

## “Legalizing Cannabis: Unpacking the Federal Task Force Recommendations”

Event Report by Jeff Shantz, Social Justice Centre, KPU

On April 13, 2017 the federal government in Canada tabled its new legislation on cannabis legalization. This legislation, the proposed Cannabis Act, promised by the Liberal Party during their election campaign in 2015, was based in part on recommendations from a task force made up of health officers, law enforcement, and researchers.

The Social Justice Centre at KPU organized a panel, “Legalizing Cannabis: Unpacking the Federal Task Force Recommendations,” to discuss the task force’s work, its insights and processes, as well as broader issues around criminalization and de-criminalization of drug use, the political economy of cannabis, future policy directions, and impacts of drug policy on social justice and human rights. Given the timing of the government announcement, the panel was also able to address the newly tabled legislation.

Held at Simon Fraser University Harbour Centre on Friday, April 21, 2017, the panel included task force members Dr. Perry Kendall, British Columbia’s Chief Health Officer, and Dr. Susan Boyd, University of Victoria, as well as Dr. MJ Malloy of the BC Centre of Excellence on Substance Use. Respondents included Don MacPherson, Executive Director of the Canadian Drug Policy Coalition and Stephanie Lake of the Canadian Students for Sensible Drug Policy.

### The Speakers

Susan Boyd began the session with a discussion of the work of the task force from her perspective as one of its nine members. She noted that the role of the task force was to provide advice on what would become the new regulatory framework. And she was clear that the mandate was one of legal regulation, not whether legalization should be mandated. As part of the process the government created a discussion paper for the public to respond to. Issues focused on included harm reduction, safe production and distribution, and reduction of the role of organized crime. Feedback was gathered through roundtable discussions and meetings with provincial governments, youth, and indigenous groups. There was also online public consultation and almost 30,000 Canadians responded online according to Boyd. There were nearly 300 written submissions.

The panel members also went to Washington and Colorado, states that have legalized cannabis, to look at the systems there. They spoke with the government of Uruguay to discuss its approach. They visited existing retail sites.

MP Bill Blair, former police chief in Toronto was the liaison with the federal government showing its, if not the overall panel’s, criminalization focus early on. At the same time, law enforcement and people who were opposed to harm reduction were at the table as well.

A driving impetus for the government was a move to regulated business and away from “organized crime” an issue that Dr.Perry Kendall would later suggest was a problematic misnomer and which is something of a red herring given the limited role of so-called organized crime.

Boyd suggests that the panel tried to use a collective voice in writing the report even though panelists were from diverse, even opposed, perspectives. The government has said it took the recommendations of the task force seriously.

Perry Kendall began his presentation with an overview of the “paradox of prohibition,” an analysis developed by psychiatrist John Marks. It suggests that social problems associated with drug use rise sharply at both ends of the spectrum from criminalization and prohibition to free market laissez-faire. Marks suggests that the “sweet spot” for drug policy is market regulation (not criminalization) and prescription. This is suggestive given that criminalization and punitive approaches have characterized drug policy in Canada for over a century while the current government seems to be pitching toward capitalization and corporate profit (the other end). Notably, industry opposes any government monopoly that limits availability and constrains distribution (as in a liquor board system). Kendall, from the perspective of a government health officer, suggests that the harms of alcohol increase with an increase in alcohol outlets. He poses the issue as one of how to ensure there is some control on access and that substances are less rather than more harmful.

MJ Milloy introduced himself as a strong supporter of regulation within a context of respect for human rights. He noted that incarceration and corrections do not work. He correctly pointed out that mass incarceration in the United States has been driven by the arrests of Black and Latino men for pot use and distribution. Furthermore, the move away from criminalization has made a large contribution to peoples health. Milloy also reminded the room that stigma, discrimination, and stereotyping marked the approach by the previous Conservative Party federal government under Prime Minister Stephen Harper.

Milloy commended the task force report for being in his view steeped in public health awareness and respect for the experiences of drug users. In terms of the legislation, Milloy suggested that we need to ensure that things proceed with respect for human rights being at the forefront.

Human rights is a central concern since use or distribution of cannabis outside of the new legal regulatory system will still be criminalized and dealt with in a punitive manner. Scholars and the concerned public need to follow these criminalization practices closely in his view.

