

# Why Canada banned pot (science had nothing to do with it)

**These days some think a total repeal of Canada's drug laws is inevitable. We look at how the drug laws put in 90 years ago were based on panic and racism as opposed to science or medicine**



PHOTOS

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Peter Bregg / The Canadian Press file photo

John Lennon and his wife Yoko Ono, in Canada on a crusade for peace, meet Prime Minister Pierre Trudeau in Ottawa on Dec. 24, 1969. Lennon shared his expertise with the Le Dain Commission, believing that marijuana was a catalyst for peace.

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Searching for the scientific origins of Canada’s marijuana prohibition is a quick exercise. There was no science used to justify the laws instituted 90 years ago, just a mess of panic, racism and accident that has metastasized over time.

Today we are in an unlikely position. American jurisdictions have begun to craft new pot policies. But Canada lumbers on, even strengthening the legislation it inherited from an era of confusion.

Yet there was one moment midway between then and now when it seemed like everything might change. In 1969, Prime Minister Pierre Trudeau’s government struck a royal commission and tasked it with an evidence-based examination of drug use and policy. The Le Dain Commission — named after its chairman, future Supreme Court justice Gerald Le Dain — signaled to observers that the country was on the cusp of regulatory revolution.

It certainly did to John Lennon.

“This is the opportunity for Canada to lead the world,” the Beatle testified three days before Christmas that year.

Lennon, his wife Yoko Ono, and a handful of Le Dain Commission officials were sitting in the couple’s private railway car in the Montreal train station. For 90 minutes, according to a transcript of the testimony unearthed by fan John Whelan for the Ottawa Beatles Site, Lennon enthusiastically shared his thoughts.

“I must say,” the musician began, “this commission that you’ve set up . . . I don’t know what’s going on in the rest of the world, you know, in reality, towards drugs, but this seems to be the only one that is trying to find out what it’s about with any kind of sanity.”

The Le Dain Commission’s findings wouldn’t have disappointed him. The ensuing decades — four exactly in December — would have.

After 55 months of exhaustive research, the commissioners found the penalties for marijuana to be “grossly excessive.” They recommended decriminalizing possession and drastically lessening charges for trafficking.

The passage of time has only reinforced that finding. As a 2002 Senate study reported, “The (Le Dain) Commission concluded that the criminalization of cannabis had no scientific basis. We confirm this conclusion and add that continued criminalization of cannabis remains unjustified based on scientific data on the danger it poses.”

Yet the report was ignored by politicians and largely forgotten by the public. In the 40 years since, Canadian police forces have recorded at least two million marijuana-related violations. Last year the Harper government introduced mandatory minimum sentences for growing as few as six pot plants.

Some experts believe a repeal of pot prohibition has become inevitable. Colorado and Washington State have recently legalized or decriminalized it. Trudeau’s son Justin, the federal Liberal leader, has promised to do the same.

A student of history might recall another time when reform felt inevitable, too.

### Anti-Chinese, anti-drugs

Drug prohibition has been described as an experiment of the 20th century. Until 1908 in Canada, it was possible to buy opium, cocaine and morphine from a pharmacy; Prairie farmers once planted hemp as a windbreaker for crops.

But in the early 1900s, the temperance movement was gaining momentum alongside growing hostility towards Asian immigrants. Opium was an initial target, but it didn’t take long for marijuana to be engulfed.

On Sept. 7, 1907, in Vancouver, a rally of the xenophobic Asiatic Exclusion League boiled over into a riot. The mob, more than 10,000 white men, stormed the city’s Chinese and Japanese enclaves, throwing some immigrants in the harbour and damaging every Asian business they could find.

“Not a Chinese window was missed,” one local newspaper reported.

When business owners asked the government for compensation, William Lyon Mackenzie King — then deputy labour minister — was sent to

investigate. King was shocked to discover the claimants included legal opium manufacturers. Some Chinese groups asked for help discouraging use of the drug. King returned to Ottawa and wrote a report on opium, including a warning it was catching on with white women and girls.

