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THE AMBITION OF JUSTICE IN THE CANNABIS SPACE

BY ANNAMARIA ENENAJOR
PHOTOGRAPH BY TYLER ANDERSON

Why cannabis convictions in this country call out for an immediate redress

The Campaign for Cannabis Amnesty is dedicated to making sure that historical wrongs which are the legacy of cannabis prohibition are made right. We are committed to ensuring equity in Canada's legal cannabis space and fair treatment for those disproportionately impacted by cannabis prohibition.

We began as a group of lawyers, activists, academics and social entrepreneurs who believed that while Canada was doing the right thing by taking the bold step of legalizing cannabis, it was doing so in a way that left behind our most vulnerable and marginalized populations. Decades of cannabis prohibition have saddled hundreds of thousands of Canadians with criminal convictions for non-violent, minor cannabis offences. Moreover, the unfair and unequal enforcement of cannabis laws has meant that marginalized and racialized Canadians have been disproportionately burdened by cannabis convictions. During a town hall discussion hosted by Vice Canada on April 24, 2017, our Prime Minister acknowledged that his late brother, Michel, was once charged with marijuana possession—and that their father's resources and connections helped make the charge “go away.” Trudeau, himself, also admitted to having smoked, even while he was

a sitting member of Parliament; despite this confession, he was never arrested for the crime.

Simple possession of cannabis was never an offence disproportionately committed by Black and Indigenous Canadians. In fact, prior to legalization, 1 in 10 Canadians admitted to having possessed cannabis. But not all of them were punished for it. Despite similar rates of use across racial groups, these offences were unequally enforced across the country, disadvantaging racialized and Indigenous Canadians for decades. In 2015, for example, Indigenous people in Vancouver were nearly seven times more likely than White people to be arrested for cannabis possession. In Calgary, Indigenous and Black people were roughly three times more likely to be arrested than White people and in Halifax, Black people were over four times more likely to be arrested for cannabis possession than White people. As Minister Bill Blair himself acknowledged: “One of the great injustices in this country is the disparity and the disproportionality of the enforcement of these laws and the impact it has on minority communities, Aboriginal communities and those in our most vulnerable neighbourhoods.”

A conviction for cannabis possession can limit employment prospects and volunteer opportunities. It can impact child custody

proceedings and can be relied on to show parents are unfit in child protection hearings. In cities like Ottawa where police services offer what are called “Crime-Free Multi-Housing” Programs, a cannabis conviction can screen you out of qualifying to live in certain neighbourhoods. In recent years, the sentences imposed by Canadian courts on those convicted of the crime of simple possession of cannabis have decreased in length. This downward trajectory reflects that fact that our courts—like our public—have come to recognize that the direct harms caused by this former offence were virtually non-existent.

Irrespective of how short a person's actual sentence is once convicted of the crime of simple cannabis possession, however, the continued existence of a criminal record imposed a *de facto* life sentence of fear, shame and uncertainty long after an individual's so-called “debt to society” had been paid. Keeping a person's criminal record for something that is no longer a crime serves no purpose other than to impose unnecessary hardship on Canadians. Yet when the Canadian government proposed legalizing cannabis, it did not propose doing anything to help these individuals.

Given the serious consequences of a cannabis conviction, the unequal enforcement of these offences in Canada cries out for redress. People



with simple possession records should be put in the same position as those people who did the exact same thing, but—because of factors that have no bearing on their degree of responsibility, such as family connections and privilege—were never convicted.

In response to the public outcry of this situation, in June 1, 2019, the federal government passed Bill C-93, *An Act to provide no-cost, expedited record suspensions for simple possession of cannabis*. This Act allowed people who had been convicted under the previous cannabis prohibition legislation to apply for a record suspension without being subject to a 5-year waiting period. It also waived the fee for this application.

A year after the legislation was passed, it has failed to bring about any significant relief. First, the legislation only applies in narrow cases.

The applicant must have been convicted only of simple possession of cannabis. This means that although the government acknowledges that there are over 250,000 Canadians with criminal records for simple cannabis possession, it estimates that only 10,000 qualify for an expedited pardon. Disappointingly, only 423 applications have been submitted to date. Of them, only 234 were accepted—123 did not qualify. Part of the reason that these numbers are so low is that, despite the waiver of the waiting period and application fee, the application process is burdensome, complex and costly. Applicants have to pay for their own criminal records check and have to personally attend courthouse to obtain the records to support their applications. This situation could have been avoided had the government chosen simply to expunge the criminal records, a decision made by many jurisdictions in the United States where cannabis has become legal.

While the Campaign for Cannabis Amnesty continues to lobby the government to adopt an expungement model of cannabis amnesty, the Campaign is continuing to prepare for the future. Our efforts are focused around five areas where racialized and vulnerable communities have experienced disproportionate impact:

- 1. Policing: Including, advocating against illegal police actions around detention, search and seizure, and use of force;**
- 2. Criminal Justice Reform: Including advocating for full decriminalization of cannabis and, in the meantime, for procedural and substantive legal reform around the prosecution and sentencing of cannabis offences;**
- 3. Collateral Consequences of Conviction: Including advocacy to address barriers to employment, education, housing, travel, and volunteer work.**
- 4. Participation in the Legal Industry; and**
- 5. Social stigma.**

We have teamed up with over ten private sector industry partners to achieve justice in these five areas. These partnerships have allowed us to set into motion a number of exciting projects that we believe will have a transformative impact in the cannabis space. For example, we are currently developing a Cannabis Convictions Pardon Clinic, an industry town hall on cannabis and racial justice and an employment grant framework for individuals with previous cannabis convictions. We believe that Canada's cannabis industry not only has the capacity to right history's wrongs, but can also become a world leader in making sure that those who were disadvantaged the most by cannabis prohibition have an opportunity to flourish with legalization. ♦

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