

THE BCAPL NEWSLETTER

The British Columbia Anti-Prohibition League respects the right of adult Canadians to choose what they consume, and advocates the repeal of the *Controlled Drugs and Substances Act*

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Editors for this issue:

PO Box 8179 Victoria BC V8W 3R8

Lance Boke, Henry Boston

The law will never make men free; it is men who have got to make the law free. They are the lovers of law and order, who observe the law when the government breaks it. – HENRY THOREAU, *Slavery in Massachusetts*, 1854

A SPECIAL COMMITTEE ON ILLEGAL DRUGS:

A Special Committee of the Senate has been meeting to reassess Canada's anti-drug legislation and policies. We present here *excerpts* from the written briefs and oral presentations given by two witnesses who appeared before the committee.

The Committee hearings have focused mainly on the study of what is still largely presumed to be the "drug problem" – rather than the "drug prohibition" problem – with its attendant intolerance, persecution, and human rights violations.

There have been some witnesses whose views have been informed by less prejudiced awareness, and it is two of these from which we will present excerpts in order to reveal the more rare highlights. And yet...still one of the most enduring erroneous convictions, is that "drug use" – other than that to which the dominant culture is accustomed, – is pathological.

Committee Mailing Address: Special Committee on Illegal Drugs, The Senate, Ottawa, Ontario, Canada, K1A 0A4
Website: http://www.parl.gc.ca/common/Committee_SenHome.asp?Language=E&Parl=37&Ses=1&comm_id=66

Proceedings of the Special Committee on Illegal Drugs

Issue 1 - Evidence for April 23, 2001

Mr. Bruce Alexander, Professor, Department of
Psychology, Simon Fraser University:

I should like to talk about it as though I were an anthropologist, which I am not. I am, however, closely connected with three subcultures in Canada that differ dramatically in their views of cannabis. My argument is that this cultural antagonism is a serious problem that cannabis policy must centre upon.

I have a family, of course, who, along with my old friends, feel that cannabis has an ugly and disreputable kind of appearance. They regard it with distaste, which is not so much because they believe that it causes addiction or that it causes lung cancer or because they believe any of the other negative stories, because I can show them quite convincingly that these stories are not true. However, they still have this distaste for cannabis. I think this is an important fact.

Many Canadians find cannabis to be a distasteful thing and they want it to be illegal. In fact, I might mention that when my next door neighbour, who is also my friend, heard that I was coming to talk to the Senate subcommittee, he was afraid that I would single-handedly convince the Senate of Canada to repeal the existing

drug laws. He was so alarmed by that proposition that he wrote a poem for me. This gentleman is a stockbroker, not a poet, but he wrote a poem in which he expressed his extreme distaste for the idea that cannabis would be legalized, knowing full well about all the health arguments that have been easily refuted. Yet, he still wanted me to understand that distaste. He is not the poet laureate, so I will not read the poem, but it is the motivation he displayed that is important.

The second subculture of which I am a member, I would say, is graduate students, faculty and older students at the university. This is a kind of transient subculture, where cannabis is regarded in a totally different way. To them, cannabis is simply a "take-it-or-leave-it" thing. People use it or they do not use it at parties. Some people use it and some people do not use it. It is not a matter of discussion; rather, it is just there and is a part of life. People in this group hardly talk about it. They are a little discreet about it: if you ask them if they use it, they might not want to tell you right now because it is just not an issue. Whereas the first group wants cannabis to be illegal, the second group is generally indifferent about legalizing cannabis.

The third group that I have close contact with consists of heavy cannabis users. The reason that I have this close contact is that I wrote a book, now 11 years ago, entitled *Peaceful Measures: Canada's Way Out of the War on Drugs*. It was published by the University of Toronto

Press right at the time cannabis in Vancouver was becoming much more popular as a kind of subculture. My book was sold in the various cannabis shops around the city, and I became, to my delight, something of a local hero for a short time.

Everyone wanted me to come to their parties and speak to their groups, in particular people in the heavy-cannabis-users group. These are people for whom cannabis legalization is a matter of religion - they want it to be legalized, and they want the approval of other people. They do not want people to think that they are a bunch of addicts, which they are not. They are simply people for whom cannabis plays a major role in their lives.

One young man summed it up for me quite eloquently when he said that there are three pillars in our subculture: vegetarianism, the use of bicycles instead of cars, and the use of dope, meaning cannabis. That is their culture, which is active and good. You cannot go there comfortably without smoking dope some of the time, but it is still a serious culture.

My point is that there is, in Canada, a real cultural problem. The three groups comprise good, well-meaning people that tend to be unkind to each other. People in the third group tend to believe that the people in the first group need education, as if they were stupid, but they are not. The first group knows perfectly well what the realities are. They may not talk often about those realities, but they can easily be convinced about what the realities are, and they still do not like marijuana.

