



James A. Baker III Institute for Public Policy  
Rice University

## Moving Beyond the “War on Drugs”

Drug Policy in the Shadow of the Elephant  
(Includes June 2003 Update)

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PRESENTED AT THE DRUG POLICY CONFERENCE  
RICE UNIVERSITY - APRIL 10-11, 2002

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*Living next door to you is in some ways like sleeping with an elephant. No matter how friendly or even-tempered is the beast . . . one is affected by every twitch and grunt.*

Canadian Prime Minister Pierre Elliott Trudeau, speaking on Canada-U.S. relations at the National Press Club, Washington, D.C., March 25, 1969

## **Introduction**

Canada's laws and policies on illegal drugs have broadly paralleled those of the United States. However, they differ in important aspects. This paper discusses some of those differences. It explores the impact of the American colossus on Canada's attempts to shape drug policies more suited to the temperament of its citizens and the needs of its society. It also examines why drug policy reform in Canada may attract both the support and the ire of groups within the United States.

The paper concludes that Canada is increasingly looking to various European models and, at least in its rhetoric, relying less on a prohibitionist approach to drugs. At the same time, Canadian policymakers must remain conscious of the weight of the United States in determining the shape of drug laws and policies outside its own borders. To this extent, the United States operates as a drag on drug policy reform in Canada.

The first part of the paper outlines the Canadian system for dealing with illegal drugs in the context of its criminal justice system generally.

## **About Canada**

Canada's population in 2001 was about 31 million.<sup>1</sup> Canada is governed federally by a bicameral Parliament, composed of an elected House of Commons and an appointed Senate. Constitutional powers are divided between the federal Parliament and the 13 provinces and territories roughly equivalent to the notion of U.S. states, but with different types of constitutional powers.

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<sup>1</sup> Statistics Canada, Canadian Statistics: Population: <http://www.statcan.ca/english/Pgdb/People/Population/demo02.htm> (accessed April 6, 2002)

According to Canada's Department of the Solicitor General, our incarceration rate in 2000 was 118 per 100,000 general population, down from 123 in 1999, and had decreased throughout the preceding five years. While Canada's incarceration rate in 2000 is higher than that of most Western European countries, it is much lower than that of the United States. The U.S. incarceration rate was 699 per 100,000 general population in 2000 - about six times Canada's rate.<sup>2</sup>

The national homicide rate in 2000, which had generally been declining since the mid-1970s, remained unchanged from 1999 at 1.8 per 100,000, the lowest rate since 1967. Canada's homicide rate is less than one-third that of the United States, and similar to those of France and Australia.<sup>3</sup>

There is no death penalty in Canada. The last public execution in Canada occurred in 1962.

### **Canada's Drug Laws and Policies**

Canada's laws prohibiting drugs fall within the constitutional domain of the federal Parliament. The provinces and territories may enact laws regulating certain drug-related matters - pharmacies and medical practice, for example - but the main legislation governing illegal drugs is federal.

The principal federal law governing illegal drugs is the *Controlled Drugs and Substances Act*. It is the latest incarnation of a series of federal prohibitionist drug laws that began with Canada's 1908 *Opium Act*. Opium was first prohibited, in part, that year, followed by prohibitions against cocaine in 1911 and cannabis in 1923.

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<sup>2</sup> Solicitor General Canada, *Corrections and Conditional Release: Statistical Overview* (Public Works and Government Services Canada, November, 2001) Figure A3:  
<http://www.sgc.gc.ca/epub/corr/estatsnov2001/estatsnov2001.htm> (accessed April 6, 2002).

<sup>3</sup> "Homicide Statistics," Statistics Canada, *The Daily*, Wednesday, October 31, 2001:  
<http://www.statcan.ca/Daily/English/011031/d011031b.htm>. Canada's Criminal Code classifies homicide as first degree murder, second degree murder, manslaughter or infanticide. Deaths caused by criminal negligence, suicide, accident or justifiable homicide are not included.

In general, the *Controlled Drugs and Substances Act* prohibits the unauthorized possession, manufacture, production, trafficking (which includes selling, administering, giving, transferring, transporting, sending, or delivering), export and import of “controlled” substances. Those substances considered “controlled” are listed in several Schedules appended to the act and currently include cannabis (resin and marijuana), heroin, methadone, cocaine and coca leaf, barbiturates, amphetamine, and hundreds of other substances. As well, it is an offense to seek or obtain a controlled substance from a practitioner, such as a physician, without disclosing particulars relating to the acquisition of other controlled substances within the past 30 days. This offense is commonly referred to as double-doctoring.<sup>4</sup>

Canada’s general criminal law, the *Criminal Code*,<sup>5</sup> makes it an offense for anyone to “knowingly” import, export, manufacture, promote, or sell “instruments or literature for illicit drug use.” Selling includes offering for sale, exposing for sale, possessing for sale, and distributing, whether or not the material is distributed in exchange for money or other valuable consideration. One province has struck down constitutional provisions prohibiting the distribution of literature for illicit drug use.

There are no mandatory minimum penalties in Canada for drug offences. The maximum possible penalty for some drug offenses is life imprisonment. Importing or exporting cannabis, heroin, or cocaine, for example, are subject to a maximum possible sentence of life imprisonment.<sup>6</sup> Possession of less than 30 grams of cannabis, on the other hand, is subject to a maximum penalty of six months imprisonment, a \$C1000 fine, or both.

