



CIVIC POLICY AND MEDICAL CANNABIS DISPENSARIES

A CASE FOR REGULATION

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1 – Introduction

The following is a brief overview of the issues pertaining to the medical cannabis dispensary industry in Canada. This report also discusses potential avenues civic authorities can explore in terms of regulating the medical cannabis dispensary industry.

2 – Background

The rebirth of cannabis as a medicine in the 1990's coincided with a period that saw several cities dealing with health issues that had reached a crises level. In the San Francisco Bay Area, Vancouver, and Vancouver Island, organizations sprung up to provide access to safe, high quality cannabis for those in need. In Vancouver, the British Columbia Compassion Club Society was registered in 1997 as a part of this movement. *(For an overview of the California experience with dispensaries, please see appendix A)*

In 2002, the Canadian Senate created the Senate Special Committee on Illegal Drugs, which found that:

- Measures should be taken to support and encourage the development of alternative practices, such as the establishment of compassion clubs;
- Health Canada should, at the earliest possible opportunity, undertake a clinical study in cooperation with Canadian compassion clubs.

Instead of following the Senate's recommendation, Health Canada instituted a succession of programs that have failed to meet patients' needs and ultimately have led to numerous court cases and constitutional challenges.

Now, in 2015, regulators of medical cannabis around the world have highlighted the need for dispensaries; yet the Marijuana for Medical Purposes Regulations (MMPR) still do not currently include them in its framework. To many who are in dire of need financial support and guidance in accessing their

medication, closing currently operating dispensaries would be a severe hardship and the end of specialized services essential to them (*see Appendix C*). To the wider community, closing dispensaries that have proven themselves to be responsible neighbours does nothing to serve the public good, and only pushes the cannabis market further underground.

3 - Why Nanaimo?

Many local and provincial governments claim that medical cannabis is a Federal issue, however, as we've already shown, the previous government's handling of this issue has not reduced either the need for dispensaries, nor the number of people willing to commit civil disobedience to address that need. Since the announcement of the MMPR, the number of dispensaries in Canada has grown drastically, with more opening in the last few months than in the first 15 years. With the legalization of recreational cannabis on the way, we believe the industry will continue to grow rapidly.

The experiences of other jurisdictions show that municipalities who move early to regulate dispensaries, are much more effective at balancing the concerns of all stakeholders (*see Appendix A*).

Conversely, allowing law enforcement to continue actions against all dispensaries has been shown to be a failure, and a waste of police resources.

4 - The Benefits of Regulating Dispensaries

While dispensaries fill many important roles, they remain an unregulated industry in Canada. By regulating dispensaries, authorities can:

- Ensure that dispensaries follow a patient-centered model
- Ensure dispensaries meet certain quality standards
- Ensure dispensaries meet certain standards of patient care
- Ensure dispensaries comply with local by-law requirements

- Allow municipal control over the number and locations of dispensaries

5 – Recommendations

- Council should instruct staff to prepare a report on the zoning and licensing of medical cannabis dispensaries.
- Council should instruct the RCMP to make cannabis offences its lowest priority pending new Federal regulations.
- Dispensaries should be licensed as essential service providers.
- CAMCD guidelines and recommendations should be used to develop regulations and by-laws around dispensary operation.
- Successful by-laws around both dispensary operation, and personal cultivation from other municipalities should also be considered. (eg. San Fransisco)

Supplementary Materials

Appendix A – California Case Studies

In 1996, the State of California passed a law that exempted patients with physician authorization and their caregivers from the State's marijuana laws. While the Compassionate Use Act (or Prop 215) made no provision for dispensaries, both they, and growing collectives soon began to open in California to address the need for safe, dignified access to medicinal cannabis. This is a brief account of how various municipal city councils have approached policy around this issue, and what their experience has been.

LOS ANGELES – CAPPING CHAOS

Los Angeles has a population of 3,792,621, and is the second largest city in the United States after New York.¹

2007- With 187 Dispensaries registered as operating within city limits, city council approved a moratorium on new dispensaries. They were immediately inundated with over 800 applications for 'hardship exemptions'. By September, there were 966 registered dispensaries operating in Los Angeles.²

2010 – Now with an estimated 800-1000, the city of Los Angeles passes a measure to limit dispensaries to 70, resulting in numerous lawsuits, and the abandonment of the measure.