People in the first group may say about people in the third group that they are addicted, but they are not. A few are, of course, but it is rare. They are not addicted; they are just people for whom cannabis plays a role in their culture. They are hurt when people think of them as addicted in the same way that people in the first group are hurt when people think that they need education; they do not. They simply have a culture that has a distaste for something, and the third group has a culture that has a taste for that same something.

[Editor's note: This recognition of cultural prejudices is highly significant. The "war on drugs" exists as a manifestation of a dominant culture's attempt to suppress, obliterate or "correct" other cultures - toward which there is a "distaste," - or which are seen as an out and out threat to cherished values and/or illusions.]

[From the] Testimony of Marie-Andrée Bertrand (Professor Emeritus of Criminology, Université de Montréal) before the SENATE SPECIAL COMMITTEE ON ILLEGAL DRUGS (Nolin Committee)

Ottawa September 25, 2000

Knowledge and Recommendations Which Legislators Have Not Considered

The history of commissions of inquiry into drugs began in 1893 with the royal commission established by the Government of India into Indian hemp. In the years that followed, no fewer than 20 task forces were established by the governments of at least 10 countries to study cannabis and all psychotropic substances, their alleged effects and ways of controlling their use and trade.

Two facts emerge from the reports of these commissions and committees: first, the virtual unanimity of their findings on cannabis and, second, the almost unanimous refusal of legislatures to act on the commissions' recommendations, except in the Netherlands.

Cannabis

From 1893 to 1896, the Indian Hemp Drugs Commission, which was established to determine the harmful effects of cannabis, produced one of the most comprehensive reports imaginable on the question. Its authors concluded that "the moderate use of cannabis produces no injurious effects on the mind" (264) and that excessive use was exceptional in the particular context of India at the time, even though the drug was popular and deemed culturally acceptable in certain social classes in that country. Having considered the assumption that cannabis had criminogenic effects, the Commission found, "For all practical purposes, it may be laid down that there is little or no connection between the use of hemp drugs and crime." (264)

Fifty years later, in 1944, Mayor La Guardia of New York struck a committee to examine the effects of cannabis on intellectual function. The studies conducted invalidated a number of the U.S. government's claims in this respect. The La Guardia Committee studied 48 regular cannabis users living in New York City and concluded, "There is definite evidence in this study that the marijuana users were not inferior in intelligence to the general population and that they had suffered no mental or physical deterioration as a result of their use of the drug." After reviewing the criminogenic nature of the substance, the committee concluded that cannabis users had no aggressive tendencies.

Twenty years later, in 1967, a Presidential Commission on Law Enforcement and Administration of

Justice was mandated to study drugs and their criminogenic effects in the United States. It recommended placing cannabis in a class separate from that of opiates, which induce drug dependence, which is not the case of cannabis.

At virtually the same time, in 1968, the British government commissioned a report from the Advisory Committee on Drug Dependence. The Committee's report recommended that cannabis be removed from the list of opiates, that cannabis possession no longer be punished by imprisonment and that the drug be made available in pharmacies. Having reviewed the effects of cannabis on behaviour and criminality, the Committee concluded, "There is no evidence that taking cannabis in any special way stimulates behaviour of this kind." (30)

That same year (1968), in Holland, a first committee chaired by Louk Hulsmann, then, in 1972, the Baan Committee produced similar reports which subsequently constituted the Netherlands' official policy on the matter. Holland is the only country where this fate has been reserved for expert opinion. The authors recommended that the drug issue remain under the authority of the Minister of Health, as was traditionally the case in the country, and proposed that drugs be divided into two classes, soft drugs and hard drugs. The use and possession of the former were not to be subject to criminal control, which was mainly reserved mainly for trafficking in hard drugs. The general orientation of the reports was determined mainly by health rather than control concerns. As a consequence of this orientation, the Dutch policy is to disseminate consumer information on the quality of products available in the illegal market and to provide substance abusers with health services and substances most likely to enable them to avoid criminal dealers as well as places to use drugs. Not only did the Dutch Parliament accept the Baan Committee's report in 1972, but, when it adopted the report, certain ministers, including the Minister of Justice, found it conservative.

That same year (1972), the U.S. government mandated a Presidential Commission on Marijuana and Drug Abuse, the Shafer Commission, to report on marijuana in particular. The Commission recommended that cannabis no longer be classified as a "narcotic", that possession for personal use and distribution in small quantities for no consideration be no longer criminalized under federal law and that possession no longer be illegal under U.S. criminal law. In the Commission's view, "considering the range of social concerns in contemporary America, marijuana does not, in our considered judgment, rank very high." (167).

