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# **National Associations Active in Criminal Justice Associations nationales intéressées à la justice criminelle**

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## **NAACJ SEMINAR**

### **Reducing the Harm of Drug Use: Legalization and Other Issues**

#### **PROCEEDINGS OF THE SEMINAR**

November 28 - 29, 1988

Ottawa, Ontario

#### **TABLE OF CONTENTS**

##### **PROCEEDINGS OF THE SEMINAR**

Preface . . . . .	1
Introduction to the Seminar . . . . .	1
The Scope of the Illicit Drug Problem in Canada . . . . .	2
Legislative and Historical Framework . . . . .	7
The Impact of Current Laws and Current Drug Strategies on NAACJ Member Organizations . . . . .	9
Possible Alternatives to the Present Legal Structure and Drug Strategy . . . . .	11
AIDS in Prison . . . . .	13
Where do we go from here? . . . . . FEB 5 1990 . . . . .	14

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##### **APPENDICES TO THE PROCEEDINGS**

##### **ACQUISITIONS**

APPENDIX 1: Program of the Seminar

APPENDIX 2: List of Participants

APPENDIX 3 Letter to NAACJ members on the seminar resolution on AIDS

APPENDIX 4: Seminar Discussion Paper by Eugene Oscapella

APPENDIX 5: Partial Bibliography on Drugs

## NAACJ SEMINAR

### Reducing the Harm of Drug Use: Legalization and Other Issues

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#### PREFACE

On November 28 and 29, 1988 N.A.A.C.J. held a seminar in Ottawa on the topic of reducing the harm of drug abuse. The purpose of the seminar was:

1. to explore the effectiveness of Canada's current approach to controlling drug use through the criminal justice system;
2. to look at ways to reduce the harm caused to society by "illicit" drug use; and
3. to identify issues for future consideration and analysis.

The seminar attracted 35 participants and resource people representing member associations of NAACJ and other interested groups and agencies, such as the RCMP, Canadian national and community-based health delivery services, and the UN NGO Committee on Narcotics and Substance Abuse.

Seminar participants were given a broad and detailed overview of the issue areas, including: statistics on drug abuse and drug related crime, the impact of drug abuse on prison populations and within the prison setting, enforcement goals and perspectives, clinical and service delivery issues, and a comprehensive overview of the Canadian National Drug Strategy.

The seminar was structured to enable participants and resource people to explore the issue areas at length, and, recognizing how complex the topic is, to identify issues for future consideration. This approach was successful in that a number of suggestions for action and further examination were forthcoming; a more immediate concern was shared by the participants in respect to AIDS, an issue which arose in a number of contexts during discussions and which was addressed directly in one session.

The following resolution was passed by the participants:

The participants of this seminar on Reducing the Harm of Drug Use recommend that the Planning Committee of the National Associations Active in Criminal Justice act to encourage NAACJ members to immediately focus on means to alleviate the existing or potential spread of HIV infection in prisons through drug injection and other forms of needle use and sexual activity.

The Planning Committee is referred to Recommendations #28, #29 and #30 from *AIDS: A Perspective for Canadians* (as follows) on staff and inmate training.

RECOMMENDATION 28: We recommend that free condoms, needles, syringes and facilities for decontaminating needles be made available to injection drug users who choose not to refrain from behaviours that could transmit HIV.

RECOMMENDATION 29: We recommend that facilities for decontaminating needles be made readily available to inmates in correctional institutions.

RECOMMENDATION 30: We recommend epidemiological surveys to monitor the spread of HIV infection among injection drug users, using voluntary and/or anonymous testing."

## NAACJ SEMINAR

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### PROCEEDINGS OF THE SEMINAR

#### SESSION I

#### Welcome to the Participants

Louis Zeitoun, Seminar Chairman

Mr. Louis Zeitoun, Seminar Chairman, welcomed everyone and asked that each participant introduce themselves. Mr. Zeitoun gave a brief outline of the program and introduced the first presenter, Eugene Oscapella.

#### Introduction to the Seminar

Eugene Oscapella  
Lawyer and Author of  
the Seminar Discussion Paper

Mr. Eugene Oscapella, lawyer and legislative consultant, introduced the seminar topic to participants, drawing upon the seminar discussion paper which he had written for the seminar (copy appended). A number of points outlined by Mr. Oscapella included his observation that there are few adequate treatment facilities for drug abusers in Canada, in particular for cocaine and heroin abusers; that criminalization tends to push drug users and addicts to the margins of society, thereby exacerbating the problems; that the costs of using the criminal law to address drug abuse must be seriously reviewed and reconsidered in the light of other approaches, including de-criminalization and controlled use; that the economic dimensions of the problem, including the economic motive in drug trafficking, the prevalence and influence of national and international organized crime, and the role of the black market must be appreciated in examining the issues if a thorough objective assessment is to be made.

Mr. Oscapella declared that his own position reflects a bias against societal responses to drug use and abuse that tend to marginalize users and abusers. He acknowledged that the topic is a huge and complex one, and that it is being introduced and explored in this seminar: firm positions and definitive statements on issues were not being sought as part of the objectives of the seminar. Mr. Oscapella argued that the subject in some ways, for example in the general failure to consider legalizing drugs, has been ignored in favour of standard responses. He pointed out that the NAACJ has a reputation of exploring reform in

novel and unconventional ways, and he encouraged the participants to speak as individual practitioners and experts rather than being constrained by formal roles or official positions.

## SESSION II

### The Scope of the Illicit Drug Problem in Canada

#### MODERATOR

Vern Redekop  
Church Council on Justice and Corrections

#### PRESENTATIONS BY

Assistant Commissioner Rod Stamler  
Economic Crime Directorate  
Royal Canadian Mounted Police

Holly Johnson  
Senior Analyst  
Statistics and Information Directorate  
Canadian Centre for Justice Statistics

The purpose of this information session was to determine the demographic composition of the user population, to determine the dollar cost for law enforcement, and to determine the link between drug use and crime. Vern Redekop, Church Council on Justice and Corrections moderated the session.

*Assistant Commissioner Rod Stamler*, Economic Crime Directorate, R.C.M.P. began his presentation by clarifying that the typical construction of responses to the drug problem is to split the problem into one of supply and one of demand. The supply side is generally attacked by enforcement measures and police activity. The orientation of enforcement has lately been to reach higher and higher levels on the supply side, penetrating organized crime as much as possible at points and on levels closer to sources of supply. This job is extremely difficult, time and resource consuming, but considered to be a more meaningful enforcement response than one that is preoccupied with smaller pushers and local level dealers and users.

Mr. Stamler remarked that the drug problem in Canada is significant, taking on proportions, both in the amount of use and in the profits of trafficking, that undermine legitimate systems and legitimate businesses. The dollars involved is in the tens of billions, with 20,000 known heroin addicts, more than one million cocaine users, as well as cannabis and other drug users in Canada.

Enforcement is difficult because crime organizations set up to supply the market take on a life of their own, organized and managed in ways to pursue profits and power. Furthermore, foreign countries often depend on revenue derived from the drug cultivation and production business. Crop substitution programs in some countries have met with resistance and have not been that successful a means of attacking supply. The problems that go along with most efforts at international cooperation, where nations reserve the right to their own form of

self help and where they choose their own level of international cooperation, all apply in the case of efforts to stem international drug trafficking.

*Ms. Holly Johnson*, Senior Analyst, Statistics and Information Directorate, Canadian Centre for Justice Statistics, began her detailed presentation of the demographics of drug use in Canada with the qualification that there are very few sources of hard facts in respect to this subject. Reporting is not reliable, and the picture one forms may be a function of the selective view of the researcher or the agency, such as the police, doing the reporting. Nevertheless, Ms. Johnson informed the group that cannabis is the most commonly used illicit drug, followed by cocaine. She noted that multiple drug use is also common but that clearly the most dramatic rise in use has been in cocaine. She explained, however, that Canada is not witnessing a drug epidemic, per se, although the impact of drug use and abuse on crime and prison populations may be observed.

Both presentations stimulated discussion that tended to follow the approach to drugs that Assistant Commissioner Rod Stamler had outlined. That is, questions were raised that spoke to the supply side, such as the effectiveness of enforcement and prosecution and those that looked more to the demand side, such as the issue of Canadian commitment to education in respect to the harm of drug abuse.

It was remarked that in many cases prosecution is not worth the cost and that society's objective should be to get to the root cause of addictions. The success of public education in respect to smoking was noted as was the success of the more global program "participation."

American statistics, although not readily transposed onto the Canadian scene were cited in respect to drugs and crime: in 1984, 50% of Crimes committed, mainly Break and Enter, were drug-related; in 1986 the figure had grown to 75%. In some States urinalysis and hair tests are now mandatory and it was suggested that in parole and probation cases, when warranted as determined by the offence and the offender characteristics, testing might apply.

In response to a question whether there are any success stories in Canada that show that prosecution works, Mr. Stamler noted some success at the level of organized crime. He added that treatment programs are also necessary and that both sides of the problem, supply and demand, must be addressed.

The notion of liberalizing use of presently illicit drugs was raised. Caution was noted on a number of fronts, including the fact that many drugs, if abused, are very harmful and use should not be encouraged; that if Canada acted unilaterally to liberalize, our country might become a safe haven for drug abusers and more particularly, for organized crime groups that depend on the drug trade.

In respect to a question that asked what priority the Canadian public is willing to give this area, a "funding trap" was noted. The statistics suggest that increasing resources to enforcement agencies is warranted. Yet increasing resources will result in increased reporting of the problem. Again, a single-sided approach to the issue was seen to be inappropriate.

### SESSION III

## The Scope of the Illicit Drug Problem in Canada

#### MODERATOR

Darryl Davies

Canadian Criminal Justice Association

#### PAPER PRESENTED ON BEHALF OF

Dr. Timothy Fullerton

Director

Operations and Plans

Health Care Section

Correctional Services Canada

Dr. Tim Fullerton, Director, Operation and Plans, Health Care Section, Correctional Services of Canada, was unable to present his paper which identified the impact on prison populations of drug-induced crimes and crime to obtain drugs. His paper was read by Mr. Darryl Davies, Criminologist, Canadian Criminal Justice Association.

In his paper, Dr. Fullerton stressed the seriousness of drugs in respect to crime and prison populations. Alcohol was cited as a major substance found in many cases: in one study, 79% of offenders reported alcohol use on the day the offence was committed. Seventeen percent of inmates in federal institutions have a history of convictions for drug possession and/or trafficking; Queen's University claims in a recent study that more than 70% of inmates have a drug abuse problem.

