dope, ganja, hemp. Hashish is produced from the extracted resin. Classified as a psychotropic drug, cannabis is a modulator of the central nervous system. It contains over 460 known chemicals, of which 60 are cannabinoids. Delta-9-tetrahydrocannabinol, referred to as THC, is the principal active ingredient of cannabis. Other components such as delta-8-tetrahydrocannabinol, cannabidiol and cannabivarin are present in smaller quantities and have no significant impacts on behaviour or perception. However, they may modulate the overall effects of the substance.

### **Chronic effects**

Refers to effects which are delayed or develop after repeated use. In the report we prefer to use the term consequences of repeated use rather than chronic effects.

### **Commission on narcotic drugs (CND)**

The Commission on Narcotic Drugs (CND) was established in 1946 by the Economic and Social Council of the United Nations. It is the central policy-making body within the UN system for dealing with all drug-related matters. The Commission analyses the world drug abuse situation and develops proposals to strengthen international drug control.

### **Decriminalization**

Removal of a behaviour or activity from the scope of the criminal justice system. A distinction is usually made between *de jure decriminalization*, which entails an amendment to criminal legislation, and *de facto decriminalization*, which involves an administrative decision not to prosecute acts that nonetheless remain against the law. Decriminalization concerns only criminal legislation, and does not mean that the legal system has no further jurisdiction of any kind in this regard: other, non-criminal, laws may regulate the behaviour or activity that has been decriminalized (civil or regulatory offences, etc.).

### **Diversion**

The use of measures other than prosecution or a criminal conviction for an act that nonetheless remains against the law. Diversion can take place before a charge is formally laid, for example if the accused person agrees to undergo treatment. It can also occur at the time of sentencing, when community service or treatment may be imposed rather than incarceration.

### **Depenalisation**

Modification of the sentences provided in criminal legislation for a particular behaviour. In the case of cannabis, it generally refers to the removal of custodial sentences.

### **Dependence**

State where the user continues its use of the substance despite significant health, psychological, relational, familial or social problems. Dependence is a complex phenomenon which may have genetic components. Psychological dependence refers to the psychological symptoms associated with craving and physical dependence to tolerance and the adaptation of the organism to chronic use. The American Psychiatric Association has proposed seven criteria (see chapter 7).

### **Dopamine**

Neuromediator involved in the mechanisms of pleasure.

### **Drug**

Generally used to refer to illicit rather than licit substances (such as nicotine, alcohol or medicines). In pharmacology, the term refers to any chemical agent that alters the biochemical or physiological processes of tissues or organisms. In this sense, the term drug refers better to any substance which is principally used for its psychoactive effects.

### **European Monitoring Centre on Drugs and Drug Addiction (EMCDDA)**

The European Monitoring Centre was created in 1993 to provide member states objective, reliable and comparable information within the EU on drugs, drug addictions and their consequences. Statistical information, documents and techniques developed in the EMCDDA are designed to give a broad perspective on drug issues in Europe. The Centre only deals with information. It relies on national focal points in each of the Member States.

#### **Fat soluble**

Characteristic of a substance to irrigate quickly the tissues. THC is highly fat-soluble.

#### **Gateway (theory)**

Theory suggesting a sequential pattern in involvement in drug use from nicotine to alcohol, to cannabis and then "hard" drugs. The theory rests on a statistical association between the use of hard drugs and the fact that these users have generally used cannabis as their first illicit drug. This theory has not been validated by empirical research and is considered outdated.

#### **Half-life**

Time needed for the concentration of a particular drug in blood to decline to half its maximum level. The half-life of THC is 4.3 days on average but is faster in regular than in occasional users. Because it is highly fat soluble, THC is stored in fatty tissues, thus increasing its half life to as much as 7 to 12 days. Prolonged use of cannabis increases the period of time needed to eliminate it from the system. Even one week after use, THC metabolites may remain in the system. They are gradually metabolised in the urine (one third) and in feces (two thirds). Traces of inactive THC metabolites can be detected as many as 30 days after use.

#### **Hashish**

Resinous extract from the flowering tops of the cannabis plant and transformed into a paste.

#### **International Conventions**

Various international conventions have been adopted by the international community since 1912, first under the Society of Nations and then under the United Nations, to regulate the possession, use, production, distribution, sale, etc., of various psychotropic substances. Currently, the three main conventions are the 1961 Single Convention, the 1971 Convention on Psychotropic Substance and the 1988 Convention against Illicit Traffic. Canada is a signatory to all three conventions. Subject to countries' national constitutions, these conventions establish a system of regulation where only medical and scientific uses are permitted. This system is based on the prohibition of source plants (coca, opium and cannabis) and the regulation of synthetic chemicals produced by pharmaceutical companies.

#### **International Narcotics Control Board (INCB)**

The Board is an independent, quasi-judicial organisation responsible for monitoring the implementation of the UN conventions on drugs. It was created in 1968 as a follow up to the 1961 Single Convention, but had predecessors as early as the 1930s. The Board makes recommendations to the UN Commission on Narcotics with respect to additions or deletions in the appendices of the conventions.

### **Intoxication**

Disturbance of the physiological and psychological systems resulting from a substance. Pharmacology generally distinguishes four levels: light, moderate, serious and fatal.

### **Joint**

Cigarette of marijuana or hashish with or without tobacco. Because joints are never identical, scientific analyses of the effects of THC are more difficult, especially in trying to determine the therapeutic benefits of cannabis and to examine its effects on driving.

### **Legalisation**

Regulatory system allowing the culture, production, marketing, sale and use of substances. Although none currently exist in relation to « street-drugs » (as opposed to alcohol or tobacco which are regulated products), a legalisation system could take two forms: without any state control (free markets) and with state controls (regulatory regime).

### **Marijuana**

Mexican term originally referring to a cigarette of poor quality. Has now become equivalent for cannabis.

### **Narcotic**

Substance which can induce stupor or artificial sleep. Usually restricted to designate opiates. Sometimes used incorrectly to refer to all drugs capable of inducing dependence.

### **Office of national drug control policy (ONDCP) USA**

Created in 1984 under the Reagan presidency, the Office is under the direct authority of the White House. It coordinates US policy on drugs. Its budget is currently US \$18 billion.

### **Opiates**

Substance derived from the opium poppy. The term opiate excludes synthetic opioids such as heroin and mehadone.

### **Prohibition**

Historically, the term designates the period of national interdiction of alcohol sales in the United States between 1919 and 1933. By analogy, the term is now used to describe UN and State policies aiming for a drug-free society. Prohibition is based on the interdiction to cultivate, produce, fabricate, sell, possess, use etc., some substances except for medical and scientific purposes.

### **Psychoactive substance**

Substance which alters mental processes such as thinking or emotions. More neutral than the term "drug" because it does not refer to the legal status of the substance, it is the term we prefer to use.

### **Psychotropic substance (see also psychoactive)**

Much the same as psychoactive substance. More specifically however, the term refers to drugs primarily used in the treatment of mental disorders, such as anxiolytic, sedatives, neuroleptics, etc. More specifically, refers to the substances covered in the 1971 Convention on Psychotropic Substances.

### **Regulation**

Control system specifying the conditions under which the cultivation, production, marketing, prescription, sales, possession or use of a substance are allowed. Regulatory approaches may rest on interdiction (as for illegal drugs) or controlled access (as for medical drugs or alcohol). Our proposal of an exemption regime under the current legislation is a regulatory regime.

### **Society of Nations (SDN)**

International organisation of States until 1938; now the United Nations.

### **Tetrahydrocannabinol (D9-THC)**

Main active component of cannabis,  $\Delta^9$ -THC is very fat-soluble and has a lengthy half-life. Its psychoactive effects are modulated by other active components in cannabis. In its natural state, cannabis contains between 0.5% to 5% THC. Sophisticated cultivation methods and plant selection, especially female plants, leads to higher levels of THC concentration.

### **Tolerance**

Reduced response of the organisms and increased capacity to support its effects after a more or less lengthy period of use. Tolerance levels are extremely variable between substances, and tolerance to cannabis is believed to be lower than for most other drugs, including tobacco and alcohol.

### **Toxicity**

Characteristic of a substance which induces intoxication, i.e., "poisoning". Many substances, including some common foods, have some level of toxicity. Cannabis presents almost no toxicity and cannot lead to an overdose.

### **United Nations Drug Control Program (UNDCP)**

Established in 1991, the Programme works to educate the world about the dangers of drug abuse. The Programme aims to strengthen international action against drug production, trafficking and drug-related crime through alternative development projects, crop monitoring and anti-money laundering programmes. UNDCP also provides accurate statistics through the Global Assessment Programme (GAP) and helps to draft legislation and train judicial officials as part of its Legal Assistance Programme. UNDCP is part of the UN Office for Drug Control and the Prevention of Crime.

### **World Health Organization (WHO)**

The World Health Organization, the United Nations specialized agency for health, was established on 7 April 1948. WHO's objective, as set out in its Constitution, is the attainment by all peoples of the highest possible level of health. Health is defined in WHO's Constitution as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

### **Part III**

#### **Policies and Practices in Canada**

#### **Chapter 11**

##### **A National Drug Strategy?**

There is no arguing that both licit and illicit psychoactive substances affect Canadians in many ways, both positively and negatively, both directly and indirectly. In addition, no one would dispute the fact that psychoactive substance use (again, both licit and illicit) is a widespread phenomenon, not only on the part of adults but also among the youths of this country. Because of the potential problems for those who abuse psychoactive substances, dealing with this issue should be a matter of serious concern for any government, and for society as a whole.