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<sup>4</sup> For a more detailed description of Canada’s drug laws, see “The Current Legal Status of Drugs,” Canadian HIV/AIDS Legal Network, *Injection Drug Use and HIV/AIDS: Legal and Ethical Issues* (Canadian HIV/AIDS Legal Network, 1999): <http://www.aidslaw.ca/Maincontent/issues/druglaws/e-idu/current.htm> (accessed April 7, 2002).

<sup>5</sup> R.S., c. C-34.

<sup>6</sup> *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, s. 6: <http://laws.justice.gc.ca/en/C-38.8/33929.html> (accessed April 7, 2002).

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Canada's laws on prohibited drugs are generally less harsh than their U.S. equivalents. However, Canada is sometimes much tougher on legal, regulated drugs. Tobacco advertising is prohibited, and the open sponsorship of sporting and cultural events by tobacco interests as a means of advertising has been severely curtailed. Direct-to-consumer (DTC) advertising of prescription pharmaceutical products is not allowed in Canada.

### *Use Rates*

Canada lacks up-to-date national figures on drug use rates, although there are several more current surveys dealing with specific populations (high school and university students, for example). The most recent national figures on use of illegal drugs in Canada are from 1994. That year, the most commonly reported drugs used on a lifetime and past-year basis were cannabis (23.1 percent and 7.4 percent, respectively); LSD, speed, or heroin (5.9 percent and 1.1 percent); and cocaine (3.8 percent and 0.7 percent). Past-year cannabis use increased from 4.2 percent in 1993 to 7.4 percent in 1994. Use of cocaine and LSD, speed, or heroin showed negligible increases.<sup>7</sup>

The Auditor General of Canada estimated in a 2001 report that 125,000 people in Canada inject drugs. In 1999, injection drug use resulted in an estimated 34 percent of all new HIV infections and was a major risk factor in the spread of hepatitis.<sup>8</sup>

Somewhat surprisingly, U.S. State Department reports from three consecutive years (1999-2001)<sup>9</sup> concluded, based on "Canadian estimates," there were 250,000 "cocaine addicts" in Canada. In fact, in 1994, only 0.7 per cent of Canadians (210,000) had used cocaine even just once in the last year; only a small percentage of those might be considered "addicts" - a far cry from the State

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<sup>7</sup> Canadian Profile, 1999: *Alcohol, tobacco and other drugs*: <http://www.ccsa.ca/Profile/cp99ill.htm> (accessed April 7, 2002).

<sup>8</sup> "Illicit Drugs: The Federal Government's Role," *Report of the Auditor General of Canada - 2001*, c. 11, p. 4, para. 11.14.

<sup>9</sup> For example, see U.S. Department of State, Bureau for International Narcotics and Law Enforcement Affairs, *2000 International Narcotics Control Strategy Report (INCSR)*: <http://www.state.gov/g/inl/rls/nrcrpt/2000/888.htm> (accessed April 6, 2002).

Department's estimate of 250,000.

In 1999, about 50,000 people in Canada were charged with offenses under the *Controlled Drugs and Substances Act* in cases where the most serious offense was drug-related. That same year, we estimated that Canadian criminal courts heard 34,000 drug cases that involved more than 400,000 court appearances. About 19 percent of offenders in the federal correctional system are serving sentences for serious drug offenses.

For the roughly 50,000 persons charged with drug offenses in 1999, 90 percent of the charges related to cannabis and cocaine. Cannabis accounted for over two thirds of the charges, and about half of all charges were for possession of cannabis.<sup>10</sup>

The inability of law enforcement to stem the flow of drugs into Canada and their production and distribution within Canada is clearly acknowledged in several police and government statements. The Royal Canadian Mounted Police (RCMP) is Canada's national police force and also serves as the provincial police force in most provinces. The RCMP *National Drug Intelligence Estimate 1990* reported that more cocaine was available in Canada in 1989-90 than ever before. Regions that had been relatively untouched by cocaine were reporting wide availability, and prices in many centres had dropped considerably.<sup>11</sup> The same report spoke of the increasing availability of heroin in Montreal<sup>12</sup> and of the active heroin markets in Toronto and Vancouver. Home-grown marijuana had also become a major agricultural commodity.<sup>13</sup>

Patricia Erickson, then Senior Scientist at Ontario's Addiction Research Foundation, commented:

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<sup>10</sup> "Illicit Drugs: The Federal Government's Role," note 10 above, paras. 11.12-13.

<sup>11</sup> (Ottawa: Ministry of Supply and Services 1991) at 28.

<sup>12</sup> Note 11 above, at 14-15.

<sup>13</sup> The *Globe and Mail* reported on December 7, 1992 that marijuana had become the top cash crop in British Columbia.

The 1990 RCMP [Drug Intelligence Estimates] not only documented falling prices and greater purity of cocaine, but also projected easier availability of almost all illegal drugs in Canada in the next two years. In this context, the Solicitor General . . . remarked: “What we’re saying is that the *war* has not been *won* yet but that we are making steady progress.” One can only wonder what a “setback” would be.<sup>14</sup>

Nine years later, the 1999 RCMP drug situation report for Canada painted a picture of continued inability to suppress illegal drugs by prohibiting them and employing supply reduction measures. According to the report:

- For all drug types, supply and demand have remained stable but will likely increase in the near future.
- The abundance of high purity cocaine and heroin at street level increases the risks of death by overdose. Conspiracies to import multi-tonne shipments of drugs in “mothership” operations or aboard private aircraft will continue. Smuggling by marine container and air cargo will be the preferred transportation means, however, primarily because of lower costs and risk of detection.
- New technologies in marijuana cultivation will become more prevalent.<sup>15</sup>

A 1999 RCMP report obtained under Canada’s access to information laws also points to the futility

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<sup>14</sup> Patricia Erickson, “Recent Trends in Canadian Drug Policy: The Decline and Resurgence of Prohibitionism,” (1992), 121 *Journal of the American Academy of Arts and Sciences* 239 at 255.

