BCCLA Submission to Health Canada regarding medical marijuana program and compassion clubs

Consultation: Thursday, July 8, 2010

Presenter: Micheal Vonn, Policy Director

Thank you for the opportunity to make a submission about our Association's concerns regarding the current Medical Marijuana Access Regulations.

Just last month, the BC Civil Liberties Association issued a press release denouncing what appears to be a national campaign by law enforcement officials to shut down medical cannabis pharmacies across Canada. We said then and will reiterate today that the effect of these raids is to force thousands of Canadians to purchase their medicine on the street.

Over the course of what is a wearily long litigation history, Canadian courts have repeatedly found the Medical Marijuana Access Regulations unconstitutional for failing to provide patients genuine and workable access to medical marijuana. In our view, if government cannot bring itself to provide people with the medication they need in a timely and appropriate way, at the very least it should not harass and prosecute those who do: namely, compassion clubs.

The decision of the Supreme Court of Canada in relation to the rights of Canadians to access health care in *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35 must be kept in mind. As Chief Justice McLachlin wrote at paragraph 105 of that case:

> The primary objective of the Canada Health Act, R.S.C. 1985, c. C-6, is "to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers" (s. 3). By imposing exclusivity and then failing to provide public health care of a reasonable standard within a reasonable time, the government creates circumstances that trigger the application of s. 7 of the Charter

She added 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.

In litigation specifically addressing access to medical marijuana, the court denied the Crown's leave to appeal decisions finding the MMAR unconstitutional (*The Attorney General of Canada v. Sfetkopoulos*, 2008 FCA 328), and Mr. Justice Evans of the Federal Court of Appeal noted in his parting comment that:

> … the options available to the Crown to bring the regulatory scheme into compliance with the Charter, without jeopardizing competing policy objectives, are neither unclear nor particularly complicated.

We are in complete agreement with Mr. Justice Evans that the correct, Charter-compliant course is both clear and uncomplicated. It is so because the model of what is required is long- established. Canadians who have need of a medication access that medication through a locally-based dedicated dispensary. This model is so evidently successful that it is the obvious and unchallenged model for almost all medications in Canada. On whatever basis it was decided that the medical marijuana scheme would have to be a radical and fundamental departure from the means of access for all other citizens' medications, it is long past the time to declare that innovation a failure and to adopt the proven access model.

There is now a substantial body of evidence to show that the three narrow options for patients to obtain a legal supply of medical marijuana do not serve to provide genuine access to these medications for the vast majority of patients in need. These regulatory constraints have effectively served to deny access to medications for thousands of patients, forcing patients to break the law in order to access their medications.

There are problems with the regulations on several fronts, including the difficulty that many patients have in finding physicians who are willing to sign the requisite forms, which is a significant reason for there being only a small fraction of medical cannabis patients in Canada who have succeeded in obtaining legal authorization to possess marijuana for medical use. Our Association and many others have raised this issue with Health Canada in the past. But for our discussion today, we are focusing on the portion of the access equation dealing with supply of medical marijuana.

Last week's *Star Phoenix* article about medical marijuana is appropriately titled: "Still Treated Like Criminals". The article suggests that the current regulatory limit of growing for only two users has recently been defended by Health Canada as needed "in order to reduce the risk of diversion and to protect the health and safety of Canadians". It is entirely possible that this is misquoted or taken badly out of context, so, there should not be put too much reliance on it. But we will say that if such a statement were to be made, it would be entirely untrue. The so-called "risk of diversion" is, in fact, many times aggravated by regulations that make access all but illusory. The current scheme not only enriches organized crime and encourages associated criminal activity, but it drives chronically and terminally ill people into the physical danger and legal jeopardy of seeking their medications from illegal sources. Obviously this is protecting no one's health and safety and is both bad criminal law policy and a terrible discrimination against people with disabilities.

Amending the regulations to provide for compassion clubs, which is simply a specialized pharmacy model, not only provides long-sought equality rights and fundamental justice to medical marijuana patients in Canada, but it is a major boon to law enforcement. It is quite frankly ludicrous that we have law enforcement in this country occupied with trying to determine whether a licensed grower is cultivating medicine for two people or an impermissible three and wasting resources lobbying to violate patient privacy rights on a national scale by insisting on police access to patient lists and addresses of licensed growers from Health Canada in order to direct investigations.

Medical marijuana is not plutonium. Like many other medications, it has a street value and may not be used as a medication, but for other purposes. Nevertheless, society meets reasonable standards of safely dispensing many such medications. The medical cannabis pharmacy is an obvious model of choice because it facilitates effective oversight by trained professionals, allows for building an appropriate and respectful relationship with community policing services; and medicines that are dispensed can be produced and provided according to uniform standards by professionals who have developed

appropriate expertise. In discussing the matter rationally, the compassion club model recommends itself both from the perspective of patient health service and law enforcement.

We are now and have been for many years in the counterproductive situation described by licensed medical marijuana patient Jason Hitz when he told the *Star Phoenix*: "Honestly, it's probably easier being an illegal grower than a legal grower." That is, a situation that is a massive problem for both health care provision and for policing.

The BCCLA is heartened that Health Canada is hearing from organizations on this subject because it is only a short matter of time before the next constitutional challenge finds unsurprisingly that the effect of raising the growing limit from one patient to two patients is obviously negligible and that, in defiance of our own constitutional and international law, patients are STILL illegally be denied genuine access to needed medications.

The BCCLA urges Health Canada to take the opportunity to adopt the compassion club model – a model highly conducive to effect oversight and regulation; a model fully compatible with effective and appropriate law enforcement; the model most likely to harness knowledge and expertise for medical benefit and, finally and most importantly, a model in which genuine, safe access to needed medications becomes something other than a legal fiction for thousands of critically and chronically ill Canadians.