



Legalization of Cannabis – The Canadian toleration pattern – Does it set up a precedent for other developed and developing countries to follow?

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Abstract

The idea of Canadian regulation with regards cannabis regulation has been highly appreciated by legal scholars and thinkers in relation to how cannabis can be utilized for recreational purpose. The paper aims to provide an analysis of how cannabis consumption and regulation can be constructed under statutory capacity without imposing daring restriction. The recreational purpose with which the Cannabis Act of Canada was provided is not limited to one consideration – restriction. The act involves giving regulation to whether or not cannabis can be consumed without causing illegal consideration for the state to consider. The paper will provide how the definitions section with the punishment and possession section of the act is key to giving a regulation of cannabis possession and consumption. The paper also looks upon how the act has established its own purpose with its indication towards protecting a particular group. The paper also considers if this model is applicable towards other countries in its concluding remarks.

Keywords – Marijuana, Cannabis, Canada, Legalization, consumption, regulation

Introduction

The requirements with regards to the regulation behind cannabis consumption has moved from various considerations. There considerations may be deemed appropriate when one consider the impact that cannabis consumption has on individuals and even

communal activities. Individuals with vested interest from various parts of the world have given due diligence and jurisprudence upon the matter of legalizing cannabis. There are two countries who have considered the idea of cannabis regulation with a very sturdy outlook of statutory requirements that should be fulfilled regardless of the product they are dealing with. The Canadian example presents us with a model that delves deep into how medicinal capacity of utilizing cannabis should be given due recognition and cognizance, not only giving procedural and regulatory framework behind cannabis consumption. The legal discretion upon cannabis consumption is not linear in terms of proving a strict definition for every single piece of action committed in relation to cannabis but rather makes way for flexible grounds of moderation as may be required. The aim here is to provide an understanding of whether or not cannabis consumption is properly regulated in this country and can this be adopted into other countries.

The Canadian Outlook

The cannabis prohibition under Canada's legislative history is based upon the prohibition under this particular act – *Narcotics Drug Act Amendment Bill*. The recreational use of cannabis had become popular in Canada amongst the middle-class college students as its ease of access became more conventional. There were increasing number of convictions based on cannabis possession in varying amounts – where the conviction rate was increasing every year. The Canadian history of

cannabis exemplifies one particular aspect – the recreational use of cannabis amongst the youth of the Canadian population. For this particular purpose, when the Cannabis Act of Canada was implemented, it worked with establishing boundaries around what cannabis would exactly involve. Under the *Cannabis Act of Canada*, under Section 2, sub-section 1, of the definitions section – “cannabis means a cannabis plant and anything referred to in Schedule 1 but does not include anything referred to in Schedule 2. (*cannabis*) *cannabis accessory* means – (a) a thing, including rolling papers or wraps, holders, pipes, water pipes, bongs and vaporizers, that is represented to be used in the consumption of cannabis; or (b) a thing that is deemed under subsection (3) to be represented to be used in the consumption of cannabis. (*accessoire*) *cannabis plant* means a plant that belongs to the genus *Cannabis*. (*plante de cannabis*)”¹⁵ This makes it very clear that cannabis has particular criteria’s under the Canadian jurisdiction, with a certain statutory definition that needs to define the manner in which cannabis will be regulated. There is even a section upon what accessories would be included when considering the use of cannabis – bongs, vaporizer, water pipes, holders, rolling paper etc. The Canadian regulation seems to derive its authority to functionally describe what cannabis should include under legal terms. There are schedules also present under the act that regulate the categorization of what exactly will include cannabis products and what will not include those products. This is massively beneficial for consumers and legal authorities to understand what products can be consumed under legal terms.