The role of drugs in prisons, including their contribution to prison violence is also significant. Consequently, 20% of institutional security measures are devoted to drug detection and trafficking. In order to obtain drugs, Dr. Fullerton notes that an inmate will assault, maim and even kill. "From 1981 to 1986 assaults in Canadian penitentiaries increased by 60% and 49 persons were killed - many of these crimes were a direct result of drug use and trafficking. During 1985-1986 alone 181 major violent incidents occurred, of which 106 (58%) were related to drugs".

Areas of response to the prevalence of drugs and the impact they have on prisons include education of inmates; staff training; treatment of addictions; and pre-release drug education programs. Support from groups such as Alcoholics Anonymous, the Salvation Army and Narcotics Anonymous is also important while offenders are incarcerated and after release.

The major theme of Dr. Fullerton's paper was that violence is the worst outcome of drug abuse in penitentiaries.

Following the presentation of Dr. Fullerton's paper a suggestion put forward was that, consistent with proposals for decriminalizing drug use in the general population, drug use in prisons be decriminalized and punitive measures be replaced with an incentive program that encourages non-use. This proposition was based in part on the recognized power of the black market outside prison and the assumption that a similar, more exacerbated black market applies within prisons. The proposed option of an incentive system might cut into the black market as inmates were rewarded for constructive behaviour, including participation in treatment programs.

This suggestion evoked the response that drugs help prisoners to adapt to a harsh environment where there is punishment and a lack of reinforcement. Drugs therefore become a highly valued commodity. It was suggested that alternatives to drugs, such a stimulating pleasure centres of the brain, might be a substitute but it was recognized that that option raises problems in its own right.

Mr. Davies underscored Dr. Fullerton's thesis, noting the great number of studies that have linked prison violence to drugs. Notable in recent years has been the Vantour Report.

Another participant asked whether we are successfully helping drug addicts? Dr. John Bradford and Dr. Diane Riley reported that in Canada addicts are required to go cold turkey in jail, although some detention centres screen out the very ill addicts and send them to hospital. It was noted as well that in remand centres methadone users cannot get the drug to maintain their stability: should remand centres stock methadone? Should there not be prison psychologists and pharmacists, as in an Alberta prison, to help addicted inmates?

Dr. Bradford remarked that we are only starting to understand the effect of drug/alcohol use on those committing offenses. Approximately 50% of child molesters and rapists admit increased levels of arousal under the influence of alcohol. In the laboratory, when given alcohol, rapists become more aroused and more given to non-sexual violence. It has also been found that child molesters, if aroused by adult females and given alcohol, the alcohol knocks that arousal out by transferring the feeling to children.

#### SESSION IV

### Current Strategies for Dealing with Drug Use

#### MODERATOR

Madeleine Mailhot  
Canadian Bar Association

#### PRESENTATION BY

Pieter de Groot  
Program Officer  
Health Promotion Directorate  
Health and Welfare Canada

The purpose of this session was to determine federal government and non-governmental drug strategies. Madeleine Mailhot, Canadian Bar Association, moderated the session and the principal presentation was by Mr. Pieter de Groot, Health Promotion Directorate, Health and Welfare Canada.

Mr. de Groot noted that historically, provincial governments, not the federal government, provided services for addicts. During the 50s and 60s provincial addiction agencies, such as the Addiction Research Foundation, were active in treatment, prevention and research. In the 70s many others began to provide treatment and there has not been very much coordination of these services.

As a generalization, services are quite good in urban areas but not adequate in Northern territories. When Prime Minister Mulroney used the term "drug epidemic" in 1986, his assessment would have been more to fact if he had stressed both drugs and alcohol. For alcohol, as noted in earlier discussions, is a serious substance that is widely abused and contributes to many problems.

After consultation with provincial agencies and other concerned groups, the National Drug Strategy was announced by the Health and Welfare Canada in 1987. It is a five year program with \$210 million new funds to support a strategy that calls for simultaneous and concerted action on six fronts: education and prevention; enforcement and control; treatment and rehabilitation; information and research; international cooperation; and a national focus.

In discussions which followed, Dr. Bradford noted that many existing programs for alcohol and drug abuse discriminate against released offenders, who are viewed as too disruptive and not having much potential for treatment success. Furthermore, line workers in corrections, like probation officers, are having difficulty enrolling clients in programs. This problem is exacerbated, it was noted, if the poor cannot afford the fees for these programs. Many programs have waiting lists of up to one year and neighbourhoods resist treatment facilities such as halfway houses.

These comments stimulated the suggestion that the National Drug Strategy should be based on a diagnosis of the problem; what are the addictions and what causes them?

Mr. de Groot responded that the causal nexus is very complex and the response must be multi-faceted. Action is necessary to curtail supply and to reduce demand for chemical substances. The need to focus on youth becomes more pronounced as efforts to significantly address addiction on a broad scale are considered. Research has shown that education programs directed at abuse are successful and while it is acknowledged that addictions may be correlated with other problems, such as family violence, intensive public education programs are necessary.

Reflecting upon the proposal that drug use be legalized, Mr. de Groot offered that we need to know much more about addictions before any such move. For example, studies show that of all persons using substances, 10% will develop addictions.

An observation about treatment programs, generally, is that at their beginning there is a high degree of success and then that success rates fall off. This results in lowered morale of treatment staff and the cycle may run through to a termination of the program. Based on this observation, it was argued that programs should not be terminated automatically when they cannot demonstrate the success rates that funders and critics expect they should. The lowered rates may be attributed to a number of things and it becomes discouraging, overall in treatment service delivery, to see programs get started up with great enthusiasm and then terminated. More patience and greater attention to detail is called for. Mr. de Groot offered in response that in respect to addictions, we should not have too high expectations of success.

Mr. de Groot had asserted that education programs work and this raised a number of questions. Mr. de Groot noted that evaluations of the impact of advertising campaigns have shown that both abusers and non-abusers are equally aware of the ads. Therefore, it has been concluded, advertising has to be part of a larger strategy. Awareness of information, per se, is not enough to stimulate behaviour change. Changing attitudes is different from the process of informing - and attitude change and behaviour change are also complex relationships.

## SESSION V

### Legislative and Historical Framework

#### PRESENTATION BY:

Eugene Oscapella  
Author of the Seminar Discussion Paper

The purpose of this session, presented by Eugene Oscapella, was to outline the origins of Canada's drug laws, the current Narcotics Control Act and Food and Drug Act, recent developments, and international obligations in a legislative and historical context.

Mr. Oscapella explained that after the race riots in Vancouver at the turn of the century, Chinese opium merchants applied for compensation for damages. MacKenzie King was incensed, believing that opium was bad, especially if it got into the hands of children. The Opium Act was passed in 1908 with very little comment. This resulted in a black market and in trafficking. Later, stronger legislation was passed to curb the black market: prohibitions were against possession, use and trafficking. During the 20s, more legislation was passed, including provision for writs of assistance. These writs gave the RCMP and customs officers wide powers of search; they were outlawed in the 1980s.

During the 1960s legislation was changed to take into account the new drugs, such as LSD. The Narcotics Control Act and the Food And Drug Act were changed to include more drugs. Minimum penalties, more law enforcement and increased penalties were the trend.

Assistant Commissioner Rod Stamler added to this account, remarking that international conventions have guided legislation in a number of individual countries. Legislation in Canada thus is not solely a domestic undertaking that can ignore or that is not influenced by international activity. For example, Canadian laws in respect to psychotropic drugs were shaped by post World War II international conventions.

Mr. Oscapella acknowledged the role of international conventions in Canadian legislative initiatives. He argued, however, that international conventions are negotiated, they are not immutable and should be open to renegotiation. Of course, such an undertaking will take years.

Someone asked what has been the experience in other countries that have legalized or tolerated drug use?

The British experience in respect to heroin was reported as follows: there was a liberalizing of heroin use for heroin addicts for treatment purposes only. Any heroin addict who requested and received state heroin was immediately put on treatment. The program was discontinued except for those heroin addicts already in treatment. The problem of determining whether a person applying to a program was an addict or someone who was seeking heroin for pleasure led to the program's termination.

Dr. Amelia Dozzi, UN Committee on Narcotics and Substance Abuse, remarked at this point that the term "legalization" was being used in the discussion, and that it required some clarification. She noted that the U.S. Princeton academic who first advocated legalization did not mean that drugs should be sold at corner stores. She noted as well that at a recent

Washington conference it had become clear that no country in the world supports free access to drugs. The UN, she explained, is encouraging talk about decriminalization.

Some specific initiatives in other areas include a political party in Italy whose main activity is advocating for the free use of illicit drugs; in Vienna, there is a conference to draw up a convention against trafficking of narcotics and psychotropic drugs; the Organization of American States, where there are drug producing countries, is against legalization.

Mr. Oscapella suggested that the consequences of legalization would be more quality control; and more government regulation.

Mr. Stamler pointed out that the wave of the future will see lab-produced, designer drugs that achieve specific moods and feelings. Furthermore, these laboratories will be part of Canada's domestic industry. His concern is that legalization will further the trend to a chemophilic society. He noted the general disappointment and concern with drug abuse at the Seoul Olympics, and he challenged participants to envision the nature of our society if legalization was to come about.

Mr. Oscapella called for a shift in resources from enforcement to demand reduction as a means of achieving the type of society we want while at the same time reducing the negative effects of criminalization, of marginalizing users and abusers.

Mr. Oscapella also remarked that in a society where legalization was the case, we might have to intrude on some social liberties, as in the case of testing employees in certain occupations, such as air traffic controllers.

Another participant asked whether, in respect to heroin, cocaine and marijuana, is there a sensible use, like the equivalent of an after-work drink? Can we proscribe that which is not good and that which constitutes abuse?

One response was that a certain percentage of the population will always abuse drugs, regardless of the drug. Furthermore, that justice and health treatment programs are probably reaching only 10% of drug users.

This observation raised the question about the purpose of the justice system's response to drug use: are laws to control or eliminate drugs? Are legal means not an invasive, ineffective means of dealing with drug use?

Medical experts responded that drugs are pharmacological agents and should not be treated lightly. It was pointed out that physiologically, heroin is more benign than alcohol or cocaine. Cocaine, if pure, causes problems if it knocks out the "reward" area of the brain. Animal studies have shown that given a choice, some animals will choose cocaine over any life-sustaining substance like water and food.

Someone asked: but maybe there are 'safe' versions and intake levels of drugs?

An example given of accepted use in other cultures was the use of coca tea in South American countries. This provoked the comment that in North American culture we rely heavily on over the counter and prescription drugs. The pharmaceutical industry may be the second biggest industry in Canada!