In Canada, in 1972, the LeDain Commission, following the most exhaustive review that had ever been conducted of cannabis, found that the probable and

possible effects of cannabis did not justify the criminal policies applied to the substance and that the costs of drug prohibition were too high in view of the substance's known effects. The majority report thus recommended decriminalizing simple cannabis possession and cultivation for personal purposes, removing cannabis from the list of narcotics and classifying it under the *Food and Drugs Act* and, using argument and statistics, rebutted the theories suggesting a progression in use from soft drugs to hard drugs and the criminogenic nature of the drug. One year later, in its final report, having completed experimental studies on human subjects who had been asked to consume large amounts of cannabis, the Commission was in a position to state that the use of this drug caused few acute physiological effects.

In 1979, the Government of Australia commissioned a study on "The Non-Medical Use of Drugs - South Australia". The Commission came to two conclusions concerning cannabis consistent with those of the LeDain Commission: that it should be decriminalized or subject to a "partial prohibition" under which possession and cultivation for personal purposes would cease to be criminal offences, whereas trafficking would remain such an offence. In addition, going beyond LeDain, it proposed adopting a "regulatory" model under which the cultivation and sale of cannabis would come under government control. The Australian report concluded that cannabis creates no drug dependence (96) and, based on the drug's potential therapeutic effects, that it was effective in the treatment of glaucoma, and that THC may impede the development of certain types of cancer (116). The Australian report thus recommended amending the policy of total prohibition of cannabis. It is true, however, that subsequent reports (national committee and expert report, in 1994 in particular) expressed reserved positions and recommended that studies be conducted on the long-term effects of regular, extensive cannabis use.

Other Drugs

The national reports concur on four points concerning drugs other than cannabis and recommend that:

(1) psychotropic substances be reclassified on the basis of their properties and known effects;

(2) possession and use be abolished as Criminal Code offences. In Canada, the LeDain Commission's interim (1970) and final reports (1973) considered the possibility of eliminating the offence of possession of any illegal drugs but did not specifically say so, concluding, "No one should be liable to imprisonment for simple possession of a psychotropic drug for non-medical purposes." (242, Interim Report) The maximum sentence should be a fine of \$100, and judges should use their judicial discretion

and strive to minimize the effects of criminal law in cases of possession of any psychotropic drug;

(3) restrictions on the medical use of opiates be repealed. These constraints have come under severe criticism in Great Britain where heroin treatment for drug addicts has never been completely prohibited;

(4) that criminal penalties for drug addicts be replaced by medical treatment.

Governments' Reluctance to Act on the Reports They Have Commissioned

The recommendations made by the committees which governments have struck have been disregarded or rejected outright in all countries except the Netherlands.

Why have legislators refused to consider the opinions they have sought? How can we understand the astounding growth in international criminal legislation on the drug issue? Between 1910 and 1988, the dates of the first and last international conventions, the number of controlled substances increased from approximately 10 to 200 prohibited drugs (United Nations, 1983 and 1988). This was accompanied by a shift from control over production, then distribution of opium at the turn of the century to prohibition with the *Single Convention on Narcotic Drugs* in 1961, that is to say to the prohibition of "holding" narcotics, which some countries have interpreted as applying to use. There was also an increase in the number of organizations responsible for controlling drug production and subsequently international trade to hundreds of thousands of public servants, thousands of councils, national and international commissions and sub-commissions as well as national and global police enforcement agencies. Any group such as yours intending to review national and international arrangements respecting drugs must deal with this powerful array of forces.

How can the fact that the more advanced countries have not yet agreed to seriously review their criminal legislation and classification of drugs on the basis of recent advances in knowledge be explained? The timid arrangement provided for by Canada's new *Controlled Drugs and Substances Act* (1996) pales by comparison with the reclassifications previously proposed by the LeDain Commission in 1970 and 1973. How can the officials of dangerous drug bureaux be authorized to amend the list of prohibited drugs without Parliament's involvement?

Furthermore, why have we had to fight so hard for a review of the restrictions on the medical use of opiates in the treatment of drug addicts? Are drugs the property of the state? Why are controls over the medical use of opiates so strict and rigid?

A number of analysts believe that the answer to these questions lies to a large extent in the international undertakings that the Parliaments of most known countries have signed. Therein lies the explanation of the rejection of all coherent and liberal proposals. In principle, however, parties signed the international conventions only after reaching agreements and in accordance with national jurisdictions. It is true that the attendant debates were often dominated by a few more powerful countries, but the number of amendments and exceptions demanded by the signatory countries to the *Single Convention on Narcotic Drugs* (1961), the *Convention on Psychotropic Substances* (1971), the *Convention of 1972 on Narcotic Drugs Amending the Convention of 1961* and, lastly, the *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988* (Vienna Convention), particularly by the poppy- and coca-producing countries, attest to the vigorous nature of the debates concerned. The number of signatories to these international agreements is constantly increasing. The prohibitionist model established by the 1961 Convention, which prohibits the holding of opiates, was confirmed in 1972, and controls were extended to include hallucinogenic drugs in 1971, whereas the prohibition of opiates was strengthened even further with the 1988 Convention, in which it was recommended that the parties criminalize offences committed upstream and downstream from use and trafficking offences (upstream: manufacturing of drug precursors; downstream: drug money laundering), attack not only supply but also demand and, for this purpose, increase the powers of law enforcement agencies. It will be remembered that Canada's Parliament passed the *Controlled Drugs and Substances Act* in 1996 in order to align Canada's drug legislation with this Convention.

