

# Toronto Police Arrest Nearly 100 In Marijuana Raids

Charter | Litigation | Litigation & Dispute Resolution | Marijuana

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Last week, Toronto police and City of Toronto licensing and standards officers carried out, according to media reports, more than three dozen search warrants of marijuana dispensaries and arrested nearly 100 people.

Whereas those who support Prime Minister Trudeau's policy to legalize recreational marijuana use and possession and the medical use of marijuana denounced the actions of the police and the city, Toronto police defended the actions on the grounds that they were merely enforcing current laws.

There is a significant political component to the actions that were taken and the costs involved in executing the warrants. The justice system will also have to deal with the costs incurred as a result of prosecuting the 90 people charged.

From a legal perspective, the 90 people charged with various offences under, among other statutes, the Criminal Code and under Municipal Licensing and Standards bylaws may have valid grounds to challenge the charges in the current climate of expected future legislative amendment and could raise Charter defences.

Charter challenges have become commonplace with respect to the sale and supply of medical marijuana in recent years with the Supreme Court of Canada last year upholding in *R. v. Smith*, [2015] 2 S.C.R. 602 a trial judge's finding that certain provisions of the *Controlled Drugs and Substances Act* which prohibited possession of non-dried forms of medical marijuana infringed s. 7 of the Charter.

As determined by the Supreme Court of Canada, the provisions at issue the case deprived the right to liberty of individuals and users by imposing a threat of imprisonment on conviction. Furthermore, medical users had their liberty limited by foreclosing reasonable medical choices through threat of criminality. They also had their security of the person breached by forcing them to choose between legal but inadequate treatment and an illegal but more effective one.

These limits were contrary to the principles of fundamental justice because they were arbitrary and contradicted the legislative objective of protecting health and safety. Did the police and city staff raids do the same thing as applied to medical marijuana users such that the Charter arguments made under *R. v. Smith* will result in many of the charges being dropped or dismissed?

Time will tell. However, one can expect that many criminal lawyers will raise the issue of the Charter in defence to the charges and engage in various procedural manoeuvres to ensure that the charges are not prosecuted until after the federal government carries out its mandate on this file.

With respect to the Charter, two provisions may be relevant. Section 11(g) provides that any person charged with an offence has the right not to be found guilty on account of any act or omission unless it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations. Section 12 provides that everyone has the right not to be subjected to any cruel and unusual treatment or punishment. Accordingly, if the intent of the federal government, as publicly announced, is to legalize the recreational use of marijuana, should persons charged under the current laws be punished or potentially stigmatized with a criminal record?

The entire issue is very much reminiscent of the days when alcohol smugglers challenged the restrictive laws during the Prohibition Era. Those who were stigmatized with criminality became wealthy and, in some cases, leaders of their respective communities after Prohibition was repealed.

The issue also raises questions regarding the city's ability to regulate marijuana dispensaries so that they cannot be established throughout our city, such as in or near residential neighbourhood or schools.

Well drafted zoning by-laws can effectively regulate where certain establishments are entitled to operate and given the proliferation of dispensaries being set up in multiple neighbourhoods in anticipation of the federal government's mandate to legalize marijuana perhaps it is appropriate for the legislative drafters to make appropriate amendments in a landscape that is beginning to represent the wild, wild west.

*(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).*

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