Based on the importance of the subject, it would probably surprise many Canadians to learn that only from 1987 to 1993 did Canada have a fully funded national drug strategy. It is true that Canada has had legislation dealing with the use of psychoactive substances since the passage of the *Opium Act* in 1908. This Act was followed by several pieces of criminal legislation over the years that increased federal enforcement powers

over psychoactive substances and expanded the list of illicit substances.[1] These pieces of legislation have historically focused on the supply of psychoactive substances, adopting a prohibitionist approach to use. It is widely acknowledged, however, that a more balanced approach is required if one is to deal effectively with those who abuse psychoactive substances.

This chapter will recount the development and implementation of the 1987 National Drug Strategy, which had as an objective the promotion of a balanced approach to the problem of psychoactive substance abuse. This will be followed by a discussion of what became of the national strategy and whether its goals have been achieved.

### **Phase I - development and implementation**

In May 1987, the federal government announced a \$210-million, five-year action plan to curb drug abuse. The government stated that the action plan was in response to mounting concerns regarding increasing rates of drug-related problems. Others have suggested that "(t)his strong political action was undoubtedly influenced by the latest American 'War on Drugs.'"[2]

The National Drug Strategy (NDS), *Action on Drug Abuse*, was launched by the then Minister of National Health and Welfare, who was the lead Minister in the federal effort to curb drug abuse.[3] Several other departments also participated in the first interdepartmental attempt to co-ordinate Canada's response to its drug abuse problem. It was believed that there was a need for a coordinated, strategic approach to the problem of drug abuse in Canada. The overall objective of the NDS was "to reduce the harm to individuals, family and communities from the abuse of alcohol and other drugs through a balanced approach that is acceptable to Canadians." [4] Other partners included provincial and municipal governments, business, law enforcement agencies, and professional and voluntary organizations.

*The federal government recognized that, in the past, the emphasis of its involvement in this area had been largely restricted to supply control measures. Meanwhile, communities, provinces and territories, and many professional and volunteer groups, had focused their efforts on reducing the demand for drugs, through prevention and treatment programs. Given the division of constitutional powers in Canada, this separation of responsibilities is not altogether surprising. It does, however, impose limits on the establishment of a comprehensive national framework.*

*The division of powers between Canadian provinces and the federal government has made concerted, comprehensive action against drug and alcohol abuse very difficult to achieve. For example, most program strategies aimed at prevention are generally seen as part of the health or education systems; matters of provincial jurisdiction over which the federal government has little direct control. However, while enforcement activities are controlled at the local level, for the most part, the authority derives from federal powers, and the control largely remains with the federal government. [5]*

*In developing the NDS, the federal government noted that, within the provinces and territories, and at the community level, many innovative programs of drug counselling, therapy and rehabilitation had been initiated. It also recognized that much of the program expertise existed at the provincial level. What was lacking, however, was a strong mechanism for national collaboration. The government believed that the NDS provided such a comprehensive national framework and viewed it as "a co-operative program that combines the efforts and resources of the federal government with those of all provincial and territorial governments and addiction agencies across Canada." [6]*

The government identified six core components of the NDS: education and prevention; enforcement and control; treatment; international cooperation; research and information; and national focus. Of the \$210 million in new federal funds allocated to enhance existing programs and to fund new initiatives, \$20 million was allocated for the first year, \$40 million for the second year, and \$50 million for the last three years of the strategy. A significant amount (70%) of the resources was committed to education and prevention (32%) and treatment and rehabilitation (38%); 20% was committed to enforcement and control; and the other 10% to information and research (6%), international co-operation (3%) and national focus (1%).<sup>[7]</sup> The government noted that, while enforcement agencies were given more resources to combat supply, most of the money was allocated to address the demand for psychoactive substances, thus providing a better balance between reducing both the demand for drugs and reducing their supply.<sup>[8]</sup> According to information received from Health Canada, the resources were generally spent as planned.

In order to illustrate the comprehensive nature of the NDS, the following sets out the goals and initiatives announced during the week of its launch:

**Prevention, treatment, research, control components<sup>[9]</sup>**

❖ **To create improved public awareness and information:**

- **A media campaign, developed in consultation with provinces;**
- **Federal endorsement of Drug Awareness Week;**
- **Telephone information lines.**

❖ **To encourage involvement in prevention activities:**

- **Support for a range of prevention initiatives developed within local communities;**
- **Support for the development of innovative and improved treatment services at the community level;**
- **Development and expansion of training and training materials;**
- **A National Action Conference on Drug Abuse.**

❖ **To encourage prevention initiatives targeted to particular groups:**

- **Efforts to encourage youth employment activities that improve life-skills development as well as employability;**
- **Support for demonstration projects by police to develop new prevention initiatives for youth in school, and for urban youth at risk and Aboriginal communities;**
- **A review of all current programming directed at drug abuse among Aboriginal people;**

- **New initiatives focussed particularly at Aboriginal youth;**
  - **Support for northern communities wishing to exchange experiences with other Arctic Rim communities on drug abuse issues.**
- ❖ **To encourage more effective treatment services tailored to specific needs:**
- **An examination of future federal cost-sharing of new or expanded drug and alcohol treatment and rehabilitation programs;**
  - **Measures to improve detection of drug abuse by health professionals and to support their rehabilitation;**
  - **Establishment of an advisory committee on methadone and measures to prevent diversion of methadone;**
  - **Development of training materials and information for health care professionals and others working in the addictions field;**
  - **A review of current efforts to address the problem of drugs in the workplace;**
  - **Continued efforts to eliminate the use of banned drugs in sport within Canada and internationally.**
- ❖ **To update and improve Canada's drug laws and regulations:**
- **New legislation to replace the outdated *Narcotics Control Act* and *Food and Drugs Act*;**
  - **Improved co-ordination among federal organizations and with provinces to improve regulatory control of drug use;**
  - **Increased federal capacity for drug identification, analysis and monitoring;**
  - **Co-ordinated policies concerning illegal supply of drugs in Canada.**
- ❖ **To improve the knowledge base in the drug abuse field:**
- **Support research on patterns and trends in the drug abuse field and on prevention and treatment;**
  - **A study and recommendations on priority data needs.**
- ❖ **To ensure a long-term commitment to the drug abuse field where long-term solutions are**

needed:

- **A Task Force to review different means of ensuring that provincial expertise and experience can be made available for the benefit of the country as a whole and to ensure national ongoing commitment to promoting the study and prevention of drug abuse.**

**Enforcement components[10]**

- ❖ To provide strengthened and co-ordinated drug law enforcement:
  - Strengthening of the RCMP's drug intelligence capabilities and liaison with other forces;
  - A co-ordinated approach to improved coastal enforcement against drug smuggling;
  - Improved co-ordination of drug law enforcement at the federal level as well as between federal and provincial organizations.
- ❖ To help take the profit out of illegal drug trafficking:
  - Expansion of the RCMP's Anti-Drug Profiteering Program and improved public awareness of program activities and objectives;
  - Improved techniques for tracing illicit funds will be developed.
- ❖ To strengthen Canada's international efforts:
  - RCMP special training in drug enforcement for police officers of selected drug source or transit countries.
- ❖ To create improved public awareness and information about drug abuse:
  - An expansion in the RCMP's capacity across the country to promote drug awareness.
- ❖ To address the problems of drug abuse in federal correctional institutions:
  - A study will be undertaken on drug use among inmates and on the effectiveness of current treatment programs in correctional institutions;
  - Improved drug control in penitentiaries;
  - Development of programs for inmates with drug abuse problems to help them cope better after

their release;

- Improved prevention through training for staff and development of information programs for inmates.

#### **Interdiction components[11]**

##### **❖ To strengthen Canada Customs' capacity to interdict illegal drugs entering Canada:**

- Expansion of Canada Customs resources to strengthen capability in the critical areas of targeting and examination of high-risk cargo shipments and travellers in all modes of transportation, and of high-risk mail;
- Development and acquisition of X-ray equipment to increase drug detection capabilities during the examination of cargo, baggage and mail;
- Expansion of the Canada Customs Detector Dog Service to provide service in all Customs regions across Canada, and increase our present capabilities at high-volume points of entry;
- Enhanced training to Customs Inspectors in the identification of drug couriers and high-risk commercial shipments: this training will increase the awareness of Customs Inspectors relating to the identification of indicators (characteristics) that may be present during the examination of a person or commercial shipment;
- Expansion of Canada Customs involvement in the Crime Stoppers programs of municipal police forces across Canada;
- Co-operation with airlines and shipping companies engaged in the international transport of people and goods, with a view to Canada Customs obtaining assistance in the detection of illicit drugs destined for Canada;
- Co-operation with foreign Customs services in targeting in-transit drug couriers.

##### **❖ To ensure appropriate immigration policies:**

- Review of immigration policy on drug traffickers.

#### **International components[12]**

##### **❖ To ensure that Canada plays an active role in international forums on drug abuse:**

- Canada's active participation at the International Conference on Drug Abuse and Illicit

Trafficking to be held in Vienna, 17-26 June 1987;

- Accession to the 1971 United Nations Convention on Psychotropic Substances;
  - Increase in Canada's contribution to the United Nations Fund for Drug Abuse Control (UNFDAC) to a target level of \$1 million by 1991;
  - Inclusion of reduction of drug abuse as a factor in considering requests for assistance under Official Development Assistance;
  - Hosting of an international conference of experts on Recommended Methods for Testing Drugs of Abuse.
- ❖ To improve public awareness and information:
- Information for Canadians travelling abroad about the hazards of illicit drug possession in other countries.

#### Proceeds of crime components[13]

- ❖ To take the profit out of illicit drug trafficking:
- Proceeds of Crime legislation to reduce the profitability of drug trafficking.