The Cannabis Act of Canada also has determined the manner in which cannabis needs to be regulated under a broad spectrum of chemical-based offences. The act states – “*chemical offence-related property* means offence-related property that is a chemical and includes (a) anything that contains any

offence-related property that is a chemical; or (b) anything that has any offence-related property on it that is a chemical. (*bien infractionnel chimique*) *chemical property* means (a) any chemical offence-related property; (b) a chemical that is not chemical offence-related property; or (c) anything that contains a chemical referred to in paragraph (b) or anything that has such a chemical on it. (*bien chimique*)”¹⁶ The idea is here to simply provide the Canadian legal authorities a structure of how cannabis consumption can be regulated under this particular act when considering its physical form and intake. Although the section makes use of the word chemical offence, the better term here in terms of regulation would be to include synthetic as cannabis in itself can be utilized in various forms. Consumption can be based upon inhalation through solid means or gaseous means, which can change the literal form of the cannabis product. The act is also regulating the meaning of distribution and promotion of such products as it needs to monitor under statutory capacity. The act states that – “*distribute* includes administering, giving, transferring, transporting, sending, delivering, providing or otherwise making available in any manner, whether directly or indirectly, and offering to distribute. (*distribuer*) *informational promotion* means a promotion by which factual information is provided to the consumer about (a) cannabis or its characteristics; (b) a cannabis accessory or its characteristics; (c) a service related to cannabis; or (d) the availability or price of cannabis, a cannabis accessory or a service related to cannabis. (*promotion informative*)”¹⁷ This provides the manner in which cannabis consumers and sellers need to understand the manner in which cannabis reaches people, especially youths. The idea is to make sure there is vigilance upon how the Cannabis Act is regulating promotion and distribution of such products as well – there

¹⁵ Cannabis act, 45 § 2 (2018).

¹⁶ *Id.*
¹⁷ *Id.*

is no blanket legal approval over the consumption and selling of cannabis.

The issue with this act remains in relation to how broad the scope illegal cannabis can be declared under the act, especially in relation to its usage or selling. Under the act itself, cannabis and its illegality is prescribed through the following contentions – “*dried cannabis* means any part of a cannabis plant that has been subjected to a drying process, other than seeds. *illicit cannabis* means cannabis that is or was sold, produced or distributed by a person prohibited from doing so under this Act or any provincial Act or that was imported by a person prohibited from doing so under this Act. (*cannabis illicite*) *young person* means (a) for the purposes of sections 8, 9 and 12, an individual who is 12 years of age or older but under 18 years of age; and (b) for the purposes of any other provision of this Act, an individual who is under 18 years of age. (*jeune*)”¹⁸ This provides the manner in which cannabis in terms of its illegality is described under the act, when it is referencing illicit, the biggest contention is put upon the act itself. The act becomes the primary consideration for establishing whether or not an individual would be indicted under the scope of illicit, which gives wide access and power to the authorities to determine the scope of illicit. The definition of young person is a complicated point of contention – the classification involves individuals above the age 12 but under the age 18 to be eligible as a young person, although various other jurisdiction would debate whether this would be the appropriate age. The act deals with a highly consumed narcotic substance – cannabis and the classification of a young person under the act involves the question of when does an individual gain conscious understanding of their cannabis related activities. The understanding of illicit and young person under this act is very arbitrary in the nature of how cannabis regulation should take place.

The purpose with which this act was established was statutorily described under the act through section 7. The section prescribes three main contentions under the purpose of cannabis regulation – the idea of providing regulatory framework to cannabis consumption and selling, the deterring nature of illicit activities in relation to cannabis and protect the most targeted group of cannabis consumption – the youth and young people. The act lays down the purpose under section 7 as following – “Under the act, the Purpose of this particular act – its regulatory intent was established through section 7 - ‘7 The purpose of this Act is to protect public health and public safety and, in particular, to (a) protect the health of young persons by restricting their access to cannabis; (b) protect young persons and others from inducements to use cannabis; (c) provide for the licit production of cannabis to reduce illicit activities in relation to cannabis; (d) deter illicit activities in relation to cannabis through appropriate sanctions and enforcement measures; (e) reduce the burden on the criminal justice system in relation to cannabis; (f) provide access to a quality-controlled supply of cannabis; and (g) enhance public awareness of the health risks associated with cannabis use.”¹⁹ With regards to the purpose of the act, it has established that the aims are explicitly talking about how regulation should involve a consideration for health and protection of young persons, prevention or deterrence, reduction of burden, quality-controlled supply and enhancement of public awareness in relation to cannabis consumption. It should be noted that this section has given due consideration to how the application of the act and its provisions should take place.

