HIGH TIME TO STOP THE WAR ON MARIJUANA

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By Professor Alan Young

With little fanfare, marijuana became a prohibited substance in 1923. Even though it had been used for sacramental, medicinal and recreational purposes for 10,000 years, when Parliament decided to criminalize marijuana use in 1923, few members of Parliament had even heard of this drug. In fact, in 1923, few Canadians were using it, and until the explosion of the counterculture in the 1960’s, there were only a handful of recorded convictions for the use or sale of marijuana. After 64 years of chasing the cannabis criminal, we have seen consumption of marijuana skyrocket, with an estimated two million Canadians indulging in this "vice" despite the presence of the draconian criminal sanctions. The only legacy left from this battle with marijuana consumers is the expenditure of billions of dollars in pursuit of the cannabis criminal, and the saddling of some 600,000 Canadians with criminal records for possession of marijuana.

The prohibition on marijuana consumption is unlike any other prohibition found in Western liberal democracies. In many, if not most, of the cases before the courts we find law-abiding, productive citizens being transformed into criminals by police, prosecutors and judges who might have indulged in the very same "criminal" activity at some time in their lives. As much as public officials protest that they never inhaled, the reality is that the law has lost touch with the biblical wisdom: "Let he who is without sin cast the first stone." Plainly and simply, the prohibition of marijuana is an exercise in hypocrisy, duplicity and stupidity.
In order to justify inclusion of marijuana as a prohibited substance in the 1920’s, public officials and media representatives were required to construct an outrageous "dope fiend mythology" to frighten the masses and convince them that they should look to the government for protection. Judge Emily Murphy, the first woman judge in Canada, wrote in her book, The Black Candle (1922), that "persons using this narcotic lost all sense of moral responsibility. While in this condition they become raving maniacs and are liable to kill or indulge in any form of violence to other persons, using the most savage methods of cruelty." Similarly, Maclean’s magazine reported in 1938 that marijuana will "send a large population of the Dominion’s population to the insane asylum."

Although their are few people in 1997 who believe this hyperbolic drivel, there still remains a sense among Canadians that Parliament would not retain the prohibition unless there existed some significant danger from marijuana use. However, this evidence of significant danger simply does not exist. The fabric of Canadian society is not now, nor had it ever been, in peril as a result of many Canadians freely choosing to intoxicate themselves with this mild psychoactive substance. We have far more to fear from problem drinkers than we do from Cheech and Chong types who get high, giggle and gyrate to rock music. Ultimately, there will be many Canadians who frown on this form of intoxicating activity; however, we still would like to believe that Canada is a free and democratic country, and the fact that many Canadians frown upon rodeos or violence in hockey does not provide a justification for banning all violent sports and forcing all Canadians to play golf. Freedom of choice is a defining feature of democratic political theory, and this freedom should not be limited save and except for the most compelling of reasons.

There is no compelling reason for forcing Canadians to avoid using marijuana by threats of imprisonment. Despite false claims by drug warriors, there is no convincing evidence that marijuana use leads to irreversible physical or psychological harm (although it must be recognized that heavy smoking of any substance will lead to pulmonary problems). There is no convincing evidence that marijuana is physically addictive or is criminogenic. There is no evidence that marijuana is a gateway or stepping-stone to the use of more dangerous drugs. Of course, there are some people who abuse marijuana, just as there are people who abuse the multitude of junk-food products available on the free market, but this is more a reflection of the reckless nature of certain consumers than of the insidious properties of the drug. I would concede that there are studies that point to various medical harms unique to marijuana. But one cannot take seriously studies that employ the following methodology: force a laboratory rat to smoke 100 joints a day, watch it slowly die and then report that marijuana consumption was the cause of death. Using this same methodology, I could very likely prove that bubble gum is a deadly, evil substance. The few reported studies on human subjects who consume moderate amounts of marijuana do not reveal any greater incidence of physical or psychological problems then are found among non-smokers.
The refusal to believe that marijuana is harmful is not a pipe dream of spaced-out and aging hippies (if they still exist.)