<sup>15</sup> Royal Canadian Mounted Police, Criminal Intelligence Directorate, *Drug Situation Canada: 1999*, at 12.

of police operations. Says a news story about the report:

The RCMP say several large heroin seizures over the past five years have done little or nothing to stop the flow of the deadly drug [heroin] onto Canadian streets. . . . “Supply is plentiful and heroin is easily acquired, when needed, from a wide variety of highly mobile and well-connected trafficking organizations,” says the March report by the RCMP’s criminal intelligence directorate.

“These seizures have had minimal effect on the drug-taking population in general and little, if any, impact among the addict population within any given Canadian city,” says the report, obtained under the Access to Information Act.<sup>16</sup>

A Canadian customs official appearing before the House of Commons Committee on Non-Medical Use of Drugs in October 2001 made the same painful assessment of law enforcement: “Law enforcement is able to stop only about 10 percent of the \$C7 billion to \$C10 billion annual trade in illegal drugs in Canada.”<sup>17</sup>

Furthermore, the corrupting influence of the drug trade is causing concern at official levels even in Canada’s relatively robust democracy. In 2000, RCMP Commissioner, Giuliano Zaccardelli, warned that powerful criminal organizations have drafted plans to use bribes to destabilize the country’s parliamentary system.<sup>18</sup> And there have been numerous examples of police and other drug-related corruption in Canada in recent years.

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<sup>16</sup> “Police losing war on heroin, RCMP say,” *Ottawa Citizen*, September 8, 1999.

<sup>17</sup> Testimony of Mr. Mark Connolly, Director General of Contraband and Intelligence Services Directorate, Customs Branch, Canada Customs and Revenue Agency, before the House of Commons Special Committee on Non-Medical Use of Drugs, October 1, 2001.

<sup>18</sup> *National Post*, September 8, 2000.

Much of the financial might and coercive power of criminal organizations comes from the sales of drugs made highly profitable by their prohibition. The RCMP itself made this observation when testifying on October 29, 2001 before the Senate Special Committee on Illegal Drugs: “The drug trade continues to provide the major source of revenue for most organized crime groups. ... The illegal status of a substance is only a hindrance to criminal organizations: profit is the motivating factor.”<sup>19</sup>

### **Auditor General Review of Canada’s Drug Strategy**

In December 2001, Canada’s Auditor General published her review of Canada’s federal drug strategy - efforts by the federal government to deal with drugs. Among the Auditor General’s observations:

- About 95 percent of the \$C500 million federal expenditures used annually to address illicit drug use in Canada were used for supply reduction (enforcement or interdiction). What the provinces, territories, and municipalities are spending to reduce the demand for illicit drugs and their supply is not known.
  
- A 1998 federal government study of organized crime concluded that the drug trade has a significant impact on Canadians and entails substantial violence. Furthermore, with drugs as its primary source of revenue, organized crime has intimidated police officers, judges, juries, and correctional officers. Illicit drugs also represent a source of income for terrorist groups.

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<sup>19</sup> See also Royal Canadian Mounted Police, Criminal Intelligence Directorate, *Drug Situation Canada - 1999*. “Drug trafficking remains the principal source of revenue for most organized crime groups. In Canada, the drug trade has the potential to generate criminal proceeds in excess of \$4 billion at the wholesale level and of \$18 billion at the street level.”

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- British Columbia's Organized Crime Agency estimates that more than 15,000 growing operations in British Columbia produce \$C6 billion worth of marijuana annually.
- The law enforcement community believes that a significant portion of this is smuggled to the United States; however, Canada supplies only a small portion of the U.S. market.
- The most serious offense by 17 percent (3,400) of offenders in Canadian federal prisons (inmates sentenced to two years or more) is drug-related.
- The RCMP *Performance Report* provides minimal information on illicit drug activities carried out by its Federal Policing Services. While the RCMP has a strategy to target the upper echelons of organized crime that control the drug trade, it does not report what it has achieved in fighting organized crime. Its *Performance Report* provides little information on whether the supply of certain drugs is increasing or decreasing.

### U.S. Perception of Canada's Drug Policies

American government agencies have criticized Canadian drug policies on several recent occasions. A 1999 U.S. State Department report criticizes the Canadian judiciary's approach to drug cases:

While the RCMP has mounted effective operations against narcotics and other criminal organizations, the impact of these efforts has been undermined in numerous cases by court decisions. Canadian courts have been reluctant to impose tough prison sentences, often opting for fines, reflecting a widespread view that drugs are a "victimless" crime or simply a health issue, not a criminal or public safety concern. . . . The Supreme Court [of Canada] has questioned the

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legality of police involvement in “sting”-type operations, undercover “buys” and other techniques now commonly used around the world in drug investigations, largely on privacy grounds, as a potential violation of the 1982 Canadian Charter of Rights and Freedoms. Canadian press reports indicate that only about 20% of those convicted of growing marijuana in Vancouver receive jail terms, and that British Columbia has the highest . . . acquittal rates in the nation.

