

A Modest Proposal for a Sane Drug Policy

I: Introduction

On August 11th, 2003, two days before I retired from the bench, a man named Simon Spence was brought in to the prisoner's dock in Courtroom 002 in North Vancouver, B.C. The Crown was asking that he be detained in custody. He had been arrested a week before when he was seen leaving Wal-Mart with a backpack-load of DVDs.

The theft was the latest in a string of petty offences dating back to February, when he had been brought in for the (relatively) minor burglary of a business. Before that, he had had no contact at all with the law. In February he had been released on bail, appeared at a later date to enter a plea of guilty and was adjourned to July for sentencing. In June, he was back in court on a charge of running out of London Drugs with his hands full of lighters. He was again released on bail and told to return on July 25 when he could deal with both charges. On July 2, in Vancouver, he was given an appearance notice by a police officer on a charge of prostitution. The notice required him to appear in Vancouver Court on July 16. He never showed up there, nor in North Vancouver on the 25th, which would have been entirely predictable if either court had been told earlier of his addiction to both cocaine and heroin.

Although he was over the first hump of withdrawal when he was brought into the prisoners' dock, he looked wretched, his hair lank and greasy, his eyes exhausted, his hands quivering and his voice muted. No longer quite as desperate to get out as he might have been a week earlier, when he was still looking ahead to the terrible prospect of being entirely without what he needed, he nevertheless knew there was a lot of pain ahead. The Criminal Code required me to refuse bail to anyone I was satisfied would likely fail to return to court and/or was substantially likely to commit further offences while at large. I detained him on both grounds. Recent experience suggested he was

unlikely to show up for further appearances; and his addiction, coupled with his penury, almost guaranteed he would do what was necessary to get drugs.

On February 6, 1976, less than a year after my appointment to the bench and still a few years before the illicit drug culture of Vancouver began to make a noticeable impact on the suburbs of the North Shore, a man named David Keilty showed up in my court in Vancouver, where I happened to be sitting at the time. He had been arrested for shoplifting in September of 1975 and had been in custody ever since. He had tried to steal a \$23 pair of shoes from the Army and Navy department store and, as a result of his identification in a line-up when he was in custody for that, he was charged with two robberies. Less than a month before, a few days apart, he had held up a Mac's Milk store and an Ernie's Fried Chicken outlet at knifepoint, netting about \$200 on each occasion. At Ernie's he manhandled the cook and threatened to kill her. He now wanted to plead guilty to the three charges. Before 1972, he had had no involvement with police or courts; but, after that, his record was quite impressive. In March of 1972, he was sentenced to jail on two counts of possession of heroin and one count of breaking and entering, the narcotics charges earning the lion's share of the sentence - a rather good illustration of the sentencing priorities of the time. In September of that year, he was given a further six months for an escape from custody. On January 8, 1974, he again pled guilty to possession of heroin and was sentenced to six months in jail. In July 1975, he was placed on probation for one year for carrying a concealed weapon (a knife). Two months later he was fined \$50 for failing to show up in court on a couple of occasions on the weapon charge. Two days later, he was picked up for the stolen shoes. I have no notes on his demeanour but, having been in pre-trial custody for five months, he is unlikely to have shown signs of withdrawal. That should be enough time to gain some semblance of health. He had emigrated from England with his family in 1957, when he was two years old, and had become addicted to heroin when he was 16.

I sentenced him to six years for the robbery with violence, five years concurrent for the other robbery and 14 days concurrent for the shoplifting. The law, quite properly, demanded it. The sentences he had received earlier for simple possession of narcotics

also reflected what the law required and I can't say that I had any qualms about them at the time. It wasn't so much that, as a society, we believed in a specific "war" over drugs (that would come later), as much as it was our acceptance of the conventional wisdom of the time. We actually believed that, except of course for alcohol, psychoactive drugs were inherently evil and enforcement and punishment could rid us of them – or at least effectively control their use.

How wrong we were. So wrong I find it personally distressing to contemplate the evils we spawned in our hopeless attempt to impose criminal sanctions for private choices.

What follows is not a scholarly analysis. A check of an organization called The Drug Policy Alliance at their website, lindesmith.org, will reveal a large body of literature which quite successfully presents a rational counterpoint to existing drug policy in the United States - which, while it does not drive drug policy in Canada, certainly has a considerable influence on it. All I can bring to bear on the subject is a somewhat anecdotal and reflective account, a *mea culpa* perhaps, certainly an effort to explain why I believe the course we have chosen is not only wrong as public policy but damaging to the health of Canadian society. Nothing I have to say is in any way new: those close to the issue have seen their reservations grow over the years and some have spoken out. You can even catch an entertaining (if sometimes factually adventurous) documentary called *Grass* - Woody Harrelson does the voice-over - that graphically depicts the outrageous hyperbole that dominated public discourse on marijuana over the last seven decades or so. Nevertheless, to my knowledge no Canadian judge has yet written anything in support of a radical change in the way we approach the bedeviling question of the use and abuse of drugs. I cannot and will not speak for anyone else; but, being of average intelligence and solidly middle-class, I doubt that my views are different from those of many others, including judges, who have worked in the world of Canadian criminal justice. I don't intend to bring to the subject the same depth of exposition and research as did James P. Gray, a judge of the Superior Court of California, in his book, *Why Our Drug Laws Have Failed and What We Can Do About It*, published in 2001. It is a telling indictment of the United States' ever-expanding war on drugs.

The two cases I have recounted suggest that over nearly three decades we have made little progress refining our approach to the issue, principally because it is much easier to continue to demonize the user/addict than to admit that an entire social policy, and its attendant complex of legislation, regulation and infrastructure, is not only useless, it is malignant. Yet had we, for example, heeded the detail of the LeDain report in 1973, it is more than likely that Army and Navy, Wal-Mart and London Drugs would never have seen those two thieves; that the clerk at Mac's Milk and the cook at Ernie's would never have had to confront a desperate, knife-wielding addict whose only goal was to get what he needed from an erratic, dangerous, and terribly costly black market; and that I, the judge, as well as a number of police officers, prosecutors, defence lawyers, and corrections officials would have been involved in matters much more crucial to the well-being of the community, like dealing with *real* bad guys.

Canada's current policy on illicit drugs, such as it is, follows on an American, propaganda-driven panic in the late 1960s, which was superimposed on decades of incremental growth in the drug-prohibition business which, in turn, was founded on grounds of "morality" and political/bureaucratic opportunism. Consumption of drugs for pleasure was seen by some to be dangerous to the moral fibre of god-fearing Christian communities.