## SESSION VI

### The Impact of Current Laws and Current Drug Strategies on NAACJ Members Organizations

The purpose of this session was to explore the current effects of legislation on NAACJ client groups.

Bonnie Diamond, Canadian Association of Elizabeth Fry Societies, remarked that 80% of the clients that local Elizabeth Fry Societies deal with have a substance abuse problem. But it is difficult to determine the extent to which drugs are directly or indirectly involved in the crimes that these offenders commit. Most of these clients admit, however, that their lives and their agony is very frequently wrapped up in what they see as a vicious drug problem.

In Prison for Women, substance abuse programs are offered but they are done so in the artificial environment of prison, which has very little relation to the problems inmates encounter outside prison. There is a sense that we do not have all of the necessary information and the appropriate research to deal with this problem.

Furthermore, once released on parole, or on probation, offenders' lives are scrutinized because of abuse problems. "It's sad to see serious parolees thrown back into prison for substance abuse."

The relationship of the criminalization of drugs to AIDS was raised. A variety of people are vulnerable to AIDS, including the homeless and prostitutes. Those who use drugs are being driven underground, resulting in making them more difficult to reach. This perpetuates the spread of AIDS. Unfortunately, when these individuals do come in for treatment, there is no where to send them.

In Toronto, the police recently requested that 97 new officers be hired to deal with the drug problem. A review of their proposal showed that Toronto has an illicit drug problem. The licit drug problem was left out, and furthermore, while it is arguable that these new personnel were necessary, their presence will in turn alter reporting and the perception of "the drug problem" in Toronto. Furthermore, their mandate is not likely to be treatment oriented and the problem of stemming the spread of AIDS is exacerbated.

Dr. Riley reported that she is optimistic, however, about the proposal in Toronto to set up a needle exchange program. A mobile unit is envisaged, accompanied with changes in legislation that will allow community workers to hand out syringes. The program is essential because intravenous drug users have a very high rate of HIV and the potential exists for AIDS to explode in Canadian society.

It is hoped that the needle exchange will invoke linkages to treatment, in the thinking of both those responsible for the allocation of treatment resources and those who abuse drugs intravenously.

It was highlighted once again that law enforcers don't want to see any programs that promote drug use, or may be alleged to promote drug use. Thus there is little support in the police community for needle exchange programs.

Someone remarked that a similar dynamic applies in respect to the distribution of condoms in society and even more so, in prisons. The public perception is that it promotes promiscuity in the general population, and that it implicitly encourages homosexual behaviour in prisons. It is difficult to separate out responses that are made for health and prevention reasons from moral issues.

It was noted that in countries where needles are free, drug use has neither increased or decreased. The viewpoint of the police was raised once again, however; police hold that needle users are committing a crime: why encourage any kind of drug use?

Vern Redekop urged participants to look at the issues from the perspective of the harm done. There is physiological harm (brain damage, AIDS), social harm (crime to support the habit) and personal harm (in families). He asked: what does the drug problem say about our society? Drug dealers see it as business, the pursuit of profits. Does our society idolize profits at any costs?

Vern suggested that we take a social responsibility view of the issue: hold people responsible for the harm being done; examine the dominant value in our society, "feeling good"; reconsider and support that which really gives meaning to our lives, our spirituality and our relationships.

Dr. Don Andrews, Canadian Psychological Association, asserted that longitudinal studies of alcoholism have shown that adventurism and pleasure seeking are more important determinants of alcohol abuse than for a means of coping with stress. Those at risk may also be identified: family conditions and immediate social environment are more important determinants than social class.

Decriminalization was explored once again, in the context of the notions of harm done, the market forces behind trafficking, and the information about those at risk.

Dr. John Bradford noted that we cannot equate alcohol, cannabis, cocaine and heroin. Nor is it sensible to suggest that since cannabis appears now to be more socially accepted, that it necessarily be decriminalized. Cannabis has 550 metabolic substances, 530 of which we do know not what they do. The tar in cannabis may be more dangerous than that in tobacco. Alcohol is more physiologically debilitating than valium, although valium often gets targeted as an over prescribed drug. Finally, some persons are more vulnerable to the effects of drugs.

Dr. Riley asserted that humans seek positive reinforcement and delay punishment. Some drugs reviewed provide instant gratification. There must be efforts at replacing the reinforcement system of drugs with a healthy one. Peer pressure is effective; peer support is necessary. The importance of working with young persons, educating them, taking preventive measures was once again indicated.

## SESSION VII

### Possible Alternatives to the Present Legal Structure and Drug Strategy

The purpose of this session was to examine the status quo and possible improvements to the present system: for example, legalization, regulation, decriminalization, public education.

Stimulated by the wide ranging discussion on the first day of the seminar, the participants considered a number of questions which helped organize their thinking:

- should we seek an alternative system of control... not through the criminal justice system nor through legalization?
- what would the ideal system be?
- who is the most primary target group if a program target approach were to be taken?
- how much control should society exert over individual behaviour?
- should we accept use, and concentrate on abuse?
- do we want to regulate or eliminate?

Recognizing that the seminar was not intended to produce final positions, and definitive statements, the participants nevertheless sought more clarification of the objective of their deliberations.

There appeared to be consensus that the objective was: *to reduce the direct and indirect harm done to drug users.*

Three broad approaches to the objective emerged:

1. pursue the objective through the status quo, which includes the Canadian National Drug Strategy, and through justice and enforcement mandates as given;
2. pursue the objective through an incremental approach to change, which includes setting priorities (i.e. children, education, and treatment); facilitated prosecution of traffickers; tackling points of resistance (producing countries, the criminal justice system in particular enforcement personnel; the public);
3. pursue the objective through a harm done, social responsibility perspective, which includes values, education and reinforcement, accountability for behaviour at all points of the social spectrum, the provision of treatment services and other resources, education of the public to the societal costs of harm done through drug use.

Some observations made during this discussion included the following. Decriminalization appears a more acceptable alternative than legalization. Decriminalization is intended to encourage more abusers to enter the treatment system, to reduce marginalization without creating a societal climate that fosters drug use and drug abuse.

Drug use might helpfully be viewed as a pyramid with addicts at the tip (i.e. the smallest group) widening out to occasional drug users and even wider at the base (the general population) Programs could be targeted for addicts first, then appropriate educational and prevention programs could be directed to the other sectors.

One of the most disturbing aspects of drug use and abuse is that as things are now, young people are the most at risk. They are vulnerable as well to the pushers and traffickers. While education and treatment programs are necessary, speedy prosecution of traffickers and effective enforcement and prosecution of larger dealers is called for. These persons are exploiting our young people for profit.

By viewing drugs in terms of "all or nothing" approaches, such as criminalization versus legalization, we fail to provide ourselves with an opportunity to learn from experience. Maybe we should start with permitting marihuana use only, or simply say users are not criminal. This "experiment" could then be monitored to see what effects it has on use and abuse, and related issues such as crime, and on treatment programs.

Drug trafficking is the worst expression of amoral capitalism. It is not necessarily a high-risk venture, given the success of cross-border smuggling, the amount that is sold on the streets, and the return on investment. The economics must inform our response.

The AIDS problem may be a powerful learning tool which can point us in the proper direction. AIDS is a question of the person dying, and other indirect victims are dying too. This touches home. We are all potential victims and intravenous drug use is clearly implicated in the spread of AIDS. It may be easier to sell anti-drug campaigns by linking it to AIDS. That is, a long-term preventative strategy is to cut down on drug use from the start.

An overall education program should emphasize good health is its own reward. In a recent municipal election in Toronto, voters voted for Healthy 2000 (better health, no pollution) instead of pro-development. AIDS is a way to get drug-users concerned about their health, but we need better trained educators.

## SESSION VIII

### AIDS in Prison

#### PRESENTATION BY

Dr. Diane Riley  
AIDS Education Co-ordinator  
Municipality of Metro Toronto

Dr. Diane Riley, AIDS Education Coordinator, Municipality of Metropolitan Toronto, presented a session on AIDS and showed the videotape AIDS in Prison.

Dr. Riley stated that it is very regrettable that society has not done anything about AIDS until it has affected the general population. And the projections of infection are alarming.

Canada on the whole stands poorly in respect to its action on AIDS. Toronto is an exception, and it is a good example of the importance of public health taking precedence over current law.

Canada rates 21st in the world for the number of persons per capita with the AIDS virus. It ranks fifth in the rate of spread. The high rate of infection in Canada is shocking since we have the resources to address the problem but we may not have adequate resources if the problem is not dealt with now.

One issue of major concern is drug use and drug use in prisons. There is even a problem with occasional intravenous drug users, because they share needles. AIDS spreads in this way. Prisons must be dealt with, for whether it is outlawed or not, and whether we like it or not, intravenous drug use goes on inside. Inmates are released to the general population and the AIDS virus is spread. Spreading may extend well down the line of contacts, through drug-related means or through conventional heterosexual relations after release.

Dr. Riley outlined the problems being encountered in respect to AIDS and drug use:

GAPS: education  
syringe exchange  
drop-in centres  
housing  
shelters  
treatment  
social supports

BARRIERS: lack of money  
attitudes  
legislation  
police  
bureaucracy  
lack of organization  
denial  
inappropriate education techniques  
time

Dr. Riley outlined the public education, political activist role that was necessary in Toronto to mobilize support to address AIDS. She showed the group two kits that are being made available to intravenous drug users, facilitating needle exchange and syringe cleansing. She then challenged the group to consider the dimension of the problem in Canadian prisons and to consider means of addressing it.

The videotape underlined Dr. Riley's account of the problem of AIDS in prison and the concern that means be created to reduce the likelihood of spread.

Following the video, the participants passed a resolution in respect to reducing the likelihood of the spread of AIDS in prisons. The resolution as reported on page one was to be presented to the planning Committee of NAACJ. This was done on January 5, 1989 by the seminar chairman, Mr. Louis Zeitoun (see appendix).

## SESSION IX

### Where do we go from here?

#### MODERATOR

Louis Zeitoun  
Chairman of the Seminar

A number of observations and suggestions were put forth. They were:

- that individual organizations act quickly to address the AIDS problem;
- that the Correctional Service of Canada be invited to NAACJ to inform members about their response to the AIDS problem
- that a collective effort at the national level be undertaken to develop education tools in respect to AIDS
- that NAACJ has the potential to provide more leadership in respect to drug abuse, generally
- that NAACJ members and experts should attend each others' conferences to reduce isolation and encourage collective action
- that there is a pressing need for dialogue between law enforcement and social/health services personnel in respect to drugs and AIDS
- that the media be informed about this area of concern
- that thought be given to hosting a session for prison advisory committees
- that the issue of personal responsibility and lifestyle practices must be raised in various contexts

- that the Seminar Discussion Paper, written by Eugene Oscapella, and the background material presented by Dr. Riley, be set to Mr. Ole Ingstrup, Commissioner of Corrections
- Mr. Zeitoun adjourned the seminar.