In addition, although they have signed the conventions, certain countries such as Spain, Italy, the Netherlands and a number of German provinces have opted out of a number of restrictive clauses for reasons related to their constitutional obligations. The international conventions are thus less binding than the Canadian delegates who represent us claim.

Recent Expert Opinion

I now come to the most recent opinions of experts whom legislators have consulted on the issue of psychotropic substances. The facts alleged by them invalidate most assumptions on which recent drug laws are based.

The Roques Report concludes that cannabis is not toxic and is completely different from alcohol, cocaine, ecstasy, psychostimulants and certain medications used by drug addicts. In high doses, it induces memory loss, shortened attention span and somnolence, but fewer than

10% of casual users become regular users. In addition, according to the report, "fewer than 10% of excessive users become dependent", which is not negligible, but much less than the risk incurred by excessive alcohol and tobacco users.

The Riley Report comes to conclusions similar to those cited above on cannabis and concludes that there is a certain degree of de facto criminalization of this substance in Canada. Police and court practices make this possible, whereas Parliaments maintain prohibition under the law in order to appear as implacable enemies of crime. Without providing specific recommendations, the author examines alternatives to prohibition, ranging from the elimination of prison terms for drug possession (as previously recommended by LeDain) to legalization/regulation. Ms. Riley feels that the latter avenue is too avant-garde and tends instead toward the policy recommended by the National Task Force on Drug Policy that cannabis possession be made a civil offence under the *Contraventions Act*, a measure that could apply to possession of other drugs (?) and which, however, I feel is less consistent with the recommendation made by LeDain in 1972 and 1973.

Failing Coherent Action by Legislators: Popular Initiatives, Referenda, Judicial Decisions and "Harm Reduction"

Since, with the exception of the Netherlands, national legislators have not had the courage to make their drug legislation consistent with common sense, social facts and scientific knowledge, the public has demanded and provoked changes in drug laws, and judges, locally-elected representatives and health professionals and social workers have helped reduce the number of prison terms for offenders and ensured decent treatment for drug users and addicts.

1. In Italy, the people, by referendum, brought about the decriminalization of the use and possession of all drugs in 1993 and liberalization of the use of opiates in drug addiction treatment.

2. In Spain in 1983, interpreters of the Constitution found that the offences of drug use and consumption were contrary to the new Criminal Code passed in the wake of the constitutional revision conducted when the democratic system was introduced. An organization of judges in that same country is now on its third attempt to have Spain's drug laws amended. In Germany, the Federal Constitutional Court has been called upon several times to determine whether countries' drug laws are constitutional and, in particular, to rule on the severity of penalties in cannabis cases and, more generally, on the constitutionality of the offence of drug use and possession. In 1994, the Court held that it was not legitimate to prosecute for possession of small

quantities of cannabis. In Canada, the very light sentence handed down by Judge McCart in a cannabis growing case (Clay, April 1997) is testimony to the disproportionate nature of the penalties provided for in the Criminal Code in such instances. The judgment in the Parker case also underscores the contradictions of Parliament which, on the one hand, recognizes the therapeutic value of cannabis and the right to use it in certain cases, but, to all intents and purposes, makes the substance inaccessible, and ruled in the appellant's favour (July 2000).

3. Since 1990, the mayors of a number of large cities have tried to correct the excesses of criminal and medical legislation through ad hoc measures. Several in Europe and the United States have signed the Frankfurt Resolution (1990-1995) thus undertaking to encourage the establishment of health resources for drug addicts, provide safe places where intravenous drug users can use drugs and bring about *de facto* if not *de jure* decriminalization of the possession and use of soft drugs.

4. In fact, since 1990, it is health and social service workers who have most often pressed municipal governments and health administrations to commit to the harm reduction movement, demanding additional services in hospital emergency wards for intoxication cases and maintenance treatments for drug addicts using substitute drugs or even preferred drugs for those addicts who cannot forego opiates.