#### Creation of the Canadian Centre on Substance Abuse

The Canadian Centre on Substance Abuse (CCSA) was created by an act of Parliament in 1988. It is a non-governmental organization with the aim to promote "*increased awareness on the part of Canadians of matters relating to alcohol and drug abuse and their increased participation in the reduction of harm associated with such abuse, and to promote the use and effectiveness of programs of excellence that are relevant to alcohol and drug abuse.*"[14] This is to be done by:

- ❖ Promoting and supporting consultation and co-operation among governments, the business community and labour, professional and voluntary organizations in matters relating to alcohol and drug abuse;
- ❖ Contributing to the effective exchange of information on alcohol and drug abuse;
- ❖ Facilitating and contributing to the development and application of knowledge and expertise in the alcohol and drug abuse field;
- ❖ Promoting and assisting in the development of realistic and effective policies and programs aimed at reducing the harm associated with alcohol and drug abuse; and

- ❖ Promoting increased awareness among Canadians of the nature and extent of international efforts to reduce alcohol and drug abuse, and supporting Canada's participation in those efforts.[15]

Thus, the CCSA was created to provide a national focus and leadership in the area of reducing the harm associated with alcohol and other drug abuse. It works closely with federal and provincial partners, both governmental and non-governmental. As the NDS indicated, the government had recognized that a coordinated response including all partners was required if long-term solutions were to be found. Co-operation and coordination between all partners is a key function of the CCSA.

The CCSA works with the private sector, provincial addiction agencies, and many special interest groups to make it possible for all Canadians to benefit from the best prevention programs. One way of doing this is by keeping people working in the field in touch with what's happening across the country.[16]

The CCSA is primarily responsible for providing "credible, objective information and policies on addiction to the federal government, the not-for-profit and private sectors, and provincial/territorial and municipal governments." [17] It has set out the following seven goals:

- ❖ Policy Formulation

- Goal 1: To monitor significant research and policy developments, and to provide informed comment on issues of national significance.

- ❖ Information Development

- Goal 2: To maintain and continually improve national information on the nature, extent and consequences of substance abuse, and problem gambling in Canada.

- ❖ Best Practices Development

- Goal 3: To monitor significant programs and practices, and contribute to the identification and dissemination of best practices.

- ❖ Communications

- Goal 4: To develop a communications strategy that includes a series of focused activities and information products aimed at increasing the awareness of Canadians of addictions issues, and influencing and informing CCSA's key target audiences.

❖ Network Development

- Goal 5: To develop, co-ordinate and support networks that facilitate the sharing and application of information and expertise.

❖ Information and Reference Service

- Goal 6: To maintain an efficient and responsive information and reference service.

❖ Administration/Management

- Goal 7: To organize the policy, administrative and human resource functions in an effective and financially responsible manner.[18]

An important contribution of the CCSA is the establishment of a Clearinghouse on Substance Abuse, which links all major sources of information on alcohol and other drugs in a single computer network.

The CCSA, which is within the portfolio of the Minister of Health, is structured as a corporation, with a chair and a board of directors. It is funded by the NDS and through its own revenue-generating efforts. The CCSA was originally allocated an annual \$2 million of core funding but the cuts that occurred as a result of Program Review in 1997 reduced its core funding to \$500 000. This necessitated the release of almost all full-time staff. Michel Perron, the CCSA's chief executive officer, indicated that the budget cuts affected the CCSA's ability to carry out its mandate.

Since 1997, the CCSA has basically survived by working for a number of departments on contract. Those contracts ensured our survival, but significantly hindered our efforts to fulfill our legal mandate in a proactive way. [19]

In early 2002, the government increased the CCSA's core funding to \$1.5 million. We were told that, with this increase, the CCSA can stabilize its activities and Canada runs a lower risk of losing its only collective memory as well as the only drug addiction specialists working at the federal level.[20]

### **Creation of Canada's Drug Strategy Secretariat**

In 1990, Canada's Drug Strategy Secretariat was given the mandate to coordinate activities within the federal government and with other governments (both nationally and internationally). The secretariat was given many responsibilities, including ensuring the visibility of the NDS, coordinating the evaluation of the NDS and examining the issue of substance abuse from a strategic standpoint. One of its key responsibilities was to act as a facilitator.

An important function of the Secretariat is to serve as an information source, a central point of entry to the federal government directing those with questions toward people with the answers. Members of the Secretariat also provide advice from outside groups to the federal partners. They attempt to bring groups together to facilitate issues of common concern. [21]

The Secretariat was disbanded in 1996 during Phase II of the strategy. In the evaluation of Phase II of the CDS, it was suggested that the function of overseeing the coordination should be given to a body that is not an integral part of one of the partner departments—otherwise, such a body would be in a potential or perceived conflict of interest.[22] In the past, some had regarded the Secretariat as representing primarily the interest of Health Canada rather than representing the drug strategy itself.

Today, the Office of Canada's Drug Strategy is the focal point within the federal government for the drug strategy. It describes itself as follows:

The Office of Canada's Drug Strategy of Health Canada is the focal point within the federal government for harm reduction, prevention, and treatment and rehabilitation initiatives concerning alcohol and other drugs issues. Our efforts aim to prevent the use of drugs by those not currently using them, reduce the harm for those who use them, and promote effective and innovative treatment and rehabilitation for those affected by substance abuse. The Office works collaboratively with other federal departments and provincial and territorial governments, and provides national leadership and co-ordination on substance abuse issues, conducts research into the risk factors and root causes of substance abuse, synthesizes and disseminates leading-edge information and best practices to key partners, and collaborates with multilateral organizations to address the global drug problem. [23]

The Auditor General, in her 2001 Report, indicated that there are limits on Health Canada's authority as coordinator and recommended that the government "*review the current mechanisms for leadership and co-ordination within the federal government as well as mechanisms for co-ordination with provincial/territorial and municipal governments in addressing the problem of illicit drugs.*"[24] *We agree with the Auditor General's assessment and recommend the creation of a position of National Drug Advisor, responsible for ensuring interdepartmental co-ordination at the federal level. In addition, the CCSA would be given a coordinating role with respect to the provinces and territories, cities and with research bodies and universities.*

#### *Phase II - Renewal*

*In order to determine the future of the NDS, the federal government undertook a national consultation process in March and April 1991. The purpose of the consultations, held with local and provincial partners, was to prepare for the possible renewal of the NDS, obtain information on the strengths and weaknesses of the strategy and identify renewal priorities. During the consultations, alcohol abuse was*

identified as the major problem in Canada, and the abuse and misuse of pharmaceuticals was the second most frequently mentioned concern. Tobacco use was also seen as a major substance abuse and health problem. Street drugs, while still a concern, were not a major worry of those consulted. It was noted that cannabis use continued to be widespread.

Many at the consultations advocated incorporating the Driving While Impaired (DWI) Strategy into the NDS, and there was also strong support for a comprehensive national alcohol policy. It was also suggested that use of steroids by athletes and youth be included in the NDS. Finally, others called for a comprehensive tobacco policy and for tobacco's inclusion within the NDS. A long-term commitment to the drug strategy was one of the issues expressed by the participants.

To address many problems in substance abuse, participants in the consultation process stressed the need for a long-term commitment to CDS. Substance abuse has been a problem since the dawn of time. To expect significant changes in the level and nature of substance abuse over a five, or even a ten, year period is not realistic. The impact of initiatives to counteract the problem of substance abuse may not be visible for generations. Therefore, CDS must become an ongoing program with political and government support and endorsement. Bringing about fundamental long-term societal changes in attitude and behaviour requires base funding, without a sunset provision. [25]

In 1992, the NDS was renewed under the designation Canada's Drug Strategy (CDS). Funding was increased to \$270 million over the five-year period and the Strategy principally involved six federal departments. [26] As had been suggested, the DWI Strategy became a component of CDS, although the same could not be said for tobacco. Once again, CDS called for a balanced approach to reducing both the demand for drugs and their supply. The funding was to be allocated as follows: prevention (30%); treatment (30%); enforcement and control (28%); information and research (5%); national focus (5%); and international co-operation (1%). According to Health Canada, over the five-year period, about \$104.4 million was actually provided. [27] In fact, resources that were originally approved were almost immediately reduced, and this reduction continued over the course of CDS as a result of budget cuts.