As the twentieth century dawned, gentlemen could enjoy their brandies and cigars, and proper ladies could sip their sherry. Opiates and their derivatives, such as laudanum, as well as coca, were freely available and taken in considerable quantities by people who had access to them and could afford them. But opium and coca began to show up among the working classes, particularly in the west, and that irrepressible streak of North American Puritanism took over. In both the United States and Canada, it wasn't that drugs were prevalent enough to have an overall impact on behaviour or productivity but rather that, once the use of opium was in the open, concern grew about how things *looked*. And from that grew an enormous body of myth about the evils that drugs, regardless of type, effect or degree of consumption, might wreak on the populace. The

most prevalent themes, of course, were of sexual predation and perversion. The sorry history of how that anxiety grew in the U.S. and how the western world picked up on the obsessions of our American cousins - who were, after all, just going through another of their occasional psychotic episodes - is set out in great detail by historian Richard Davenport-Hines in his book, *The Pursuit of Oblivion: A Global History of Narcotics, 1500-2000*. Of particular note is his treatment of Henry Anslinger, the Commissioner of the Federal Bureau of Narcotics from 1930 to 1962, and the first person to be called a drug “czar”. He is described as “...egotistical, authoritarian, energetic, brutal and unscrupulous”, just the traits you would want in someone not only in charge of enforcing the law, but actually consulted by Congress on what the law should be.

The inclination in humans (and other mammals, birds and even insects) to use mind-altering substances is innate. It is referred to as “the Fourth Drive”, after hunger, thirst and sex, in *Intoxication: Life in Pursuit of Artificial Paradise*, a book by Ronald K. Siegel who, when it was published in 1989, had spent twenty years as a research psychopharmacologist at the Department of Psychiatry and Biobehavioral Sciences of the University of California at Los Angeles. Even without his entertaining study, any observant person can note the enduring popularity of everything from coffee and tobacco to alcohol and ecstasy. That does not mean to suggest that mood-altering substances are harmless. Some are predictable agents of serious illness and even death. Nothing I write here is to be taken to suggest that drugs are just toys and a little play never hurt anyone. But all drugs, without exception, can be beneficial in the sense that, taken with care and in moderation, they provide a respite from the illness, stress and conflict that life inevitably serves up, whether you are a Kurdish goat-herder smoking hashish or a Vancouver schoolteacher sipping a scotch. We have already conceded the point in our acceptance of alcohol, the one significant intoxicant we can consume without being criminals but which we recognize as dangerous when not consumed in moderation, or consumed at all by those too young to deal appropriately with its effects.

From that perspective, it is immediately clear that no amount of prohibition and punishment will prevent us from seeking out and using what are now illegal drugs. There

is, always has been and always will be a demand for such substances; and it follows that there is and always will be a supply. It is how we deal with that immutable fact that says a great deal about our free and democratic society. Authorities in the United States, in the midst of their growing attack against opiates and, to a lesser extent, cannabis and coca in the first decades of the last century, undertook what turned out to be the perfect experiment in the value of criminal sanctions for drug consumption. It was called Prohibition, and it was a disaster. Yet they appear to have learned nothing from it; and Canada, taken in by the increasingly strident calls for draconian measures to “stamp out” recreational drug use, has followed along.

II: The Canadian Experience

On July 20, 1908, Parliament passed *An Act to Prohibit the Importation, Manufacture and Sale of Opium For Other Than Medical Purposes*; and on May 19, 1911, that statute evolved into *The Opium and Drug Act*. That put Canada in the game some six years before the United States; but because of our much smaller population and notably different political climate, it was the passage of the *Harrison Act* in the U.S. in 1914 that bred what James Gray refers to as the “drug warriors”, like Anslinger and the many who followed him. Canada “progressed” with *The Opium and Narcotic Drug Act* of 1923 and the *Opium and Narcotic Control Act* of 1929, which served the purpose - prohibition and punishment - until the passage of the *Narcotic Control Act* on September 15, 1961. Throughout, it was accepted without question that the increasingly draconian approach of the United States was warranted, indeed necessary, to eradicate recreational drug use which, in turn, was by definition an evil of almost unimaginable proportions. Nevertheless, at about the same time the Nixon administration launched the first declared War on Drugs, Parliament took a different and promising course: it sought some clear, objective and reliable information on illicit drug use, presumably to guide our own, separate course. It didn’t work out that way.

In May 1969, Parliament established the Commission of Inquiry Into the Non-Medical Use of Drugs. Over the next three years, that five-person Commission reviewed over

14,600 books, articles and other documents and conducted some 120 research projects on the chemical make-up and effect of all predominant “problem” drugs (including some obtainable by prescription), their sources, distribution and pattern of use. It examined law enforcement, medical treatment, the influence of the media and the effects of information and education. It spent 46 days in public hearings from October, 1969 to February, 1971, in 27 cities across Canada and received 639 written submissions from individuals and organizations. Its analysis and conclusions, known since simply as the LeDain Report, after the Chairman of the Commission, were presented in December, 1973. The substance of the report, including dissenting conclusions, takes up 273 pages. The details of the Commission’s work, the appendices, cover 864 pages. It remains one of the most careful, thorough, balanced and well-written explorations of modern non-medical use of drugs. It was ignored.

In its Preliminary Observations, the Commission noted that,

Non-medical drug use is too deeply rooted and too pervasive to be eliminated entirely. It cannot be swept away. There will always be a very high proportion of our population who will engage in non-medical drug use of various kinds. The proportion that can remain strictly abstinent...will remain infinitesimal. If one considers the number of persons who are likely to continue to use tobacco and alcohol, then one develops a realistic appreciation of the inevitable proportions of non-medical drug use.

It appears that the population at large did not view *all* non-medical drug use with moral condemnation after all. Indeed, if we lumped in over-prescribed and over-used tranquilizers and barbiturates, it was impossible to escape what the Commission called, “an overwhelming impression of a climate of reliance on psychotropic substances.”

The Commission conducted an elaborate cost-benefit analysis of non-medical drug use and available social policies to deal with it - including no policy at all. It concluded that the state does have a role to play, making the obvious point that any drug can be

poisonous if the dosage is sufficiently high or if it is mis-identified or adulterated, and it is within the legitimate purview of governments to regulate the distribution and use of potentially poisonous substances. It then considered the costs of a policy of prohibition and punishment:

- the creation of an illicit market, noting that, “When we prohibit something which a lot of people desire and are willing to pay money for we invite people to create an illicit market...Moreover, the more effective our law enforcement against distribution is, the more attractive we make the market for professional criminal elements by forcing the price up and putting a premium on skill and daring.”
- an inhibition of efforts to seek help or treatment when consumption gets out of hand.
- a further inhibiting effect on drug education, since “...so long as the law purports to make the decision for us it is difficult to discuss drug use in the context of a wise exercise of freedom of choice,” as we at least attempt to do with alcohol or tobacco.
- a disproportionate demand on law-enforcement resources, which are used almost always in a haphazard and even token fashion and which end up fundamentally doing nothing more than reinforcing the moral injunction of the law.
- the stigma of conviction and its effect on society, principally as a barrier to employment or travel.