In the meantime, members of national parliaments have been deaf and blind to what is actually happening in society, to the reports of experts and their own advisers and to popular pressures (except in Italy), being more concerned, according to Diane Riley, with their image as guardians of the peace and with winning another term than with the general interests of their countries. It is true that reelection can be inconsistent with the need to educate and convince voters of the importance of seeing beyond their personal interests on sensitive and complex matters such as the drug issue and that, in a country of Canada's size, values and aspirations differ from east to west. In these conditions, working to develop decent, coherent and legitimate national legislation comes second to some MPs' desire for reelection and calls for courage on their part.

Current Situation

Is the climate in Canada now more favourable to a drug policy consistent with scientific information, the social reality of several million users and the problems caused by drug laws? Recent surveys and Court judgments in Canada, Spain, Italy, Germany, the Netherlands, Belgium and even France suggest this is in fact the case.

As to the way parliaments are prepared to receive the findings of their experts over the next three years, the reactions of France's National Assembly to the Roques Report, if it is put before that body, and of Britain's Parliament to the Walton Report will be invaluable indicators for Canada's Senate Committee, which must table its own report in three years.

The strategy that your committee has promised to develop will have to respond to what many call the "drug problem". But what problem is that?

What Problem Are We Talking About?

The vast majority of persons who use illegal drugs for recreational purposes and exchange drugs with friends or acquaintances pose no problem either for themselves or others. In any case, they definitely do not constitute a "social problem" that the country's authorities must take into consideration. There remain 5% to 10% of users who come to the attention of public authorities either because they violate drug laws or because their drug use causes them health problems. Regular drug users, that is to say 90% to 95% of individuals who use illegal drugs, are not drug addicts and never have dealings with the courts or correctional services.

Since my area of competence is the population of persons who are criminalized or who risk becoming criminalized, I will therefore say a word about the drug "problem" as it manifests itself at the criminal level. What is the "size" of this "problem" and how serious is it?

1. Number and Nature of Offences

Figure 1

1. Over the past 20 years, offences under drug laws have represented 2% to 4% of criminal offences recorded in Canada. The figure declined from 1977 (4%) to 1992 (less than 2%) and has recently risen to 2.6%.

Figure 2

2. In absolute terms, the number of drug offences varied between 60,000 and 70,000 a year from 1977 to 1998, whereas the total number of offences ranged from 160,000 to 260,000 annually.

Figure 3

The vast majority of drug offences involve cannabis (from 85% in 1977 to 65% recently), followed at a great distance by offences involving cocaine and those involving other drugs (hallucinogenics) and lastly by heroin offences, which represent a very small percentage of the total.

Figure 4

Possession cases, which alone represented 80% of all drug offences 25 years ago, still amount to more than 60%.

Figure 5

Cases involving simple possession of cannabis, which represented nearly 80% of all drug cases in Canada in

1976, still form 50% of all offences committed under drug legislation in recent years.

Thus, even today, 50% of drug-related police activity concerns cases of simple possession of cannabis.

2. Variations in Law Enforcement, by Province

Policing and court practices vary considerably across the country. In British Columbia, the enforcement rate (number of cases recorded by police) under drug legislation is 429.4/100,000, whereas the figure is 151 in Quebec and 218 in Ontario. The number of cases that are prosecuted also differs greatly from province to province, even though the same substances and offences are involved. The rate is much higher in Quebec than in Ontario, but lower in British Columbia than in Quebec.

3. Confusion Caused by an Unenforceable Policy

A recent qualitative study of members of the Montreal Urban Community Police Department (Carrier, 2000) underscores the ambivalence and confusion of frontline police officers and their varied reactions to the "drug problem". The extent of the problem is perceived quite differently depending on the officers in question and the neighbourhoods they patrol. In the minds of some, particularly in the case of young drug users and "exchangers", although "the law is the law" and must undoubtedly be enforced, drug possession and use do not really concern the police. The prohibition is simply not enforceable. It is impossible to determine cases of possession in the absence of search and seizure powers, except "on a hunch" or in arresting suspects for other "crimes". Once possession cases and drug deals in public places are discovered either by accident or in the course of investigating other offences, police officers react in various ways depending on their professional aspirations. Those seeking promotion and specialization (who want to join the drug or victimless crimes squads) pass the information along to the appropriate divisions. Patrolmen who intend to remain patrolmen close their eyes or question suspects to obtain trafficking information in exchange for promises of immunity, or else take substance abusers to treatment services, call the parents of minors, etc.

4. Public confusion

The coexistence of a harm reduction practice with a policy of prohibition is a source of considerable moral and mental confusion for the general public. The former counters the effects of criminal policy as well as drug abuse and addiction. Prohibition forces drug use underground and creates a market in which the content and quality of drugs are unknown. The harm reduction policy is a policy for reducing the risks of drug use in a context of prohibition. A government that, on the one hand, maintains a prohibition policy is compelled, on the

other, to pay to correct its effects. It is high time this inconsistency was corrected.