In renewing CDS, the federal government acknowledged the concerns of stakeholders and stated that solutions to substance abuse require long-term commitment—that to expect significant changes over five or even ten years was not realistic. Thus, it was stated that CDS should become an ongoing program. In addition, it was thought that a balanced approach between demand and supply reduction was critical to the success of CDS. Finally, it was recognized that partnerships (both governmental and non-governmental) at all levels (locally, nationally and internationally) were needed. [28]

On the whole, it was concluded that the strategy was working well and that it was important to maintain the momentum created by Phase I. The primary and overall objective of Phase II was to make Canada's alcohol and other drug interventions more effective at reducing harm to individuals, families, and communities caused by the problem use of alcohol and other drugs. This would be accomplished through the following secondary objectives:

- ❖ Improved program targeting through a focus on high-risk populations (especially young children, street kids, dropouts, off-reserve Aborigines, the unemployed, seniors and women);
- ❖ Improved coordination and collaboration across federal departments and with external partners (provincial and territorial governments, non-governmental organizations, etc.);

- ❖ *An improved information base on substance abuse-related issues, to assist policy-makers, program developers, researchers, professionals, and others concerned with substance abuse issues in addressing this problem; and*
- ❖ *Enhanced resources that would enable departments to continue certain ongoing activities and redirect attention to emerging issues or new activities.[29]*

*The decision to renew CDS was accompanied by a requirement for its evaluation. In June 1997 a report evaluating Phase II of CDS was published by Health Canada. Its main findings were as follows:*

- ❖ *Improved program targeting was implemented in all participating departments, with justifiable variation according to their respective mandates;*
- ❖ *Interdepartmental coordination at the working level and for task-specific initiatives was effective. However, interdepartmental co-ordination at the strategic planning level was identified as a concern over the course of Phase II and would not appear to have been resolved (clear coordination goals were not identified, nor was the role of the CDS Secretariat properly defined);*
- ❖ *CDS did not have national visibility at either political or public levels;*
- ❖ *The information available in Canada on the issue of substance abuse increased as a result of Phase II funding;*
- ❖ *Departmental resources were increased through Phase II. However, there were significant subsequent cuts to some departmental budgets that may have limited the potential achievements of Phase II; and*
- ❖ *Phase II resources were used in a manner consistent with a harm reduction approach, although a formal harm reduction policy was not in place during the course of the strategy.*

*The report also identified effective leadership, coordination and strategic planning as essential to the strategy, and found weaknesses in these areas during Phase II. In addition, a common vision and a set of clear and measurable objectives were also found to be fundamental requisites. Lack of accountability for strategy-wide objectives was also identified as a problem. As will be discussed later, most of these issues were again raised as concerns in 2001 (five years later) by the Auditor General of Canada*

*To coordinate the strategy, two groups were established at the federal level, both chaired by Health Canada: the Assistant Deputy Ministers' Steering Committee on Substance Abuse, and the Interdepartmental Working Group on Substance Abuse. Their purpose has been described as follows:*

*The Steering Committee is mandated to meet at least twice a year to improve the overall effectiveness of the strategy and provide direction to the Working Group. Its aims are to co-ordinate federal activities, develop consensus on priorities, address emerging issues, and monitor implementation of the federal strategy. [30]*

### *Phase III – Renewal without specified funding*

In 1997, the *Controlled Drugs and Substances Act* (CDSA) was enacted. This legislation formed part of CDS; it was focused, according to the government, on modernizing and enhancing the drug abuse control policy underlying the previous legislation and on fulfilling Canada's international obligations. It should be noted that since the introduction of the CDSA, most changes to federal legislation dealing with illicit drugs have focused on supply reduction.

In 1998, CDS was renewed in principle but without any specified funding, despite warnings of possible negative consequences. An evaluation of Health Canada's contributions to CDS stated that:

We must conclude that short-term initiatives such as the CDS Phase II are useful in that they inspire a higher sense of priority for a certain issue; at the same time, they hold inherent disadvantages in addressing an issue such as substance abuse, that is widely recognized to require a longer-term intervention than time-limited initiative funding will allow. [31]

The following was also added:

The CDS Phase II Health Canada Component made a considerable investment in research and program development, and information monitoring systems. In many areas, Health Canada is now poised to reap benefits from the knowledge gained – however it is feared that this will not be the case due to non-renewal.

There are also concerns that the sunseting of the Health Canada component of the CDS will not only leave a void but see the balance in the federal harm reduction policy list too far in the direction of supply reduction, and that Canada's international credibility will also suffer. [32]

The signatories were limited to federal departments and agencies, with Health Canada again responsible for providing national leadership and coordination. CDS still states that it reflects a balance between reducing the supply of drugs and reducing the demand for drugs. The long-term goal of the strategy remains unchanged: it is to reduce the harm associated with alcohol and other drugs to individuals, families and communities. The goals of CDS are to:

- ❖ Reduce the demand for drugs;
- ❖ Reduce drug-related mortality and morbidity;

- ❖ Improve the effectiveness of and accessibility to substance abuse information and interventions;
- ❖ Restrict the supply of illicit drugs and reduce the profitability of illicit drug trafficking; and
- ❖ Reduce the costs of substance abuse to Canadian society.[33]

The strategy states that it is built on four pillars: prevention; enforcement and control; treatment and rehabilitation; and harm reduction. Within this general framework, seven separate components have been identified: research and knowledge development; knowledge dissemination; prevention programming; treatment and rehabilitation; legislation, enforcement and control; national coordination; and international co-operation.[34]

The Drug Strategy and Controlled Substances Program, within the Healthy Environments and Consumer Safety Branch of Health Canada, currently spends \$34 million annually on substance abuse.[35] The Office of Canada's Drug Strategy currently manages \$16.5 million of the \$34-million total budget. The Alcohol and Drug Treatment and Rehabilitation program, which was originally managed by HRDC, was transferred to Health Canada in October 1997. It is currently managed by the Office of Canada's Drug Strategy, which provides \$14 million to the provinces for treatment and rehabilitation programs. The other \$2.5 million is allocated to the CCSA (\$1.5 million) and for research and program management (\$1.0 million). The remaining \$17.5 million is allocated by the Healthy Environments and Consumer Safety Branch as follows: administration of regulations other than the Marijuana Medical Access Regulations (\$5.0 million); Medical Marijuana Program (\$5.0 million); drug analytical services (\$4.5 million); policy, research and international affairs (\$3.0 million).[36]

Health Canada does spend other resources on substance abuse through the department's varied activities. For example, the Population and Public Health Branch allocates resources to deal with HIV/AIDS and Hepatitis C, and to deal with FAS/FAE.

### Canada's Drug Strategy – A Success?

This section does not claim to provide an in-depth analysis of CDS since its implementation and development in 1987. Certain key objectives, however, will be reviewed in order to determine whether or not the CDS can be deemed a success. It is important to note that, despite the considerable amounts of money spent at the federal level to control psychoactive substances, many would argue that Canada does not even have a funded national drug strategy.

In 1997 the government implemented "Program Review", and severe financial cuts were applied to all departments, including Health Canada. The drug strategy did not escape these cuts and it sunset in 1997. In fact, there has been very little new money from the federal government for the field of addictions since.

Canada currently has no national strategy. We therefore simply do not have research data to guide us. In

fact, no one knows the extent of drug consumption or prevalence in Canada because no national inquiry has been done since 1994. We therefore have to come up with hypotheses and resort to other tools to get a picture of the current situation in Canada. [37]

As mentioned, research, knowledge development and knowledge dissemination are severely lacking in Canada, despite the fact that these are intended to be key components of the CDS. A more complete analysis of these deficiencies in knowledge development and dissemination is set out in Chapter 6. To summarize, Canada has not given itself the means to conduct proper research and to acquire knowledge in this field. For example, only two general national drug surveys have been conducted - in 1989 and 1994. Much of the problem with respect to research and knowledge development can be attributed to the almost non-existent funding allocated to the CCSA. Considering the importance of the CCSA's role in knowledge development and the costs of substance abuse in Canada, it is clear that its funding has been totally inadequate over the years. The recent increase to its core funding may temporarily stop the bleeding but will not allow Canada to acquire the tools necessary to conduct vital and necessary research in this area.

The CDS has, since its implementation, stated that it reflects a balance between reducing the supply of drugs and reducing the demand for drugs. While such policy objectives are easy to pronounce, they have not been reflected in reality. The Auditor General has recently indicated that, of the approximately \$500 million spent annually by 11 departments or agencies at the federal level to address illicit drug use in Canada, roughly 95% is spent on supply reduction. Notwithstanding the division of constitutional powers in Canada, one would be hard pressed to argue that this allocation of funds represents a balanced approach.

Another of the key objectives of the CDS is to ensure coordination and collaboration across all federal departments and with the provinces and municipalities. The Auditor General has recently criticized the leadership provided at the federal level and recommended a drug strategy with sound co-ordination and with clear objectives and results.

Canada requires stronger leadership and more consistent co-ordination to set a strategy, common objectives, and collective performance expectations. It must be able to respond quickly to emerging concerns about illicit drug use or the illicit drug trade. The present structure for leadership and for co-ordination of federal efforts needs to be reviewed and improved. The mechanisms for co-ordination with the provinces and municipalities also need review since they cross three levels of government. [38]

One of the obvious weaknesses of the CDS is the failure to provide comprehensive evaluations of its objectives. For example, we are unaware of any evaluations of the prevention and treatment programs that have been funded by the federal government. This lack of evaluation is an overall concern.

Although the federal government provides leadership and co-ordination for dealing with the illicit drug problem, it has not produced any comprehensive reports that demonstrate how well Canada is managing the problem. It would be logical for Health Canada, as the lead department, to report government-wide results of Canada's efforts to reduce the demand for and the supply of illicit drugs. [39]

In summary, it would be difficult to declare the CDS a success when we do not even have the tools needed to determine whether or not the objectives of the strategy have been satisfied. The current strategy has, at

the very least, many fundamental weaknesses. As several critics have argued one must question whether we in fact even have a comprehensive drug strategy in Canada.

### Conclusions

While we recognize that the federal government cannot act alone if it is to deal effectively with substance abuse problems, our conclusions with respect to a national strategy regarding psychoactive substances are generally limited to the role played at the federal level.

➤ Canada urgently needs a comprehensive and coordinated national drug strategy for which the federal government provides sound leadership.

- Any future national drug strategy should incorporate all psychoactive substances, including alcohol and tobacco.
  
- To be successful, a national drug strategy must involve a partnership with all levels of government and also with non-governmental organizations.
  
- Over the years, the intermittency of funding has diminished the ability to co-ordinate and implement the strategy; adequate resources and a long-term commitment to funding are needed if the strategy is to be successful.
  
- Clear objectives for the strategy must be set out, and comprehensive evaluations of these objectives and the results are required.
  
- At the developmental stage, there is a need to identify clear and shared criteria for "success".
  
- The core funding for the CCSA has been insufficient for it to carry out its mandate; adequate funding for the CCSA is essential.
  