APPENDIX

1

**National Associations Active in Criminal Justice  
Associations nationales intéressées à la justice criminelle**

55 Parkdale, Ottawa, Ontario, K1Y 1E5 (613) 725-3715

**NAACJ SEMINAR**

**Reducing the Harm of Drug Use:  
Legalization and Other Issues**

**Monday, November 28 - Tuesday, November 29, 1988**

**Top of the Hill Room  
Skyline Hotel  
Ottawa, Ontario**

**PURPOSE OF THE SEMINAR**

1. To explore the effectiveness of Canada's current approach to controlling drug use through the criminal justice system
2. To look at ways to reduce the harm caused to society by "illicit" drug use
3. To identify issues for future consideration and analysis

**PROGRAM**

**MONDAY, NOVEMBER 28**

**8:30 am REGISTRATION**

**9:00 am SESSION I**

**Welcome to the Participants**

**Louis Zeitoun**

**Seminar Chairman**

**Introduction to the Seminar**

**Eugene Oscapella, lawyer and author of  
the Seminar Discussion Paper**

**PURPOSE:** To introduce the scope of the issues.

**9:20 am SESSION II**

**The Scope of the Illicit Drug  
Problem in Canada**

**PURPOSE:** To determine the demographic composition  
of the user population (children, adults, those in  
trouble with the law generally and within the prison  
population specifically)

To determine the dollar costs for law enforcement

To determine the success rate in attacking drug  
crime

To determine the link between drug use and crime:

- (a) crime committed while under the influence of  
drugs
- (b) crime committed to support the cost of illicit  
drug habits
- (c) crime committed by drug traffickers against  
other traffickers

**MODERATOR:** Vern Redekop, Church Council  
on Justice and Corrections

**PRESENTATIONS BY:**

**Assistant Commissioner Rod Stamler  
Economic Crime Directorate  
R. C. M. P.**

**MONDAY, NOVEMBER 28, 1988 (Continued)**

Ms. Holly Johnson, Senior Analyst  
Statistics and Information Directorate  
Canadian Centre for Justice Statistics

10:00 am DISCUSSION

10:30 am BREAK

11:00 am **SESSION III**  
**The Scope of the Illicit Drug**  
**Problem in Canada (Continued)**

PURPOSE: To identify the impact on prison population  
of drug-induced crime and crime to obtain drugs.

MODERATOR: Darryl Davies  
Canadian Criminal Justice  
Association

PRESENTATION BY:  
Dr. Timothy Fullerton, Director  
Operations and Plans, Health Care Section  
Correctional Service of Canada

11:20 am DISCUSSION

11:40 am **SESSION IV**  
**Current Strategies for Dealing**  
**with Drug Use**

PURPOSE: To determine federal government and non-  
governmental drug strategies

MODERATOR: Madeleine Mailhot, Canadian  
Bar Association

PRESENTATION BY:  
Pieter de Groot, Program Officer,  
Health Promotion Directorate,  
Health and Welfare Canada

12:00 pm DISCUSSION

12:30 pm LUNCH

2:00 pm **SESSION V**  
**Legislative and Historical**  
**Framework**

PURPOSE: To outline the origins of Canada's drug  
laws, the current Narcotics Control Act and Food and  
Drug Act, recent developments and international  
obligations in a legislative and historical  
framework.

PRESENTATION BY:  
Eugene Oscapella, the author of the  
Seminar Discussion Paper

2:30 pm **SESSION VI**  
**The Impact of Current Laws and**  
**Current Drug Strategies on**  
**NAACJ Member Organizations**

PURPOSE: To explore the current effects of  
legislation on drugs on NAACJ client groups.

4:15 pm **ADJOURNMENT OF FIRST DAY**  
Louis Zeitoun, Seminar Chairman

**TUESDAY, NOVEMBER 29**

8:30 am Coffee, Tea, Juice available

9:00 am **SESSION VII**  
**Introduction to Second Day**

Louis Zeitoun, Seminar Chairman

9:15 am **SESSION VIII**  
**Possible Alternatives to the**  
**Present Legal Structure and**  
**Drug Strategy**

PURPOSE: To examine the status quo and possible improvements to the present system: for example, legalization, regulation, decriminalization, public education

To consider which possible improvements fit within the social responsibility approach to criminal justice

10:45 am BREAK

11:45 am **SESSION IX**  
**Plenary - Plan agenda for**  
**afternoon session**

MODERATOR: Louis Zeitoun, Seminar Chairman

12:00 pm **LUNCH AND NAACJ ANNUAL MEETING**

1:30 pm **SESSION X**  
**VIDEO PRESENTATION:**  
***AIDS in Prison***

Presented by: Diane Riley, AIDS Education Co-ordinator, Municipality of Metro Toronto

2:00 pm **SESSION XI**  
**Where do we go from here?**

TYPE OF SESSION AND CONTENT TO BE DETERMINED BY PARTICIPANTS

3:30 pm **ADJOURNMENT OF SEMINAR**

Louis Zeitoun, Seminar Chairman

## APPENDIX

# National Associations<sup>2</sup> Active in Criminal Justice Associations nationales intéressées à la justice criminelle

55 Parkdale, Ottawa, Ontario, K1Y 1E5 (613) 725-3715

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### Reducing the Harm of Drug Use: Legalization and Other Issues

November 28-29, 1988

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## APPENDIX

### 3

#### LETTER TO NAACJ MEMBER ORGANIZATIONS FROM THE EXECUTIVE SECRETARY

January 26, 1989

I am writing to inform your organization that the following resolution was passed by the seminar participants who attended the NAACJ Seminar on Reducing the Harm of Drug Use: Legalization and Other Alternatives on November 29, 1988.

The participants of this seminar on Reducing the Harm of Drug Use recommend that the Planning Committee of the National Associations Active in Criminal Justice act to encourage NAACJ members to immediately focus on means to alleviate the existing or potential spread of HIV infection in prisons through drug injection and other forms of needle use and sexual activity.

The Planning Committee is referred to Recommendations #28, #29 and #30 from *Aids: A Perspective for Canadians* (as follows) on staff and inmate training.

*RECOMMENDATION 28: We recommend that free condoms, needles, syringes and facilities for decontaminating needles be made available to injection drug users who choose not to refrain from behaviours that could transmit HIV.*

*RECOMMENDATION 29: We recommend that facilities for decontaminating needles be made readily available to inmates in correctional institutions.*

*RECOMMENDATION 30: We recommend epidemiological surveys to monitor the spread of HIV infection among injection drug users, using voluntary and/or anonymous testing.*

*Aids: A Perspective for Canadians*. Summary Report and Recommendations. Royal Society of Canada.

The resolution was presented to the Planning Committee of NAACJ on January 5, 1989. After discussion about the resolution and having considered some associations' responses to the problem of AIDS, it was decided that you be informed of the resolution and be provided with any supporting material we could assemble. We therefore enclose a resolution passed by the John Howard Society of Canada on December 12, 1988, an article and some statistics for your information.

I hope this information is useful to your organization. If you plan or have taken action on this issue, I would appreciate notification in order to pass your material on to your colleagues on the Planning Committee.

**APPENDIX**

**4**

**REDUCING THE HARM OF DRUG USE:  
LEGALIZATION AND OTHER ISSUES**

**A Discussion Paper  
prepared for the  
National Associations Active in Criminal Justice**

**Eugene Oscapella B.A., LL.B., LL.M.**

**November, 1988**

## TABLE OF CONTENTS

	page
I. Introduction	1
II. History of Drug Legislation in Canada	3
III. The Disadvantages of Employing the Criminal Law to Control Drugs	7
IV. The Advantages of Employing the Criminal Law Against Drug Use	18
V. Injecting Drugs and AIDS	20
VI. Options for Reducing the Harm Caused by Drug Use	24

## I. INTRODUCTION

### (a) The Theme

This discussion paper examines reducing the global harm of drug use, notably the use of those drugs that we now call "illicit" - for example, heroin, cocaine and marihuana.

**THIS PAPER IS NOT INTENDED TO REPRESENT THE POSITION OF THE NAACJ OR ANY OF ITS MEMBERS. IT IS A DISCUSSION DOCUMENT ONLY.**

Almost everything that is said in this paper has been said before. One can be both encouraged and discouraged by this. One is encouraged because others have argued the validity of many of the ideas in this paper. One is discouraged because, despite their validity, ideas about reforming our approach to drug use remain cries in the wilderness. If anything, the mood in society seems to be swinging towards heavier reliance on the criminal law to deal with drug use. As this paper argues, the application of the criminal law does more harm than good.

This paper does not simply look for ways to reduce drug use. It also considers the appropriateness of measures to do so. The measures used to effect a reduction in drug use might well cause more "global" harm than is warranted simply to achieve a reduction. The moral and ethical costs of some measures (for example, executing heroin addicts or giving them lengthy minimum prison terms) will almost certainly outweigh the benefits to be obtained from the resultant reduction in heroin consumption. From this global perspective, the paper criticizes the consequences of tackling drug use with the criminal law.

To summarize, the purpose of this paper (and the seminar to which it relates) is as follows:

- (1) to look at ways to reduce the global harm caused to society by drug use,
- (2) to explore the effectiveness of Canada's current approach to controlling some types of drug use through the criminal justice system, and
- (3) to identify issues for future consideration and analysis.

These topics can be explored effectively only by recognizing drug use as a multidisciplinary problem. It concerns the police, lawyers, judges, health care professionals,

politicians, social workers and those governmental and voluntary sector agencies involved with the criminal justice system. Above all, it affects the ordinary Canadian who fears an explosion of drug use and drug-related crime.

This paper has been prepared in a spirit that will accept criticism and new ideas. It is intended simply to stimulate and focus discussion.

#### (b) Drug Use and the Social Responsibility Approach to Criminal Justice

In December, 1987, the National Associations Active in Criminal Justice (NAACJ) held a seminar to review a discussion paper entitled A Social Responsibility Approach to Criminal Justice.

The paper presented a new approach to our present criminal justice system - the social responsibility approach. The paper defined the premises of the approach, its principles and guidelines for implementation.

The social responsibility approach provides a convenient point of reference for this discussion on reducing the harm of drug use. The Social Responsibility paper criticizes (at page 21) criminal laws that create unnecessary categories of crime. It also criticizes the practice of scapegoating certain segments of society (at page 21). It calls for processes that focus on problem solving rather than establishing blame (at page 12).