The respondents included Don MacPherson, a longtime and respected social justice advocate who has worked to change drug policy, away from punitive and repressive approaches, and address the needs of drug users in Canada, and of the Canadian Students for Sensible Drug Policy.

MacPherson began by suggesting, perhaps surprisingly, that the task force report was better than many advocates expected. He made reference to a quote from Public Safety Minister Ralph Goodale that drug law, so far, has been an abject failure. Criminalization has not stopped either organized crime or youth drug abuse. Yet, as MacPherson noted, Goodale’s statement was known to advocates in the 1970s.

MacPherson expressed the concern that the public health side of the discussion is now emphasized *over* social justice. He noted that cannabis should never have been made illegal in Canada. It was criminalized solely because it was associated with other classes and races to the backgrounds of the moral entrepreneurs who brought in the legislation (who were primarily white and petit bourgeois).

MacPherson insisted that we need to ask about those who have been arrested and jailed for small scale use and distribution over the decades. Thousands of Canadians have paid the terrible price for working peacefully within the cannabis industry over decades. From a social justice perspective MacPherson raises issues with the prohibition of *all* drugs.

He notes that the public health approach has moved away from a social justice perspective and social justice commitments. Protection of youth and prohibition within a legal regime have taken precedence. Thus the new legislation will still target marginalized and poorer people. White, middle strata males will not be targeted, but others will.

As one example of a more social justice oriented approach, MacPherson provided the example of planned legalization in Oakland where people who have been jailed for pot offenses previously will go to the front of the line for legal permits. This approach recognizes the inequality of criminalization and prohibition while offering some measure to keep richer white guys, who have not been criminalized, from reaping all of the financial and social benefits after legalization. This at least acknowledges the inequalities of the War on Drugs in the US over generations.

Stephanie Lake of Canadian Students for Sensible Drug Policy raised concerns that youth will still be targeted. Many youth will already have a record for pot which will harm them going forward. Her organization proposes earlier age education for youth. They recognize that the abstinence message does not and will not work. In her view youth must be shown trust and support to help them to make responsible decisions.

#### A Robust Discussion: Moralism, Myths of Organized Crime, Policing

Some of the most interesting and pertinent discussions came out through the question period. Audience members were engaged and brought forward a range of relevant concerns.

In terms of moral regulatory language, Susan Boyd pointed out that youth and women, and their protection, have been used as the rationale for drug penalties since the start over 100 years ago (generally by adult male moral entrepreneurs) . And, she noted, they are still being used as the rationale. Yet youth and women are not asked if they want to be the rationale for prohibition or regulation.

Audience member Anne Livingston, a longtime advocate with the Vancouver Network of Drug Users (VANDU) remarked that it is incredible that so much concern is expressed for children's brain development and pot when so many children are living in poverty and have great nutritional lacks. As well there are no free soccer classes or other programs in community centers that would aid in childhood development.

It was noted rightly that the city budget of virtually every municipality is gobbled up by police. Children can get picked up for jaywalking, etc. This can start investigations by police into "bad parenting" and this can lead to further criminalization of families and individual children. Being poor in the city means interactions with police. Yet there are few funds left over for social centers and youth activities which actually make a beneficial contribution to people's lives.

MJ Milloy noted that differences between pot use and non-use in youth brain development go away when you account for poverty and class, family resources, stigmatization, etc. Social context is more important than substance use. Studies mentioned by Milloy suggest there is no significant difference once social issues are accounted for. The same was true for studies on use during pregnancy. Poverty was more of a factor.

The focus on youth covers up issues of predatory capitalism, settler colonialism, police violence, etc. The drug war is another cover for a race war, in the words of another audience member. And it is government initiated and carried out.

The panelists noted that most pot production is *not* done by organized crime. Mostly it is regular folks who do it to provide for themselves and/or friends or to make some extra income. Boyd noted that according to the US Department of Justice, only about five percent could be linked to organized crime. But the link to organized crime is a powerful ploy for policing agencies and moral regulators alike. By linking cannabis to organized crime agencies can justify harsh penalties and punishment regimes and sell these to the public. And profit.