The Commission concluded that prohibition held out little, if any, long-term promise of success and that there should be a gradual reconsideration of Canada’s approach to whatever problems may arise from the non-medical use of drugs. It said, “...we are not

in favour of extending the application of the criminal law against the user but rather of making an orderly withdrawal from it.”

What could be simpler and clearer than that? There have been, are and always will be a significant number of Canadians who will make non-medical use of drugs; the state has a legitimate interest in exercising some control over that use; and the criminal law is a useless, indeed a dangerous, tool for that purpose, like using a blowtorch to remove a wart. That was thirty years ago, and Canada’s approach to drug policy since has been essentially one of *laissez faire*, except for the implementation of the *Controlled Drugs and Substances Act*, the over-complicated and cumbersome amalgamation of the *Narcotic Control Act* and the punitive portions of *The Food and Drugs Act*, which regulated sale and use of hallucinogens and other street chemicals. Since 1973, none of those punitive statutes has had any effect whatsoever on the consumption of drugs for pleasure in this country. But they have spawned a culture of suspicion, surveillance, harassment and maltreatment of otherwise ordinary citizens who are either addicted - and therefore compelled to seek out their drug of choice - or who simply choose to enjoy, in moderation, some drug other than alcohol. Which is not to condemn the efforts of those charged with enforcing those laws. They - *we* - did nothing more than the job we were sworn to do, although it must be said that a few did it with considerable enthusiasm.

The evolution of that culture, of the objectification of the drug user as a threat, points to one of the two most significant costs of prohibition beyond those set out by the Commission. They are touched upon in the report, but hindsight gives them a significance today that was not obvious then. The most insidious cost of all is the threat to civil liberties. There is little doubt that the work of law-enforcement agencies in Canada in the name of drug control will inevitably lead to gradual but serious dents in the protections against state power we have always taken for granted. Since illicit drug consumption is, in the criminal law context, a victimless crime, the primary means to enforce its prohibition is the search - of individuals, residences, vehicles and businesses - and the snitch. The result of the futile attempt, over the past half-century or more, to enforce the prohibition of non-medical drug use has often forced the Supreme Court of

Canada to struggle with long-standing principles of privacy, search and seizure and arbitrary detention. And the use of informants has led to a reliance on dubious sources to batter down doors with guns drawn, sometimes with tragic results, all in an effort to overcome the investigative constraints of laws against personal behaviour.

The second serious cost of prohibition has been the inevitable unreliability of the quality and strength of the product - or its outright mis-identification - and the attendant threat of serious illness and death from overdose. In other words, if the regulation of poisons is a reasonable pursuit of government, one which justifies a policy in the first place, the prohibition/punishment approach has enhanced, not reduced, the poisonous potential of street drugs.

Having quietly shelved the LeDain report, the federal government steered clear of any formal policy on drugs until 1987. Ordinary citizens, whose only crime was to make the choice to ingest opiates, coca, cannabis or an ever-evolving selection of chemicals, were - and continue to be - hounded and prosecuted as dispensable members of our communities, non-persons who lost any right to be treated civilly simply because they had become users of certain substances. Yes, the choice may well be self-destructive for some but what business is that of the rest of us? So are many other choices people make every day; and the fact that the user/addict has become a selected target cannot be ignored. Typically, for law enforcers it has been the equivalent of shooting sitting ducks, since the stigma of addiction has driven users (and sellers, who are often addicted themselves) into ghettos, and the drugs themselves have made them less than vigilant prey.

In the midst of all that effort, those who have used illegal drugs with discretion and care (some of whom indeed addicted), including physicians, lawyers, teachers and business people, have carried on with their lives and their work with no adverse impact on society at large. As long as the dope “fiends” are herded into city cores and visibly dealt with, and the producers or sellers are occasionally prosecuted (usually to great fanfare) the original, puritanical/ political purpose of the entire exercise is met: something is being

done about the “drug problem”, mainly keeping it out of sight and therefore out of mind. Two factors inherent in that approach doom it to failure. The first, to repeat, is that the addict *will* find what he needs, and it won’t be brought by the stork or discovered under cabbage leaves. The demand won’t abate and the supply will be there. It is also worth noting here that drawing a distinction between user and supplier, seeking greater and greater punishment for the latter while proposing to go easy on the former, is absurd. Both are essential participants in a single market. The second is that to fund his use in the context of a black market (which keeps prices impossibly high) the addict will commit property crimes. Society generally has come to describe those burglaries, thefts and frauds, as well as claimed incursions by “organized crime” into the sellers’ side of the market, as “drug-related”.

They are, of course, nothing of the kind. They are prohibition-related.

To say that a crime is related to a drug, there must be some evidence that the drug, as opposed to the prohibition against its sale, possession and use, has led to the commission of the offence. In my 25 years as a Provincial Court judge, I never once encountered a case where the accused committed a crime *because* he was under the influence of heroin, cannabis or any chemicals except methamphetamine (“speed”) and L.S.D. By that I mean the explanation given for the criminal conduct has never included the intoxicating effects of those drugs. As for cocaine, it could be said to have had a direct influence in only two cases that I can recall, both involving violence accentuated by use of the drug. There are also a growing number of cases where alcohol and cocaine are both part of the impetus behind the offence. Methamphetamines have, in a very small number of cases, created a diminution of inhibition, much as alcohol notoriously does; and the single LSD case the accused was because he was quite convinced, at the time of the theft, that the bracelet he stole was given to him by God. On the other hand, over that same time more than two-thirds of my work arose directly from the consumption of alcohol - many drunk-driving charges but most commonly crimes of violence, sometimes appalling in its savagery. Similarly, I dealt with hundreds of people like Messrs. Spence and Kielty, while encountering only a couple of dozen cases that could be said to involve alcoholics

committing a crime to get booze. One involved the break-in of a restaurant where the police responded to a silent alarm only to find the perpetrator passed out behind the bar hugging an almost-empty bottle of single-malt scotch. The rest were thefts from liquor stores. The fact is, a person addicted to alcohol can get what is needed without resorting to crime - because it is sold in an open, regulated market.

In short, the drugs we have been told for decades would turn us into crazed beasts and our children into hopeless zombies have, in my experience at least, had little or no effect on the commission of crimes. Prohibition, on the other hand, has had a direct impact, by ensuring that a lucrative black market persists, one that promises enough of a return on investment to convince ordinary people to, for example, take the risk of starting a cannabis growing operation; or to invite those already involved in high-level crime to use their considerable resources to participate in the drug business. It also guarantee that prices will remain artificially high, as producers and dealers pursue the maximization of their profit, thereby driving those who need the drugs to get their funds however they can - not to mention recruiting users to enhance the client base. At a symposium on drugs in Boston in January 1998, one participant summed up the illegal drug trade in these words:

...if the cocaine industry had commissioned a consultant to design a mechanism to ensure profitability, it couldn't have done better than the war on drugs. There's just enough pressure to inflate prices, but not enough to keep the product from the market.