In 1908 the labour minister tabled a bill prohibiting the manufacture, sale or import of opium except for medicinal purposes.

Canada's first drug law was passed without debate.

Penalties were light, however. Even in 1911 when morphine and cocaine were rolled into the act, maximum jail times for sale or possession stood at one year, and fines were much more common.

That soon changed, when a new social crisis brought the drug question rushing back.

The 1920s saw a drug panic that coincided with even fiercer anti-Asian agitation. As University of Guelph historian Catherine Carstairs recounts in her book *Jailed for Possession*, the two hysterias were intertwined.

“The history of drug use in Canada is inextricably tied to Canada's history of racism,” she writes.

Hysteria was highest on the West Coast. Newspapers churned out stories that obsessively chronicled the drug-induced downfall of previously upstanding white Canadians and provided sinister depictions of Chinese drug dealers (including an improbable story of Asian gangsters driving limousines around Stanley Park). In the Vancouver Sun, Carstairs relates, a reformed addict praised the RCMP for “bending their energies to rid our Canadian soil of the Oriental filth of the drug traffic.”

Emily Murphy, the famous Canadian suffragette, was partly responsible for spreading panic across the rest of Canada. In a series for Maclean's, Murphy wrote of the “grave drug menace” facing society, personified by illustrations of a caricatured Asian man.

“It behooves the people in Canada and the United States, to consider the desirability of these visitors — for they are visitors — and to say whether or not we shall be ‘at home’ to them for the future,” she wrote in her subsequent book *The Black Candle*. “A visitor may be polite, patient,

persevering, as above delineated, but if he carried poisoned lollypops in his pocket and feeds them to our children, it might seem wise to put him out.”

Members of Parliament were chastened. In 1922 and 1923, minimum drug-offence penalties were instituted, maximum penalties were raised, and — crucially — foreigners found to have trafficked drugs could now be deported.

Carstairs counts 671 Chinese-Canadians expelled under the act over the next decade; their average time in Canada beforehand had been 17 years. Possession and trafficking laws were also applied far more severely to Asians than white Canadians. Not coincidentally, 1923 was also the year that the Chinese Immigration Act was implemented, capping immigration from China at just a handful of students and merchants annually.

Along with those changes, MPs rolled in another that garnered little attention at the time. They added a new drug to the list of prohibited substances: marijuana.

Scholars have long puzzled over this. Cannabis was not commonly used, and the average citizen might never have heard of it. In Murphy’s 400-page *The Black Candle*, marijuana was covered off in seven pages (though hysterically). It would not be prohibited federally in the U.S. until 1937. Even in 1975, a deputy minister in the Health and Welfare department called the reasons for banning marijuana “somewhat obscure.”

Whatever the motivation, marijuana was banned without debate. The only recorded statement in the House of Commons was: “There is a new drug on the schedule.”

The drug panic of the 1920s quickly faded away. Annual convictions for marijuana over the next 20 years hovered between zero and 12. There wasn’t a single police seizure of the drug until 1937.

Then came the hippies.

Lennon tries his best

“A solution without a problem” is how the 2002 Senate report described the original marijuana ban. If so, the situation had corrected itself by the 1960s,

when droves of young, middle-class kids began experimenting with mind-altering drugs.

Suddenly, there were lots more pot smokers to prosecute and a whole lot of law to do it with: penalties had crept up, until in 1961 trafficking marijuana became punishable with life imprisonment.

These harsh penalties had no discernible deterrent effect. In 1967, there were 431 convictions for cannabis possession across Canada. In 1971, there were 8,389.

A real sense of crisis formed among older generations. As one Le Dain commissioner told John Lennon on the train in Montreal, “one of the things that we have to do is to try to explain to the Canadian people what the hell is going on here.”

That is as good an explanation as any for what drove Trudeau’s government to strike a royal commission and to staff it with some of the brightest minds in the country.

