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Cannabis legalization won't let youth off the hook: experts

Provincial offences could have lasting effects

By Solomon Israel

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Hey there, time traveller!

This article was published 17/5/2018 – that's before recreational cannabis was legal in Canada, so language and information in the article may be dated.

After cannabis becomes legal, youth under the age of 18 won't face federal criminal penalties for being caught with less than five grams of weed. The Trudeau government constantly touts that provision of its Cannabis Act, saying it will help young Canadians avoid life-changing consequences for possessing a small amount of marijuana.

But the federal government has also coaxed provincial and territorial governments to create their own offences for youth possession of less than five grams, official documents obtained by *The Leaf News* through access-to-information laws show.

Critics say those provincial and territorial offences could harm young Canadians.

"Provinces and territories are strongly encouraged to create provincial or territorial offences that would prohibit youth from possessing any amount of cannabis," says a talking points memo prepared for the federal justice and public safety ministers ahead of a September 2017 summit between those ministers and their provincial counterparts.

"This approach would provide police with the authority to seize cannabis from youth who possess very small amounts, while at the same time not render youth liable to criminal sanctions for

possessing and sharing very small amounts of cannabis which could negatively impact their future."

Provincial and territorial governments appear to have acted on Ottawa's request. On top of establishing their own minimum ages for cannabis possession — the same as the drinking age in all provinces but Manitoba — provinces are planning different kinds of tickets for petty cannabis possession by youth.

In Quebec, a minor with less than five grams of cannabis could be fined \$100. In Ontario, a person under the age of 19 caught with any amount of cannabis could face a fine of \$200, or be required to take part in education or prevention programs.

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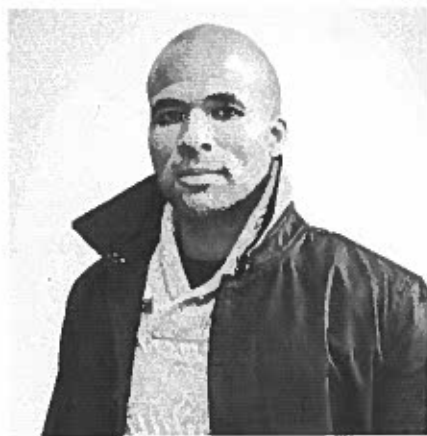
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Underage Manitobans caught with cannabis could be subject to tickets such as those for possessing liquor while underage, which are more than \$600. In Saskatchewan, a youth small-time cannabis possession offence could cost as much as \$2,000.

Tickets don't mean 'no consequences'

Those kinds of provincial tickets and fines are a far cry from a criminal record for drug possession, but critics say they could lead to serious problems for youth.



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Sociologist Akwasi Owusu-Bempah expects provincial tickets for youth cannabis possession to disproportionately affect young people of colour

"It definitely doesn't mean there will be no consequences," says Akwasi Owusu-Bempah, an assistant professor of sociology at the University of Toronto who studies race and policing.

"I think one of the things to consider is, what is the impact for not paying a ticket? What ultimately happens if someone's ticketed and can't afford to pay? So I think there's perhaps still a risk of criminalization there."

Since police often focus on marginalized communities, says Owusu-Bempah, tickets for

provincial cannabis offences could "have a disparate impact on racialized and impoverished young people."

"While more wealthy kids are more generally protected from the use of tickets and criminalization generally, those more marginalized populations wouldn't be."

Ottawa criminal defence lawyer Michael Spratt says the federal government's approach will create huge variations in cannabis-related ticketing across the country.

"By having a patchwork across the provinces, there is no guarantee that there's going to be privacy in one's provincial offences record or that there's going to be non-disclosure of that record."

Provincial cannabis tickets could still carry a stigma, Spratt says.



SUPPLIED

Criminal defence lawyer Michael Spratt sees serious problems with the Cannabis Act's approach to youth possession.

"You're not going to be denied travel to the United States, or you're not going to be denied employment or other opportunities to participate in society because you have an alcohol ticket," he says. "It remains to be seen whether that's going to be the case with the cannabis tickets."

A statement from the Department of Justice says "Bill C-45's non-criminalization of the possession of five grams or less by persons under the age of 18 years will apply uniformly across the country," and describes provincial cannabis laws as being "in line with provincial legislation dealing with alcohol."

"Not all provincial ticket offences lead to serious consequences," says the statement. "It is not a reason, however, to act in contravention of applicable laws."

Youth possession over five grams

Under the Cannabis Act, a minor caught with more than five grams of cannabis bud could face a sentence under the Youth Criminal Justice Act.

"The YCJA is based on principles that promote youth rehabilitation and reintegration, and recognize that youth must be held accountable, but in a way that takes into account their greater dependency and reduced level of maturity," states a federal memo.

Spratt acknowledges that the YCJA offers certain protections for youth, but says criminal proceedings under that act are far from benign.

"This is still introducing youth to the criminal justice process," he says.

"It's still having them attend a police station, having contact with the police, having their information recorded, having them attend court — often in the same courtroom as adults, exposing them to negative influences. And even if the youth record is sealed, that record can be reopened if an offence is committed in early adulthood."

By treating youth and adults differently for possessing more than five grams of cannabis, says Spratt, the Cannabis Act amounts to "discrimination based on age."

"We see that nowhere else in the Criminal Code, where a 17-year-old and an 18-year-old, two friends, can be standing side by side on the street, doing exactly the same thing, but it's a criminal offence for one and perfectly legal for the other."

Sociologist Akwasi Owusu-Bempah agrees.

"If you're criminalizing young people for more than five grams, then you are criminalizing them for something that's not illegal for adults," he says. "I would compare this to alcohol: if you've got a six-pack you get a ticket, if you've got a two-four you get a criminal record."

Like provincial tickets for youth who are caught with less than five grams of cannabis, Owusu-Bempah worries the federal offence for youth possession of more than five grams will disproportionately affect young Canadians of colour.

"I'm worried for young people generally, and I'm worried for our marginalized populations in particular, because they will be the focus of police attention. I'm quite convinced that unless something is done, they're going to be the ones who will get criminal records for this."

— With files from Dylan Robertson

solomon.israel@theleafnews.com

@sol_israel

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