The idea of criminal activities in relation of cannabis possession is massive in countries that are debating upon the recreational use of cannabis. Under the Cannabis Act of Canada, the criminal activities is prescribed as the following – “DIVISION 1 Criminal Activities

¹⁸ *Id.*

¹⁹ Cannabis act, 45 § 7 (2018).



Marginal note: Possession. 8 (1) Unless authorized under this Act, it is prohibited (a) for an individual who is 18 years of age or older to possess, in a public place, cannabis of one or more classes of cannabis the total amount of which, as determined in accordance with Schedule 3, is equivalent to more than 30 g of dried cannabis; (b) for an individual who is 18 years of age or older to possess any cannabis that they know is illicit cannabis; (c) for a young person to possess cannabis of one or more classes of cannabis the total amount of which, as determined in accordance with Schedule 3, is equivalent to more than 5 g of dried cannabis; (d) for an individual to possess, in a public place, one or more cannabis plants that are budding or flowering; (e) for an individual to possess more than four cannabis plants that are not budding or flowering; or (f) for an organization to possess cannabis. Marginal note: Punishment (2) Subject to section 51, every person that contravenes subsection (1) (a) is guilty of an indictable offence and is liable (i) in the case of an individual who is 18 years of age or older, to imprisonment for a term of not more than five years less a day, (ii) in the case of a young person, to a youth sentence under the *Youth Criminal Justice Act*, or (iii) in the case of an organization, to a fine in an amount that is in the discretion of the court; or (b) is guilty of an offence punishable on summary conviction and is liable (i) in the case of an individual who is 18 years of age or older, to a fine of not more than \$5,000 or imprisonment for a term of not more than six months, or to both, (ii) in the case of a young person, to a youth sentence under the *Youth Criminal Justice Act*, or (iii) in the case of an organization, to a fine of not more than \$100,000.²⁰ The idea here is to simply provide what takes place under possession under this act and what punishment can be provided accordingly with other statutory acts under the jurisdiction of Canada. The possession under this act is determined through a multifaceted consideration of how various types of legal

conditions have been put upon how a particular act would be deterrent for a youth under the act accordingly. This act has majorly catered to the consumers of cannabis – especially individuals that might have easy access to acquiring these products. The emphasis placed upon possession involves two major factors – the location where a particular individual possesses a cannabis plant and the role that dried cannabis has under possession in this particular act. The act then gives prescription to punishment under the understanding that deterrence must be built with regards to illegal conduct on cannabis consumption and sale. The inclusion of the Youth Criminal Justice Act clearly showcases the overall goal of this act – to comprehend the acts under this act that involve youths should always be given due emphasis under the act.

Conclusion

The Canadian Cannabis Act of 2018 has provided a massive precedent for how cannabis regulation for recreational purpose. This involves not only consideration for how individuals that possess cannabis should be regulated under statutory capacity but also individuals that are involved in the sale of such products and products infused with cannabis. The possession of cannabis should be quality controlled by the authorities without interference from acts that could potentially hinder the prosecution of individuals working around cannabis consumption and production. The issue of whether the Canadian example can be followed by other countries should be considered by the extensive manner of categorisation and regulation that the cannabis act provides. The act has a detailed and thorough section of defining what cannabis and its various nuances in terms of its usage should be defined under legal capacity. The only problem that this particular act seems to have encountered is with regards to how its going to regulate the legal definition of young persons for the purpose of regulating cannabis possession. The possession of cannabis will not

²⁰ Cannabis act, 45 § 8 (2018).



only involve one singular consideration especially when young individuals involve, hence, this particular act should give more jurisprudence to how young person under this particular act should be expanded for whether or not cannabis related activities can be associated with them. The value of this act lies in the fact that it's a regulating force which gives wide discretion to the public and legal authorities to regulate cannabis possession, consumption, transportation, and any activity relating to it – especially keeping in mind that youth are most effected by these activities.