These criticisms and comments raise three questions relevant to our examination of drug use:

- (1) Are we creating unnecessary categories of crime by attacking the use of certain drugs with the criminal law? (This has been called the "overreach" of the criminal law.)
- (2) Are we, by creating unnecessary categories of crime, scapegoating people (and driving them to the margins of society)?
- (3) Does our current method of "solving" the drug problem truly focus on solving the problem, or does it seek merely to establish blame for certain types of conduct?

## II. HISTORY OF DRUG LEGISLATION IN CANADA

(Much of the factual substance of this article (although not all the editorial comment) is drawn from M. Green, "A History of Canadian Narcotics Control: The Formative Years" (1979), 37 U.T. Fac. L. Rev. 42; see also Bruce McFarlane, Drug Offences in Canada (2d ed. 1986) at pp. 3-28).

The process by which Canada acquired what are generically referred to as its "narcotic control" laws is a cross between a farce and a bad dream. It confirms one's worst (and most cynical) suspicions about the governmental process that generates criminal law.

Canada appears to have been the first Western country to criminalize the distribution of narcotics for recreational purposes. Canada did so first in 1908. The United States followed only in 1914. In fact, opium was recognized as a legal substance in Canada in 1879 through the imposition of federal import duties on opium.

Until 1908, the only narcotic of social concern in Canada was opium. Opiates were freely prescribed. They were widely used throughout the late 19th and early 20th centuries. The patent medicine industry sold opium-fortified household remedies, pain killing syrups and the like. Surveys estimated that between 200,000 and 2 million Americans were addicted at the turn of the century. No comparable Canadian statistics are available.

In Canada, opium addiction occurred largely in the middle-aged middle-class. It was generally regarded as an individual medical problem or vice. It was not generally viewed as a menace to society or as a criminal habit. A smaller community of users existed among the Chinese community in Canada.

At the turn of the century, racial disharmony between Chinese immigrants and whites led to various confrontations in western Canada. In 1907, William Lyon Mackenzie King, then Deputy Minister of Labour, was sent to Vancouver to investigate racially-motivated riots and to arrange reparation for Asians who had suffered property losses in the riots.

Two claimants were Chinese opium merchants who asked for substantial compensation for their losses. King was affronted by this and eventually conducted an unofficial investigation into the opium trade in British Columbia.

After consulting groups that may have been biased against the opium trade, King concluded that the "evil" of opium could be eradicated only by prohibiting its importation, manufacture and sale.

Within three weeks of King's report of his conclusions about opium, Canada's first criminal narcotics legislation was drafted, passed and given royal assent. It was called An Act to prohibit the importation, manufacture and sale of Opium for other than medicinal purposes (also known as the Opium Act). The Act did not prohibit possession or use.

There was no discussion of the legislation in the House of Commons and no effective opposition in the Senate. The only real concession obtained by the Senate was a delay of six months in implementing the legislation to allow merchants to dispose of their stock. The legislation was racist and moralistic. It apparently had no broad public support but slipped through because of public apathy about the issue.

King was Canada's delegate at the Shanghai Opium Commission of 1909. There he apparently contributed to the passage of various resolutions urging nations to pass strict measures on domestic opium use.

Canada soon experienced the corrupting effect of criminalizing opium. A 1910 royal commission reported that the 1908 Opium Act had served to inflate the price of opium and made trafficking in the drug a highly lucrative business. This created the need for more powerful legislation, especially since customs officers were having virtually no effect on illicit importation.

In 1911, King introduced new legislation dealing with opium and cocaine. The genesis of this legislation is not entirely clear, although King's personal beliefs clearly played a strong role. As well, various organizations were concerned about the use of cocaine, particularly among the young in Montreal. And, as stated above, the need to counter the black market (created, ironically, by the 1908 legislation) was also a factor.

The proposed 1911 legislation generated more discussion in Parliament than did the 1908 legislation. This discussion had a highly moralistic tone, but little empirical information. One commentator described the debate as being characterized "by vagueness on one hand and by panic on the other hand".

The 1911 Opium and Drug Act broadened the types of drugs covered by criminal legislation. The importation, manufacture, sale, simple possession and transportation of these drugs "without lawful excuse" and "for other than scientific or medicinal purposes" were defined as summary offences. Maximum penalties were \$500 or one year in prison, or both. Smoking opium was defined as a lesser offence, as was being found in an opium "resort".

The Act also introduced strict controls on the legitimate trade in opium. Equally important, it enlarged police enforcement capabilities.

Subsequent Canadian narcotics laws have been modelled on the 1911 legislation - legislation that clearly bore racist and moralistic overtones. Later legislation was influenced by other factors as well. As Green argues:

The influential forces ... have been diverse: international treaty obligations, American social and legislative developments, continued racial paranoia, reformist campaigns, prescribing indiscretions, recurring police demands for greater enforcement powers, the creation of a federal control apparatus, and, occasionally, the courts' reluctance to construe Parliament's enactments as liberally as did the police. (at 51)

No significant changes to narcotics legislation occurred until 1920. From 1920 until 1960, several amendments were made and new provisions added, including the following:

- . provisions deeming a person to be in possession of a prohibited drug unless he could prove it was there without his knowledge or authority (1921)
- . the enactment of a distinct offence prohibiting sales to minors (1921)
- . the enactment of a power of search (without warrant) by a peace officer where there was reasonable cause to suspect that a prohibited drug was being kept or concealed in any of various places (searching a house still required a search warrant) (1922)
- . automatic deportation of aliens following conviction (a racist measure clearly aimed at the Chinese) (1922)
- . a consolidation of the legislation and the inclusion of more substances, including heroin (apparently this is the first specific mention of heroin, although it may have fallen under a general prohibited category before then), codeine, eucaine, cocaine, morphine, cannabis indica (Indian hemp) and "hasheesh" (1923)

- . amendments allowing for the issue of writs of assistance (a powerful and now outlawed form of search warrant) by the Exchequer Court (1929)

- . increased penalties for trafficking, and new evidence provisions that made it easier to convict persons of possession for the purpose of trafficking (1953).

In 1960-61, the legislation was restructured and renamed the Narcotic Control Act. Its present form largely remains that of the 1961 legislation.

In Canada, drugs have also been regulated under the Food and Drugs Act. Chemical drug abuse during the 1960's likely led to amendments to the Act to create a new schedule of drugs, the sale or distribution of which was prohibited. LSD was one such drug.

Because of the increased popularity of LSD and other hallucinogens, schedules of "restricted" and "controlled" drugs were added to the Food and Drugs Act. The law on these scheduled drugs largely parallels that found in the Narcotic Control Act.

#### The Current Legislative Scheme

Heroin, cocaine, marihuana and several other drugs defined by law as "narcotics" are dealt with by the Narcotic Control Act. The Act sets out several offences:

- . possession (penalties up to seven years imprisonment)
- . trafficking (up to life imprisonment)
- . importing and exporting (minimum seven years (note that this specific minimum penalty was declared unconstitutional in 1987 by the Supreme Court of Canada in R. v. Smith)
- . cultivation without a licence (up to seven years).

The Food and Drugs Act applies three different criminal control schemes, depending on the drug involved. Two of the schemes are particularly relevant to this discussion paper. Part III of the Act prohibits trafficking in controlled drugs (for example, amphetamines). It is an offence to traffic or to possess for the purpose of trafficking. Penalties range up to ten years. Unlike narcotics and marihuana, however, simple possession of a controlled drug is not an offence.

Part IV of the Act controls restricted drugs (including LSD and MDA) to a greater extent. Unlike the situation with controlled drugs, possession of a restricted drug is prohibited; an offender may be imprisoned for up to three years. Trafficking or possession for the purpose of trafficking is also prohibited. Maximum penalty is ten years imprisonment.

Canadian criminal legislation on narcotics and other "illicit" drugs can be summarized as follows:

	Narcotics	Marihuana	Controlled Drugs	Restricted Drugs
Possession prohibited	yes	yes	no	yes
Trafficking prohibited	yes	yes	yes	yes
Possession for trafficking prohibited	yes	yes	yes	yes
Importing and exporting prohibited	yes	yes	yes	yes
Cultivation prohibited	yes (opium poppy)	yes	not applicable	not applicable

These are not the only pieces of criminal legislation dealing with drugs. For example, Bill C-61 provides more efficient mechanisms for seizing the proceeds of crime, including drug crime. This legislation comes into force in January, 1989.

### III. THE DISADVANTAGES OF EMPLOYING THE CRIMINAL LAW TO CONTROL DRUGS

The 1973 Final Report of the Commission of Inquiry into the Non-Medical Use of Drugs (the Le Dain Commission Report) identified several "costs" of using the criminal law to deal with drug abuse. Other literature identifies additional costs. This part summarizes various views on the damage done by applying the criminal law to some forms of drug use. Part IV will briefly discuss the advantages of applying the criminal law to drug related activities.

In summary, the disadvantages of criminalization are the following:

- (a) creation of an illicit market
- (b) forcing users to deal with criminal elements to obtain a supply of drugs and pushing users to commit crimes to maintain a habit
- (c) inhibiting people from seeking treatment
- (d) inhibiting drug education
- (e) demand on law enforcement resources
- (f) calls for better means of enforcement
- (g) the moral stigma associated with calls for change
- (h) legislating morality
- (i) the rigidity of the criminal law
- (j) the inconsistency of the criminal law
- (k) inappropriate role models
- (l) the attractiveness of risk
- (m) a terrorist tool
- (n) diversion of funds from the legitimate economy
- (o) encouragement to become a poly-drug user
- (p) AIDS and drug use
- (q) lack of quality control
- (r) stigmatization and marginalization of drug users
- (s) drug use in prisons.

(a) Creation of An Illicit Market

The Le Dain Commission Report states:

The first and undoubtedly the most serious of the costs of criminal law prohibition is the encouragement and maintenance of an illicit market. When we prohibit something which a lot of people desire and are willing to pay money for we invite people to create an illicit market. In effect, we create a profitable enterprise for criminally inclined elements. Moreover, the more effective our law enforcement against distribution is, the more attractive we make the market for professional criminal elements by forcing the price up and putting a premium on skill and daring. This is an inherent and unavoidable cost of prohibition of distribution. (at 56) (my emphasis)

This argument, simply stated, is one familiar to any business person. Drug trafficking can be a highly profitable business. Criminal prohibition forces the price of drugs up. Large profits can therefore be made by selling these drugs. The attractiveness of trafficking illicit drugs leads to active "marketing". The more you sell, the richer you get. The threat of criminal sanction is too remote (and the profits created through the law's establishment of a black market too great) to dissuade people from trafficking drugs in school, for example.