I have described the Canadian approach as *laissez faire*. What has the federal government done since the LeDain report was tabled in 1973? From 1973 to 1987: nothing. Then, Prime Minister Mulroney having declared in 1986 that drug abuse had become an “epidemic that undermines the economic and social fabric of Canada” (thus firmly establishing his credentials as a North American politician), the government launched a five-year “National Drug Strategy” (NDS). The guiding principle of the NDS was that drug abuse was primarily a health issue - a critical point that I will get back to in a moment - and the Ministry of Health would lead its implementation. Its centrepiece

was the Canadian Centre on Substance Abuse, created by statute in 1988 to play a strong “complementary” role to that of the federal government.

The CCSA has done good work. Among its 235 papers and studies to date, most of which deal with alcohol, tobacco, gambling, AIDS, and other health issues such as Fetal Alcohol Syndrome, there has been some consideration given to questions of policy on illicit drug use. In 1991, it studied the politics of Canada’s drug laws, the paper aptly titled *Panic and Indifference*; in 1993 it contrasted Canada’s drug strategy to the American war on drugs; and three times, in 1991, 1995 and 1998, it weighed the impact of “decriminalizing” marijuana. One of the Centre’s five original goals is “Promoting and assisting in the development of *realistic and effective* policies and programs aimed at reducing the harm associated with alcohol and drug abuse” (my emphasis). Ignoring for now that the legislation which spearheaded the NDS perpetuated the misleading distinction between “alcohol” (presumably because it was legal) and “drugs” (presumably because they were not), I think it is reasonable to ask what effect, if any, the Centre’s work has had on drug policy. The answer would appear to be: none at all. The NDS was “renewed” in 1992 and became “Canada’s Drug Strategy” (new government, new name), with an emphasis on impaired driving. Budget cuts reduced its funding from a projected \$250 million to “only” \$104.4 million, apparently enough to create another agency, “Canada’s Drug Strategy Secretariat”, but not much else.

By 1997, the CDS was reduced to a bureaucracy doing little more than parroting the goals and approaches of earlier strategies and apparently ignoring the ever-increasing problems with prohibition. It called for “reducing demand” through education, but it also aimed to “restrict the supply of illicit drugs and reduce the profitability of illicit drug transactions”, marking the bulk of what funding there was for enhancing enforcement efforts of “proceeds of crime” laws. It mentioned no new approaches for that, suggesting that old methods would have to yield new results. The Auditor-General states, in her 2001 Report, that the government spends “approximately \$500 million annually to address illicit drug use in Canada”. Hold that thought.

III: Full Circle

In that same year, 2001, after all that research, all those committee meetings and all that experience in various “strategies”, the Government decided more study was needed. On May 17, 2001, Parliament created yet another Special Committee on the Non-Medical Use of Drugs, this time with 13 members and a mandate to study “the factors underlying or relating to the non-medical use of drugs in Canada” and to make recommendations aimed at “reducing the dimensions of the problem involved in such use.” It is difficult not to be cynical in the face of such fatuous waste. Our elected representatives, apparently frightened of real change based on almost three decades of knowledge, opted to spend countless millions on re-inventing the light bulb. The Report of the Committee, *“Policy for the New Millennium: Working Together to Redefine Canada’s Drug Strategy”* presented to parliament in December, 2002, is nothing more than a rehash of history and old evidence. To be sure, the Committee traveled, read submissions and heard witnesses; but, in the end, most of its many recommendations came down to “enhance”, “improve”, “consult”, “cooperate”, “develop” and “coordinate”. Consider, for example, Recommendation 5 in Chapter 3, which is devoted to a review of what has gone before:

The Committee recommends the Canadian Centre on Substance Abuse, as an independent non-governmental organization, be given the mandate to develop, in consultation with federal, provincial and territorial governments and key stakeholders, the goals, the objectives, the performance indicators and the strategic plan for a renewed Canada’s Drug Strategy, which shall be comprehensive, coordinated and integrated.

Leaving aside the silly sound of GovSpeak, that is essentially what the Centre was mandated to do when it was created in 1988. Stranger still is the fact that this comment is preceded on the same page, in equally bold type, by Recommendation 3, which calls for the establishment of another, separate bureaucracy, the office of a Canadian Drug

Commissioner, “mandated to monitor, investigate and audit the implementation of a renewed Canada’s Drug Strategy”. An interested observer would be forgiven for asking if the Committee wanted the buck to stop and, if so, where.

Those recommendations, among others, and the report’s lack of any serious discussion of real policy alternatives, lead to the suspicion that the Committee was created in the first place to justify inaction. But there are nonetheless some interesting facts disclosed and observations made. For example, remember that \$500 million figure mentioned by the Auditor-General? The report tells us that she went on to say that 95% of that expenditure in 2000 went to “supply reduction”, that is, enforcement and interdiction efforts by the RCMP, Correctional Services Canada and the Department of Justice. That’s *\$475 million* - leaving a mere \$25 million for everything else. And what do they have to show for it? First, although the stated goal since 1997 has been to deal with the supply side of drugs, prosecutions for trafficking, cultivating and importing have persistently lagged behind those for possession, and prosecutions of all kinds have been overwhelmingly for marijuana offences. Thus, it would appear that a large chunk of that \$475 million has gone into the investigation and prosecution of people possessing marijuana. It is instructive to note the effect all that money has had on illicit drug use in British Columbia, recognized as the country’s haven for users, importers, traffickers and growers alike and where it is accepted wisdom that “simple possession“ of marijuana is not prosecuted (all figures from the B.C. Ministry of Public Safety and Solicitor-General):

- There were 9,989 cannabis offences in 1993 and 16,573 in 2002, a 66% increase.
- In 2002, 70% were for possession, 19% for cultivation and 10% for trafficking.
- There were 1,837 offences involving cocaine in 1993, and 3,827 in 2002, a 48% increase.
- Fifty-one percent were for trafficking and 48% for possession.

- There were 925 heroin offences in 1994; that decreased 15% until 2000 and fell a further 38% by 2002.
- There were 1,723 offences related to “other” drugs in 2002, a 38% increase over 2001, much of that driven by “ecstasy” (MDMA).

Considering the increases in all but heroin, we don't seem to be getting much of a bang for our buck. As for the drop in heroin use, those users may be risk-takers but they are not crazy. Having carefully considered the spate of overdose deaths of the past decade they have opted, here and in the U.S., to change to the more reliable and often less expensive drug, cocaine. Finally, the figures show that enforcement of laws against simple possession of marijuana continues to dominate police activity. That the conviction rate for trafficking in cocaine in B.C. somewhat exceeds the rate for possession deserves comment even if, in spite of the incarceration of all those peddlers, the number of convicted users rose by almost 50% in less than a decade (in other words, attempting to eliminate supply is as futile as concentrating on demand). In more than 25 years on the bench, I have presided over hundreds of preliminary hearings, trials and guilty pleas on charges of trafficking, and possession for the purpose of trafficking, in cocaine. I can't recall the largest amount I dealt with, but I do not remember a case involving anything more than mid-level distribution - and even those were relatively rare. The most common scenario was of a user/addict having a couple of dozen “flaps”. Notably absent, with respect to cocaine, heroin or marijuana, was anyone who might be said to have been part of a high-level, “organized” plan to import, produce, distribute or sell the drug. Such prosecutions have, of course, been undertaken; but they have been as rare as asteroid hits.