Conclusion

Your committee has a number of advantages over previous commissions and committees. First of all, although you are legislators, you are not elected. Second, your work comes at a propitious time in the history of drug policy when scientific knowledge about drugs and the experience of 30 years of criminal policies are difficult to disregard. Third, the convergence of similar initiatives taken at the same time in other countries lends weight to your efforts. Fourth, the fact that judicial bodies are reluctant to apply Canadian drug legislation and are calling upon Parliament to assume its responsibilities stands in your favour, but you must act quickly if you do not want judicial review to overtake the legislative function. Lastly, recent surveys attest to the fact that the public is ready to reconsider, if not all legislation on psychotropic substances, at least certain aspects.

Your task is an important one and it is urgent that you speak out. The practice of harm reduction must not serve as an alternative to genuine legislative reform. By failing to change the legal-criminal framework, we become accomplices in a detestable strategy.

[From the] Proceedings of the Special Committee on Illegal Drugs Issue 1 - Evidence for April 23, 2001

The Chairman: It is our great pleasure to hear this afternoon from Professor Marie-Andrée Bertrand. Dr. Bertrand was, 30 years ago, a member of a commission of inquiry examining anti-drug policies.

Marie-Andrée Bertrand has a Ph.D. from Berkeley University in California, and is professor emeritus of criminology at the University of Montreal. She was a member of the Commission of Inquiry into the Non-Medical Use of Drugs, known as the LeDain Commission, from 1969 to 1973. She is the author of a number of studies and texts on the issue of drugs. Among her most recent publications, *La politique des drogues*, is an article that appeared in the November 2000 issue of the journal *Psychotropes*; an article entitled *Le adroit de la drogue comme instrument de mondialisation*, which appeared in *Globalization and Legal Cultures*, published by Onati Papers, Onati Summer Course, Spain, 1997; *Réflexions sur la décriminalisation de l'intervention (auprès des consommateurs de drogues illicites)*, in *Europa*; *Ta jeunesse t'interpelle*, published in Aix-les Bains, in 1997; and *La situation (du droit de la drogue) en Amérique du Nord*, appearing in *Drogues et droits de l'homme*, published by Caballero, in Paris, 1992.

The Chairman: It is part of our mandate to assess the way in which our country is meeting its international obligations as concerns the control of substances. Does Canada go beyond its obligations or do we do less? How does this compare with other jurisdictions?

Ms Bertrand: Canada was one of the very first countries to sign the 1961 International Convention, right on the heels of the United States, which had been the driving force of this convention. It is obvious that Mr. LeDain insisted that we not sign the Convention on Psychotropic Substances and in fact, we signed it later on. The country ratified it later on. However, we ratified the last convention, the 1988 one, which is far more repressive and which goes the furthest, concerning police powers that the Supreme Court of Canada had tried to limit. For example, it was the Supreme Court of Canada that declared search rights and searches without warrants to be invalid and unconstitutional, and that obliged police officers, as of 1985, to obtain proper warrants in order to enter residences and seize narcotics, wherever they may be. It was also the Supreme Court that invalidated the offence, given the unconstitutionality of the reversal of the burden of proof that existed in the offence referred to as "possession for the purposes of trafficking". In these cases, in Canada up until 1986, the burden of proof could be reversed, that is that the accused had to prove that he did not possess a substance for the purposes of trafficking, which is contrary to the spirit of common law and the absolute opposite of the presumption of innocence. The Supreme Court said that this provision of the Narcotics Act was unconstitutional and that it should be dealt with by Parliament. It took a certain period of time for the legislator to give in.

Despite the decisions made by the Supreme Court, the Parliament of Canada has been slow to make the Narcotic Control Act, in particular, completely compliant with the Canadian Charter of Rights and Freedoms. That is the issue here. There has been a resistance on the part of Parliament - and I think I can say that publicly - but there has also been and still is considerable resistance from bureaucrats, particularly regarding health and drugs. In the case of the LeDain Commission, there was a resistance on the part of bureaucrats to show the evidence they had about the harmfulness of cannabis, for example. As we were conducting our own research on human subjects on people's ability to drive a car after smoking cannabis, the Department of Health discussed our research without having seen it and challenged it, hiding many things from us.

For example, it hid the fact that it already had some fairly significant cannabis fields that we could have used for our research. I must say quite frankly that I still do not

understand all the reasons for this resistance. I happened to speak about this with the Chair of the LeDain Commission, and we spoke about it among former members of the Commission. We met three years ago, on the 25th anniversary of the LeDain Commission, and we reviewed this experience together. If any of the commissioners want to come to see you, they could tell you themselves what they think about this entire experience. Perhaps they may have some explanations for you in answer to your question.

The Chairman: The European countries you mentioned have signed the same treaties as us.