Furthermore, as law enforcement becomes more sophisticated, "amateur" criminals may be driven out of the market; their place will be taken by more sophisticated (and hence more dangerous) "professionals".

Perhaps drug trafficking is the model of (amoral) high risk capitalism. It is almost like investing in speculative stocks. If you win, you win big. If you lose, you lose big; you may even be able to contemplate your failure in prison.

Clearly, however, the risk of loss is not great enough today to deter people from "investing" in the drug business.

If the risk of loss does not (or cannot, within the bounds of respect for civil liberties, be made to) operate as a disincentive to enter the drug trade, another disincentive must be chosen.

One obvious (to all but Parliamentarians and most other Canadians) disincentive is to reduce the profitability of the drug trade at the front end. Reduce the business person's ability to win big. If the black market were eliminated, market forces would cause the price of formerly illicit drugs to plunge to their true price of production,

which is substantially (perhaps even a hundred fold) less than the black market price.

The lower price of the drug would make it unprofitable for a producer to market to school children, particularly if sanctions were imposed for doing so (Thus, we would not legalize across the board; we would selectively legalize). Hence, the incentive to market to those we want to protect most - children - would largely disappear. As an example of how this scheme might work, look at alcohol. There may be alcohol problems and alcohol experimentation in schools, but is there a significant (and dangerous) black market in alcohol to compound the problem?

(c) Forcing Users to Deal with Criminal Elements to Obtain a Supply of Drugs and Pushing Users to Commit Crimes to Maintain a Habit

Le Dain states:

[P]eople who persist in seeking to use the prohibited drug will be obliged to have contact with criminal elements and in the process will be exposed to a variety of illicit drugs and drug use. Some will be introduced to other kinds of crime and become part of a criminal pattern of life. (at 56-57)

To maintain an expensive illicit drug habit (which may run to thousands of dollars a week) some users will turn to crime (break and enter, shoplifting, etc.). There may be no precise way of measuring the amount of "spin-off" crime attributable to people trying to support a drug habit. One hears a wide (and therefore suspect) range of estimates, some as high as 70%. Licit drug habits, on the other hand (alcohol, tobacco, caffeine), rarely seem to lead to the commission of crime simply to allow the user to purchase the drug. This is certainly in part because the price of licit drugs has not been driven up by criminalization.

(c) Inhibiting People from Seeking Treatment

Le Dain states:

[B]y making conduct criminal we may inhibit people from seeking help from other sources, such as medical treatment. The fear of being identified as a drug user, and thereafter being subject to surveillance, may make some people reluctant to approach treatment facilities. The attitude of treatment personnel may also be adversely affected by the characterization of the conduct as criminal. Sometimes treatment authorities are placed in an awkward position in relation to law enforcement authorities, as, for example, where they are expected to furnish evidence of violation of probation or parole. (at 57)

(d) Inhibiting Drug Education

Le Dain states:

In discussing the pros and cons of drug use ... one is placed in the rather ambivalent moral position of assuming that one's listeners may choose to break the law if there are not other good reasons for not using the drug.... What all this amounts to is that so long as the law purports to make the decision for us it is difficult to discuss drug use in the context of a wise exercise of freedom of choice.

... The legal characterization of certain kinds of drug use can affect drug education in other ways. A legal characterization that is at extreme variance with the facts, as has been the case with cannabis, can undermine not only the credibility of the law, but also the credibility of information about other drugs. For example, it has been said that the very misleading impression which the law has conveyed about cannabis, by placing it on the same basis as the opiate narcotics, has led many young people to question the truth of information about more dangerous drugs, including heroin. (at 57)

One need only remember the grossly distorted characterization of marihuana in the film "Reefer Madness" and in literature of the period to understand why so many people suspect "official" stories about the dangers of drug use.

(e) Demand on Law Enforcement Resources

Le Dain notes that a disproportionate application of law enforcement resources is required to deal with drug crimes:

The numbers involved in drug-related behaviour are such that we would have to employ a very large proportion of the time of police, prosecutors and judges to make a serious, systematic effort to enforce the law. This would inevitably have an adverse effect on other law enforcement priorities. Any crime which involves such a high proportion of the otherwise non-criminally inclined population is bound to produce a very drastic distortion in the application of law enforcement resources if a really serious attempt is made to enforce the law.

In fact, the law can only deal with a very small proportion of the actual number of offenders, and this on a haphazard basis.... The result is that for a very substantial expenditure there is really only a modest yield. The purpose of law enforcement in this area is simply to reinforce to some extent the moral injunction of the law. (at 58)

The police face particularly daunting problems. They do not have adequate resources to pursue even a significant fraction of drug offences. Nor are they likely to receive sufficient resources to do so. This means that they must be selective in choosing targets.

Selecting targets out of a crowd has long been part of police work. It is characterized as "police discretion". While the exercise of police discretion is a necessary part of police work, it can lead to problems. In the drug context, it may lead to accusations that the police are singling out a particular group for prosecution. As a corollary, it may mean that the police are ignoring others. At some indefinable point, this exercise of discretion amounts to the "licensing" of certain drug users or dealers.

Licensing arrangements can nonetheless be useful to the police. For example, the police may overlook that a person is dealing drugs if that person supplies them with information to apprehend other drug dealers. If the police are allowing a small fish to go free to catch a bigger fish, this may not seem too objectionable. Sometimes, however, these licensing arrangements allow the small fish cum informer to eliminate his competition and improve his own position - assisted by the police.

Drug crimes are "victimless", in that there is often no direct victim to complain that a crime has occurred. Accordingly, the police are forced to rely heavily on informers. These informers often have a history of criminal activity. Their trustworthiness and their motives may therefore be suspect, especially since informing on others may eliminate their drug trade competition. As well, the police may feel pressured to make "deals" with an informer that can appear to compromise the integrity of the police.

This licensing process and the use of informers can tend to corrupt the investigative end of the criminal justice system.

Another corrupting factor comes from the sheer wealth involved in the drug trade. Officials - police, judges and customs officers, among others - face bribes (and sometimes threats) that keep them from their appointed rounds.

As an alternative to informers, or to supplement their information, police officers work undercover. Undercover drug enforcement operations may be lengthy. Undercover officers may be subjected to enormous pressures to prove their "legitimacy". They must work for extended periods to develop relationships with the very people they are ultimately trying to catch. This must certainly lead to psychological stress. It may lead to corruption or death; by creating an illicit market with enormous potential to acquire riches, we have also encouraged the ruthless disposal of anyone who threatens an enterprise through police work (or, indeed by subverting the black market through legalization).

The need to employ extraordinary techniques to catch drug criminals may also lead to persons being "entrapped" by schemes set up by police. If the person intended to commit a drug crime and the police merely provided an opportunity to do so, there may be few objections. On the other hand, the zeal of the police may result in their actively pressuring a suspect to commit a crime that he would not otherwise commit.

#### (f) Calls for Better Means of Enforcement

The difficulty of combatting drug trafficking and drug use has given rise to calls for increased resources (police and equipment) and investigative powers. Increased resources and enhanced powers may result in minimally (but not substantially) more effective enforcement. Unfortunately, they may also result in increased oppression by the state.

And if extraordinary investigative powers are assigned to tackle drug trafficking, what is to stop eager law enforcement officials and Parliamentarians from advocating their use for other crimes? Extraordinary drug investigation powers will serve at once both as an example of and a justification for extending those powers to other areas of criminal law enforcement.

The history of drug-related legislation in Canada seems to have consisted of calls for ever-increasing powers of law enforcement. Unfortunately, more effective law enforcement can also be viewed as more "repressive" law enforcement. The history of drug legislation shows that many of the most intrusive investigative powers have been associated with drug abuse. Wiretaps are most often used to investigate suspected drug crime. Until 1985, writs of assistance gave certain RCMP officers almost unfettered powers to search for drugs. Bill C-61, dealing with seizing the proceeds of crime, has been criticized as repressive (although many have praised it). Reverse onus provisions and mandatory minimum penalties are often associated with drug offences. The recent American "Zero Tolerance" program is another example of the obnoxious and oppressive measures that can be adopted when agencies and governments get stuck in the mire of the criminal justice approach to drug use.

(g) The Moral Stigma Associated with Calls for Change

It may be argued that criminalizing some forms of drug distribution and possession creates a climate that makes it difficult to press for change. The strong moral tone of the criminal law on drugs may stigmatize those who press for change as being "immoral" or advocates of lawlessness. Instead of looking at the issue of drug use objectively, people adopt strong moral stances buttressed by the criminal law. This does little to resolve problems of drug dependency.

(h) Legislating Morality

Some argue that it is wrong to try to legislate morality. Others argue that legislating morality is an inherent function of the criminal law. John Stuart Mill adopted the former stance:

The only purpose for which power can rightfully be exercised over any member of a civilized community, against his will, is to prevent harm to others.

Mill would allow only two exceptions to this rule: to protect children and to prohibit people from voluntarily becoming slaves.

If we agree with Mill's principle, it may be wrong to criminalize the use and distribution of certain drugs. Though this discussion paper devotes little space to this issue, it is undoubtedly pivotal in determining society's approach to drug use.

(i) The Rigidity of the Criminal Law

The criminal law is rigid. It is not easily changed. Is this rigid system the best way of dealing with the drug issue? Should a more flexible approach supplant the criminal justice system?

(j) The Inconsistency of the Criminal Law

Caffeine and nicotine are stimulants, but do not attract the application of the criminal law; certain other stimulants, including cocaine, do attract the criminal law. Caffeine and nicotine can both be hazardous to health.

Alcohol and antihistamines both affect the brain. They are sedative hypnotics. Alcohol is particularly dangerous. The active ingredients in perfumes are designed to stimulate areas of the brain.

Why does the criminal law attach to the distribution and possession of some drugs that affect the brain, but not others? Why are we allowed to kill ourselves with alcohol and nicotine, which are both acknowledged to be extremely dangerous to health, but not with other drugs?

The criminal law on drugs is inconsistent and irrational. Public health arguments for criminalizing some drugs falter when sees the equally significant damage done by licit substances - alcohol and nicotine, for example.

This inconsistency and irrationality detracts from the credibility of the criminal law.

(k) Role Models

Criminalization creates a black market. The black market creates enormous profit potential. People become rich from drug trafficking. How does one encourage the "work ethic" among people (particularly impressionable adolescents) when they see their peers becoming wealthy simply by selling drugs? The drug market provides the wrong role models.

(l) The Attractiveness of Risk

Like skydiving, the risks associated with drug trafficking and drug use are attractive to some people. Arguably, it may enhance their status among peers. Reduce the risk (and profitability) of dealing in or using drugs and you may reduce the attractiveness of the exercise.