2012 – Los Angeles again approves a ban on dispensaries, but is unable to implement it due to overwhelming support for a citizen initiative repeal.

2013- Proposition D is passed, limiting the number of dispensaries to less than 135, and ordering all dispensaries that opened after the 2007 moratorium to close.

As of October 2013, 42 dispensaries had voluntarily closed, and the city had taken action against 38 others. Many of the 134 permitted dispensaries, forced to move due to new zoning laws, find themselves competing for space with unpermitted dispensaries, as new ones continue to open.³

SAN FRANCISCO – AHEAD OF THE CURVE AND UNDER THE RADAR

¹http://en.wikipedia.org/wiki/Los_Angeles

²<http://voices.yahoo.com/a-history-medical-marijuana-moratorium-glendale-8722215.html>

³<http://mmjbusinessdaily.com/100s-of-dispensaries-still-open-in-la-more-launching-every-day-despite-new-mmj-law-crackdown/>

*San Francisco is home to 825,111 people, and is the leading financial and cultural centre of Northern California.*⁴

In 1991, San Francisco passed Proposition P with an overwhelming 79% of the vote. Proposition P called on the State of California and the California Medical Association to 'restore hemp medical preparations to the list of available medicines in California,' and not to penalize physicians 'from prescribing hemp preparations for medical purposes.'⁵

While Proposition P did nothing to change existing law, in 1992, the first public cannabis dispensary, the San Francisco Cannabis Buyers Club, opened its door.

In 1996, Attorney General Dan Lungren obtained a court order stipulating that the club close its doors. Sheriff Mike Hennessey refused to assist in the raid, claiming "I would hope that the Attorney General would understand that our community does not wish to spend precious law enforcement dollars busting people engaged in distributing marijuana for medical purposes."

With the passage of prop 215, in 1996, a ruling by Superior Court Judge David Garcia allowed the club to reopen.⁶

In 2000, the city's Department of Public health began issuing medical marijuana cards.⁷

In 2005, with 43 estimated dispensaries in the city, they update dispensary guidelines⁸

In 2008, the Medical Cannabis Dispensary Inspection program was introduced by the city's Department of Public Health.⁹

By 2012, the city had permitted 15 dispensaries. In 2013, San Francisco began to look at expanding 'green zones' as the limited space available meant dispensaries were clustered in certain areas. The new regulations are looking at ensuring a more even distribution of dispensaries.

Despite pre-empting both State and Federal Law, and having multiple conflicts with the DEA, San Francisco's medical cannabis industry has had a much lower profile than cities that have followed suit. The city regulates both dispensaries, and personal growing set-ups.

⁴http://en.wikipedia.org/wiki/San_Francisco

⁵<http://medicalmarijuana.procon.org/view.timeline.php?timelineID=000026>

⁶<http://articles.latimes.com/keyword/cannabis-buyers-club>

⁷http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca

⁸http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca

⁹<http://www.sfdph.org/dph/files/EHSdocs/MedCannabis/finalregs.pdf>

OAKLAND - TAMING THE WILD WEST

*Oakland (Pop. 390, 724) is continually listed among the top cities in the United States for sustainability practices, including a No. 1 ranking for usage of electricity from renewable resources.*¹⁰

Shortly after the Compassionate Use Act was passed, the Oakland Cannabis Buyers Cooperative (OCBC) was founded.¹¹

In January 1998, the US federal government began proceedings against the OCBC with a civil suit for violating federal law. The next night, Oakland City Council declared a public health emergency over marijuana. In August, it named the OCBC the city's designated dispensary. It also named the Directors and Suppliers of OCBC City Officers. By October, with all legal options exhausted, and the Appeal Court refusing to hear the appeal, the OCBC closed.¹²

Some of the Directors of OCBC then set up a second dispensary called 'The Zoo'. This was the beginning of what has been referred to as the 'Wild wild west days' of the medical cannabis industry in California, and over the next five years, twenty dispensaries would open in Oakland, earning it the nickname 'Oaksterdam'.¹³

In 2003, the city adopted Measure Z, allowing for the existence of 4 dispensaries in Oakland, and creating an oversight committee to deal with the regulating and licensing of dispensaries.¹⁴ The City of Oakland has been limited to the 4 existing ones until 2012, when they voted to double the number of allowable dispensaries.