- There is a need for an independent organization – the CCSA – to conduct national surveys at least every second year; there is also a need to achieve some level of consistency, comparability and similar time frames for provincially based school surveys.
  
- Coordination at the federal level should be given to a body that is not an integral part of one of the partner departments.
  
- Canada's Drug Strategy's should adopt a balanced approach – 90% of federal expenditures are currently allocated to supply reduction.

[1] A discussion of Canada's legislative history in regard to psychoactive substances can be found in Chapter 12.

[2] Giffen, P.J., Endicott, S. and S. Lambert, (1991) *Panic and Indifference: The Politics of Canada's Drug Laws*, Ottawa: Canadian Centre on Substance Abuse, page 587.

[3] Government of Canada, News Release, *Federal Government Launches Co-ordinated Action on Drug Abuse*, 25 May 1987.

[4] Government of Canada, *Action on Drug Abuse: Making a Difference*, 1988, page 5.

[5] Giffen, P.J., *op. cit.*, page 585.

[6] Government of Canada, *Action on Drug Abuse: Making a Difference*, 1988, page 7.

[7] *Ibid.*

[8] From 1987 to 1991, an additional \$19.5 million was provided for the Driving While Impaired (DWI) Strategy. The DWI strategy included national awareness programs, driver education curricula, national surveys and hundreds of local initiatives aimed at making drinking and driving socially unacceptable to

Canadians.

- [9] Government of Canada, *National Drug Strategy: Prevention, Treatment, Research, Control Components*, 25 May, 1987.
- [10] Government of Canada, *National Drug Strategy: Enforcement Components*, 26 May 1987.
- [11] Government of Canada, *National Drug Strategy: Interdiction Components*, 27 May 1987.
- [12] Government of Canada, *National Drug Strategy: International Components*, 28 May 1987.
- [13] Government of Canada, *National Drug Strategy: Proceeds of Crime Components*, 29 May 1987.
- [14] *Canadian Centre on Substance Abuse Act*, R.S., 1985, c. 49 (4th Supp.), s. 3.
- [15] *Ibid.*
- [16] Government of Canada, *Canada's Drug Strategy*, 1991, page 4.
- [17] *Report of the Auditor General of Canada to the House of Commons*, 2001, Chapter 11, "Illicit Drugs: The Federal Government's Role", page 6.
- [18] For more information on the CCSA, visit its website at <http://www.ccsa.ca> and see Government of Canada, *Canada's Drug Strategy - Phase II: A situation paper*, Canada, 1994, pages 38-40.
- [19] Michel Perron, Executive Director, Canadian Centre on Substance Abuse, Proceedings of the Special Committee on Illegal Drugs, Senate of Canada, first session of the thirty-seventh Parliament 2001-2002, 10 June 2002, Issue no. 22, page 69.
- [20] *Ibid.*,
- [21] Government of Canada, *Canada's Drug Strategy - Phase II: A situation paper*, Canada, 1994, pages 11-12.
- [22] Health Canada, *Evaluation of Canada's Drug Strategy: Final Report*, June 1997, page 22.
- [23] Information regarding the Office of Canada's Drug Strategy can be found on the Health Canada web site at <http://www.hc-sc.gc.ca/hppb/cds-sca/cds/about.html> (revised: 1 December 2000).
- [24] *Report of the Auditor General of Canada to the House of Commons*, 2001, Chapter 11, "Illicit Drugs: The Federal Government's Role", page 24.
- [25] Government of Canada, *Canada's Drug Strategy: Consultations 1991*, page 7. For more information on comments made regarding supply issues, demand issues and the role and impact of CDS, see pages 3-7.
- [26] Health and Welfare Canada, Solicitor General Canada, Revenue Canada (Customs and Excise), Labour Canada, External Affairs and International Trade Canada and Justice Canada.
- [27] Gillian Lynch, Director General, Drug Strategy and Controlled Substances Programme, Health Canada, Proceedings of the Special Committee on Illegal Drugs, Senate of Canada, first session of the thirty-seventh Parliament 2001-2002, 10 June 2002, Issue no. 22, page 27.
- [28] Government of Canada, *Canada's Drug Strategy - Phase II*, 1992, page 3.

- [29] Health Canada, *Evaluation of Canada's Drug Strategy: Final Report*, June 1997, p. iv.
- [30] *Report of the Auditor General of Canada to the House of Commons*, 2001, Chapter 11, "Illicit Drugs: The Federal Government's Role", page 6.
- [31] Health Canada, *Evaluation of Health Canada's Contributions to Canada's Drug Strategy: Final Report*, December 1996, pages 33-34.
- [32] *Ibid.*, pages 34-35.
- [33] Government of Canada, *Canada's Drug Strategy*, 1998, pages 4-5.
- [34] While CDS deals with both licit and illicit substances, a separate strategy has been developed to identify specific approaches to tobacco.
- [35] This does not include expenditures made by the First Nations and Inuit Health Branch, which total approximately \$70 million.
- [36] Health Canada, Presentation to the Special Committee on Illegal Drugs, 10 June 2002.
- [37] Michel Perron, *loc. cit.*, page 71.
- [38] *Report of the Auditor General of Canada to the House of Commons* 2001, Chapter 11 – Illicit Drugs: The Federal Government's Role, page 1.
- [39] *Ibid.*, page 22.

## Chapter 12

### The National Legislative Context

Drugs have been prohibited for fewer than one hundred years; cannabis for slightly more than 75. It is tempting to think that the decisions made over the years to use criminal law to fight the production and use of certain drugs are in keeping with social progress and the advancement of scientific knowledge about drugs. Pre-twentieth century societies were less "advanced" and did not have the sophisticated tools that medicine, molecular biology and biochemistry, psychology and the cognitive sciences have provided over the course of this century of technological revolution. The prohibition measures adopted by parliaments, and on a wider scale, by the international community were therefore a more or less accurate reflection of the knowledge gradually acquired by scientists. The gradual conquest of territory occupied not so long ago by the irrational and its gang of charlatans and other shamans continued, for the greater good of humanity. As proof, phenomenal technical advances in medicine and pharmacology over the course of this century have resulted in increased longevity and decreased infant mortality in Western countries.

But is this really the case? Is civilization one long march towards progress, towards greater, and increasingly invincible, rationality? If we consider the state of the planet and the alarms sounded by more than one scientist today, we may have our doubts. From a social standpoint, the twentieth century has not brought fewer wars, less destruction, or more equality between people than previous centuries. With respect to drugs, is the legislation a more or less faithful translation of scientific knowledge for the greater good of all? Can we discern a rational structure in the national laws and international conventions that govern certain drugs and other substances? Are they based on knowledge of the effects of drugs on the psyche and human behaviour? Do they reflect the desire to ensure the well-being of the public?

The history of legislation governing illegal drugs in Canada, like the analysis in Chapter 19 of the structure

of international conventions, suggests that this is highly doubtful. We do not deny that knowledge has advanced; the second part of our report testifies to this. But scientific knowledge itself is a structure that develops in a given historical context and responds to paradigms in the way problems are posed and research is conducted. The dominant scientific positivism is a temporary result in the long evolution of knowledge. It is not the "end of the story". Within the scientific process, a "selection" is made of pertinent questions and ways in which to ask them, such that any question is not necessarily a good question and certain ways of answering are more acceptable to the community of researchers.

Moreover, legislation adopted by parliaments is influenced at least as much by prejudices and preconceptions resulting from "*pop science*" as by partisan, personal and international considerations. In this sense, the parliamentarian is no different from any other citizen, as we pointed out in the report's general introduction.

We were told several times that we could not compare the effects of cannabis to those of alcohol or tobacco. And yet, even at the risk of being unreadable if not unacceptable to the community, public policy on "drugs" must propose some rationale of the type: "this is prohibited, because..., and this is not, because...". Most of the time the "reason" - or the justification? - is presented as risks or dangers on the one hand and as medical usefulness on the other. Thus, under the current control regime, because of the risks or dangers they are believed to present, some drugs must be regulated, that is, they are not sold over the counter. When they present a danger **and** they have no known medical application, the regulatory controls prohibit their manufacture, production, growth, use, possession, etc., entirely. That is the case with the legislation and conventions governing opium and its derivatives (heroin), the coca plant and its derivatives (cocaine, crack) and the cannabis plant and its derivatives (marijuana, hashish). When the drug presents a danger but is medically useful, it is subject to more or less severe regulatory controls. That is the case with benzodiazepines and other powerful medications, which are sold by pharmacists and cannot be obtained without a medical prescription. Other drugs present a "health risk": nicotine, alcohol, as well as several other over-the-counter drugs. The packaging must indicate the risks (except for alcohol - which is very telling) so as to "warn" the user.

To what extent is such reasoning really rational?

Three researchers at the University of Toronto (Lazarou, Pomeranz, Corey, 1998) have estimated that correctly prescribed legal medications kill, on average, 100,000 people a year in North America. Although for methodological reasons that figure was cut back by one half or two thirds, it nonetheless illustrates the enormous losses of human life that go undetected by any monitoring system, including the legal system. No one thinks that this danger should be avoided by prohibiting medical prescriptions - the risky decisions made by physicians - or denying the "right to use" medications. Why? Because we do not see how that solution could be preferable to the solution of taking risks responsibly. Knowing that this problem exists, we will try to find other solutions, such as better quality control for the products, etc. Nor (fortunately) do we consider assigning criminal responsibility to physicians for taking the risk of writing a correct prescription, knowing that even correctly prescribed medications can cause death. [1]

The 2001 report from the International Narcotics Control Board indicates a "worrisome" increase in the abuse of various prescription drugs in the United States and notes that several of these medications are found on the black market, in particular through the Internet.[2]

Tobacco use causes more than 400,000 deaths a year in the United States, and approximately 45,000 in Canada. As for alcohol, it is linked to physical aggression and violence, especially marital, and to road

accidents, and its abuse causes thousands of deaths each year.