The chief judge of the British Columbia provincial court retorted that the United States has no business criticizing British Columbia or Canada for what it considers lax treatment of drug dealers: “I want to say to them, ‘Don’t talk to me about how to get rid of a drug problem. . . . You hand out long sentences and your jails are full of people, but your problem isn’t going away’ . . . . If I want to listen to anybody, it would be [to] a country that doesn’t have a drug problem, and that has solved their drug problem.”<sup>20</sup>

The sting of the judge’s remarks did not faze the State Department. Its year 2000 report made an almost identical criticism:

While the RCMP has mounted effective operations against narcotics and other criminal organizations, Canadian courts have been reluctant to impose tough prison sentences reflecting a widespread view that drugs are a “victimless” crime and should be treated primarily as a health issue. The Canadian Supreme Court has questioned the legality of police involvement in “sting”-type operations, undercover “buys” and other techniques now commonly used around the world in drug investigations, largely on privacy grounds, as a potential

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<sup>20</sup> “B.C. Judge Tells U.S. to Butt out of Canada’s Drug Enforcement,” *Vancouver Sun*, March 4, 2000.

violation of the 1982 Canadian Charter of Rights and Freedoms.<sup>21</sup>

However, the criticism of Canadian courts disappeared from the State Department's 2001 report,<sup>22</sup> despite no change of significance in judicial approaches to drug cases in Canada.

The State Department also describes RCMP drug operations as "effective." This is puzzling, since, as described above, the RCMP's own reports and those of Canadian government officials have given no reason to suggest that its drug suppression efforts have been even remotely effective. If anything, they have pointed to the utter inability of law enforcement to suppress the drug trade.

### **Shifts in the Canadian Prohibitionist System**

Canadians have endured over 90 years of drug prohibition and they have watched the similar American experiment closely. Increasingly, Canadians are recognizing that the prohibitionist model is severely flawed. In a slow, but perhaps inevitable process, Canadians are looking to examples of more effective drug policies in Europe and Australia.

Canada has had government-funded syringe exchange and distribution programs for well over a decade. Methadone is available as a treatment for heroin addiction and is even now available in some prison settings. However, critics say that methadone programs should be more widely available in open society and in the prison environment.

There is virtually no testing of students for drug use in Canadian schools, although drug "sweeps" -- the periodic use of drug detection dogs in schools -- do occur. Testing of athletes remains in the

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<sup>21</sup> U.S. Department of State, Bureau for International Narcotics and Law Enforcement Affairs, *2000 International Narcotics Control Strategy Report (INCSR)*: <http://www.state.gov/g/inl/rls/nrcrpt/2000/888.htm> (accessed April 6, 2002).

<sup>22</sup> <http://www.state.gov/g/inl/rls/nrcrpt/2001/rpt/8478.htm>.

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control of national sporting federations. Although it is impossible to make precise comparisons, it seems clear that employee drug testing has not penetrated the Canadian workplace to the extent that it has in the United States. Executives from American companies operating branch offices in Canada may be surprised to learn that drug testing is not widely accepted in Canada. This is in part because of successful challenges to employee drug testing under Canadian human rights laws, and in part due to different Canadian attitudes about drug testing. Differing attitudes to social responsibility may also play a part.

However, drug testing is conducted in the Canadian Armed Forces and in some transportation sectors, the latter driven in part by U.S. requirements that foreign transportation workers operating in the United States be drug tested.

Canada's former federal Minister of Health announced in November 2001 that he was ready to fund a pilot safe-injection site (a place where drug users can consume drugs in sanitary conditions with access to health services) and to create the legal framework necessary for it to operate.<sup>23</sup>

In 1999, the same Minister of Health introduced a program to allow access to marijuana for medical purposes. The program did provide marijuana to a few hundred medical users but it proved cumbersome, arbitrary, and unpredictable. In response to a legal challenge of this program, the Ontario Court of Appeal in 2000 declared the law prohibiting possession of marijuana unconstitutional. However, it suspended the declaration of invalidity for one year to give Parliament an opportunity to come up with a more workable scheme for medicinal marijuana. In July 2001, medical marijuana regulations took effect. The regulations remain cumbersome and, as of May 2002, federal government attempts to produce medical grade marijuana have failed miserably. Nonetheless, the regulations may indicate some goodwill and effort by the federal government to provide marijuana for medicinal purposes.

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<sup>23</sup> "Safe-injection Site a Go If B.C. Wants it," *Vancouver Sun*, November 15, 2001.

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Two federal committees are currently examining Canada's drug laws and policies. The first - the Senate Special Committee on Illegal Drugs - is focusing primarily on cannabis. The second - the House of Commons Special Committee on Non-Medical Use of Drugs - has a broader mandate. Both committees are expected to report late in 2002. Because Canadian senators are appointed, not elected, the Senate committee stands a greater chance of producing a balanced, non-partisan report on sensitive drug policy issues. However, even the House of Commons committee, composed of elected members who must occasionally look over their shoulders to assess their chances of re-election, seems less driven by partisan considerations than many other Commons committees do.

Both committees have received submissions reflecting a broad range of drug policy perspectives. For example, both have heard testimony criticizing current government approaches to linking drugs with terrorism, the gist of which is that the drug trade under a system of prohibition represents a significant source of financing for many terrorist groups. The problem is not the drug trade per se, but prohibition. Without prohibition, the drug trade would not be a significant source of financing for terrorism - or organized crime, for that matter. Yet the official rhetoric that developed in both countries in response to the events of September 11 has completely ignored the role of prohibition in financing terrorist organizations.<sup>24</sup>

There are glimmers of hope for significant drug policy reform in Canada. However, Canadians still live in a punitive, largely prohibitionist country, populated by politicians fearful of change and by groups with vested interests in prohibition that may have nothing to do with protecting the public good.