In Chapter 6 of the Report, *Substance Abuse and Public Safety*, the Committee purports to deal with “alternatives to prosecution and/or incarceration”. It discusses drug treatment courts - which are, of course, not an alternative to prosecution at all. They are essentially a band-aid measure intended to reduce court loads by addressing what is really a public health issue, the addiction of those who are repeatedly charged. The Committee

also considers the problems associated with forced treatment of addicts as part of sentence. But it never discusses at any length the alternatives of legalization, decriminalization or “de-profitization”, as if those are not worthy of serious consideration. In the section on Organized Crime, the Report notes that R. G. Bob Lesser, Chief Superintendent of the Drug Enforcement Branch of the RCMP, testified that “approximately 80% of [organized crime groups’] funding is from drug trafficking”. It quotes Peter Ditchfield, the deputy chief of the Organized Crime Agency of B.C., to the effect that the profits from what he estimates are the 15,000 to 20,000 marijuana grow operations in the Lower Mainland “fuel the engine of organized crime in this province”. Finally, it quotes Superintendent Carl Busson, the Officer in Charge of the Drug Enforcement Branch: “The illegal status of a substance is only a hindrance to criminal organizations. Profit is their motivating factor. We see these groups involved in illegal activities surrounding alcohol and tobacco”.

Those pronouncements were accepted as gospel. It doesn’t appear to have crossed the minds of any member of the Committee that all three sources - and particularly the last - are likely to have a bias towards maintaining the *status quo*. I don’t suggest for a moment any dishonesty on the part of these high-ranking police officers. But there can be no doubt that their comments are not only predictable, they are obligatory. Otherwise, they would have to concede that they have devoted themselves for decades to enforcing a misbegotten policy that does more harm than good. They sincerely believe what they say; but the fact remains that any deviation from that line would be like a bishop accepting that there is no God. The Committee notes that, “Representatives from enforcement agencies tended toward the view that *more resources* and improved legislation are needed to achieve better results in the repression of illicit substance use and trafficking” (my emphasis). What part of the phrase “vested interests” did the Committee not understand? Someone has defined insanity as doing the same thing over and over again and expecting a different outcome. Just under a half a billion dollars’ worth of resources per year has had no effect; and “improved” legislation, in this context, means “more punitive“. Yet the Committee, without any serious weighing of real “alternatives to prosecution and/or incarceration”, concludes with this observation:

While the prohibition and regulation of controlled substances is the framework within which organized crime constructs its markets, our society is not prepared or equipped, at this time, to abandon such controls simply to pre-empt criminal activities, since unrestricted use of most controlled substances poses real health risks to people

The degree to which that conclusion misses the point and obscures the real issue is breathtaking. It would appear that prohibition is nothing more than “a framework” for the “construction of markets”, despite evidence that 80% of organized crime profits emanate from it. If society is not immediately prepared or equipped to abandon criminal controls - and that is likely so - is it not the responsibility of the government to undo the mess it created in the first place and to prepare and equip Canadians to accept and deal with legalization? And the qualifier, “at this time”, suggests that the Committee accepts that at some undisclosed point in the future legalization will be appropriate and the Canadian public can then be effectively prepared and equipped. Surely that deserves some exposition: What might be done in the future that can't be done now? How long will it take? Why not now? But the most egregious comment, the one which most leads me to doubt the sincerity of the Committee's work, is the last clause, “...since *unrestricted use* of most controlled substances poses real health risks to people” (my emphasis).

Only the most rabid free-marketer would advocate full legalization of recreational drugs without regulation. There is no evidence in the report of such a suggestion being made to the Committee. It therefore set up a straw man and opted to define for itself what “legalization” meant for this purpose - unrestricted use - in order to have something it could reject. Tobacco, alcohol, coffee and any number of substances pose “real health risks”, but we have not opted to make their use a criminal act; and the use of the first two is certainly regulated. Finally, if the fatal flaw in legalization is the risk to health, it is

once again necessary to ask why the issue is presently dealt with in the context of the criminal law.

Before turning to that essentially constitutional issue, credit is due for the Committee's rather more expanded treatment of the legalization option in Chapter 9, devoted to cannabis. But, in the end, it is more of *la meme chose*:

...the Committee shares the concern expressed by many educators' treatment providers, and law enforcement officers to name only a few, that many Canadians, and youth in particular, might misperceive legalization as evidence that parliament is not concerned about the widespread use of cannabis. At least as far as this committee is concerned, nothing could be further from the truth. Indeed, the Committee was told by various health care professionals, addiction Specialists and treatment providers that frequent and prolonged use of Cannabis can lead to dependence as well as social problems for certain users...Furthermore, the Committee is not convinced that legalization accompanied by regulation would remove the profit from the illegal production and sale of cannabis or in any significant way discourage criminals currently involved in distribution.

Once again, if health concerns are at the heart of a reluctance to send the wrong message, why are criminal sanctions needed for marijuana but not for a host of other unhealthy substances? The concerns of all those professionals apply generally. It goes without saying that "frequent and prolonged use" of any mood-altering substance - or, for that matter, butter, brown sugar or trans-fatty acids - is cause for concern. Indeed, that phrase defines "dependence". As for the "social problems" of certain users, it is unclear how they can provide a foundation for a policy. Remember those statistics? If criminal charges show a 66% increase in marijuana use since 1993, where is the epidemic of zonked-out kids roaming the streets in a fog? As for a regulated market not being a

deterrent to organized crime, although it was the Committee's job to be persuaded, or not, about a number of things, one would expect it to cite *some* information that has led to that conclusion. Without it, it can only be said to be bad elementary economics to suggest that cutting the profit margin to a level equivalent to the sale of any other commodity would have no effect. Such underground activity as there may be with regard to alcohol is insignificant. As far as I know, criminals have a similar lack of interest in bananas, wool or hogs.

Finally, there is what I see as a serious problem with a fundamental assumption made by the committee: that the federal government has any role to play at all in the formulation of a drug policy. Again in Chapter 3 the Committee repeats the "overarching principle...that substance abuse is primarily a health issue". Shortly thereafter, it says,

Parliament exercises its authority to pass laws regulating the sale, distribution and possession of psychoactive substances through *The Controlled Drugs and Substances Act*. Responsibility for providing health care and, therefore, treatment and rehabilitation for substance dependence, falls primarily to the provinces.