Virtually every commission of inquiry in the Western world has reached this conclusion. Starting with the 1893 Indian Hemp Commission, every time a government establishes a commission of inquiry to study the issue, the commission concludes that the marijuana problem is a tempest in a teapot and that marijuana use should not be considered a criminal activity. This consensus emerged in the 1944 LaGuardia Report (U.S.), the 1967 Presidential Commission on Law Enforcement (U.S.), the 1968 Report by the Advisory Committee on Drug Dependence (British), the 1972 President's Commission on Marijuana and Drug Abuse (U.S.), the 1972 Inquiry into the Non-Medical Use of Drugs (the Canadian LeDain Commission) and the 1979 Report on the Non-Medical Use of Drugs (Australia). Not only do these educated and informed commissioners conclude that the marijuana prohibition is without a justifiable foundation, but, in addition, recent (1995) public opinion polls in Canada indicate that 70 per cent of Canadians favor a change in drug policy with a movement toward decriminalization of marijuana.

Displaying utter contempt for democratic principle, the Canadian government (and its mentor, the U.S. government) simply shelved these reports, allowing them to collect dust while hundreds of thousands of North Americans are still being persecuted simply because they prefer to intoxicate themselves with marijuana and not just with alcohol, tobacco or caffeine. It is a strange world indeed when one’s choice of intoxicant becomes the dividing line between law-abiding and criminal activity in a world in which the consumption of intoxicating substances, for better or worse, has become an ordinary fact of life.

People begrudgingly accept some erosion of democratic principle and some curtailment of legal rights during an emergency situation or during war. So it should come as no surprise that politicians have employed the metaphor of a "war on drugs" to justify disregarding the popular will of the people and the conclusions of informed scholars and scientists. When Nixon, Reagan and Mulroney issued their declarations of the war on drugs, it was not because marijuana was truly perceived to be an enemy of the people. It was a signal that the government was willing to resort to propaganda to sustain the highly intrusive and powerful law enforcement agencies which were set up to combat marijuana use. Without conducting any reputable scientific research, the Canadian and American governments continued to assert that marijuana consumption would lead to social harms far worse than the 10 horrific biblical plagues. Drug users are blamed for every social ill and every manifestation of urban decay. Violence, indolence, ignorance and all manner of physical and psychological injuries were - and still are - attributed to marijuana use despite the fact that many marijuana users are now highly respected leaders in the worlds of business, law and medicine.
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Written by Alan Young
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North America is becoming increasingly isolated in its punitive response to marijuana use. The Netherlands, Germany, Italy, Spain, South Australia and the Australian Capital Territory have all moved toward decriminalization in recognition that the war on marijuana consumers is both a failure and an injustice. While other Western liberal democracies have seen fit to rethink their approach to soft-drug use, North American drug policy still lingers in the afterglow of the Reagan "just say no" approach to the issue, and, as with many other issues of public policy, Canada cannot sever the umbilical cord that connects us to American folly. When Nancy Reagan coined the expression "just say no," North America took one giant step backward in the development of a rational approach to social problems. The "just say no" approach to drug use is as sensible and sophisticated as having psychiatrists deal with patients suffering from clinical depression by telling them to "just cheer up."

The sad reality is that the war on marijuana consumption has created far more harm for society than the consumption ever did. By saddling marijuana consumers with criminal records, we have left many law-abiding and decent Canadians with a mark of Cain that can prevent them from pursuing economic opportunities and can only serve to marginalize and ostracize people who would most likely become productive members of society. Furthermore, the false labeling of marijuana as a dangerous narcotic has prevented many cancer and AIDS patients from securing marijuana for medicinal purposes. It has become readily apparent that marijuana is a valuable antiemetic that reduces the nausea of chemotherapy; however, our government prefers to see AIDS patients suffer through their last days rather than admit that marijuana has therapeutic value.