In 2007, when the DEA began trying to seize the buildings from landlords renting to dispensaries, both the City of Oakland, and the City of Berkeley filed an injunction to delay proceedings, and in July of 2013, they won that injunction.¹⁵

¹⁰http://en.wikipedia.org/wiki/Oakland,_California

¹¹<http://www.law.cornell.edu/supct/html/00-151.ZO.html>

¹²<http://www.cannabisculture.com/articles/1414.html>

¹³<http://oaklandnorth.net/2012/07/05/future-cloudy-for-oaklands-regulation-of-medical-marijuana-dispensaries/>

¹⁴<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CannabisRegulatoryCommissionformerlyknownasMeasureZCommittee/index.htm>

¹⁵<http://www.businessweek.com/news/2013-07-03/oakland-wins-ruling-halting-u-dot-s-dot-bid-to-shut-pot-superstore-1>

BERKELEY – STANDING TALL

*Berkeley is a city of approximately 112,580, and is the location of a number of nationally prominent businesses, many of which have been pioneers in their areas of operation.*¹⁶

With 80% of Berkeley voters supporting the Compassionate Use Act, the City of Berkeley passed a resolution to facilitate the implementation of this act. One year later, in 1997 the City amended its zoning ordinance 3018-NS to include medical cannabis dispensaries.¹⁷

In 2002, the Berkeley City Council unanimously passed an ordinance that 'the Berkeley police and the city attorney's office are not to cooperate with the DEA in "investigations of, raids upon, or threats against physicians, individual patients or their primary caregivers, and medical cannabis dispensaries and operators." This built upon an earlier initiative, passed in 1979, called the Berkeley Marijuana Initiative, declaring that the cultivation, possession, and sale of marijuana be named the police's lowest priority.¹⁸

In 2007, the DEA adopted a new tactic revolving around seizing the assets of those who rent to dispensaries. In response, the next year Berkeley's city council passed a resolution declaring itself to be a sanctuary city for medicinal cannabis, echoing a San Francisco Resolution passed seven years earlier. The resolution, which was passed unanimously, called for the City to oppose the DEA's action, reinforced the order for Berkeley Police to not cooperate with the DEA, called for active lobbying to higher levels of government to amend their laws around medicinal cannabis, and called for a special workshop on the status of medicinal marijuana locally, and state-wide.¹⁹

This move also led to the creation of the Medical Cannabis Commission for the City of Berkeley, a group made up of representatives of the city and dispensaries, including two from the Berkeley Patients Group.²⁰

In 2009, on the Berkeley Patients Groups' tenth anniversary, the City of Berkeley declared Saturday October 31st, 2009 to be known as "Berkeley Patients Group Day" in honour of their ten years of contribution to the community.²¹

In 2013, the Cities of Berkeley and Oakland won their injunction to delay proceedings in a case involving the seizure of assets of those who rent to dispensaries.⁵

¹⁶http://en.wikipedia.org/wiki/Berkeley,_California

¹⁷<http://druglibrary.net/schaffer/hemp/medical/berkeley.htm>

¹⁸<http://www.canorml.org/laws/berkeleycannabisordinance.html>

¹⁹<http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/2008-01->

²⁹Item_27_Medical_Cannabis_Sanctuary_Resolution_and_Opposing_U.S._DEA_Dispensary_Raids.pdf

²⁰<http://www.ci.berkeley.ca.us/MedicalCannabis/>

²¹<http://www.berkeleypatientsgroup.com/history.html>

Appendix B - Applicable Legal and Ethical Framework



1. Section 4 of the Health Care and Care Facility Act states that:

“Any adult who is capable of giving or refusing consent to health care has the right to:

(b) select a particular kind of health care on any grounds, including moral and religious,

“(d) the right to expect that a decision to give, refuse or revoke consent will be respected”

2. Section 7 of the Canadian Charter of Rights and Freedoms states that:

“Everyone has the right to life, liberty and security of person and the right not to be deprived thereof except in accordance with the principles of fundamental justice”.

3. R. v. Morgentaler, [1988] 1 S.C.R. 30, Beetz J. (joined by Estey J.) established a constitutional right to access to health care without fear of criminal sanction:

“Security of the person” within the meaning of s. 7 of the Charter must include a right of access to medical treatment for a condition representing a danger to life or health without fear of criminal sanction.