(m) A Terrorist Tool

The profitability of drug crime has made it another method to finance terrorist organizations. It also leads to the destabilization of governments and can undermine economic and social institutions. The corruption of the financial system to launder drug money is one example of this.

(n) Diversion of Funds from the Legitimate Economy

Some, perhaps all, drug money eventually returns to the legitimate economy. After all, drug dealers buy cars, take vacations and eat at restaurants. In the meantime, however, enormous sums are being diverted from the legitimate economy. Among other uses, drug money can be used for corruption. No taxes are being paid on drug profits. No taxes are paid on the sale of illicit drugs. Accordingly, governments are missing out on a major source of revenue (which should be captured and diverted to drug education and rehabilitation programs).

(o) Encouragement to become a Poly-drug User

Criminalizing one drug may encourage people to try other licit or illicit drugs - that is, to become "poly-drug" users. In the United States military, for example, some marihuana users are alleged to have substituted heroin for marihuana because heroin use was easier to conceal (no distinctive odours, smaller packages).

In effect, criminalizing some drugs may promote the use of other drugs. These other drugs may be even more dangerous than the original drug.

(p) AIDS and Drug Use

This topic is developed more fully under a separate heading in this paper. To summarize, it is strongly arguable that criminalizing some forms of injection drug use has greatly contributed to the spread of HIV infection and AIDS and is a major impediment to slowing their further spread.

(q) Lack of Quality Control

Users of illicit drugs have no guarantee of the quality or content of the drugs they purchase. This can lead to injury or death.

(r) Stigmatization and Marginalization of Drug Users

The criminal law stigmatizes those who use certain drugs. A cocaine dependent person is likely to be considered a criminal, even though he or she engages in no other form of criminal activity. An alcoholic, on the other hand, is likely to be considered someone who has acquired an unfortunate social condition. It is arguable that the use of criminal law against certain drugs has largely created the morality that stigmatizes drug users. At most, criminal law should express the prevailing morality. The criminal law should not be allowed to create it.

Large numbers of persons who use some drugs have been stigmatized by criminal records. Users of alcohol do not obtain criminal records unless they also act anti-socially - for example, by driving while impaired.

Stigmatizing those who use certain types of drugs drives them to the margins of society. From there, they are less likely to hold employment and less likely to seek treatment (or to be considered by politicians to be worthy of treatment). They lose precious social contacts with the "mainstream", and may compensate by forming social contacts at the margins of society. Thus the criminal law promotes the loosening of bonds that could help drug users, while promoting the tightening of bonds that may hurt them.

(s) Drug Use in Prisons

Users jailed for drug related crimes may wish to continue using drugs while in prison. Similarly, jailed traffickers may wish to continue their trade. The presence of these groups in prisons may contribute to the drug problem there. Particularly, their presence may result in the recruitment of imprisoned non-users.

IV. THE ADVANTAGES OF EMPLOYING THE CRIMINAL LAW AGAINST DRUG USE

This paper has focussed on arguing that the criminal law is inappropriate for controlling drugs. Nonetheless, one must recognize the strength of arguments that support using the criminal law. Some of these are summarized here. They include the following:

- (a) providing a control mechanism
- (b) criminal law gives expression to morality
- (c) criminal penalties may limit drug consumption
- (d) criminalizing drugs employs people
- (e) criminalizing drugs accords with international obligations and domestic legislative schemes in other countries.

(a) Provision of a Control Mechanism

The present criminal law approach to some drug use provides a method of control and a law enforcement hierarchy to exercise that control. If the criminal law did not touch on drugs, it would be necessary to create some other mechanism of control.

(b) Criminal Law Gives Expression to Morality

Some argue that the criminal law should give expression to morality (but see the contrary argument of John Stuart Mill, above). Criminalizing the distribution and possession of some drugs does this (although, as argued elsewhere in this paper, it may have been the criminal law that created the morality in the first place).

(c) Criminal Penalties May Reduce Drug Consumption

People may be dissuaded from using certain drugs because they fear a criminal penalty.

(d) Criminalizing Drugs Employs People

Although perhaps self-evident, criminalizing aspects of drug use employs people. It employs police, jail guards, crown attorneys, defence lawyers, court administrators, judges and government departments. A non-criminal approach to drugs, of course, would still employ some people, but not those associated with criminal law enforcement.

At least one author has argued that law enforcement agencies may create a drug menace to enhance their budgets. Empire building is well known to many government departments and corporations. Why should the police and other agencies of government dealing with drug issues not indulge in this practice as well?

Bruce McFarlane, in Drug Offences in Canada (2d ed. 1986), reports the following:

Whitaker [the author of a 1969 Canadian study, Drugs and the Law] maintains that during the latter part of the 1930's, the "great marihuana scare" arose in the United States largely as a result of the activities of H.J. Anslinger, then the Commissioner of Narcotic Drugs. Whitaker contends that Mr. Anslinger and his associates in the Federal Bureau of Narcotics used their influential position for the purpose of conducting a widespread publicity campaign against the "horrors" of cannabis (marihuana). As to the reason for conducting such a campaign, Whitaker suggests at p. 65 that:

The reason for the Bureau's sudden concern is not hard to find. In the depression years and with the opiate problem diminishing from its high point in the 1920's, the Bureau found that its annual appropriation from Congress was declining. One obvious answer to this bureaucratic crisis was to create a new drug menace to justify the Bureau's continued existence. With the Bureau's command over information and communications in the narcotics field this did not prove to be a very difficult task.

(McFarlane calls Whitaker's theory "risky speculation" at best (at p. 26)).

(e) Criminalizing Drugs Accords with International Obligations and Domestic Legislative Schemes in Other Countries

Many Western countries - particularly Anglo-American countries - attach some form of criminal penalty to the distribution and possession of certain drugs. Canada's laws are consistent with domestic legislation in many other countries.

As well, Canada adheres to international agreements designed to stem the flow of certain drugs by applying the criminal law.

It would fly in the face of current international agreements and the practices in many countries if Canada were to adopt a non-criminal approach to the distribution and possession of certain drugs. On a practical level, it would also be difficult for Canada to alter its approach to drugs (perhaps via legalization) if other countries choose to maintain a criminal justice approach. Political forces in other countries, particularly the United States, make it unlikely that any unilateral action by Canada could succeed.

V. INJECTING DRUGS AND AIDS

(a) General

Canada's Federal Centre for AIDS publishes weekly figures on AIDS in Canada. To October 11, 1988, 2,040 cases of AIDS have been reported to the Centre. As many as 30,000 to 50,000 Canadians may be infected with the HIV (the virus that can cause AIDS) but will not yet have developed AIDS.

The Federal Centre for AIDS has observed that approximately 35-50% of persons infected with HIV will develop AIDS within 7 years of becoming infected. Other studies suggest that as many as 90% of those infected will eventually develop AIDS. At present, AIDS is fatal.

Of those 2,040 cases of AIDS, less than 1% (15 cases) can be associated with IV (intravenous) drug use alone. A further 2.5% (51 cases among males only) are attributed to some combination of IV drug use and homosexual or bisexual activity.

These numbers seem insignificant when compared to the risk of accidental death from automobile accidents (4,235 in 1985) or heart disease (over 58,000 in 1985). Nonetheless, the experience in other countries - notably the United States, Scotland and Italy - show the real potential for

intravenous drug use to become a major means of transmitting HIV infection into the uninfected population. HIV infection among intravenous drug users can explode from almost nil to 50% in less than two years.

The heterosexual population, unlike the increasingly careful homosexual population, has largely not taken precautions to prevent the spread of HIV infection. Accordingly, the consequences of an increase in HIV infection among drug users could be particularly disastrous for their heterosexual partners and any children born to them.

HIV infection is spread among intravenous drug users by the sharing of needles and syringes contaminated with infected body fluids (generally, blood). To avoid HIV infection, intravenous drug users are advised to take any of the following measures:

- (a) don't inject drugs,
- (b) don't share needles and syringes, or
- (c) if you must share needles or syringes, clean them with bleach before sharing them.

The first measure - abstention - is often not practical. Drug dependent persons will continue to want drugs. Similarly, some people will continue to experiment with drugs for various reasons, including curiosity and peer pressure.

The second measure - not sharing needles and syringes - is more practical. Yet it too encounters difficulties. Avoiding the sharing of needles and syringes means using one's own injection equipment, or "works". Although the sale of needles and syringes is legal, not every pharmacy will sell them to "addicts". Few pharmacies in Montreal, for example, sell needles and syringes to addicts. In other cases, users cannot afford to buy syringes and needles (a free needle exchange program would resolve this).

Perhaps above all, users fear that the police will watch them as they obtain their supply of needles, then follow them and arrest them or others with whom they deal. The police will rely on the needles and syringes as evidence of a drug crime. Accordingly, some addicts are reluctant to carry this equipment with them.

The third option - cleaning needles and syringes with bleach - can be effective. Again, however, addicts fear carrying bleach with them. The police may use the bleach as evidence of involvement with drugs.

(b) The Impact of Legalization

Legalizing (or at least decriminalizing) drugs that are injected may resolve two problems: (1) Addicts would no longer need to fear carrying equipment (clean needles or bleach) that would prevent HIV infection, as these items could no longer be used as evidence of a crime; (2) pharmacies might not be as reluctant to make needles and syringes available because doing so will no longer associate them with criminal activity.

The issue here is life and death. If measures are not taken to control the spread of HIV infection through needle sharing, many people, including the "innocent" partners of drug users and newborns of the partnership, will die. The AIDS cases associated with drug use in New York and New Jersey are compelling evidence of this. **Yet our current legislative (and law enforcement) approach to drug use forces the police to work at odds with the greater need of society - preventing the deaths that will occur through the spread of HIV infection.** Street workers encourage addicts not to kill themselves and others through needle sharing, while the threat of criminal sanction pressures users to do the opposite. We are working at cross-purposes.

(c) The Special Interests of Prisoners

Two phenomena create a risk of spreading AIDS in prisons: homosexuality and the sharing of needles and syringes to inject drugs.

The coercive and stressful prison environment "compels", or at least encourages, some prisoners to engage in these activities. Similarly, the presence in prisons of persons jailed for drug crimes makes it more likely that drugs will become part of the prison culture.

If drug using prisoners want to protect themselves against HIV infection, however, they will not be allowed to use bleach to clean needles and syringes. Nor will they be allowed to obtain clean drug injection equipment. To allow either of these measures would amount to an acknowledgement (and perhaps, a perceived condonation) of the use of drugs in prison. Accordingly, prisoners are much less able to protect themselves against HIV infection than are those outside.