Le Dain himself was then dean of Osgoode Hall. Heinz Lehmann was a renowned doctor at the forefront of treating, rather than institutionalizing, people with mental illness. Ian Campbell was arts dean at Sir George Williams University. Marie-Andrée Bertrand was a criminologist at the Université de Montréal. Peter Stein, the youngest and the only commissioner still living, had spent years working with prisoners, especially young ones.

Campbell and Lehmann, along with Ralph Miller, the commission’s dogged director of research, were the ones to meet with Lennon, who tried his best to explain what the hell was going on here. (Ono’s participation in the conversation is redacted.)

“We are one example of people who have experienced marijuana,” Lennon said. “Are we sitting in the mud? Are we sitting at home just smoking pot in a den of iniquity?” He told them he quit LSD because “it did burn my head off,” but that marijuana was a catalyst for peace.

Before the commissioners left, Lennon and Ono made a promise. “We are available anytime, anywhere,” he said. “There’s nothing more important.”

They weren't the only ones to consider a Canadian government inquiry of signal importance: Led Zeppelin, the Grateful Dead and Allen Ginsberg all reportedly testified. Aside from meeting celebrities, the commission travelled more than 80,000 kilometres to hold public hearings in 27 cities and 23 universities.

Yet arguably the commission's most gargantuan task was a systematic review of all known scientific literature on marijuana. Ralph Miller and his staff amassed a library of some 2,600 published and unpublished papers. Where research was lacking, they designed experiments to fill the gap (including one that involved intoxicated volunteers driving around an airfield).

"Every time we thought we were done, Ralph would say, 'Well, here's another study,' " says Stein.

"We busted our butts," says Miller. "Many long nights. An outrageous amount of work."

The commission published its cannabis findings in May 1973. The final, 1,148-page report came out that December.

The report identified several areas of concern when it came to pot and health. The commissioners were troubled by rumblings from clinicians that chronic use appeared to be linked to mental disorders such as schizophrenia. Most troubling of all was the use of marijuana by adolescents, which "has, in all probability, a harmful effect on the maturing process." Aside from long-term use, being acutely intoxicated did not appear to help when driving or handling machinery.

But they had no patience for misconceptions about marijuana perpetuated by dodgy science or unyielding interest groups.

Despite rampant claims about cannabis inciting crime, there was absolutely no evidence linking it to violence. Among the 239 criminal cases RCMP brass chose to present to the commissioners, commissioners pointed out that only five involved crimes committed while stoned, and only two were violent.

Marijuana also did not appear to be a “gateway” into opiates or stronger drugs; the report deemed scientific studies claiming as much “highly questionable.”

The commissioners found unequivocally that the harms of criminalizing marijuana — encouraging illicit markets, obliging pot smokers to engage in crime, diverting police from more important tasks — outweighed the harms of use.

“There can be no doubt that the law on the books is at extreme variance with the facts,” the report stated.

All the commissioners recommended vast changes to the regulatory scheme, deeming trafficking charges “grossly excessive” and far harsher than that of most other countries, and calling possession penalties “completely unreasonable.” While the commissioners varied in their prescriptions — Le Dain, Stein, and Lehmann recommended decriminalization, Bertrand recommended legalization, Campbell recommended ticketing — all five found that possession “does not justify imprisonment in any circumstance.”

The impact of the Le Dain report was swift. While politicians danced uncomfortably, accolades filtered in from lawyers, doctors and civil servants. The head of the federal directorate on non-medical drug use said his first reaction was to copy one particular chapter and send it to every physician in Canada. Jerome Jaffe, the “drug czar” of the Nixon administration, told the Star he still has his copy of the report, complete with underlined passages.

Then, silence.

Modern studies

Science has subsequently shown that the Le Dain commissioners directed their concerns about the health risks of marijuana to exactly the right areas. The state of cannabis research is still abysmal — a point on which both drug hawks and doves usually agree — but modern studies have brought some of the risks into sharper focus.

There does appear to be a correlation between chronic marijuana use and the onset of schizophrenia and other mental illnesses, particularly in those who smoke heavily and start young.