Ms Bertrand: I forgot to answer that part of the question. Spain left, saying that under its Constitution, it could not accede to a single convention that required the country to arrest and penalize individuals for mere possession of soft drugs and for using soft drugs. And what is happening at this time? If you look at the single Convention, you will see the name of the signatories that have demanded certain conditions in order to ratify the Convention. You will see that 20 or 22 countries have demanded either not to sign now or to sign now but not to accept all the provisions, and so on. So Spain was the exception. If we did the same thing at the time of the 1995 referendum, saying that the Convention was unconstitutional, the Netherlands, as you may know, were very slow to sign the 1961 Convention. When they did sign, they brought their own legislation to the table, and said that they would not deal with soft drugs such as opiates, and so on. Their legislation did not include soft drugs in the Narcotic Control Act or the Single Convention on Narcotic Drugs. In addition, if I understand correctly, and if my information is accurate, Switzerland never ratified the Single Convention.

Senator De Bané: What are the arguments of those who advocate maintaining the criminalization of soft drugs, Doctor Bertrand?

Ms Bertrand: I think that what the previous questions allowed us to deal with the hypothesis of people who progressed to harder drugs. This has been broadly refuted, and Dr. Bruce Alexander refuted it earlier using statistics. The vast majority of users do not move from a so-called soft drug to drugs that are more addictive. A second point, which is the main argument put forward by the police around the world, is that we must be able to repress possession and possession of any drug, in order to dismantle the drug and drug trafficking networks.

Senator De Bané: Since there appear to be no rational reasons for maintaining the criminalization of these drugs, is it true that the Netherlands have decided to take a tougher stand against drugs, including soft drugs such as marijuana?

Ms Bertrand: That is not the information I have. I was in the Netherlands two years ago, and I know that the scientific secretary of this commission was there more recently than me. The information I have and the very recent articles I have read say that on the contrary, according to their findings violence drops when the use of soft drugs can be tolerated and even organized. So they therefore have a beneficial effect in the country. According to my information, the Netherlands is not introducing harsher policies. Perhaps Mr. Sansfaçon has some additional information on this.

Senator De Bané: We were told that the prison population in the Netherlands had increased and one of the reasons for this was that it had been decided that users of drugs, including soft drugs, would be dealt with much more harshly. Perhaps we will have to check into this further.

Ms Bertrand: You are referring to prison statistics for recent years.

Senator De Bané: So your conclusion, after studying this issue for more than 25 years, is that laws that do not reflect customs and practices, and that do not have a rational basis should be corrected to take into account contemporary realities, rather than making non-compliance with these laws a routine matter. Is that correct?

Ms Bertrand: Definitely, but I would also say that maintaining laws in which most Canadians - and I am thinking of open line programs I have heard or in which I participated - say they no longer believe and for which they see no basis, leads to distrust by citizens of their government, which is putting forward policies that are not in keeping with their culture. This becomes laughable in a number of circles. This may also sometimes become dramatic, because it sometimes happens, because Canadian legislation permits it, that people are imprisoned for mere possession of cannabis. We imprison quite a few people! I counted that 1,400 people that had been imprisoned between October and January of this year, just for possessing cannabis in Canada. These are newcomers to prison. These are not insignificant figures, because prison is expensive. Moreover, a criminal record is also costly to individuals in their attempt to function in society.

The Chairman: We are talking about simple possession?

Ms Bertrand: Yes.

The Chairman: Was that the only offence? The argument often put forward by the police when they are told this is that the offence for cannabis possession occurred at the same time as a bank robbery, but that the accused had cocaine or cannabis in his or her pockets.

Ms Bertrand: I am very pleased to be able to tell you that this answer is very wrong and very inaccurate, and that you must definitely refute it during your study. In Canada, in criminal law, only the most serious offence is considered. That is the one with which the person is charged and the reason he or she is in prison. In fact, Serge Ménard was able to say on the radio the other day that he could not say how many inmates have drug problems or have committed drug offences, because very often the offence of which they were found guilty was much more serious. So the reality is somewhat the opposite of what you described. Since possession of cannabis is now a minor affair under the 1997 act, particularly at the trial level, cannabis possession cannot cover more serious crimes. It is the most serious offence that is the reason for imprisonment.

The Chairman: So it is not a lesser, included offence, as we were told.

Ms Bertrand: No. Of course, the individual may have robbed a convenience store of \$25 and it was felt that cannabis possession was more serious because this was the second such offence, and so on and so on. But it is not possible that the figures I have given you are hiding very serious crimes that would have warranted imprisonment. They really refer to possession of cannabis.

The Chairman: Doctor Bertrand, what distinction do you make between depenalization and decriminalization?

Ms Bertrand: In fact, depenalization in the strictest sense involves reducing the severity of the penalty and the charges, as the Canadian Parliament did in 1997. Rather than proceeding by indictment, we proceed summarily; rather than taking people into custody, we impose a fine. It is a lesser punishment, or a very small punishment.

