

Legalize use of marijuana for medical purposes, MDs and patients plead

Charlotte Gray

In brief

AS DEBATE ABOUT THE LEGALIZATION OF MARIJUANA CONTINUES in Canada, physicians are joining the fray. Ottawa family physician Don Kilby is working hard to make it easier for ill patients to use the marijuana that alleviates their symptoms. A recent case in Toronto indicates that the courts are starting to share these views.

En bref

LE DÉBAT SUR LA LÉGALISATION DE LA MARIJUANA SE POURSUIT au Canada et les médecins se lancent dans la mêlée. Le D^r Don Kilby, médecin de famille d'Ottawa, ne ménage pas ses efforts pour que les patients puissent utiliser plus facilement la marijuana afin d'atténuer leurs symptômes. Un cas récent à Toronto indique que les tribunaux commencent à être du même avis.

Jean Charles Pariseau is a 30-year-old Ottawa AIDS patient who, if he had stuck to his legally prescribed medications, would probably be dead by now. At his sickest, Pariseau weighed only 82 lbs. He had to take about 30 pills a day to boost his immune system, fight nausea and stimulate his appetite, but could not keep them down. He was bedridden and miserable. His physician, Don Kilby, gave him less than 3 months to live.

"Jean has a decent prognosis today," reports Kilby, a family physician with an extensive palliative care practice who also serves as director of health services at his alma mater, the University of Ottawa. "He is doing remarkably well because he can now digest his medications. His cerebral toxoplasmosis is in remission, the HIV has been suppressed because he has improved immune function, he has put on weight and he has learned to walk again, with a cane. Most important, he has a decent quality of life. He has regained weight, recovered his appetite and can join his wife and child at the dinner table."

Pariseau owes this startling change of status to the marijuana he smokes each day, half an hour before it is time to take his pills. Since he cannot use marijuana in its pill form, which is legal, because he cannot swallow the pills, Pariseau must buy his on the illegal market. This means he is at risk of purchasing contaminated product and being charged for possession of an illegal substance; the police have already charged him with the latter offence. [Police raided his home after receiving a tip that Pariseau was growing marijuana hydroponically. — Ed.] "If he was incarcerated," says Kilby, "God knows what would happen."

Kilby is working hard to eliminate the problems terminally ill patients like Pariseau face if they want to use marijuana. In December, along with Dr. Michele Brill-Edwards and lawyers Eugene Oscapella and Glenn Gilmour, Kilby applied to Health Canada for permission to prescribe marijuana to Pariseau under the Facilitated Access Program, formerly known as the Emergency Drug Release Program.

Although the application was "well received," Kilby says it was turned down because the group lacked access to a legal source for a supply of marijuana. The manufacturer must have a licence under the Controlled Drug and Substance Act to conduct research on a controlled substance; an unlicensed grower would not qualify.

This meant Kilby has had to investigate legal suppliers — pharmaceutical companies, university laboratories or licensed facilities overseas. "I am crossing



Features

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my fingers that we will have our application accepted before the end of February," he says. "We are looking into the possibility of a supplier in the Netherlands."

Initially Health Canada also argued that Kilby himself must have a special licence to prescribe a controlled substance, but he challenged this successfully by pointing out that physicians can already prescribe controlled substances and opiate derivatives like morphine. Kilby feels that if he could satisfy the legal requirement about a supplier, problems would melt away. "The whole point of the Facilitated Access Program is compassion for patients. You don't have to prove effectiveness or safety when a patient is in the last months of life anyway." He points out that another compound is already being released for cancer patients under the program, despite a lack of evidence about its effectiveness.

Kilby has been involved in the marijuana fray since he first became Pariseau's physician a year ago. Like many doctors involved in palliative care he was aware that 10% to 15% of his patients used marijuana, "but I turned a blind eye." However, he wasn't blind to its beneficial effects on users, who to his knowledge included judges and police officers, or to the resulting improvement in their quality of life. When Pariseau's story became front-page news in the *Ottawa Citizen* in December — he contacted the paper after the police raid on his home — Kilby decided that passive approval was no longer an option: as a physician, he had to take responsibility. Since then he has been overwhelmed by the number of phone calls from people supporting his initiative.

"Until now I never realized how many people were using marijuana for medicinal purposes, without discussing it with their physicians. Nor did I realize how distressing and frightening it has been for my patients' families, who had to find the supplies."

He has heard from elderly women who have been forced to go onto the streets to purchase marijuana for their dying husbands — a terrifying prospect for people who have no idea about the quality of what they are buying or whether they are paying a fair price. Kilby is convinced that physicians should move beyond tacit approval: if they are going to support their patients, they must help them secure legal access to a useful substance.