That presupposes, without any foundation, the legitimacy of a Federal presence in the area in the first place and presents an interesting constitutional question not addressed in all of those "Drug Strategies". When, in 1908, it first "occupied the field", as the expression goes, with its law against opium, the federal government effectively declared that non-medical drug use was within its purview under its criminal law powers. Nobody seemed to question that, at the time nor for a long time after. But since 1973, Parliament's own many Committees and Commissions have repeatedly declared it to be a "health issue". If it is, then it is incumbent upon Ottawa to butt out and let the provinces take over. They probably would resist the idea but, if the provinces can handle alcohol, a manifestly dangerous recreational drug, why not all the others? The only answer to that, as well as to the question of the persistent and fruitless reliance on prohibition, seems to be the Law of Natural Inertia of Governing Bodies: if a policy would be bold, socially

beneficial and fiscally prudent, but risky with the electorate and require the dismantling of an entrenched bureaucracy, ignore it.

In short, if the federal government itself has repeatedly said illicit drug use is a question of health protection, a matter within the constitutional purview of the provinces, it has no place legislating in the field. As long as it maintained that such use was criminal, and the provinces were prepared to go along with it, Ottawa's prohibit-and-punish drug laws were constitutionally defensible. It no longer does and, in my view, it is certainly arguable that the *Controlled Drugs and Substances Act* is, in its punitive aspects, outside the jurisdictional powers (*ultra vires*) of the federal government. I would not expect the provinces to eagerly accept the challenge; but if it is their responsibility, they will have to.

To summarize, the existing Canadian policy of prohibition with regard to all non-medical or recreational drug use, supported with a few suggested cosmetic changes in the latest Report, has had the following ill effects, unchanged from those identified thirty years ago by the LeDain Commission:

1. It establishes a black market, which, in turn, keeps prices artificially high, driving property offences and attracting organized crime.
2. It betrays the very role the Government seeks to play, the protector of public health, by driving addiction underground, ensuring a total absence of quality control and contributing to death, illness and the spread of AIDS and hepatitis C.
3. It has made, and continues to make, generations of adolescents cynical about any attempt to educate them on the dangers of certain drugs. They have not all just tumbled out of the back of a turnip truck. The vast majority have tried marijuana and are intelligent enough to see that the outrageous hyperbole - and sometimes just plain lies - they have heard about its dangers over the past several decades is an empty effort by their elders to convince them of something they know isn't so.

Educating them on the dangers of drugs is going to be tough. We have already sent them the “wrong message” and it will take some time to break through with effective education rather than fear mongering.

4. It is a serious and unnecessary drain on the resources of police, prosecutors, courts and corrections officials. If prohibition had ever demonstrated some chance of success, Canadians would no doubt accept that cost. But it bears repeating that it cannot work and never will. Consider this recent Profile of drug offenders within its jurisdiction by Correctional Services Canada - and it must be remembered that the numbers represent those serving a sentence of two years or more:
 - As of December 31, 2000, there were 5,779 drug offenders in the system, or 26% of the prison population. Noteworthy is the 10% of that number doing time for possession.
 - Since 1995, the number remained within the narrow range between 5,310 and 5,779. B.C. Provincial Corrections figures are not nearly as striking, but it is worth noting that the proportion of drug offenders to the rest of those in custody from 2000 to 2003 was 9.6%, 8.9%, 8.1% and 9.1% respectively. In spite of all the resources thrown at prohibition, the number of persons in jail for drug offences remains static and drug use shows no sign of abating.
5. Finally, the policy is more likely than not to breed problems of corruption and the erosion of civil liberties as it has in the United States.

IV: The American Experience

On June 8, 1998, the *Ottawa Citizen* ran an editorial, which effectively summed up the impact of the U.S. “War on Drugs”. In part it read:

Today in New York City, an act of almost indescribable stupidity will be committed. Eighteen years after Ronald Reagan announced he would stamp out drugs, the War on Drugs will be declared once again. This time the United Nations will play the fool, with the announcement of the most ambitious international anti-drug program ever.

That program called for opium, cannabis and coca crop eradication and substitution in Afghanistan, Myanmar, Indonesia, Mexico, Laos, Vietnam, Pakistan and Colombia. The editorial went on to label the plan an “impossible task” but, even if successful, irrelevant for some rather obvious reasons:

Cutting the supply of drugs does nothing to reduce the demand for them. It would mean, however, that some of that demand won’t be met, which would push the value of drugs skyward. That, in turn, would tempt criminals, soldiers, politicians, guerrillas and farmers elsewhere in the world to produce their own supply.

What about Canada? As always, the federal government is clambering onto the bandwagon and cheering on the war. Since the Trudeau years, it has seldom given serious thought to drug policy, preferring instead to follow whatever variation on failure is being proposed.

That, sadly, is true of most of the world’s nations. Sense and experience are ignored, folly is repeated and the war on drugs becomes a war on reason itself.

It is interesting to note in passing that Reagan’s declaration of war came less than ten years after Nixon’s; that, in 1986, the report of Reagan’s own Commission on Organized

Crime sadly proclaimed, “Despite continuing expressions of determination, America’s war on drugs seems nowhere close to success”; and that, in 1989, Reagan called for the death penalty for drug traffickers.

James P. Gray, in his book, *Why Our Drug Laws Have Failed*, goes into considerable detail about how the war has damaged the community rather than improved it, how it has eroded civil liberties and how it has spawned corruption within law enforcement and corrections authorities. I’ll provide a few snapshots of the reality of those failings, but first it is both entertaining and instructive to draw a few statistical parallels between alcohol prohibition (1920-1933) and the war on drugs (1971-present):

- Federal funding for law enforcement went from \$2.2 million in 1920 to \$12 million in 1929.
- The federal prison population went from 3,000 in 1920 to 12,000 in 1932. Two-thirds of the 1932 number were in prison for alcohol and other drug offences.
- Between 1973 and 1983, the number of state and federal prisoners in the U.S. doubled to 660,800. Between 1983 and 1993, the number almost doubled again, to 1,408,685. In 1996, it reached 1,630,940 by 1998, had climbed to 1.8 million.
- In 1960, one in 25 state prisoners was there because of a drug offence. By 1993, it was one in three
- In 1994, there were as many drug offenders in prison in the U.S. as there had been total prisoners for all types of offences in 1970. In 1994, one in six federal prisoners were there primarily for a marijuana offence.

The utter failure of alcohol prohibition and its criminal side-effects would suggest caution in assessing the progress of the war on drugs. But you would be forgiven for believing that the war is surely being won, considering the number of people incarcerated for drug offences since it was declared. Unfortunately, the 2002 National Survey on Drug Use and Health, conducted by the U.S. Department of Health and Human Services, tells a different story, one that must be galling to the drug warriors.

Overall, 19.5 million Americans (8.3% of the population over the age of twelve) identified themselves as “current illicit drug users”. Marijuana was the drug of choice for 14.6 million, and one-third reported using it more than twenty times in the past month. Two million reported cocaine use, approximately 1/4 of whom used crack. There were 1.2 million declared users of hallucinogens, slightly more than half identifying ecstasy as their chosen substance. Heroin use has declined, but those numbers were always comparatively small.