The Chairman: Less severely.

Ms Bertrand: To decriminalize would be to remove the offence from the Criminal Code, as was done with abortion, without necessarily legalizing it. Decriminalization is removal from the Criminal Code.

The Chairman: Are you for or against the legalization of drugs in general?

Ms Bertrand: Twenty five years ago, this is what I said in a minority report, which was no doubt a thorn in the side of the Commission's chairman since he had hoped we would be unanimous. I still believe this, but with a subtle difference. I still believe, rationally, that if we don't take care of all substances - and I do not pretend that my position is politically correct - and if for example we remove cannabis from the Criminal Code, by hypothesis,

through decriminalization, it is clear that organized crime, illicit traffic, illegal trafficking will have a firmer hold on the most dangerous substances. That is to say that organized crime will no longer be very interested in cannabis, and will concentrate more on substances that are apt to make people addicts.

The Chairman: Do you make a distinction between making something legal and not making it criminal?

Ms Bertrand: My recommendation was that drugs be regulated as alcohol is in Canada.

The Chairman: You would not advocate free sale?

Ms Bertrand: No, controlled by State regulations.

The Chairman: A regulatory program such as we have for milk, water and food.

Ms Bertrand: With price and quality controls, and taking into consideration the age of the person buying.

The Chairman: You wrote an article recently for the newspaper *Le Devoir* concerning federal government regulations for the medical use of cannabis. What is your opinion on this subject?

Ms Bertrand: With all due respect for the Department of Health, it seems to me that this is some kind of diversionary tactic. A country must show itself to be compassionate, but it must not devote a lot of time and energy to a few hundred people who could benefit from a drug. It is all well and good if this drug is useful for them. Even better if this substance is useful to them. However, the issue here is the few people for whom cannabis could provide some relief. Some four or five million Canadians use cannabis. It seems to me that policy should target the population in general and make it possible for the laws of a country - legislation which definitely affects 20 per cent of one age group and 10 per cent of another - to recognize reality, which is not a situation causing national problems. We are not faced with a national security problem of cannabis use and if we are, it is because we are preventing farmers from growing what they want to grow and we are perhaps contributing to organized crime's interest in cannabis. I recognize that organized crime is interested in cannabis. I sometimes testify at major trials involving tons of cannabis arriving in the country.

It is a significant issue. It is not possible that the Canadian government would only examine compassionate use of medical cannabis at a time when your senatorial committee has had the courage to give itself a mandate to study the question overall.

In sixteenth century Egypt, sales [of coffee] were banned, stocks burned, persons were convicted of having drunk the evil substance, and warnings denouncing its pernicious properties were circulated widely... chocolate aroused a storm of violent disapproval when it was first introduced into Europe... In the nineteenth century, a long struggle was waged against cigarettes, which led the New York Times to solemnly warn its readers in 1884 that "the decadence of Spain began when Spaniards adopted cigarettes and if this pernicious practice obtains among adult Americans the ruin of the Republic is close at hand."

– R Whitaker, *Drug and The Law: The Canadian Scene*, 1969.

CHRIS BENNETT WITH THE HELP OF NEIL McQUEEN

Chris Bennett has written a controversial 500 page book entitled *Sex, Drugs, Violence and the Bible*. The book is divided into two parts. Part 1 is entitled "Everything you wanted to know about Judaism but were afraid to ask the Rabbi." And part 2 is entitled "Everything you wanted to know about Christianity but were afraid to ask the Minister."

A review of the book will appear in the next newsletter.

The book is published by the Forbidden Fruit Publishing Company, Box 485 Gibsons, British Columbia. Canada, V0N 1V0 and costs \$24.95 in U.S. dollars and \$34.95 Canadian.

BOOKS BY JAMES D. DURE

James Dure has also written a couple of controversial books: *The Book of Angels*, 87 pages and *Manna*, 31 pages. These can be obtained by writing to the Sacred-Wine-Press, 403-3048 Cowichan Lake Road, Duncan B.C., V9L 4K5, Canada.

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The International War on Freedom, 24 pages.

Forsaken Fountain with The Right to Choose, 66 pages.

These books can be mailed for \$5.00 each or picked up for \$4.00 each.

Both can be mailed for \$9.00.

BCAPL Notes

B.C. Anti-Prohibition League meetings are usually held on the third Monday of each month. The next BCAPL meeting will be held at 826, Johnson Street, Victoria, B.C. on Monday January 21, 2002 at 7pm.

Ted Smith has arranged for Jim Hackler, professor of Sociology at the University of Victoria to present and discuss his views on the current Prohibition.

This presentation will take place at the Central Library, 735 Broughton Street on Thursday January 10, 2002 at 6:30.

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