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Book Review: Cannabis Law by Bruce A. MacFarlane, Robert J. Frater and Croft Michaelson (Toronto: Thomson Reuters Canada Limited, 2018)

JUSTICE RICK LIBMAN, Ph.D., Ontario Court of Justice

The authors of *Cannabis Law* have already written extensively in the area of controlled substances and drugs, being the authors of *Drug Offences in Canada, Fourth Edition*, also published by Thomson Reuters. Why the need, then, for a dedicated book dealing with the recent changes brought about by the federal *Cannabis Act*,¹ and the accompanying provincial legislation that has followed, which typically sets out the minimum age to purchase, sell and consume cannabis as well as

establishing the retail licensing regime in which to provide such products to the public. The answer, as pointed out in the preface to *Cannabis Law*, by Professor Dodek, is that within a very short period, criminalization of this class of drugs has evolved to regulation, and this gives rise, in turn, to several new areas of legal concern impacting health, safety and regulatory welfare, and indeed, ongoing criminal law and regulatory offences issues as well. In short, the broad scope of the reform of cannabis law more than justifies and merits on its own an expert and in-depth analysis of these new and emerging legal issues and areas, and those that are on the horizon, and will doubtlessly be played out in Canadian courts and regulatory agencies, if not in the court of public opinion concerning broader, or more limited, access to cannabis and cannabis-based products.

As one of the very first publications in the area timed to coincide with the legalization of cannabis in Canada on 17 October 2018, *Cannabis Law* plays an important role in filling a void in an area that has been previously unaddressed. To this end, a list of government websites that are cannabis-related is provided at the outset, as are those for medical cannabis and business news. As municipalities and other jurisdictions enter the licensing regime, consideration might be given to adding these to this list

¹ S.C. 2018, c. 16. The law went into effect on October 17, 2018.

of such resources, particularly as more and more cannabis products become available, and licensing regimes evolve and expand.

The book itself is divided into six parts: (1) federal regulation; (2) regulation by other governments; (3) criminal and regulatory offences; (4) penalties; (5) medical and workplace issues; and (6) the cannabis business. The initial Table of Cases is just under 20 pages; there are 22 chapters in total. There is also a detailed Index of just under 10 pages. A Table of Legislation would also be helpful, as would a Bibliography of books and studies and scholarly articles cited by the authors.

Under Part I, an overview and history of the legislation is provided, as well as the federal regulatory framework. Other issues dealt with in this section of the book are search and seizure, detention and disposition of seized property and a brief chapter on cannabis edibles. The latter examines the sale of such items in Colorado. As the sale and availability of this form of cannabis products becomes more available in Canada, including creams and oils, energy drinks, coffee pods, and perhaps even pet ointments, this section of the book will hopefully be expanded and updated to reflect the Canadian experience, which may well vary across provinces. For example, some jurisdictions do not, at present, permit cannabis products to be sold in bricks and mortar premises, restricting access online. Others may ban outright the sale of cannabis products within municipal boundaries, or restrict areas of use, such as not in enclosed spaces like motor vehicles, or near playgrounds and schools.

Footnotes and citations are helpfully provided at the bottom of each page in Part I of the book, a pattern that is followed throughout. The reader will find this easier to follow than endnotes, or a list of notes grouped by page numbers or chapters at the back of the text. However, where there is not a neutral or court-specific citation, such as SCC or ONCA, the authors might consider providing at least one alternative case citation at the bottom of each page, as opposed to listing only one source such as CCC, and having the reader cross-referencing the Table of Cases to find alternative citations that may be more readily accessible on websites such as CanLII.

Part II consists of three chapters that address regulation by other levels of government, including regulation by Indigenous Peoples. There is a helpful chart breaking down the respective laws in each province, having a column for items such as distri-

bution/retail, age of purchase/possession, transportation non-commercial, consumption and cultivation non-commercial. As municipal licensing regimes take hold, consideration might be given to providing a similar helpful and easy to follow chart of the various enactments in this area.

The largest group of chapters (eight) are concentrated under Part III which concerns criminal and regulatory offences. The majority of these chapters consider, in fact, criminal law matters such as possession, distribution and selling, importing and exporting and production. Chapter 13 on Cannabis-impaired driving includes consideration of Bill C-46 which went into force shortly after the book's publication, in December 2018.² Two chapters are also devoted to promotion, packaging and labelling as well as evidence and procedure. The format that is used throughout the book of headings set out in bold with sequential numbers makes the summary under each topic easy to follow.