### **Impact of American Drug Policies on Canada**

Beyond the hurdles to possible drug policy reform erected by entrenched attitudes and power structures in Canada, lies the question of American influence. To what extent does the United States

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<sup>24</sup> For a more extensive analysis of how drug prohibition finances terrorism, see the following web site: [www.cfdp.ca/terror.htm](http://www.cfdp.ca/terror.htm).

influence Canadian drug policy?

Opponents of drug policy reform sometimes use the United States as a shield against reform proposals. They claim that even if Canada wanted significant change, our proximity to the United States would make it impossible to deviate significantly from the American prohibitionist model. It is impossible to assess the validity of this argument. Only a select few within either government really know if the United States would threaten, cajole, or bully Canada back into line if we choose to stray far from the path of prohibition - or whether the United States has in fact already done so.

Apart from occasional rhetoric from the State Department and U.S. officials, there is little *public* evidence of any direct U.S. pressure being applied to Canada. However, a news report by a Canadian television network in May 2002 suggests that the U.S. “drug czar” was pressuring Canadian authorities not to loosen Canadian law, “and he’s carrying a very big stick - threatening trade sanctions if we don’t do what he wants.”<sup>25</sup> The drug czar’s office has made no formal statement to this effect as of mid-May 2002, so it is impossible to assess whether the news report was accurate.

Even without direct pressure on Canada, the close relationship between the two nations exerts a homogenizing influence in drug policy matters. Many Canadian government officials and law enforcement agencies are in regular contact with their American colleagues. This collegiality may help to bring Canadian police views into line with American views, as the Canadian “little brother” may be tempted to emulate its American “big brother.”

Canadians watch American television and American movies, and they read American print media. Canadians are therefore often subjected to the same drug policy messages as their American neighbors. This includes advertisements from the Partnership for a Drug Free America and television programs that may have quietly introduced prohibitionist messages to please the Office of

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<sup>25</sup> Global Television News, May 13, 2002, 6:30 pm EDT (reporter: Carl Hanlon).

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National Drug Control Policy.<sup>26</sup> Canadians, like Americans, have been subjected to the highly misleading “if you use drugs, you may support terrorism” advertisements that began to appear early in 2002. The Royal Canadian Mounted Police seems to have adopted this same rhetorical flourish, perhaps taking the lead from the United States. In a report released in May 2002, the RCMP concluded that Canadian illicit drug consumption generates annually between 20 and 40 million \$US in Asia for hashish and heroin and between 30 and 50 million \$US in South America for cocaine. Portions of these proceeds are used to finance terrorist and insurgent activity abroad. Drug consumers are therefore supporting such terrorist and insurgent groups.<sup>27</sup>

Canadians also feel the direct impact of the American prohibitionist movement on Canadian soil. In May 2001, Vancouver hosted a strongly anti-reform conference supported by the Drug Free America Foundation Inc. Critics of the conference suggested that its purpose was to derail measures such as safe injection sites and expanded opiate maintenance programs -- measures that have increasing support in Canada.

Furthermore, the traditional police liaison role served by having police representatives in other countries appears to be expanding in the case of drugs. In June 2001, the Drug Enforcement Administration announced plans to open a “substantial” office in Vancouver, in part to deal with the sizeable marijuana industry in British Columbia, a source of some exports to United States.<sup>28</sup> A more substantial DEA presence in Canada may well reduce any sparks of enthusiasm for reform within Canadian police ranks.

Eleven years ago, a former U.S. career diplomat questioned the use of DEA agents abroad: “In what has to be one of the most twisted bits of logic of any foreign policy ever attempted,” he wrote,

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<sup>26</sup> Perhaps more important than pleasing the drug czar is the relief from the obligation to carry anti-drug advertisements. Networks are then free to sell the time that otherwise would have to be devoted to unprofitable anti-drug messages.

<sup>27</sup> *Drug Situation in Canada – 2001*: [http://www.rcmp-grc.gc.ca/crim\\_int/drugs\\_2001\\_e.htm](http://www.rcmp-grc.gc.ca/crim_int/drugs_2001_e.htm).

<sup>28</sup> “U.S. Drug Police Plan B.C. Office,” *Vancouver Sun*, June 30, 2001.

“American DEA agents are assigned to work in foreign countries in the expectation that these agents will be able to help a foreign country achieve the success that DEA has failed to achieve at home.”<sup>29</sup>

### **Why Should the United States Care About Canadian Drug Policies?**

As long as it retains a prohibitionist approach to some drugs, the United States has several reasons for being concerned about Canadian drug policies. Perhaps the most significant reason is the fear of contagion.

