

Prof. D. S. Hutchinson
Trinity College
6 Hoskin Avenue
Toronto M5S 1H8

2016 March 28

For the attention of Hon. William "Bill" Blair,
Parliamentary Secretary to the Minister of Justice

Subject: stop prosecuting marijuana possession now, as there is currently no valid law that authorizes arrest or prosecution for this former offence.

Greetings Mr. Blair,

I write in urgent response to [your statement, as reported on February 24](#), that the prosecution of marijuana possession must continue; "the laws that currently exist, exist in this country and we are a ... nation of laws," Blair said. "Quite frankly, until those laws are repealed by Parliament through the appropriate processes, they should be upheld, they should be obeyed." On the contrary, **the law you refer to does not exist.**

The former prohibition against the possession of marijuana has been struck down repeatedly by court decisions, and yet you continue to enforce it, which is illegal conduct on your part. In fact the law was struck down yet again on February 24, the very day you made those comments, when [the Crown lost the case of Allard](#); this judgment rules that there is currently no valid medical marijuana access system, and there has not been one for several years, certainly since July 2013 and probably earlier.

Allard is now a final decision as of March 24, and its finding of invalidity cannot now be overturned. This means that more than 100,000 Canadians arrested for marijuana possession since July 2013 have been prosecuted without legal authority, when *Allard* is combined with firmly cemented legal precedent. You must not add to the chaos in our legal system on this matter by pushing for further invalid convictions and empty pleas.

The precedents set by the juvenile accused *J.P.*, who was acquitted 3 times in Ontario courts in 2003, establish that when there are no currently valid medical marijuana access provisions there is likewise no currently valid prohibition of simple possession. So there is no currently valid law that would even authorize those arrests and prosecutions that you say must continue. The rule of law demands that they must stop.

In Canada the prohibition against marijuana fell into invalidity on 2001 July 31, because Parliament, which was required to discuss and pass a new prohibition, did not meet its deadline. This was the judicial reasoning in *R. v. J.P.* ([OSC 2003 May 16](#): decision at [15]-[16]; *ratio* at [9]-[14]). When it was appealed, the Crown lost again ([R. v. J.P. OCA 2003 October 7](#): decision at [34]), this time for a different reason (*ratio* at [11]-[16]): the *Medical Marijuana Access Regulations* were invalid at the time of *J.P.*'s alleged offence, 2002 April 12, and therefore so was the overall prohibition.

Both of these judgments retain precedent value in the Canadian legal system, as neither one has ever been reversed by a conviction based on dissenting reasons. Indeed the only jurisprudence that calls into question the rationale in *J.P.-OSC 2003 May 16* is [J.P.-OCA2003x7](#) (at [17]-[33]), which more firmly cements its precedent that when the access provisions to medical marijuana are inadequate, then the criminal prohibition of simple possession is invalid. After *J.P.*'s acquittal, the Crown was forced, by the legal precedent set by his innocence, to abandon several thousand current cases of marijuana possession.

Since then, because the Crown has pressed ahead relentlessly with enforcement, while failing to provide an adequate medical marijuana system, there have been close to one million unauthorized arrests over these last 15 years. You must not add to the shame of our Canadian justice system by continuing to enforce a law that lacks validity.

In Canada in recent years [the state commits about 150 arrests per day](#) for the former crime of marijuana possession, over 1,000 per week. All of these are vexatious processes and all guilty pleas and convictions are invalid. As of the time of writing, I estimate that 600 Canadians have been falsely arrested since last Thursday, when your Government decided not to appeal *Allard*. Do not make this dreadful number keep rising.

You are personally in a vulnerable position, Mr. Blair: you blotted your copy-book badly in 2010 during the Toronto G20 protests, when you enforced that infamous 'secret law' and [later admitted that the 5-meter provision had no legal validity](#). You should not take the risk of doubling your disgrace, once you know that your enforcement actions might be based on invalid laws.

By this letter you have now been advised of this, and warned.

Yours sincerely,

Douglas Hutchinson
Professor of Philosophy
University of Toronto

Copies are being sent simultaneously also to: Hon. Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada; Hon. Dr. Jane Philpott, Minister of Health; Hon. Ralph Goodale, Minister of Public Safety; Hon. Justin Trudeau, Prime Minister.

Further copies might if necessary be sent to Parliamentary leaders of opposition parties, as well as to media outlets.