4. In R. v. Parker, (2000) 146 C.C.C. (3d) 193, the Ontario Court of Appeal recognized that it is a violation of section 7 of the Charter to deprive a person with a serious illness for which marihuana provides relief, of the right to use marihuana to treat her illness. The Medical Marihuana Access Regulations, which was the first legislative framework allowing qualifying patients to use marihuana for medical purposes, were created in response to the decision in the Parker case.

5. In R v Long (2007), the Ontario Court of Justice held that the prohibitions in the *Controlled Drugs and Substance Act* against the possession of marijuana were unconstitutional.

6. In R. v. Bodnar/Hall/Spasic (2007), the Ontario Court of Justice followed the *Long* decision, holding that the prohibition against possession of cannabis in the *Controlled Drugs and Substances Act* was of no force and effect.

7. R. v. Smith,[2012] BCSC 544 claims a breach of the Principles of Fundamental Justice:

I conclude that the restriction to dried marihuana in the MMAR does little or nothing to enhance the state’s interests, including the state interest in preventing diversion of a drug, or controlling false and misleading claims of medical benefit. I find that the restriction is arbitrary, and that its engagement of the rights to liberty and security does not accord with the principles of fundamental justice, and therefore infringes those rights.

6. In *Hitzig v. Canada* (2003), the Ontario Court of Appeal did not fault the MMAR for establishing doctors as gatekeepers to determine eligibility for medical marijuana licenses, the Court stated that “if in future physician co-operation drops to the point that the medical exemption scheme becomes ineffective, this conclusion might have to be revisited.”

7. The 2002 Report of the Senate Special Committee on Illegal Drugs found that:

- People who smoke marijuana for therapeutic purposes prefer to have a choice as to methods of use;
- Measures should be taken to support and encourage the development of alternative practices, such as the establishment of compassion clubs;
- The practices of these organizations are in line with the therapeutic indications arising from clinical studies and meet the strict rules on quality and safety;
- The qualities of the marijuana used in those studies must meet the standards of current practice in compassion clubs, not NIDA standards;
- Health Canada should, at the earliest possible opportunity, undertake a clinical study in cooperation with Canadian compassion clubs.

8. This same report made 11 recommendations regarding policy, the seventh of which was:

The Committee recommends that the Government of Canada declare an amnesty for any person convicted of possession of cannabis under current or past legislation.

9. *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, in which Chief Justice McLachlin states at paragraph 118:

The jurisprudence of this Court holds that delays in obtaining medical treatment which affect patients physically and psychologically trigger the protection of s.7 of the Charter.

Appendix C - The Benefits of Regulated Dispensaries

Why dispensaries are Best for Patients:

- Outlawing clubs hits patients the hardest, since this is the model they say best meets their needs (Patients underline familiarity with dispensaries, and rapport with staff)
- Dispensaries remove patient barriers to obtaining quality-controlled cannabis
- Patient-to-patient contact at clubs is the best therapeutic setting
- Smaller medical cannabis operations mean lower prices and more personal care
- The diversity of cannabis products available at dispensaries is essential to many patients
- Dispensaries amalgamate information about effective use, as well as providing patients with counselling and support groups, advocacy and access to other natural therapies
- Dispensaries utilize the best cultivation knowledge to provide high-quality medicine
- The MMAP mail-order system drastically failed the expectations and needs of Canadian patients in terms of quality, diversity of products, ease of access and level of service

How Dispensaries Benefit Communities:

- The presence of a dispensary in a neighbourhood reduces crime and improves public safety
- Dispensary clients conform to “good neighbour” rules and keep neighbourhood civil
- Dispensaries curb street sales of cannabis
- Neighbourhood businesses get business from dispensary clients, which revitalizes neighbourhoods where these are located

These findings are from:

Medical Cannabis Facilities as Health Care Providers, by Amanda Reiman MSW PhD, University of California, Berkeley

Medical Cannabis Dispensing Collectives and Local Regulation, by Americans for Safe Access

It Doesn't Hurt to Ask; A Patient Centred Quality of Service Assessment of Health Canada's Medical Cannabis Policy and Program, by Phillip Lucas, Centre for Addictions Research of BC, University of Victoria