The contagion can be a direct result of drug sales. Media reports increasingly cite Canada as a major source of drugs - primarily marijuana - destined for the United States. As noted above, however, Canada’s Auditor General concluded that Canada supplies only a small portion of the U.S. market for marijuana. Furthermore, a joint 2001 report by U.S. and Canadian government agencies concluded that U.S.-produced marijuana accounts for a significant share of U.S. marijuana markets and that criminal groups based in Canada supply far less marijuana to the United States than their Mexican or Colombian counterparts.<sup>30</sup>

Perhaps a more dangerous form of contagion would be the example that Canada might set if it were to deviate significantly from the U.S. prohibitionist model. The United States wants ideological allies for its current war on drugs. A Canadian rejection of this ideology could have repercussions for the United States. New Mexico Governor Gary Johnson testified before Canada’s Senate Special

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<sup>29</sup> Mack Tanner, “International Drug Suppression Follies,” in the Drug Policy Foundation, *New Frontiers in Drug Policy* (Drug Policy Foundation, Washington, D.C.: 1991) 343 at 347. The author was a retired U.S. State Department career diplomat who has been Consul and Principal Officer with the American Consulate, Thailand; Director of the Narcotics Assistance Unit with the American Embassy, Mexico City; and Counselor of the American Embassy, Thailand, for International Narcotics Matters and Director of the Narcotics Assistance Unit.

<sup>30</sup> National Drug Intelligence Center, *United States-Canada Border Drug Threat Assessment* (December 2001) at 3: <http://www.rcmp-grc.gc.ca/pdfs/cid/CanadaUSDrugThreat.pdf> . The agencies responsible for the report included the National Drug Intelligence Center, the Department of the Solicitor General Canada, the Canada Customs and Revenue Agency, and the Royal Canadian Mounted Police.

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Committee on Illegal Drugs in November 2001. Asked by the Committee Chairman how the U.S. government would react if Canada were to decide to “change the course on prohibition,” Governor Johnson replied:

If you do this, and forget about the politicians for a minute, 50 million Americans will know immediately just exactly what you have done and they will applaud what you have done. Another 100 million Americans will be sure to ask, “What could Canada be doing here, legalizing marijuana? What could they possibly be doing?” They will understand what you have done, and you will change public opinion - in my opinion - of the majority in the United States. . . . Perhaps, it blows America up for a few weeks, but there will be a raging conversational fire that will go on in the United States that public opinion, in a very short amount of time, changes to the positive because this is a factually, scientifically common-sense-based policy.<sup>31</sup>

A move by Canada away from prohibition will bolster efforts by reform advocates in United States to change American drug policies. Those opposed to reform could not easily pass off Canadian society as being so radically different from the United States that drug policy reforms that work in Canada could not work in the culture of the United States.

For the very reason that Governor Johnson eagerly awaits a Canadian move away from prohibition,

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<sup>31</sup> Testimony of the Governor Gary E. Johnson before the Senate Special Committee on Illegal Drugs, Monday, November 5, 2001.  
[http://www.parl.gc.ca/37/1/parlbus/commbus/senate/Com-e/ille-e/09ev-e.htm?Language=E&Parl=37&Ses=1&comm\\_id=85](http://www.parl.gc.ca/37/1/parlbus/commbus/senate/Com-e/ille-e/09ev-e.htm?Language=E&Parl=37&Ses=1&comm_id=85)

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those Americans who support the status quo - or even more punitive drug policies - may resist such a move. A Canadian example that is good news for those Americans interested in substantial drug policy reform would be bad news for those opposed to change. In drug policy matters, the U.S. elephant, bent on retaining the status quo, might have reason to fear the Canadian mouse next door.

**Update: June 2003**<sup>32</sup>

Several developments have occurred in Canadian drug policy since this paper was submitted in 2002. Many relate to cannabis and most have drawn the ire of U.S. drug policy officials:

- September 2002: The release of a report<sup>33</sup> by Canada's Senate Special Committee on Illegal Drugs recommending a regulatory, as opposed to criminal law, scheme for possession, production, and distribution of cannabis for non-medical purposes. The report also called for immediate action to improve the existing but cumbersome process for obtaining access to cannabis for therapeutic purposes.
- September 2002: A promise in the Speech from the Throne (a statement of the government's legislative and policy intentions) to consider decriminalization of cannabis.
- December 2002: The release of a report<sup>34</sup> by Canada's House of Commons Special Committee on the Non-Medical Use of Drugs, recommending that possession and production of small amounts of cannabis be decriminalized.
- January 2003: An Ontario (Canada's most populous province) court decision declaring that Canada's regulatory scheme for medical access to cannabis is unconstitutional (a decision held in abeyance for several months to allow Parliament to remedy the defect in the law), leading to the further possibility that the cannabis possession law itself will cease to apply if Parliament fails to remedy the defect identified by the court. This case is under appeal.
- January to June 2003: Several court decisions in Ontario and other provinces declaring that no law exists prohibiting the possession of small amounts of cannabis. These decisions flowed from an Ontario Court of Appeal finding in 2000 that the cannabis possession law

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32 More recent developments in Canadian drug policy can be followed through the web site of the Canadian Foundation for Drug Policy: [www.cfdp.ca](http://www.cfdp.ca).

33 [http://www.parl.gc.ca/common/Committee\\_SenHome.asp?Language=E&Parl=37&Ses=1&comm\\_id=85](http://www.parl.gc.ca/common/Committee_SenHome.asp?Language=E&Parl=37&Ses=1&comm_id=85)

34 <http://www.parl.gc.ca/InfoCom/CommitteeDocument.asp?DocumentID=32905&Language=E>

was unconstitutional; the court suspended the declaration of invalidity and gave Parliament one year to remedy the defect in the law. The later court decisions in 2003 concluded that Parliament had not remedied the defect in the way that the 2000 Court of Appeal decision had required. The possession law therefore lapsed due to passage of time. As a result, the federal Department of Justice conceded in June 2003 that, unless an appeal court decides otherwise, in Ontario there is no law prohibiting the possession of small quantities of cannabis. However, police in some jurisdictions are still confiscating cannabis and recording information about the individuals in possession. They may be charged later if an appeal court overturns the current court decisions.