It is a mistake to see illegal drugs in a separate category from the legal drugs insofar as the history of criminalization is concerned. We have compounded that difficulty today because we do not tend to see the legal drugs in the same limelight as the illegal drugs. To demonstrate that, we use the phrase "alcohol and drugs" as if alcohol were not a drug, as if police officers who go to domestic disputes do not know already that the major drug problem they will likely find at that dispute is alcohol abuse, as if we do not already know that more than 70 per cent of all homicides involve alcohol abuse as a critical factor. For us to pretend that the consumption of alcohol is on a morally different plane from the consumption of illegal drugs seems to be a kind of cultural folly that speaks volumes about the cultural blinders we wear as we go about our business in everyday life. [3]

Is the rationale of the system of controls acceptable in the eyes of civil society, users as well as abstainers? What criteria motivated the legislators' decisions? For that matter, were there any criteria? What motivated parliamentarians from Canada and elsewhere to prohibit certain substances, to control access to certain others, and to permit still others to be sold over the counter?

Knowing where you have been helps you to understand where you are going. That is the goal of this chapter, which retraces the evolution of Canadian drug laws from 1908 to the present day.[4] We have identified three legislative periods. The first, and longest, spans the years from 1908 to 1960. That is the period of hysteria. The second, which is much shorter, runs from 1961 to 1975 and is the period involving the search for lost reason. Lastly, the contemporary period, which really starts at the beginning of the 1980s, is the period of forging ahead regardless. As it would be too much to describe the different sections in the various bills adopted over the years, we have appended a table that explains and presents the clauses of the legislation adopted from 1908 to 1996 on the control of narcotics.

#### **1908-1960: Hysteria**

At the time of the Shanghai Conference on opium in 1909[5], European societies had known for hundreds of years about opium, coca leaves, and cannabis, having discovered them through contact with other societies. These "drugs" were used in medical practice, as well as by a certain worldly or artistic elite, and especially as a commercial tool by colonial powers. In the midst of advances in chemistry, the 19th century saw the arrival of a large number of new drugs—primarily opiate based—and their enthusiastic adoption by physicians, pharmacists, general store owners and traveling salesmen as miracle elixirs. What happened so that Canada in 1908, and the seven countries gathered in Shanghai in 1909, decided to prohibit this "drug"? At least four factors figured in the game of chance and necessity that led to prohibition.

First of all, geopolitical issues, commercial dealings with China in particular and the political stability of the Middle Kingdom in general, played a considerable role, as shown in Chapter 19. But from a domestic standpoint, these factors do not explain everything, especially since the concerns of the Dominion of Canada and its people about international politics were still relatively minor.

Initially, physicians noticed, sometimes from their own experience as a user, that use of opium derivatives resulted in a certain degree of dependence and health problems.[6] At first, these cases of drug addiction were limited to the leisured classes and to artists, who were rarely labeled as "delinquents". However, the increasing availability of these drugs[7] and the subsequent development of dependence problems within the

working classes had a profound effect on public opinion about these drugs. There was no longer talk of "the ill" but rather of "delinquents" who [translation] "could not face up to the demands of life as a good citizen and worker" [8]. A few doctors, worried about protecting their monopoly, did not hesitate to demand laws from the government to restrict the use of drugs produced by pharmaceutical companies and thus avoid the propagation of this "scourge" that threatened the foundation of North American society.

Even though the use of opium did not result in a social crisis before the beginning of the 1880s, whites who frequented Chinese opium dens were often seen as suspicious or dangerous. At the time, [translation] "Frequenting the Chinese quarter and its opium dens is seen by several moral groups as a preference for the foreign, as willingly straying from white Anglo-Saxon values. This judgment is even more severe where women are concerned." [9]

Associated with the problem of alcoholism in the working classes, the question of the use of drugs then became the metaphor par excellence for the decay of western Judeo-Christian civilization, and the favourite theme of temperance leagues in the United States as well as Canada. Born in the 19th century, these movements had a very strong religious basis, especially in the protestant ethic of responsibility for personal health through work and self control: [translation] "work and sobriety were valued as a means to avoid loss of production and to maintain the economic superiority of the white Anglo-Saxon race." [10] Waging "war" against alcohol that causes male violence and adultery, against drugs that kill young people, and also against prostitution, cigarettes and gambling suited these movements perfectly. [11] From community support groups designed to help those who wanted to break their bad habits, these leagues transformed themselves into powerful pressure groups demanding the complete prohibition of alcohol first, and then supporting the prohibition of opium and other drugs.

The third factor, closely related to the previous two, was population movement and especially Chinese immigration – it would be more accurate to talk about the importation of Chinese workers. The Chinese had immigrated to the United States in the middle of the 19th century to work in the mines and build the railroads in the American West. Once these large projects were completed, certain labour disputes broke out on the American West Coast, pitching the Chinese, who offered cheap labour to owners of agricultural enterprises, against powerful unions, largely composed of white workers. Following the appearance of the union-based anti-Chinese movement and legislation that prevented any further Chinese immigration, many Chinese had no choice but to develop the opium trade in the ghettos where they lived in large American cities. The temperance movement did not hesitate to adopt the racist feeling driving certain segments of American society in order to denounce the use of opium, seen as a scourge that promoted immorality, crime and the decline of the white Anglo-Saxon race. It was in this context of social unrest, although limited to the American West Coast, that the first American legislation governing the opium trade was adopted.

In Canada, in the middle of the 19th century, the Chinese became a major source of manpower for building the Canadian Pacific Railway. As the economy of British Columbia diversified, these immigrants found work in fish processing plants, coal mines and the forestry industry, although the jobs available to them remained limited. This worsened the competitiveness of the local labour market and increased their marginalization in society. [12] Beginning in the 1880s, the massive influx of Chinese juxtaposed with the economic slowdown brought on by the end of construction of the Canadian Pacific railway and the economic recession that marked the end of the 19th century and the early years of the 20th century caused several union and popular demonstrations demanding the end of Chinese immigration, the source of British Columbia's economic and moral problems.

According to Giffen, this fear was not justified since white immigration from other regions of Canada more than offset the increase in British Columbia's Chinese population. In fact, the proportion of Chinese in the province declined from 20% at the beginning of the 1880s to less than 6% in 1921 [13], just before a clause in the Opium and Narcotic Drug Act was adopted authorizing the deportation of an

immigrant found guilty of a drug-related offence.

But,

Tolerance for the habit of smoking opium lasted only as long as British Columbia's tolerance for the Chinese. In the early years of the twentieth century, both a labour surplus and anti-Asian resentment developed. The Asiatic Exclusion League was formed, supported by an amalgamation of the Vancouver Trades and Labour Council and federal Conservative politicians. Opposed to the Liberals' immigration policies (under Sir Wilfrid Laurier), the league demanded an end to immigration from Asia, claiming that the "yellow peril" was about to "swallow" a white British Columbia. [14]

In fact, well before the development of this "social crisis", the British Columbia government had tried to halt Asian immigration by adopting the *Chinese Immigration Act* in 1884, which imposed an annual tax of \$10 on the Chinese and other Asians living in British Columbia and prohibited them from buying land belonging to the province. The federal government disallowed this Act, but in 1885 it created a Royal Commission to investigate Chinese immigration and this commission recommended imposing a \$10 entry tax on every Asian immigrant. In 1885, as a result of public pressure, the federal government adopted the *Chinese Immigration Act*, which imposed a \$50 entry tax that was increased to \$500 in 1904, as many had criticized the fact that despite the imposed tariff, 20,000 Asians had immigrated to the country between 1889 and 1900.

A major incident in 1907 led the federal government to intervene in matters of Chinese immigration and labour disputes in British Columbia. During the year, a demonstration organized by the *Asiatic Exclusion League* and attended by more than 10,000 people, most of whom were union workers and members of the middle class, turned into a riot when the angry crowd headed into Vancouver's Chinese district, attacking people and causing serious property damage. After convincing Prime Minister Laurier of the wisdom of compensating the Chinese, William L. Mackenzie King, then Deputy Minister of Labour, returned to Vancouver in the Spring of 1908, where he wrote a report [15] that would lead to the adoption of the *Opium Act*. Based primarily on moral, ethical, political, diplomatic and ethnic considerations, Mackenzie King's report, rather than attacking labour disputes between white and Chinese workers, shifted the problem to opium use by Asian foreigners.

*[...] the amount [of opium] consumed in Canada, if known, would probably appall the ordinary citizen who is inclined to believe that the habit is confined to the Chinese, and by them indulged in only to a limited extent. The Chinese with whom I conversed on the subject, assured me that almost as much opium was sold to white people as to Chinese, and that the habit of smoking opium was making headway, not only among white men and boys, but also among women and girls. [16]*

*As in the United States, Chinese immigrants brought with them not only their labour but also their practice of smoking opium. They preferred this practice to the widespread habit of white workers of using alcohol and opiate-based drugs to cure illnesses and to momentarily forget their social and working conditions. [17] Thus the first opium den opened its doors in Vancouver in 1870. Some Chinese even opened factories to produce opium for smoking; the opium was then used in opium dens in Vancouver's Chinese district or was simply sold to white clientele. As Professor Boyd mentioned during his testimony before the Committee:*

*Over time, equal amounts of smoking opium were sold to whites as to Chinese. If you look back through the issues of Vancouver Province or the Victoria Times Colonist, you find advertisements. You do not find any expression of concern or anger about those smoking opium establishments, but you find advertisements. [18]*

In 1883, there were three factories producing smoking opium in Victoria and in 1891, there were more than 10 opium dens in the Chinese districts of large cities in the Canadian West.[19] The surge in this industry was beneficial to the British Columbia government since it imposed a customs tariff on crude opium of 10% to 25%.