Part IV addresses penalties. Chapter 17 on ticketing and Chapter 18 on administrative monetary penalties are first set out; the lengthiest discussion concerns sentencing and criminal records in Chapter 19. There is a heading on principles of sentencing, for example (19:100), which is divided in turn into sub-headings, in this case statutory principles (19:100:20), aggravating and mitigating factors in sentencing (19:100:40) and then aggravating factors (19:100:40:20) and mitigating factors (19:100:40:40). A separate heading is used for drug treatment (19:120). Readers will find the break down of topics logical and easy to follow, and the discussion concise and analytical throughout.

There are three chapters divided into the remaining two parts of the book. They contain insightful and thoughtful discussions on issues that will emerge from cannabis regulation, and receive increasing attention moving forward. In Part V on medical and workplace issues, the authors examine in Chapter 20 medical cannabis. This chapter focuses on consumers and health care practitioners, as well as licensed sellers. Recreational use of cannabis is discussed, on the other hand, in Chapter 15 on promotion, packaging and labelling, which is set out in the criminal and regulatory offences portion of the book. As recreational availability of cannabis products becomes more available, it might be helpful to incorporate as part of the medical use of cannabis, non-medical use, or at least provide some cross-referencing, given that both manners of usage have the potential to

² S.C. 2018, c. 21.

impact on the subject dealt with in the following Chapter 21, workplace and human rights related issues. Some of the issues that are raised in this latter chapter include drug testing in the workplace, drug plans and the duty to accommodate. There will doubtlessly be much litigation and public interest in these areas, and the reader will find the authors' comments as to these important issues to be of considerable interest.

Finally, Part VI concludes with commercial law issues set out in Chapter 22. A number of different topics are itemized, ranging from importing and exporting cannabis, to advertising and marketing, as well as product liability, capital markets, intellectual property and immigration matters. While this chapter at present is less than 20 pages, it will likely be considerably lengthier in the future, particularly as these subjects are litigated in courts given the significant financial interests likely to be at stake.

In summary, readers will find *Cannabis Law* an excellent and portable soft-cover publication which provides a convenient first treatment of an area of the law that received scant attention prior to the change in the law in October 2018. Now that cannabis use and associated products are becoming, or about to become, widely available, public discourse and interest surrounding it will no doubt mirror its increased use and accessibility. Indeed, there does not seem to be a day when some topic concerning cannabis does not attract public attention, whether in the arena of publicly traded stock, to municipalities determining whether to make such products available, or labelling and design and product stamps, to driving laws aimed at deterring drug and alcohol use. The availability, then, of a new publication to help identify and clearly explain the issues that will arise in relation to cannabis use by expert authors, well versed in the study and law of drugs and controlled substances, makes this timely work essential and required reading, whether for the casual follower or sophisticated aficionado alike.

The YCJA: A Tale of Two Approaches

CAROLINA REPILA*

Introduction

Canada has struggled when dealing with young offenders in a manner that is effective, that is, in a manner that helps both the young offenders and the public. Since 1908, youth Acts were enacted to handle young criminal offenders, beginning with the *Juvenile Delinquents Act* (the *JDA*), followed by the *Young Offenders Act* (the *YOA*), and finally the current *Youth Criminal Justice Act* (the *YCJA*). Fuelled by public discontentment that led to outcries for change, new Acts were created. Criticisms included that these Acts were too lenient, incarceration rates were too high, and youth criminality was on the rise. The goal of the *YCJA*, when it was being created, was to decrease the rates of incarceration and criminal offences committed by the youth, by incorporating three strategies that would complement each other.¹ The first strategy was “Prevention and Meaningful Alternatives”, followed by “Meaningful Consequences for Youth Crime”, and finally “Rehabilitation and Reintegration”.² The introduction of the *YCJA* did not stop criticisms, however, but it does appear to be effective. Thus, I posit that the *YCJA* is not only working, but that its success can be credited to its divided approach, to give custodial sentences to violent youth offenders, and to give alternative measures to non-violent offenders, while ensuring that their experiences are meaningful while holding them accountable, reducing youth rates of incarceration and recidivism.

A Background of Youth Acts

“As Canadians’ demands and expectations of their justice system change, governments and judicial institutions must be prepared to respond”.³

Before 1908, Canada did not have any youth justice Acts, and children as young as the age of seven were treated as adults

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¹ Department of Justice of Canada, *A Strategy for the Renewal of Youth Justice* (Ottawa: Department of Justice, 1998), online: <http://publications.gc.ca/collections/collection_2017/jus/J2-456-1998-eng.pdf>.

² *Ibid.*

³ *Ibid.*