Researchers are still questioning whether they are seeing this in people who would have developed mental illnesses regardless of drug use and perhaps use pot to self-medicate, whether the drug tips the scales in people who are more vulnerable than others in the first place, or whether it triggers an illness that would not otherwise occur. (The latter is unlikely, since rates of schizophrenia would have risen rapidly along with marijuana use).

Developing dependence on marijuana is also a risk. In general, scientists agree with the Le Dain Commission that the drug's effects on the adolescent brain is of greatest concern, and that laws and social policies should discourage young people from heavy use.

Marijuana is, after all, an intoxicant.

“I don't think there's anything magical about marijuana, that it's harmless,” says Igor Grant, director of the Centre for Medicinal Cannabis Research in California.

Yet “my own conclusion, based on the literature, is that used in the amounts people typically use marijuana, it doesn't pose any serious health hazards,” says Grant. (For certain conditions, his lab has shown, the medical use of marijuana can have a beneficial effect.)

Richard Bonnie, director of The Institute of Law, Psychiatry and Public Policy at the University of Virginia, was a member of the Shafer Commission — the American equivalent to the Le Dain Commission — which reported in 1972.

Then, as now, Bonnie held serious concerns about the effect of marijuana on the developing adolescent brain, the association between marijuana and mental health crises, and the onset of addiction. Yet “there didn't seem to be significant evidence that used moderately over the long term that the drug was seriously harmful,” says Bonnie, noting that modern research has borne that out.

Shafer, like Le Dain, concluded that the harms of criminalization vastly outweighed the harms of use, and that other policy methods should be implemented.

“To me, that was a perfectly logical and rather conservative approach. It remains perfectly logical, and I don’t know why it’s taken so long.”

Canada out of step

In 1997, Lehmann and Bertrand appeared as expert witnesses in a constitutional challenge to Canada’s marijuana laws brought by Osgoode Hall law professor Alan Young.

Bertrand noted archly that despite the Le Dain Commission’s unsurpassed rigour, possession laws remain virtually unchanged between then and now. (Earlier that year the Controlled Drugs and Substances Act gave marijuana its own schedule apart from narcotics; possession of under 30 grams was classified as a summary-conviction offence with maximum penalties of six months.)

The judge in the case ruled that while Canada appeared to be out of step with the rest of the western world, fixing the country’s pot laws was a problem for Parliament, not the courts.

In 2012, voters in Colorado and Washington adopted ballot measures that would get rid of criminal sanctions for marijuana. Scholar-led consultancies and expert panels were convened to discuss how best to implement the changes. While the drug remains illegal federally, the Department of Justice has said it will not interfere.

Also in 2012, Stephen Harper’s Conservatives introduced the omnibus “Safe Streets and Communities Act,” Bill C-10. It created mandatory minimum jail terms of six months for growing as few as six pot plants. That year just over 26,000 Canadians, including 3,800 youths, were charged with simple marijuana possession, according to the Canadian Centre for Justice Statistics.

This year, the Canadian Association of Chiefs of Police passed a resolution recommending that officers have the ability to hand out tickets for smoking weed.

“The police are less resistant to change than the politicians,” says Simon Fraser University criminology professor Neil Boyd, noting that both police enforcement and the penalties handed down by courts have changed dramatically over the past decades.

Still, about 46 per cent of adults and 34 per cent of youths charged with simple possession are found guilty, and all 26,000 who appeared in court last year occupied the time and resources of the justice system.

“One has to ask in these circumstances what the benefit to society is,” says University of Toronto criminologist Anthony Doob. Forty years ago, the Le Dain report also questioned the notion that overly harsh laws were harmless if not strictly enforced. Aside from the occasional outlandishly severe sentence, rational people lose respect for laws that are irrational, corroding the faith that citizens — especially young people — ought to place in institutions.

Stein, the sole living Le Dain commissioner, believes that despite being ignored by lawmakers, their report was able to nudge public opinion.

Lennon, and others, had expected more.

“Show us the way,” he said on that train in Montreal in 1969. “Instead of . . . envying America its wealth, let us envy Canada its progression.”