Most significantly, the endless pursuit of the cannabis criminal diverts valuable justice resources away from the pursuit of real predatory criminals. Victimization surveys indicate that 27 per cent of Canadians are afraid to walk the streets at night, and this is surely not a product of fearing confrontation with a marijuana user. Billions of dollars are being spent on this war on marijuana, and even if one objects to marijuana use on moral grounds, it must be recognized that justice is a finite commodity. We cannot afford to waste valuable resources investigating and prosecuting minor criminal activity while violent crime has increased by 300 per cent since 1962. Criminal justice is a blunt instrument that must be used with restraint. Restraint means that social nuisances and other petty criminals should be dealt with outside the criminal justice system, in order to leave sufficient resources for criminal justice to attend to the crime problems that leave Canadians fearful and insecure in the streets and in their homes. The limited resources available for law enforcement should be used to apprehend and prosecute dangerous criminals, not to manufacture criminals who pose no threat to the well-being of the community.

Canada will never be a drug-free zone, and we should abandon the naïve aspiration to eradicate drug use by threat of imprisonment. The goal should be to facilitate responsible use of substances that are relatively harmless. Responsible drug use can never be attained while the
government clings to exaggerated and misinformed propaganda employed to scare young
people into thinking that marijuana will leave permanent scars on their physical and
psychological development. When the curious teenager smokes his/her first joint and the world
does not collapse at his/her feet, this same teenager will probably ignore government warnings
about the harms of hard drug use. Given the right information, most young people will make
responsible choices, and government should facilitate responsible and informed choice. In the
many jurisdictions that have decriminalized marijuana use, studies have conclusively
demonstrated that consumption of marijuana among young people does not skyrocket because
of lenient policy. In the Netherlands, one can walk into a local café and purchase marijuana. But
the rate of consumption of marijuana by young people remains stable at none per cent whereas
in Canada, with the threat of criminal prosecution looming in the shadows, the rate of
consumption hovers between 31 per cent (1979) and 23 per cent (1996).

I am deeply saddened by the political inertia that has left the 1972 LeDain Commission Report
recommendation for decriminalization an unfulfilled promise. Knowing that millions of Canadians
have smoked marijuana, I am bewildered by this government's refusal to take action based
upon the conclusions reached by virtually every government inquiry established to study the
issue. While the academic debate rages on, we still find people engaged in the marijuana trade
serving longer sentences than predatory criminals such as Karla Homolka. For the criminal, the
cost of taking a human life in an act of homicidal rage is far less than the cost of distributing a
relatively safe psychoactive substance to individuals who have made an informed choice to
partake in this activity. I have seen marijuana traffickers and importers sentenced in excess of
15 years, and I have seen convicted rapists receiving a two-year slap on the wrist. Our priorities
are all askew, and it is no surprise that surveys conducted by the Department of Justice reveal
that the vast majority of Canadians believe that the criminal justice system is a "joke" that is
often "ineffective or impotent."

Criminal justice should serve to protect the life, liberty and security of Canadians. We are
consumers of security, and government bears a heavy burden in providing this service. The
time has come for Canadians to demand that their governments be responsive to the needs of
ordinary citizens. Such responsiveness requires a refocusing of the "criminal justice industrial
complex" on the real concerns of Canadians. We should no longer accept the current state of
affairs in which most municipal police budgets allocate more money for morality concerns (i.e.
drugs, gambling and prostitution) than they do for the investigation of sexual assault. In order to
bring the criminal justice system into proper focus, it will be necessary for the hundreds of
thousands of law abiding and productive baby boomers who have smoked marijuana to
abandon the hypocrisy of claiming never to have inhaled and to admit that they have never
exhaled. Marijuana has been consumed for 10,000 years and civilization has not fallen as a
result. But waging this 64-year war on marijuana might well bring the criminal justice system to
the brink of collapse.
Alan Young is a professor of law at Osgoode Hall Law School. On April 28, he will start a criminal trial in which he will be challenging the constitutionality of marijuana prohibition.