If I could turn back the clock 100 years to Vancouver, Victoria and New Westminster, I could show you opium-smoking factories which were started in the late 1870s and persisted for 30 years without complaint. The labour surplus and the depression in the first decade of the 20th century led to concerns that led to the original legislation. It is noteworthy that the Opium and Narcotic Drug Act of 1908 was introduced by the Minister of Labour. When he introduced the act, he said, "We will get some good out of this riot yet," referring to the anti-Asiatic riot in Vancouver in September of 1907.

Imagine, today, the idea of illegal drug legislation coming forward from the Minister of Labour because he or she is seeking to get some good out of a labour crisis on Canada's West Coast. The situation in California was similar. [20]

Even though the Royal Commission of 1885 did not recommend specific measures governing the production or use of smoking opium, it did indicate that smoking such a substance was a pagan practice incompatible with the lifestyle of a Christian nation.[21] According to Line Beauséjour, the crusade against opium that followed this report gradually resulted in a decline in opium smoking.[22] The results of an investigation conducted by the *American Pharmaceutical Association* in 1903 into drug use claimed that drug consumption was widespread throughout American society, but involved two social groups more specifically: Chinese immigrants and Blacks. This study probably influenced some federal politicians and temperance movements that used similar arguments until the beginning of the 1930s to justify the prohibition of opium and other drugs.[23]

In short, while economic considerations were at the heart of anti-Asian feeling, temperance movements and religious groups took advantage of the situation to promote their views, not only in the immediate area of British Columbia but also across the rest of the country. These events drew the public's attention to the "dangers" of opium for Canadian society.

### **Opium Act, 1908**

In the House of Commons on July 10, 1908, the Minister of Labour proposed the adoption of a motion prohibiting: "*the importation, manufacture and sale of opium for other than medicinal purposes.*"[24] *The motion was adopted without debate. The Minister introduced Bill 205, An Act to prohibit the importation, manufacture and sale of opium for other than the medicinal purpose. (Opium Act, 1908).*[25] The first section of the Act prohibited the importation of opium without authorization from the Minister of Customs. Additionally the drug could be used for medical purposes only. The manufacture, sale and

possession for the purpose of selling crude opium or opium prepared for use by smokers was also prohibited. Whoever violated these provisions could be found guilty of a criminal offence punishable by a maximum prison term of three years and/or a minimum fine of \$50 and not exceeding \$1,000. Even though it prohibited the use of opium, the legislation was aimed at opium dealers, most of whom were Chinese, and not users. The bill was given Royal Assent on July 20, 1908.

### The Opium and Narcotic Drug Act, 1911

The enactment of the *Opium Act* led to the introduction of 8 new bills intended to make it both more restrictive and effective on January 26, 1911, Mackenzie King, who had just become the Minister of Labour, introduced Bill 97, an *Act to prohibit the improper use of Opium and other Drugs (the Opium and Narcotic Drug Act, 1911)*.<sup>[26]</sup> During the deliberations on second reading, Mackenzie King gave three reasons for introducing the bill: the Shanghai Commission, the panic in Montreal caused by cocaine use and the need to grant special powers to the police to ensure that the Act could be enforced effectively. The Shanghai Commission had adopted a number of non-binding resolutions, including: putting a gradual stop to the opium smoking habit, with due regard to the specific circumstances of each country; prohibiting the use of opium and its alkaloids and derivatives (morphine, heroin, etc.) and other drugs for non-medical purposes; and prohibiting the export of these substances to countries that prohibited their use.

No member raised any objections about the four drugs added to the Schedule to the Act, namely cocaine, opium, morphine or eucaine. Section 14 of the Act also provided that the Governor in Council had the power to order any alkaloid, by-product or drug preparation added to the Schedule when its addition was deemed necessary in the public interest—a power which still exists today. The justification given for this was that if the use of a new drug were to become widespread in society, it would be possible to add it more quickly to the Schedule than by having to enact new legislation.<sup>[27]</sup> Other provisions of the Act related to the use of opium, search powers granted to the police, orders for the confiscation or restitution of seized drugs and a reverse onus for cases of simple possession of drugs. The possibility of requesting that a higher Court issue a writ of *certiorari* with respect to prosecutions carried out under this Act was eliminated.

The post-war period led to a string of major amendments to the offences, penalties, police powers and criminal procedure provided in the *Opium and Narcotic Drug Act*. There are several factors to explain this legislative ferment: the concerns raised by Emily Murphy's writings about the extent of the "scourge" of drugs in Canada<sup>[28]</sup>; the renewed conflicts between Whites and Asians in British Columbia; the mobilization of doctors' and pharmacists' associations to prevent the Act from infringing on their activities; the establishment in 1919 of the Department of Health and the powerful Narcotics Division (the predecessor of the current Office of Controlled Substances), which were responsible for enforcing international conventions on drugs in Canada; the establishment in 1919 of the Royal Canadian Mounted Police (RCMP), responsible for enforcing the *Opium and Narcotic Drug Act*; the enactment of the *Harrison Narcotic Act* in the United States in 1914; and the mobilization of the international community to enforce the *International Opium Convention* (The Hague - 1912) imposed on a number of countries by the 1919 Treaty of Versailles.

### The establishment of the narcotics division

The enactment of the *Harrison Narcotic Act* in the United States and the mobilization of the international community to enforce The Hague Convention quickly brought to light three major shortcomings of the *Opium and Narcotic Drug Act, 1911*.<sup>[29]</sup>

The first problem appeared when the time came to control drug imports and exports. The Act had only vague instructions concerning trading in drugs for medical or scientific purposes. That being the case,

customs officials were reluctant to seize cargo containing opium or other drugs.

The second problem stemmed from the enactment in the United States of the *Harrison Narcotic Act*, which was similar to the Act passed in Canada in 1911. However, it imposed a system of licences issued to businesses by the federal government authorizing them to import or export drugs. This led to a significant demand for illegal drugs in the United States. As the supply of these substances in Canada exceeded consumer demand, traffickers quickly took advantage of this business opportunity and exported their surpluses to the United States. This had become so profitable that in 1918, a committee of the US Senate filed an official complaint with the Canadian government concerning drug trafficking.

The third and final problem stemmed from the fact that traffickers quickly found ways to avoid the provisions of the 1911 Act because its enforcement was not centralized within a single government agency. On the one hand, Customs was attempting as best it could to control legal trade in drugs whereas on the other hand, municipal police departments handled illegal trafficking, which was becoming increasingly sophisticated every year, requiring that new powers be granted to the police.[30]

The many amendments to the Act to deal with these problems were orchestrated in part by F. W. Cowan the first Chief of the new Narcotics Division (1919-1927) of the Department of Health, and in particular by Colonel C. H. L. Sharman, the former RCMP officer who succeeded him (1927-1946). Cowan quickly understood after becoming Chief of the new division that he would have to centralize control over both legal and illegal trade in drugs to ensure that the Act could be enforced effectively, thereby assuring the long-term survival of his organization. During his tenure, an impressive communications network was created, and by the end of the 20s, it included the other divisions of the Department of Health, the Department of Justice and the lawyers hired to prosecute drug offences, the RCMP, the media, municipal police departments, associations representing doctors and pharmacists, governments and agencies responsible for enforcing the laws of other countries, including the United States, and international narcotics control agencies established by the League of Nations.

Under Sharman's impetus, the administration of information from all of these participants was eventually conducted solely by the Division, and no longer by the Department of Justice or the RCMP. This made it possible for the director to have an overall picture of the narcotics situation, thereby making him an "expert" in the field. A former official of the Division described Colonel Sharman as "a Czar running an empire of his own." [31] *His influence grew when the Division was placed under the authority of the Deputy Minister of Health. The reorganization fostered a closer and more direct relationship with the Minister and Members of Parliament, making it possible for him to short-circuit proposals from other divisions within the Department. And when the time came to add further offences, penalties, criminal procedures or new police powers in the 20s, the Division never hesitated to take advantage of the "panic" generated by the media in Vancouver, or Emily Murphy's writings, to justify such amendments.* [32]

*From the standpoint of enforcing the Act, this structure was very useful. For example, up until the 50s, from the moment a police officer or a lawyer, anywhere in Canada, informed the Chief of the Division of a weakness in the Act, he would draft proposed amendments, pass them on to his network for rapid consultation, and if necessary, he would encourage the Minister of Health to introduce a bill to correct the problem situation. The federal drug bureaucracy as we know it today was born!*

*In such a context, the establishment of a network like this had a significant impact on the direction that would be taken by Canadian narcotics legislation:*

*In short, the establishment of an administrative organization to enforce narcotic law had the unintended consequence of creating a centralized pressure group which had the motivation and influence to play a major role in shaping the future course of the legislation. This centralization of power and expertise together with the fact that the resources were directed mainly at a socially powerless group helps to*

*explain the virtual absence of an effective criticism and alternative proposals for control from 1920 to 1950. [33]*

#### ***Amendments to the Opium and Narcotic Drug Act (1920-1938)***

*Many amendments were made to the 1911 Act prior to an in-depth overhaul of the Act in 1938. It was during this period that cannabis was added to the schedule of the Act.*

