

Court Strikes Down Marihuana Regulation

In a judgment dated January 10, 2008, Justice Barry Strayer of the Federal Court of Canada struck down a federal regulation which prohibited licensed producers of medical marihuana from growing the drug for more than one person at a time.

The federal government's Marihuana Medical Access Regulations ("the Regulations") allow individuals suffering from specified diseases, symptoms, and conditions to apply to the Minister of Health for authorization to possess dried marihuana. The Regulations restrict an authorized individual's lawful sources of marihuana to three categories:

- (1) marihuana produced by that person,
- (2) marihuana produced by a person designated by that person, or
- (3) a licensed dealer.

There is one licensed dealer in Canada, which grows marihuana in Manitoba and processes it in Saskatchewan. Individuals growing their own marihuana require a personal production license; designated producers require a designated-person production license (DPPL).

1. 41(b.1) of the Regulations restricted DDPL holders from producing marihuana for more than one person. This regulation was challenged when a number of individuals (the applicants) applied to have the same person designated as their producer. Pursuant to Regulation 41(b.1), Health Canada refused all but one of the applications. The applicants applied to the Federal Court of Canada, asking that the regulation be declared invalid. The applicants argued that the regulation violated [section 7](#) of the Canadian Charter of Rights and Freedoms (the Charter) which states that:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

The Federal Court of Canada held that the regulation violated section 7 of the Charter and could not be justified under [section 1](#). Justice Barry Strayer found that the applicant's interests were infringed in several ways:

[L]iberty comprehends the right to make decisions of fundamental personal importance. This would include the right to choose, on medical advice, to use marihuana for treatment of serious conditions, that right implying a right of access to such marihuana. It would also include the right not to have one's physical liberty endangered by the risk of imprisonment

for having to access marihuana illicitly. With respect to security, this interest includes the similar right for those with medical need to access to medication without undue state interference. [i]

Justice Strayer went on to state that the regulation's interference with life, liberty, and security of the person were not in accordance with the principles of fundamental justices for two primary reasons: (1) the regulation, in practice, forced authorized users to obtain marihuana illicitly, [ii] and (2) the regulation was arbitrary in that it interfered with users' access without furthering the stated objectives of the state [iii].

Justice Strayer found that the regulation could not be saved by section 1 of the Charter because (assuming that the regulation had a valid objective) the regulation was not rationally connected to that objective, and had disproportionately negative effects. The Court therefore declared Regulation 41(b.1) of no force and effect.

Sources:

1. [Sfetkopoulos v. Canada \(Attorney General\)](#) 2008 FC 33 (CanLII).
2. New Pot Ruling Not A Concern for Local Police SooNews (16 January 2007).
3. Ottawa loses medical marijuana challenge National Post (11 January 2008).

[i] [Sfetkopoulos v. Canada \(Attorney General\)](#) 2008 FC 33 (CanLII) at para. 10.

[ii] Ibid. at para.13.

[iii] Ibid. at para. 20.