- May 2003: The hearing by the Supreme Court of Canada of an appeal challenging the constitutionality of Canada's cannabis possession law. A decision will likely be rendered before year-end.
  
- May 27, 2003: The introduction of a bill<sup>35</sup> in the House of Commons to remove criminal penalties and the possibility of a jail term for possession of up to 15 grams (about ½ ounce) of cannabis. The bill also introduced a system of varying penalties for production of cannabis. Production of any amount would remain a criminal offense, but the maximum penalty for production of up to 25 plants would be lower than under current law. Production of more than 25 plants would see higher maximum penalties than under current law, with a maximum of 14 years. Unlike some U.S. drug laws, the current and proposed Canadian provisions contain no mandatory minimum penalties. However, the rhetoric of the Minister of Justice, who introduced the bill, is still strongly prohibitionist at a time when reformers had hoped for a more health-based approach to drug issues.<sup>36</sup> His stated intention is to increase enforcement of possession offenses through the new possession law and to reduce

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35 Bill C-38, An Act to amend the Contraventions Act and the Controlled Drugs and Substances Act.  
[http://www.parl.gc.ca/common/Bills\\_House\\_Government.asp?Language=E&Parl=37&Ses=2#C-38](http://www.parl.gc.ca/common/Bills_House_Government.asp?Language=E&Parl=37&Ses=2#C-38).

36 Some might argue that the Minister and his Cabinet colleagues with responsibilities for drug issues – the Solicitor General and the Minister of Health – are using this prohibitionist rhetoric to appease U.S. interests. In fact, only days before he tabled the bill in the House of Commons, Canada's Minister of Justice traveled to Washington to meet with U.S. Attorney General John Ashcroft. The subject matter of their meeting is not public, but it is almost certain that it included a discussion of Canada's proposed legislation.

the number of grow operations through tougher production laws – despite evidence of the failure of harsh U.S. drug laws to defeat grow operations there.

- May 27, 2003: The announcement of a renewed Canadian Drug Strategy, involving C\$245 million over five years. About \$50 million will go to the Department of Justice for drug prosecutions and over \$60 million will go to the Royal Canadian Mounted Police for drug investigations and other activities.

The official U.S. reaction to these developments has been consistently hostile, often accompanied by threats that changing Canada’s cannabis laws would cause border slowdowns and seriously affect Canada-U.S. trade relations. Several U.S. officials and politicians have reiterated earlier claims that Canada is a major exporter of cannabis to the U.S. and that relaxing Canada’s cannabis laws would result in an increase in Canadian cannabis flows to the United States. John Walters, director of the U.S. Office of National Drug Control Policy, has been among the most vocal:

- Liberalizing laws will boost drug use and bring more pot into the United States, said John Walters, director of the U.S. Office of National Drug Control Policy. Canada is already a major source of marijuana for the United States, with an estimated \$2.5 billion worth smuggled in each year, Walters said Thursday.<sup>37</sup>
- [U.S. Drug Czar ] Mr. [John] Walters said this week that 90 percent of a highly potent strain of Canadian marijuana being grown in Canada is shipped to the U.S. “Canada is now becoming the principal vehicle to move what amounts to the crack of marijuana into the United States. This is not about us having a small additional problem, this is about driving directly at the biggest threat that we have.”<sup>38</sup>

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37 “U.S. Frets Canada May Ease Marijuana Law,” *New York Times*, December 12, 2002.

38 “RCMP focuses on traffickers: commissioner: Mounties not interested in making criminals out of marijuana users”, *The Ottawa Citizen*, May 16, 2003.

- “The problem today is that Canadian production of high-potency marijuana in British Columbia is a major source of marijuana [in the United States] . . . and it's spreading. Just like cocaine, shipped up from Mexico.”<sup>39</sup>
  
- Canada is a major source country for high-potency marijuana, hydroponically-grown marijuana, so-called “BC bud” from British Columbia coming into the United States.<sup>40</sup>
  
- Sources close to the U.S. Drug Enforcement Agency [Administration] say it will soon issue a report claiming there are 15 to 20,000 marijuana growing operations in British Columbia alone and 95 percent of the output is headed south.<sup>41</sup>

However, the assertions that Canada is a major exporter of cannabis to the United States fly in the face of the evidence. Several reports and statements, including those prepared by Canadian police, jointly by Canadian and U.S. police bodies, the DEA, and the United Nations, have concluded that Canada is only a minor supplier of cannabis to the United States. The United States produces much of its own cannabis, and the vast bulk of imported cannabis comes from Mexico, not Canada. Some excerpts from recent reports:

Recently, the United Nations International Narcotics Control Board raised some concern about Canada's efforts to eradicate cannabis. British Columbia's Organized Crime Agency estimates that more than 15,000 growing operations in British Columbia produce \$6 billion worth of marijuana annually. The law enforcement community believes that a significant portion of this is smuggled to the United States; however, Canada supplies only a small portion of the U.S. market.<sup>42</sup>

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39 “Canada's pot policy under fire from U.S.,” *Globe and Mail* (Toronto), September 13, 2002, quoting U.S. Drug “Czar” John Walters.