#### ***Amendments to list of substances in schedule: Addition of cannabis***

*From 1911 to 1938, many drugs were added to the schedule of the Opium and Narcotic Drug Act. The 1911 Act was introduced to control only four drugs. In 1938, when the Act to amend the Opium and Narcotic Drug Act [34] was enacted, the schedule listed more than 15 drugs, including derivatives or salts, one of which was cannabis, added in 1923.*

*During a sitting of the Committee of the Whole in connection with a review of the 1923 Act, Minister of Health Henri-Séverin Bédard simply said about the substance that, "There is a new drug in the schedule." [35] That is how cannabis ended up in the schedule to the Act. According to Giffen, the circumstances leading to the decision remain obscure because, until 1932, the issue of the effects of cannabis on people's physical, psychological or mental health had never been raised in Parliament. Giffen described the criminalization of the drug as a solution without a problem.*

*In the United States, beginning in 1890, some American doctors were worried that the potency of cannabis appeared to be variable and that individual reactions when cannabis was taken orally appeared to be unpredictable. Thus despite the continued use of much more dangerous drugs like barbiturates and opiates, cannabis was abandoned by doctors. At the beginning of the century, the discovery of the hallucinogenic nature of cannabis contributed considerably to its reputation as a dangerous drug. However, the people who wrote the *Harrison Narcotic Act* had not deemed it appropriate to subject it to the controls provided in the Act. [36] But in 1915, California became the first American state to prohibit the use of marijuana, and in the early 20s, marijuana had "become a major 'underground drug' traced to an influx of Mexican workers into Southern United States in the 1910s and 1920s." [37] As with opium, labour disputes, the economic interests of big business and morality served as catalysts to create a popular movement in favour of the prohibition of cannabis in the United States, which led to the passage of the *Marijuana Tax Act* in 1937, prohibiting the use and production of cannabis.*

*Unlike in the United States, there were no reliable accounts of the non-medical use of cannabis in Canada before the 1930s. [38] And unlike California, Canada was not faced with an influx of Mexican workers. Why then was cannabis added to the Opium Act schedule?*

*In 1922, Emily Murphy referred to the harmful effects of cannabis on human behaviour in her book *The Black Candle*, in which she worked over most of the articles she had published in *MacLean's* magazine. In the chapter entitled "*Marihuana - A New Menace*" she reported comments made by the Chief of the Los Angeles Police Department, who described the terrible effects of cannabis.*

*But Giffen's research in the archives of the Department of Health indicates that these scare tactics, which were steeped in morality, were not behind the placing of cannabis in the *Opium and Narcotic Drug Act* schedule, particularly given that at the time, it was virtually unknown in Canada and its use was not a problem. [39] This is confirmed in section 7 of the 1932 Act, which amended a provision of the 1920 Act by allowing the manufacture, sale or distribution, without a permit, of medicines if they contained only small quantities of certain drugs listed in the schedule. In 1932, the measure would henceforth apply to cannabis. During parliamentary debate on the introduction of this statute, the discovery of the existence of this drug appeared to elicit the interest of certain parliamentarians. During Committee of the Whole, MP*

Ernest Lapointe asked the Minister of Health, "What is *cannabis sativa*?", and the Minister replied "Hitherto this was a drug which was not included in the list which might be used. It is one form of the drug used in India which, I believe, goes under the popular name of hashish. There is no objection to the use of it ...."[40]

*In short, it is remarkable that, over seventy-five years later, we should still not know why cannabis was placed on the list of prohibited drugs. On the other hand, no shortage of "reasons" were found in the years that followed.*

*Under the influence of American media campaigns, which were taken up by Canadian newspapers, and of horrifying accounts by police officers about young Canadians who were physically and mentally destroyed after using cannabis, the attitude of federal parliamentarians towards the drug would become less and less tolerant. The 1938 Act, enacted one year after the passage of the Marijuana Tax Act in the United States, was the end result of this "new panic". Section 3 of the Act prohibited anyone from growing cannabis or opium poppy without first having obtained a permit from the Department of Health. The penalties for this new offence were the same as those provided for trafficking in, and simple possession of, cannabis. This measure was unusual because Canada, for the first time, had climate conditions conducive to the growing and production of a drug, which it did not for the other drugs in the schedule. An analysis of parliamentary debates shows that the Department of Agriculture conducted scientific experiments on industrial hemp by growing cannabis at the Experimental Farm in Ottawa and at another research centre near Montreal. A number of entrepreneurs in Ontario were still growing hemp. The 1938 Act put an end to the practice.*

Following the introduction of the Bill, Minister of Health Charles Power said in connection with section 3: "The proposed amendments deal to a considerable extent with the attempt which is being made by the department to control what, though it cannot be called a new drug, is a new menace to the youth of the country".[41] Later, he said that it was very dangerous to smoke marijuana cigarettes. To demonstrate his comment, he cited a report prepared by Harry J. Anslinger, the first commissioner of the *Federal Bureau of Narcotics*, in which the drug was described as, "the assassin of youth ... one of the greatest menaces which has ever struck that country".[42] The Minister of Health nevertheless said that the situation in Canada was not as serious as in the United States. The statements by the Minister of Health about the harmfulness of cannabis were not disputed by any members, even though no research was put forward in defence of the statements made.

*The most important amendments to the schedule were made in 1932, following the enactment of the Act to amend the Opium and Narcotic Drug Act, 1932.[43] In the amendments, over 10 psychoactive substances were added to the schedule, both natural drugs (like coca leaf) and synthetic drugs. The inclusion of these substances coincided with the adoption in 1931 of the Geneva Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, with Colonel Sharman making a major contribution to the negotiations leading to the signing of the convention. It was also at this time that Canada had begun to play an active role internationally with respect to drugs in support of the efforts of the United States and Harry J. Anslinger to better control international drug trafficking, particularly in the producing countries.[44]*

During the debates on the enactment of the 1932 Act, which would implement the provisions of the 1931 Convention into Canadian law, no questions were asked of the Minister of Health, Murray McLaren, concerning the reasons leading the Minister to include the above-mentioned drugs in the schedule

#### **Amendment of penalties**

The penalties for trafficking or illegal possession of narcotic drugs were amended several times during this period. Furthermore, other offences were created as trafficking techniques to get around the law became

increasingly sophisticated. According to Giffen, there were several reasons why the authorities responsible for enforcing the Act wanted more flexibility:

"Latitude in regard to penalties helped to overcome the reluctance of the courts to convict in cases of lesser culpability and respectable social status; such cases were inevitable in the early years when the addict population was still relatively heterogeneous. Moreover, popular support for the law was more likely to be maintained if sentences that were regarded as unjust by local people could be avoided." [45]

This flexibility gave more options to the police and Crown attorneys allowing them to negotiate guilty pleas more easily, to decide on the type of proceeding or to make use of people who had been charged as informers or undercover agents by promising them a reduced sentence or the withdrawal of the charges. In some instances, it also allowed for minimum sentence thereby reducing the Court's discretion during sentencing. The increase in the severity of penalties also sent a clear message to judges about the severity and level of social reprobation for drug offences. The possibility of proceeding by summary conviction also reduced the time period between the arrest and the sentencing. This made it possible to significantly increase the number of convictions. This was particularly important, because the higher the number of convictions, the more the people would be able to see the extent of the problem and the effectiveness of the act.[46]

The 1911 Act provided for a maximum sentence of imprisonment of one year and/or a maximum fine of \$500. In 1920, after the *Act to amend the Opium and Narcotic Drug Act, 1920*, was passed[47], a minimum fine of \$200 was assessed with the maximum increased to \$1,000. In 1921, the *Act to amend the Opium and Narcotic Drug Act, 1921*,[48] significantly amended the penalty for this type of offence. Hybrid offences were created (summary conviction and indictment) for these two illegal activities. For an indictment, a maximum term of imprisonment of seven years could be imposed. For a proceeding by summary conviction, the maximum prison sentence was increased to 18 months, with the possibility of an additional 12 months for default of payment of any fine assessed by the Court. In 1922, the *Act to amend the Opium and Narcotic Drug Act, 1922*,[49] amended the sentence of imprisonment for a summary conviction by providing for the imposition of a minimum prison sentence of six months. In 1925, Parliament passed an amendment providing for the imposition, at the judge's discretion, of a sentence of forced labour for a summary conviction, for simple possession of a drug.

In 1921, an offence was created for the sale, gift or distribution of drugs by a trafficker to a minor. In such cases, one could only proceed by way of indictment and anyone convicted could receive a maximum prison sentence of seven years. Following a highly emotional debate, the sentence of whipping, which had been suggested by a Member, was withdrawn. However, the next year, while reviewing the 1922 Act in the Committee of the Whole, the same member once again suggested the imposition of a sentence of whipping for traffickers selling drugs to minors. At the end of the debate, the Minister of Health agreed to add the penalty of whipping to the Act. In 1929, federal parliamentarians stated their opinions about extending the punishment of whipping to trafficking and simple possession of drugs, as provided for in the *Act to amend and consolidate the Opium and Narcotic Drug Act, 1929*,[50]

*Another important penalty was introduced in the 1922 Act: the deportation of immigrants. Section 5 of this statute provided that, except as may otherwise be provided in the Immigration Act, any immigrant convicted of trafficking, simple possession or selling drugs to a minor could be deported from Canada. From 1922 to 1944, when the last immigrants were deported for drug offences, over 1,082 Chinese (82%) were deported, compared to 163 Americans (13%) and 68 other persons of various ethnic origins (5%), for a total of 1,313 deportations. In 1930, the "panic" in British Columbia was a thing of the past, but during the previous eight years, over 638 Chinese had been deported by the Canadian authorities.[51]*

There were other offences as well in the legislation, for example possession of pipes, lamps or any other