The statistical trends over the duration of the war are equally discouraging for those who would seek to maintain the *status quo*. In 1965, 5% of persons 18 to 25 years old admitted to marijuana use. By 1970, that number had risen to 22%. It climbed to 54% in 1980 and then dipped to 47% and 44% in 1990 and 1995, respectively. By 2002, it was back to its 1980 high point of 54%. Cocaine looks just a bit better by comparison: 1% of the population admitted to its use in 1967, that climbed to 17.9% in 1984 but then dipped to 10.1% in 1996. By 2002, it was back up to 15.4%.but not to its previous 1984 high point. Finally, in 1992 14.3% reported hallucinogen use and that rose to 24.2% in 2002, the increase due almost exclusively to the spread of ecstasy. New users of marijuana and cocaine continue to remain steady each year at 2.5 million and 1.2 million, respectively.

All of those numbers reveal that the policy of drug prohibition has been as abject a failure as was alcohol prohibition before it. If it showed any sign of succeeding, people might be prepared to accept its manifest side-effects - the enormous cost, the corruption, the incursions into private lives, the fostering of organized crime and the creation of a

distinct criminal underclass. But not only does it show no sign of achieving its goals, illicit drug use and trade is clearly increasing.

And here are some snapshots of the U.S. in the heat of the war:

A university freshman shoots to death a counselor who had found cocaine in his possession, and then shoots himself. Acting on a tip from two anonymous (but paid) informants that marijuana is being grown on a ranch near Los Angeles, the property of a reclusive millionaire, 27 agents from five different agencies, including the L.A. Police Department and the Drug Enforcement Agency, stage a raid. The owner, awakened by the door being battered down, accompanied by police shouts and his wife's screams, reaches for a gun in his night table and is shot dead in his bed. Nothing is found. An official inquiry concludes that the search warrant was based on "misstatements" in the application to obtain it, that previous surreptitious searches of the property (when nothing was found) had been illegal and that the raid was in part motivated by the potential forfeiture of the \$5 million property, the bulk of which, by law, deemed "proceeds of crime", would go to the budget-strapped local police agencies involved. The family collects \$4 million from the State and \$1 million from the Federal Government. Again, acting on a tip from a paid informant that there is a marijuana grow operation on the premises, the home near San Diego of a computer company executive is raided, with the assistance of a battering ram and concussion grenades. He is shot and seriously injured. Nothing is found - and \$2.5 million in damages is paid to him and his family.

There is no doubt that, over the years, U.S. law enforcement agencies have conducted innumerable successful searches, have uncovered huge amounts of illicit drugs and have generally enforced the law in a professional and responsible way. I cite the examples I do because they are the extreme end of a spectrum of enforcement activity that has always included misidentification, misinformation and therefore some degree of misfortune for the innocent citizen. The point is that, when the police are given the task of investigating victimless crimes, they must rely on often tenuous tips from less than

reliable sources; and over time, they will inevitably bend the rules to conduct illegal searches or to obtain warrants.

Even when the suspect himself is placed under surveillance, the success rate has been far from sterling. In 1981, 106 federal wiretaps were judicially authorized. By 1994, the number had risen to 554, the vast majority concerned with drug offences. Indeed, federal judges did not refuse an application in the six years before 1994. (The cost, by the way, was \$66,783 *per wiretap*). Only 17% of all of those intercepts of private conversations produced incriminating evidence. In short, the war is being lost while ordinary citizens are too often the victims of friendly fire.

The lack of balance and the resort to excessive measures does not only affect specific suspects. Americans have been conditioned to accept that the well-being of their children is the principal motive for the war on drugs. Yet on November 5, 2003, at Stratford High School in Goose Creek, South Carolina - a suburb of Charleston - a number of police officers staged a raid. They came at the invitation of the principal, who decided that surveillance tapes from the school's multi-camera video system disclosed some sort of drug activity. The principal later said (before resigning) that he had no idea the police would come in with guns drawn and drug-sniffing dogs snarling at cowering students. Nothing was found.

Even innocent foreign interests can be affected by a policy of "zero tolerance". On August 9, 1999, the DEA seized 20 tons of birdseed and held it in a Detroit warehouse. Kenex Ltd., a Canadian company, had shipped the sterilized seeds from its industrial hemp harvest. It showed a THC concentration of .0014%. THC, the active ingredient in cannabis, has an average concentration in marijuana of 5%. Kenex was told to withdraw all of its shipments of hemp - used for horse bedding, rope-making and hemp oil - or face \$500,000 in fines.

The increasing attempts to "get tough" on drugs has not only bloated prison populations, in a number of states it has apparently been thought insufficient to punish a user of a

small amount of marijuana or cocaine with multi-year terms of imprisonment - or life, in states with “three strikes” laws. Legislation has been passed that prohibits prisoners, released after serving time for a felony drug offence, from collecting welfare, living in public housing, receiving food assistance, obtaining a driver’s licence, securing student loans or applying for a job with any government agency or private company that receives government grants. Forty-eight of the fifty states prohibit ex-convicts from voting. Vindictive in the extreme, those laws were passed by legislators who, having conditioned the electorate by campaigning on law-and-order platforms targeting the drug user, simply gave their constituents what they had learned to want. The only real effect of those laws has been to create a permanent criminal underclass. Prison construction has expanded enormously over the last two decades, as have the agencies charged with putting people in them. Gray sees those bureaucracies, and all the others connected to the war on drugs - what he terms the “prison-industrial complex” - as the ultimate barrier against any meaningful change in the law. The livelihood of too many Americans depends on maintaining the present system

All of that has happened in the face of the proven failure of criminal sanctions to even keep drug consumption level, let alone reduce or eliminate it.

V: Conclusion

It is time, I believe, for our legislators to resist the temptation to continue riding that particular bandwagon and to address this issue separately from the course adopted by our neighbours. Manifestly, we do not want to go where they have gone and, without radical change, we will surely end up there. Indeed, I suspect that, should we adopt a rational, balanced and above all, healthy policy to deal with recreational drug use, we might find over time that our example has been followed. Our government should be guided by the initial admonition of the Hippocratic oath: “First, do no harm”.

In case there is any doubt that we are headed in the direction of the U.S., consider three events that occurred while this was being written. On December 28, 2003, the RCMP

raided offices in the B.C. Legislature for reasons that have yet to be specifically revealed; but it was hinted darkly by the police spokesperson that it had something to do with “drugs” and “organized crime”. On January 6, 2004 six Vancouver police officers were sentenced on charges of assault. They had been found guilty of beating up on three drug dealers they picked up on the notorious Granville Street Mall and drove out to the privacy of Stanley Park. The two who were later dismissed by the force were quoted by a courageous fellow officer, who was at the scene, as repeatedly referring to the victims as “scum of the earth”, “slime’ and “shit”. Finally, on January 8th, six members of the Toronto police Central Field Command Drug Squad were charged with 22 criminal offences ranging from obstruction of justice, perjury, and extortion to theft and assault causing bodily harm. One of them had been charged earlier in the week with other drug-related offences.

