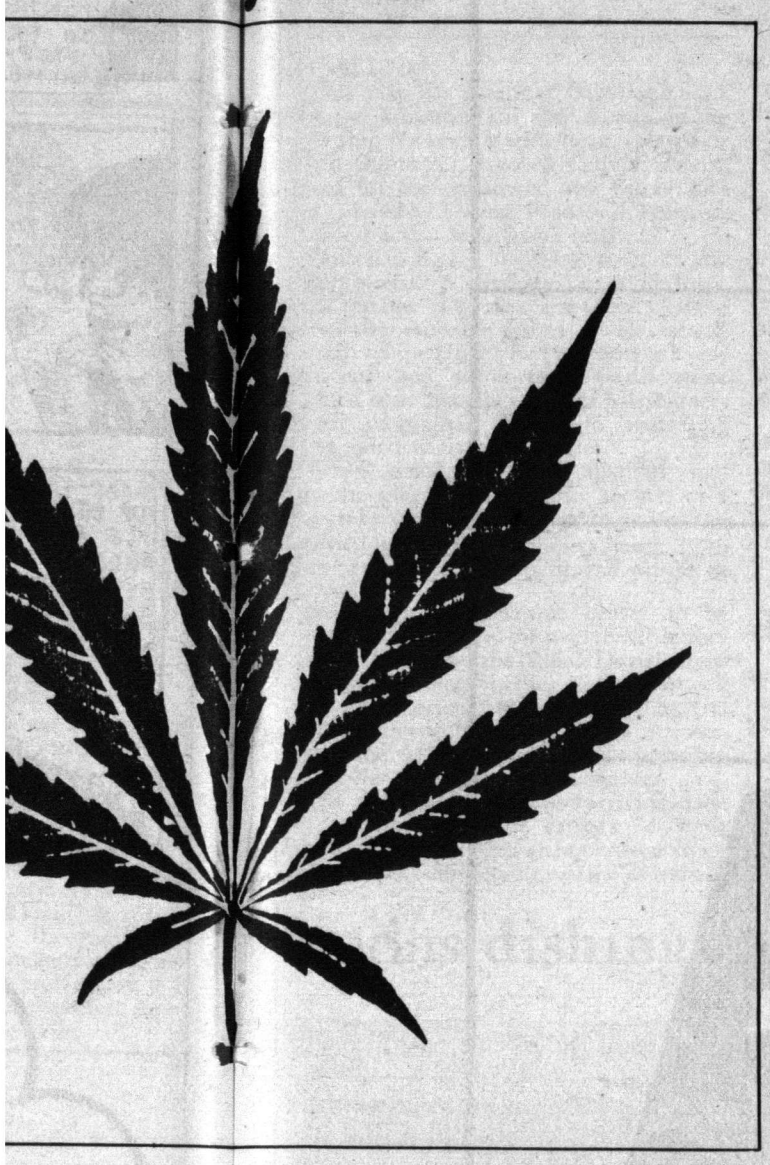
FEATURE

w may have stretched out too far



And so advocates of marijuana reform are "hanging their hats on the charter."

"Sooner or later, the charter will be used to force the government to bring legislation before the Commons to overturn the marijuana laws," says Rapoch.

"The government will not do so voluntarily, they will say to the electorate 'we didn't WANT to change the laws, we HAD to.' "

Canadian law on marijuana has remained essentially unchanged since 1969. Although not itself a narcotic, cannabis was brought under the federal Opium and Narcotic Drug Act in 1923. When that act was replaced in 1961 by the current Narcotic Control Act, cannabis was kept on the schedule of narcotic drugs and remained subject to all of the provisions of the new act.

A case coming before the courts in January in Manitoba may be the one that will change the books.

14 people arrested on charges of marijuana possession in Thompson, Manitoba will be using the Charter to fight their charges. Their lawyer is from NORML.

Rapoch says they are going for the "arbitrary" clause under the charter, that says that everybody has the right not to be arbitrarily arrested. There are two issues involved.

One is that marijuana is arbitrarily called a narcotic in law. There is no scientific basis for the classification. The second is that the law, by the police's own admission, is selectively enforced. All the arrests constitute less than one per cent of the offences, so the arrests are arbitrary.

Charter experts think another matter that will certainly invite consideration of the charter is the extraordinary search powers in drug cases. Right now, a police officer has far broader powers of search and seizure in even a minor drug case than he or she has in a murder, rape or other serious criminal cases. Any officer is authorized to enter and search any place other than a home in which he reasonably believes there is a drug, and also, to search any occupant. This search may be conducted in the complete absence of evidence or suspicion of wrongdoing.

Also certain to be brought before the courts are the writs of assistance. Certain police officers are issued the writs which empower them to enter and search any home, day or night, in which they reasonably believe there is a narcotic and to search all the occupants. The writ is not limited as to time or place, and is valid for the officer's entire career. Any officer armed with a writ can "break open any door, window, lock, fastener, floor, wall, ceiling, compartment, plumbing fixture, box, container or any other thing."

"The federal judge who issues a writ has absolutely no control over when, why, how often or in what circumstances it is involved, regardless of any abuse that may arise.

"These powers are surely extraordinary and they will inevitibly be challenged as unreasonable infringements under the charter's search and seizure guarantee," writes Robert Soloman, a professor of law at the University of Western Ontario.

Soloman writes in ARF's *Journal*, "There is probably no aspect of Canada's drug laws that offends defense counsel as much as the minimum penalty of seven years imprisonment upon conviction of the offence of importing a narcotic.

The law does not distinguish between amounts or types of narcotics. A person convicted of bringing a single joint of marijuana into Canada is necessarily liable to at least seven years of incarceration. Over the years, judges have spoken to the record in such cases, saying that if they had a choice, they would not be sentencing so strongly for the charge of importation.

Rapoch is also concerned about section one of the Charter. It says that the rights and freedoms guaranteed by the Charter are subject only to such reasonble limits described by law as can be demonstrably justified in a free and democratic society.

"This loophole could be used by the crown attorneys at the Supreme Court level. They can say "regardless of what you think, the law is demonstrably justified in a free and democratic society," says Rapoch.

Also, section 33 says that the provinces can pass laws notwithstanding the charter. "We can end up with the checkerboard Canada that Trudeau was trying to avoid," argues Rapoch.

"Only unjust laws need unjust enforcement," says Rapoch. If you can't have a law that can be fairly enforced, then you have to say 'are you doing the right thing to begin with(Is the prohibition against the individual use of marijuana just?' If it is not, it should be overturned." He says there is no clear reason to believe that is going to happen for quite some time. "We can only hope and fight, and that's what we intend to do."

NORML has five chapters in Ontario, in Windsor, St. Catherines, Kitchener, Timmins, and Schriber. In Manitoba, chapters are located in Winnipeg and Thompson. There are none in Saskatchewan.

"Saskatchewan is like a black hole, nobody cares there," says Rapoch. There is a fledgling group in Calgary and an affiliate group in Edmonton and Vancouver. There are none east of Ottawa.

"Quebec has the lowest arrest rate in Canada, less than half the national average," says Rapoch. "P.E.I. is hard-line all the way."

Rapoch and the members of his group believe that adults should have the right to chose what form of intoxication they wish to enjoy. They are not fighting for legalization, but decriminalization. They want to abolish the simple possession offence, and the cultivation offence.

Says Rapoch: "I want to stop individuals from having to be worried about being busted for a little bit of pot."

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