

### **Medical pot cookie prohibition ruled unconstitutional**

**Court challenge stems from B.C. case of Owen Smith, who was charged with trafficking for baking pot cookies**

CBC News Posted: Aug 14, 2014

It's unconstitutional to forbid licensed medical marijuana users from possessing pot-laced products, such as cookies or body creams, a B.C. Court of Appeal judge has ruled.

Parliament has been given one year to re-craft regulations to allow medicinal marijuana users to use products made from cannabis extract. They can include creams, salves, oils, brownies, cakes, cookies and chocolate bars.

Health Canada currently allows people suffering from debilitating illnesses access to medicinal marijuana, but **only in the form of dried marijuana.**

In her written reasons, Justice Risa Levine said this specification "is arbitrary and cannot be justified in a free and democratic society." (s. 7 Charter)

Levine went on to state that when patients choose to use edible forms of marijuana, it "was a matter of necessity, or put another way, the restriction to dried marijuana interfered with their physical or psychological integrity."

### **Case of the pot cookie baker**

The court challenge stems from the case of Owen Smith, who was charged with trafficking for baking pot cookies and producing topical cannabis creams for a medical marijuana club in Victoria in 2009.

Smith was caught baking more than 200 pot cookies for the Victoria Cannabis Buyers Club, and had a supply of cannabis-infused cooking oils and some dried dope in his apartment when he was arrested.



Owen Smith was caught baking more than 200 pot cookies for the Victoria Cannabis Buyers Club in 2009.

He was acquitted in April 2012 after the B.C. Supreme Court ruled the medical marijuana regulations were unconstitutional, because patients were denied access to edible pot products and derivatives.

Justice Robert Johnston concluded that permitting dried cannabis alone was arbitrary and did little to further a legitimate state interest.

Thursday's ruling means Smith acquittal stands and he will not be retried.

Health Minister Rona Ambrose's office said in a statement released Thursday that it is "reviewing the decision in detail and considering our options."

### **Marijuana laws under the microscope**

Canada currently prohibits the possession and trafficking of all marijuana products under subsection 4(1) and Schedule II of the Controlled Drugs and Substances Act. However, subsection 55(1) of this act allows for exemptions to be made.

As such, an annex to that act, the Marihuana for Medical Purposes Regulations, allow people with medical need and authorization access to medicinal marijuana.

Under these regulations, many people suffering from debilitating illnesses get marijuana through Health Canada approved companies or get permission to grow it themselves.

However, the MMPR and its predecessor, the MMAR program, limit this access to dried marijuana and do not make any other exceptions to the list of banned substances detailed in Schedule II of the Controlled Drugs and Substances Act.

These banned substances, aside from the exempted dried marijuana, include cannabis resin and various extracts and derivatives of the cannabis plant.

Ottawa had hoped the B.C. Court of Appeal would strike down the B.C. Supreme Court decision.

But under Thursday's ruling, government has been asked to review these rules, which could mean medical marijuana users would be supplied with resin or extract or be permitted to make themselves products such as pot cookies using marijuana extracts.

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