There is the further problem that the definition of organized crime is too broad. The definition simply says two or more people working together to carry out a criminal act. In this way authorities can define it generally and then put everybody into the category and then equate them with biker gangs and other groups with some notoriety with the public (who will desire a harsh response as conditioned).

Boyd further identified her own approach as being informed by critical criminology and feminism. She said she stands as a prison abolitionist. This was clarified further with her suggestion that prison might only be used for those committing the most horrible crimes. Certainly, she argued, prison should never be used, and is never appropriate, for people using substances, no matter how hard. All were strongly of the view that there must be decriminalization for youth.

Boyd wanted to see decriminalization not only for pot but for *every* drug. She said this relates importantly to the overdose crisis right now.

The panelists pointed out that the harms associated with drug use are most related to the criminal justice system itself, not to the substances used by people. They also noted that every encounter a person has with the criminal justice system, at any level, is quite traumatic. The worst thing about pot for most people is getting busted. As well the resources that people have to move through the system are quite unequal.

One of the recommendations that the more critical members of the task force, including Boyd, suggested was to expunge the criminal records of all who had non-violent cannabis convictions. The panel pushed against the limits of the mandate but on issues of decriminalization and expunging records there was no leeway. Kendall pointed out that they realized that they were not doing the *best* policy for health, they were limited to doing *better* policy.

## “Hot Issues”

The task force members identified a few “hot issues” they faced. One was home growing. They noted that municipalities hate this. As a result, they create moral panics around electricity “theft” and push for heavy law enforcement on this. This approach has certainly been the case in Surrey, where much money and many resources have been put into surveillance of electricity use and intrusive policing. It has been of great financial gain for the RCMP in Surrey.

Another hot issue was around possession limits. They noted that this is also a red herring as people are not driving around with large quantities to sell. It would go bad and have to be sold below value. In addition, police would not assume someone driving around with a trunk full of beer was bootlegging or trafficking. What about someone loading up for a camping trip.

Task force members Boyd and Kendall both said the five gram personal limit was a surprising part of the Bill. They see no good coming out of that. In their view there is no reason for personal limits. They suggested that people should have as much pot as they want or need.

They also questioned the impaired driving panic language. As Kendall suggested, the issue is not your blood level, it is whether you are impaired or not. How do they measure that?

Some differences were also noted between the Canadian legal context and that in the United States. In the US, federal law does not recognize use and distribution of pot as being legal. There is a contradiction between the federal government and state governments in Washington and Colorado. Banks are federal institutions so people cannot put legally earned pot money into banks, even in states where the trade is legal.

The new legislation in Canada will allow age limits to be greater than 18 but not lower as each province decides. As well the legal limit could be lowered below five grams but not above in each province.

Statistics Canada shows police reported pot arrests up to 2015. From 2013 to 2015 there was a slight decrease. But there were still more than 5000 arrests for cannabis.

The task force did not recommend any penalties. Those were put into the Bill by the federal government.

## Conclusion: Righting Wrongs not Making Laws

In the discussion, Don MacPherson focused on changing social norms and behaviors. He noted that the law has not done this. He further argued that the new law will not do this.

He agrees with getting rid of criminalization because it does not work, but argued that the new legislation will still criminalize youth who are distributing pot among their friends. Indeed most youth get it shared from friends.

Perry Kendall said he wished that more attention had been given to concerns about impacts on vulnerable people. Righting a historic wrong as Don MacPherson put it is different than changing a law. In his view there remains a pressing need to address the harms done to people over decades.

He noted that many who are elderly now have lived their lives deeply impacted by early drug busts. And often for trivial, low level activity.

Susan Boyd suggested that the criminalization of drug use expresses an underlying fear of personally pleasurable activities. And we might add of bodily autonomy. Policies are created against personal pleasure. As many critical criminologists have detailed, this is related to the work ethic under capitalism. For Boyd this is a longstanding emphasis on moralizations around sobriety and self-control in white Canadian mythology. And, we might add, the regulation of the working class. It relates to concerns over time and use of time for profit and the preparation for work for the bourgeoisie in a capitalist context of exploitation.

All panelists pointed out that as the Bill passes through government to become law, it could get worse. And during this process criminalization is still being carried out since the government refused a decriminalization period. Right now there is still a six months mandatory minimum simply for growing five pot plants. And punishment increases for growing near a school or park or for second offenses.