While Kilby pursued the issue through Health Canada, other challengers have taken the issue to the courts. The campaign to decriminalize marijuana for medical use burst into public view in December when an Ontario judge ruled that 42-year old Terry Parker of

Toronto, who has spent 2 decades battling Canada's marijuana laws, has a legal right to grow, possess and smoke the substance that helps control his epilepsy.

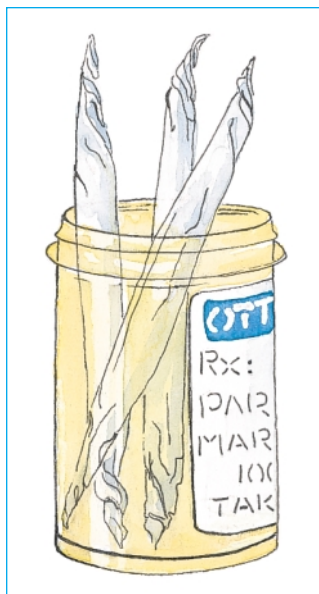
Before he began using the banned substance he had experienced as many as 12 seizures a day, rendering a normal life impossible. Once he was robbed while lying unconscious in a subway station following a seizure, and he had been arrested repeatedly after his seizure symptoms were mistaken for drunkenness; he cannot ride a bicycle, drive a car or hold a job. However, when he smokes marijuana, the number of seizures declines dramatically; he keeps a careful record of its impact on his health.

In dismissing the possession charges facing Parker, Judge Patrick Sheppard ruled that restricting his access to marijuana "does not accord with fundamental justice." Sheppard, after listening to expert evidence for and against medical use of the drug, concluded that "regular moderate use of marijuana causes no physical or psychological harm to the vast majority of users."

Sheppard did not dismiss trafficking charges against Parker, who had told police that he supplied home-grown marijuana to friends who also suffer seizures, but he did point out that his cultivation of marijuana was a logical and defensible activity. "It allowed him to control the quality of the drug smoked, to maximize its benefit and minimize any risks from an unadulterated product. Further, it was an economic necessity for him to grow his own marijuana. All witnesses agreed that at illicit street prices, the marijuana used by Mr. Parker would cost approximately \$5000 annually."

Sheppard's decision has created a comfort zone for other judges dealing with the explosive issue — several other cases involving the use of "medicinal marijuana" are already before the courts. In December AIDS activist Jim Wakeford filed suit, calling for a court declaration allowing people with AIDS to possess and consume marijuana if its use is recommended by a doctor. He also called on the court to order the federal government to supply the drug from the crop grown at Agriculture Canada's Experimental Farm in Ottawa. In April, Lynn Harichy is due to appear in a London, Ont., courtroom to defend her use of marijuana to alleviate her multiple sclerosis symptoms.

Moves to legalize marijuana for medicinal purposes have solid public support — according to a recent poll, 83% of Canadians believe this type of use should be legal. There have been well-publicized stories about its effectiveness in controlling nausea and relieving symptoms of glaucoma, epilepsy and multiple sclerosis. When the issue





arrives in court, much of the argument surrounds scientific proof of its effectiveness, for which little agreement yet exists. The federal government continues to argue that not enough is known about potential dangers posed by the drug.

Sheppard said his ruling did not extend into the hazy world of recreational drug use but referred only to Terry Parker's Charter rights to life, liberty and security. However, his decision provided a springboard for editorialists across the country. They argued that the harsh penalties for marijuana use contained in the Criminal Code should be eliminated. Pointing to the amount of court and police time that marijuana arrests consume — there were 29 562 arrests in 1996 — the *Globe and Mail* concluded that the "marijuana ban should go to pot." Meanwhile, the *Ottawa Citizen* said that legalizing marijuana for medicinal use would simply "invite what amounts to a market in medical prescriptions that is, except for the status quo, the least satisfactory way of dealing with the problem." It said Parliament should act to legalize the possession, consumption and production of marijuana. Several commentators

pointed out that it is now 25 years since Gerald Le Dain's royal commission recommended the decriminalization of marijuana use. The Addiction Research Foundation, Canadian Bar Association and Canadian Police Association also want to eliminate criminal penalties.

However, those who are pressing for the release of marijuana for medicinal purposes are less quick to support general access. Kilby shies away from any discussion of recreational use. "In my practice I deal with patients who have addiction problems and need detoxification programs. I don't think there is any question that marijuana is addictive — mildly addictive compared to heroin or cocaine, perhaps, but at least equal to nicotine in both its addictive qualities and its health effects."

He is not interested in seeing a full-scale campaign to take marijuana out of the Criminal Code but does want to encourage other physicians to show compassion for patients who will benefit from smoking marijuana. He would also like to investigate the possibility of finding a legal supply of marijuana to meet patients' needs through Ottawa's Facilitated Access Program. ?