If those events were part of a price we have to pay for a successful policy of prohibition, it might be worth it. Unfortunately, on February 23, 2004, Statistics Canada released a report that shows a 42% increase from 1992 to 2002 in all “drug-related incidents” reported to police. Possession of marijuana offences increased 81% in the same decade, while trafficking (in all drugs surveyed) declined slightly. It is working no better here than it has in the U.S. And as for the cost, it is noteworthy that over the lifetime of the federal gun registry program, vilified for its one-billion plus price tag, nearly twice as much has been spent on drug law enforcement.

V: The Modest Proposal

I have found it interesting that, when discussing this issue casually with friends and colleagues, the reaction has been mixed, ranging from unqualified agreement to a sort of horrified disbelief. I think the latter has been due to a failure on my part to clearly define what I mean by a radical change in drug policy. Having rejected, for all of the reasons I have already set out, the option of doing more of the same or, god forbid, getting tougher, there are many options available and they deserve to be addressed separately and in select packages. They range from the least disruptive, decriminalization, to the most, outright

legalization without restriction. “Medicinal” marijuana does not deserve separate consideration. While I have no doubt that a number of people with certain illnesses derive some benefit from smoking pot, I am of the view that the concept is fundamentally a foot in the door for marijuana legalization activists who have given up on convincing governments with rational argument.

I have already noted that no serious advocate of a change in drug policy proposes unregulated trade in drugs, such that they would be treated like any other commodity. There are some market worshippers out there, but I accept the argument that government has a regulatory role to play in the sale and use of substances that, if used wrongly or immoderately, could prove poisonous. As for de-criminalization, the removal of criminal sanctions, apart from the constitutional frailty of the proposal, is intended only for users, only for marijuana and even then only in small quantities. It is a quarter-measure at best; and it is tainted by the reasonable suspicion that it is a bone being tossed at those who have lobbied over the years for a more rational approach to what used to be known, rather quaintly, as “soft” drugs - derivatives of cannabis. Except for their addictive potential, I can find no logic in distinguishing cocaine and heroin from marijuana and the almost defunct hashish: all are mood-altering substances and for that reason alone carry the potential for dependence. That the first two can be physically addictive merely puts them in the same class as alcohol, a drug we seem to be able to manage in a regulated market

Nor can I logically distinguish users (of whatever amounts) from sellers. To excuse the first while targeting the second disregards their interdependence and simply perpetuates the failed prohibition approach, except only for one side of the economic relationship. It bears repeating: although the substances are drugs, and some users become addicted, the relationship between seller and buyer is purely one of supply and demand. The demand will continue and proposing serious punishment for the seller while exempting the user will be no more effective as a deterrent in the future than it has been in the past. The market will continue to flourish, only with more inflated prices, a more uncertain supply and a continuing total absence of quality control.

A third option is treatment, either alone as a mandatory aspect of sentencing in a continued prohibition/punishment scheme, or in conjunction with a system of regulated distribution of legal substances. The first suffers from the same drawbacks as decriminalization: it will have no impact on the market itself and presupposes the continuation of a failed policy. Two studies of treatment for drug dependency done in 1994, one by the Rand Corporation and one funded by the State of California, came to essentially the same conclusions: treatment is seven times more cost-effective than domestic enforcement, eleven times more than attempts to interdict illegal drugs at borders and twenty-three times more than crop eradication and substitution overseas. It is the *only* method by which demand - which principally dictates the supply - can be lessened. But it can only do so successfully in a climate of openness, where drug users are not marginalized and too frightened or ashamed to seek help voluntarily.

That climate, of course, is one of regulated distribution of drugs. It is time to focus, as Gray does in his book, on alcohol as the model for all drug distribution. First and foremost, it is a matter under provincial jurisdiction; and different provinces have adopted slightly different approaches regarding minimum age, bootlegging, “home-brew” operations, bar and tavern hours and so on. They respond to their local culture in the same way they do to any health issue. Almost all have stayed with government-regulated distribution, which seems to have worked well enough. There is no reason, except for the shock to the body politic, why other drugs for which there exists a clear demand cannot be distributed in a similar way, though never in exactly the same way. The “drug store” in question would sell plain packages of a particular drug containing only the name of the drug, the amount, perhaps its place of origin and type (there are many strains of marijuana, for example) and its price. There would be no advertising. The government of the province would enter into low-bid contracts with growers and producers and would operate the retail outlets itself. It would ensure that a strict quality control process was in place, as now exists with regard to all new drugs proposed for the pharmaceutical market. The price would be set in such a way that a portion of it - depending on need, perhaps a large portion - would be a tax which would go not into general revenue but into a fund specifically earmarked for education about and treatment of drug abuse. Unlicensed sale

or distribution of heroin, cocaine and marijuana would remain an offence; but its profitability would be lost and it is doubtful that illegal drug dealers would compete with a government monopoly that could alter its price downward as it saw fit. The true value of street drugs is miniscule compared to its black market price. A typical dose of cocaine, with a sterile needle in the package, could cost less than \$2.00. Approximately one-third of that would go to the grower/producer, one-third to fund the operation of the stores and one-third into the education/treatment fund. Sale to minors would be strictly prohibited, as it is now in liquor stores. Existing laws dealing with the misuse of alcohol, such as driving while impaired or being intoxicated in a public place would, of course, remain in place and be applicable to other drugs.

The result would be to destroy the black market, remove at a stroke a principal source of revenue for organized crime and terrorist groups, free up hundreds of millions of dollars now spent on enforcement and corrections, create a new source of government revenue and greatly reduce the incidence of property crime. Notorious inner-city drug ghettos, like Vancouver's downtown east side, would slowly disappear and the cores of our cities could be revitalized. The spread of HIV and hepatitis from multiple needle use would be checked.

There is only one unknown in this scheme: whether drug use would increase in the short or long term. Gray believes that a short-term increase is likely, something with which I respectfully disagree. Those who are presently using illegal drugs would simply be able to procure them legally. That they might try to entice others to share in the drug would not be affected - the same potential exists now. In other words, the extent of new users, depending as it does now on being "initiated" by someone, would remain the same. That some people might seek to experiment with cocaine by buying a dose or two at the neighbourhood government drug store would be offset by the absence of peddlers whose livelihood under a black market depended on initiating new (usually underage) users. In the long run I suggest that, with effective education, treatment and social pressure, use will decline considerably.

In any event, if it should occur, some short-term increase in use would be worth establishing some sanity in our criminal law, allowing police officers to regain their dignity in work that does not involve rousting hapless addicts, eliminating a source of enormous profit for black marketers, restoring in the young some faith in the wisdom of their leaders and, above all, protecting the health of Canadians.

Jerome B. Paradis

March 10, 2004.