Drugs continue to be injected in prisons. Drug injection equipment continues to be shared. This creates an environment ripe for the spread of HIV infection. In male prisons, the inevitability of homosexual activity, including rape, means that a person may transmit HIV infection to (or receive it from) an unwilling partner through sexual intercourse. Yet Correctional Service Canada refuses to allow prisoners access to condoms, thereby compounding the problem.

A stay in prison is already fraught with dangers. Imprisonment should not be allowed to burden prisoners with additional and grave health risks when those risks can be reduced by simple measures. Yet present prison policy threatens to perpetuate an environment fraught with risk.

Even if the public has no concern for prisoners, it must acknowledge that these prisoners will eventually be released (if AIDS does not kill them first). The general public will then be at risk.

**It is recommended that NAACJ members immediately focus on means to alleviate the present or potential spread of HIV infection in prisons through drug injection and sexual activity.**

**The following measures must be considered, among others:**

- (a) pressing for the supply (with no penalties attached) of clean drug injection equipment to prisoners, or**
- (b) (again with no penalties attached) providing bleach kits to prisoners, to allow them to clean drug injection equipment before using it.**

**In addition, we must press for making condoms available in prisons to prevent or reduce the spread of HIV infection.**

There is of course no guarantee that prisoners will adopt measures to prevent the spread of AIDS even if they are permitted to do so. I assume, however, that most prisoners are in fact interested in preserving their health and will take reasonable precautions to do so. In any event, prisoners should be placed in no worse a position than the general public when it comes to being able to protect themselves against the spread of HIV infection.

A third, less attractive (and possibly unconstitutional), avenue, is to test all prisoners for HIV infection. Those who are infected could be placed in segregation, or identified as infected to other prisoners, to prevent the spread of infection.

Part of the problem with drug use in prisons results from some prisoners being in prison for drug crimes. They induct others into the drug fraternity or sorority. Take away the criminal law for distributing and possessing drugs, and you take away the need to incarcerate some of these people. In addition, prison policy on drugs would not have to be as strict as it now is for those drug users who are in prison for other crimes; correctional officials would no longer be seen as condoning an illegal act by supplying injection equipment or bleach kits.

## VI. OPTIONS FOR REDUCING THE HARM CAUSED BY DRUG USE

### (a) Introduction

This part sets out several options for dealing with the problem of drug use. It is intended to facilitate discussion. It does not pretend to set out all possible options, nor does it fully discuss the merits or drawbacks of the options.

### (b) Drug Education and Drug Treatment as Part of Any Option for Dealing with Drugs

**Whatever option we choose to deal with drug use, drug education should form a part of it.** Drug education aims at reducing the demand for drugs. It assumes that if people are told about the consequences of using certain drugs, they may be dissuaded from using them.

This paper does not discuss the effectiveness of education programs - who should deliver them, what the message should be - beyond stressing the need for honesty and consistency.

Some argue that the history of drug education is littered with exaggeration and deception (Who has seen the film "Reefer Madness"?). Little wonder then that people, especially young people, may be suspicious about the truthfulness of the stories officials tell them about drugs. Similarly, the message is inconsistent - a product in part of the inconsistent approach of the law to drugs. The message we give is that it is proper and legal to possess and use alcohol and caffeine in limited quantities. It is legal, if unwise, to possess and use nicotine. These drugs affect the brain and can cause harm. But it is improper and illegal to possess cocaine, heroin and marihuana for recreational use in any amount. Why?

The availability of treatment for drug dependency must also be a component of any program. We will never resolve (or at least ameliorate) the social problems associated with drug dependency unless we devote adequate resources to helping those who have become dependent.

(c) The Options

(1) Status Quo

The status quo in dealing with illicit drugs is represented by the National Drug Strategy. The National Drug Strategy was announced in 1987. It adopts a two-pronged approach to alcohol and drug use - supply reduction and demand reduction.

The literature on the National Drug Strategy describes it as involving action on six fronts:

- . education and prevention
- . enforcement and control
- . treatment and rehabilitation
- . information and research
- . international cooperation
- . national focus.

As discussed above, education and treatment should be a part of any program dealing with drug use. Similarly, continuing research on drug use is needed. At issue, however, is the "supply reduction" component of the National Drug Strategy. The supply reduction component consists in part of increased criminal law enforcement, coupled with increased international cooperation (again largely involving a criminal law approach) and domestic legislation, such as that allowing the seizure of proceeds of crime (Bill C-61).

This paper has discussed at length the inappropriateness of using the criminal law to reduce the supply of drugs. This component of the National Drug Strategy is unlikely to be effective, and is objectionable on many of the grounds discussed earlier.

## (2) Legalization

Legalization is a broad concept. Few people would advocate unrestricted legalization, any more than they would advocate the sale of consumer products without some form of government control. Certain legislative standards could be imposed on the quality, production and distribution of drugs, as is the case with licit drugs. **The main point** is that no criminal penalties would attach to those who distribute drugs in accordance with government quality controls or other regulations. This would effectively kill the black market in drugs. Nor would any penalty attach to the possession of drugs for personal use (or, possibly, depending on the legislative control scheme, for the possession of drugs for the use of others).

Following are several "variations on the theme" of legalization. Each has its merits. All are premised on the removal of the criminal law (except in strictly limited circumstances) from the control of drugs. For a more thorough discussion of some options, see Chester N. Mitchell, "A Justice-Based Argument for the Uniform Regulation of Psychoactive Drugs", 31 McGill Law Journal 213 at 250 (1986).

(a) Legal, but Disapproved Practices (from a letter to the editor of The Economist (August 13, 1988)):

The key is the mistaken belief that any practice which is wrong should also be illegal. To overcome this misconception and to facilitate the more rapid adoption of a sane drug policy, I would like to recommend setting up a new legal classification which might be called "disapproved practices".

...

All the restrictions which apply to the use of cigarettes and alcohol could also apply to the use of marijuana or other legalised drugs. The production and sale of all disapproved drugs would be heavily regulated and taxed. All advertising could be banned. Driving a car, or operating other heavy machinery, while under the influence of marijuana or any other disapproved drug, would be at least as serious an offence as driving while under the influence of alcohol.... It would be illegal to sell disapproved drugs to minors. And it definitely should always be illegal for anyone to try to start another person using disapproved drugs by giving away free samples.

Two points to note about this option:

(i) Sales to minors would be illegal. In any event, if the drugs were legal on the open market, their price would fall substantially. There would be little profit in selling to minors, unlike the situation today, where enormous profits can be reaped.

Still, large interests (a parallel example being the cigarette companies) may have an interest in "hooking" minors on drugs, so that they will provide a reliable market in the future. Hence, there may be a need for strict penalties for selling to minors, or for conspiring to sell to minors.

(ii) No free samples. This ties in with point (i). Again, if drugs were manufactured by large organizations, as are liquor and cigarettes, these organizations may have a long term interest in creating a market by giving away free samples. Not only minors are vulnerable to free samples. Accordingly, no samples should be permitted to be given away to any sector of the population. The Canadian government should discourage companies from selling to minors in other countries or giving away free samples there (The companies may complain, however, that Canada is imposing its laws outside its borders - a problem of "extraterritoriality". The solution may lie in an international agreement banning these practices.)

(b) Legalization, with Government Control of Distribution

The Economist (April 2, 1988) suggests that we "legalise, control, discourage" alcohol, tobacco and marijuana consumption:

A sensible policy might be to treat all three - alcohol, tobacco, marijuana - the same, with licensing, taxes and quality control. Since all are bad for you, it may be right to plaster them with larger health warnings than those that are at least helping to cut smoking. Wary governments might stop the pub culture spreading to the communal joint culture by restricting marijuana sales to boringly uncongenial premises, like the glum state liquor stores of Sweden or New Hampshire; or give monopolies to state shops like the post office, which has perfected the art of driving customers away. But a main weapon should be tax: high enough to deter consumption, and varied enough to move people from the worst drugs.

About cocaine, The Economist says:

Cocaine most needs to be brought under the aegis of controlled and thus legal suppliers, either by treating it like alcohol, tobacco and marijuana ... or like heroin [allowing users to buy strictly limited doses]... depending on how statistically awful it proves to be.

About heroin, the magazine says:

[T]he best policy existing heroin users might be to bring them within the law, allowing them to register to buy strictly limited doses. Taxes should be high enough to deter consumption, but low enough to put illicit dealers out of business. To get addicted to heroin you have to be crazy, or weak-willed or young and foolish. It is a problem of mental health, treated as one of crime and therefore made worse. If some extra stick is wanted, then ... registered heroin and cocaine users could be disqualified from driving cars. They might then have an incentive to get listed as cured.

About other drugs, the magazine says:

Even if the present narcotics trade could be beaten, self-destroyers will seek other ways to bend their minds. Calming pills from respected multinational companies produce doped-up addicts when doctors prescribe them for non-medical ills such as poverty or unhappiness. Backroom chemists find and market new drugs. The LSD of the "psychedelic" 1960s was followed in the violent early 1980s by PCP, or angel-dust. There will be more nasty successors. But these drugs, cheaply produced close to their markets, do not spawn the sort of international racketeering that today's narcotics do. They go through brief cycles of fashion, newspaper scares and oblivion. They are destructive teenage fashions, rather than social menaces, which might also be reduced by discriminatory tax.

(c) Legalization, Allowing the Private Sector to  
Produce and Distribute

This option would see schemes much like those that exist with alcohol (in some provinces) and tobacco. Anyone could produce the product. Market forces (or perhaps government) would dictate a sufficiently low price to destroy the black market.

(d) Legalization, Allowing the Medical Profession to Distribute

This option would see the medical profession distribute drugs much the same way that it now handles prescription drugs. At issue is whether the medical profession will consider this sort of activity part of its "therapeutic" mission. Also, some people may question giving the medical profession a monopoly on the distribution of these drugs.

(e) Legalization, Coupled with Rationing

This option would see the government ration the amount of drugs that could be consumed in society. Like criminal prohibition, however, rationing will tend to lead to the creation of a secondary black market, with its inflated prices and profitability for criminal enterprise.

(f) Legalization, with Restrictions on Where Drugs can be Consumed (already alluded to in the quote from The Economist).

Alcohol and tobacco can generally be consumed in public, although restrictions are increasingly being placed on smoking. Similar restrictions might be placed on the consumption of other drugs. For example, it might be declared illegal to consume heroin or cocaine in a restaurant. Perhaps use should be restricted to one's home or some other private place.

# APPENDIX 5

## NAACJ Seminar REDUCING THE HARM OF DRUG USE: LEGALIZATION AND OTHER ISSUES

November 28-29, 1988

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APPENDIX 5/Page 5

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