40 U.S. Drug “Czar” (Director of the U.S. Office of National Drug Control Policy) John Walters, press briefing for foreign journalists, Washington, DC, August 13, 2002.

41 Carl Hanlon, *Global National Television News* (Canada), 6:30 pm EDT, Monday, May 13, 2002.

42 “Illicit Drugs: The Federal Government's Role”, Office of the Auditor General of Canada, 2001 Report, Chapter 11, para. 11.19.

- Seizure data and anecdotal evidence suggest that multi-metric ton quantities of Canada-produced marijuana reach U.S. markets yearly. **Nevertheless, marijuana transported from Canada clearly amounts to only a small percentage of all marijuana smuggled into the United States.** [emphasis added]<sup>43</sup>
- To put things in perspective, it is estimated that approximately three tons of Canadian marijuana are seized each year in the United States, while the exports from Mexico alone total thousands of tons annually. During the first half of 1999 alone, U.S. Customs intercepted 547 tonnes of marijuana being smuggled into the country from Mexico. The United States is basically its own main source of marijuana.<sup>44</sup>
- From the United Nations Office for Drug Control and Crime Prevention (UNDCCP):
  1. Mexico accounted for 46 percent of the world total of all cannabis herb seizures in 2000.
  2. Canada accounted for just 2 percent of the world total of cannabis herb seizures and just 2 percent of worldwide cannabis resin seizures.
  3. Mexico accounted for 2,050 metric tons of cannabis herb trafficking in 2000; Canada accounted for 70 metric tons.<sup>45</sup>
- The U.S.-Mexico Border continues to be the preferred corridor to smuggle cocaine, black tar heroin, methamphetamine, and marijuana into the United States. . . . **Drug trafficking organizations operating from Mexico have smuggled marijuana into the United States for over 20 years and are responsible for supplying most of the**

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43 National Drug Intelligence Center, *United States–Canada Border Drug Threat Assessment*, Product No. 2002-R0423-001, December 2001, pp. 2-3.

44 Criminal Intelligence Directorate, Royal Canadian Mounted Police, *Marijuana Cultivation in Canada: Evolution and Current Trends* - November 2002. [http://www.rcmp-grc.gc.ca/crimint/cultivation\\_e.htm](http://www.rcmp-grc.gc.ca/crimint/cultivation_e.htm)

45 United Nations Office for Drug Control and Crime Prevention, *Global Illicit Drug Trends 2002*, pp. 127, 132, 138, 140. [http://www.unodc.org/pdf/report\\_2002-06-26\\_1/report\\_2002-06-26\\_1.pdf](http://www.unodc.org/pdf/report_2002-06-26_1/report_2002-06-26_1.pdf).

**foreign marijuana available in the United States. Virtually all the marijuana smuggled into the United States, whether grown in Mexico or shipped through Mexico from lesser sources such as Central America, is smuggled across the U.S.-Mexico Border. [emphasis added]<sup>46</sup>**

Besides the available evidence that Canada is only a minor supplier of cannabis to the U.S., there are other reasons for questioning the logic of the U.S. position that cannabis flows to the United States will increase if laws are relaxed:

- Canada is retaining significant penalties for exporting cannabis. In fact, the maximum penalty for exporting cannabis remains life imprisonment, the most severe penalty available under Canadian criminal law.
- Decriminalizing the possession of half an ounce of cannabis should have no impact on the export of cannabis to the United States.
- Oft-heard claims that Canadian cannabis is particularly “potent” and therefore much in demand in the United States appear to assume that U.S. cannabis growers are not capable of producing equally potent forms of cannabis. This assumption is likely false, since American producers of cannabis have access to the same technology and breeding techniques as their Canadian counterparts.

Still, the official posture of U.S. drug officials about the need to tighten border security if Canada changes its cannabis laws worries Canadian politicians, and likely also the Canadian public, since about 85 percent of Canada’s trade is with the United States. Threats of trade retaliation by the U.S. resonate loudly in Canada.

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46 Statement by Donnie R. Marshall, Administrator, Drug Enforcement Administration, before the U.S. House of Representatives Committee on the Judiciary Subcommittee on Crime, March 29, 2001.  
<http://www.usdoj.gov/dea/pubs/cngrtest/ct032901.htm>

However, the logic of the official U.S. border threats is seriously deficient. Are U.S. officials claiming, in essence, that they tightened the border only to a limited extent to deal with terrorist threats, but that they will *really* tighten it now to deal with the threat of cannabis? Only the most ardent drug warrior could make the case (and some may have tried) that the threat of Canadian cannabis exports to the United States requires greater border security than is now in place to confront weapons of mass destruction and the infiltration of the United States by terrorists.

The bill now before Canada's House of Commons will be referred to the House of Commons Justice Committee when Parliament reconvenes in September 2003. After the committee reports, the bill may be enacted by the House of Commons, then referred to the Senate for a similar committee and approval process. Only after all this has been completed can the bill become law. Some argue that the earliest that the bill will be enacted is late 2003. Others argue that it may not happen at all, since the current Prime Minister will be retiring in February 2004 and may not have the time or the effective authority as a lame duck to move the legislation quickly through Parliament.

In any event, Canadian courts have, in recent years, increasingly rejected the cannabis possession law as unconstitutional. If the Supreme Court of Canada were to join this trend and declare the possession law unconstitutional, Canada's Parliament would be unable to continue to criminalize cannabis possession, no matter how great the pressure from the United States. It would be open to Parliament to regulate, but not criminalize cannabis – an approach that should have been in place decades ago.