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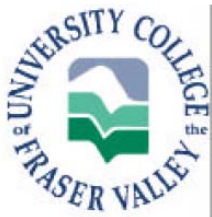
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THE CRIMINAL JUSTICE RESPONSE TO MARIHUANA GROWING OPERATIONS IN B.C.

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INTRODUCTION

In 1999, approximately one million marihuana plants were seized across Canada by various police departments¹. The R.C.M.P. estimated the annual production of marihuana in Canada to be at least in the 800 tonne range and it is clear that a large proportion of the marihuana produced is grown in the province of British Columbia. The problems associated with the increasing number of marihuana grow operations uncovered each year in British Columbia have drawn attention to the need to examine the effectiveness of the current criminal justice response to the phenomenon².

There is a widely held perception in British Columbia that the number of marihuana grow operations is increasing rapidly throughout the province and, in particular, in the Lower Mainland and on Vancouver Island. That increase may be due both to the large profits that can be quickly generated by growers and dealers and, to the relative impunity that these individuals enjoy in the province. Such operations can be set up very easily and produce a first crop within three months or so. There is no way of finding out exactly how many grow operations there are in the province or in a given municipal jurisdiction. According to informal estimates by law enforcement agencies there could be at least 4,000 of these operations in the City of Vancouver, and at least as many in each of the neighbouring municipalities of Richmond, Langley, Surrey, and Burnaby. Most law enforcement agencies of the region have sizeable waiting lists of

1. Royal Canadian Mounted Police (2000). *Drug Situation - Canada 1999*. Ottawa, R.C.M.P., Criminal Intelligence Directorate, p. 7.

2. *Ibidem*.

complaints awaiting investigation and known grow operations awaiting an intervention. According to law enforcement agencies, this epidemic of marihuana growing operations now amounts to a serious crisis for many communities. There is also mounting concern that this increased criminal activity is the result of the involvement of organized criminal elements and their growing control over that illicit industry. There are rumours that criminal organizations have been moving their marihuana grow operations from the neighbouring province of Alberta and the State of Washington to British Columbia. There is a fear that these activities will result in increased violence in the community.

Several community-based crime prevention initiatives have been launched throughout the region in concert with various forms of enhanced law enforcement activities. “Snitch lines” and so-called “green teams” or “grow busters” teams have been set up by the police. Public information projects have also been mounted as well as projects to foster the cooperation of property owners in preventing and detecting marihuana grow operations. These initiatives consume a significant amount of law enforcement and other criminal justice resources. Yet, they do not appear to be producing the desired results. At best, it would seem, they succeed in producing a slight displacement of the problem from one area to another, or from one neighbourhood to another.

The current crisis is likely the result of the combined effects of a number of factors. Among them, of course, is the fact that huge illicit profits can be made with little risk or investment. A pound of marihuana which is worth between \$1,000 and \$2,000 on the local market can be produced relatively easily at a fraction of that cost and can be sold for up to \$5,000 in the neighbouring State of Washington and for as much as \$10,000 in California. Furthermore, the current proliferation of the problem could result largely from the fact that marihuana growers and dealers in British Columbia may in effect have little to fear in terms of the criminal justice response to their criminal activities. That response offers little in the way of an effective deterrent from getting

involved in that very lucrative form of criminal enterprise. The sentences ordered by the court in the cases of these offences are so light as to often be regarded by offenders as “the mere cost of doing business”. In practice, some law enforcement agencies have apparently concluded that their resources are, in many cases, better utilized trying to shut down as many marihuana growing operations as possible, as opposed to trying to get the offenders convicted and punished under the law. Many agencies have a fairly high number of these so-called “no-case” interventions. In at least one jurisdiction in the province, that controversial policy has become the standard practice in most cases of marihuana growing operations³.

The present study⁴ is a first attempt, with limited resources, to gain a better understanding of the rapid proliferation of marihuana growing operations in British Columbia and to identify the nature of the current law enforcement and criminal justice response to that problem. The study was designed to:

- 1) document the variations in the prevalence and profile of marihuana growing operations that came in recent years to the attention of the police in selected jurisdictions within British Columbia Richmond, Surrey and Mission;
- 2) collect data on charging and sentencing decisions in these same selected jurisdictions in British Columbia;
- 3) compare, for the selected jurisdictions in British Columbia, the sentences ordered by the court in cases of marihuana growing operations to the sentences ordered in similar cases in one jurisdiction in the province of

3. Skelton, C. (2000). “100 raids, no arrests for police pot squad - Vancouver police didn’t even try to lay charges against marihuana growers”, *Vancouver Sun*, December 11, 2000, pp. A1 and A10.

4. The study was initiated in February 2000, at the suggestion of the Director, Federal Prosecution Services (B.C. Region), Department of Justice Canada. The study was funded in part by the National Crime Prevention Centre, Department of Justice Canada, Ottawa. Contributions in kind were made by the Department of Criminology and Criminal Justice of the University College of the Fraser Valley and the Royal Canadian Mounted Police, E Division.

Alberta and one jurisdiction located on the border between the provinces of Alberta and Saskatchewan;

- 4) compare, if possible, some of the sentences ordered by the Provincial Court of British Columbia in cases involving a marihuana growing operation to the sentences ordered in similar cases in the neighbouring State of Washington;
- 5) compare the sentences ordered by the court in selected jurisdictions of British Columbia in cases of marihuana grow operations to the sentences that would likely have been ordered if the offender had been convicted of a similar offence in the State of Washington and had been sentenced under the sentencing guidelines of that State.

METHOD

After consultations with the R.C.M.P. Drug Operations Support Unit, "E Division", and with analysts from the Organized Crime Agency of British Columbia (OCA), it was decided that the study would attempt to capture data for the period of time between January 1, 1997 and June 30, 2000 (42 months). It was felt that such of period of time would be sufficiently long to allow the observation of potential changes in the patterns of operation themselves. It was also felt that cases originating in 1997 and 1998 would hold a reasonable prospect of having reached the sentencing stage. The exploratory nature of this study and the limited resources at its disposal did not allow it to capture data from all jurisdictions in the province of British Columbia. Three R.C.M.P. detachments from the Lower Mainland region of British Columbia agreed to facilitate the collection of the necessary data from police files. These jurisdictions were Richmond, Surrey, and Mission. In addition, the R.C.M.P. Red Deer Detachment and Lloydminster Detachment agreed to participate in the study and facilitate the collection of data in the provinces of Alberta and Saskatchewan.

Based on a preliminary list of data elements identified by OCA analysts, a dozen or so files from each one of the years covered by the study were obtained from the Richmond Detachment and reviewed. On the basis of the information generally available in these files, a list of data elements to be captured during the data collection phase of the study was developed. That list can be found in *Appendix 1*.

All police files coded as marihuana cultivation files (according to the OSR Scoring Guide) were reviewed one by one and the information contained therein was manually coded and recorded on the project data gathering and scoring sheets. This information included basic information concerning the suspect, the location of the alleged operation, the nature and origin of the complaint, the police investigation, the nature of the grow operation, the amount of marihuana involved, the presence of other drugs, the presence of various equipment, decisions made by the prosecution, and the sentencing outcome. In addition, for every suspect identified in relation to all the cases, a criminal record check was conducted and a copy of the suspect's criminal record was obtained and coded. Most operations involved multiple suspects. The data were analysed using the database and statistical analysis program SPSS (version 10.1).

In addition to those derived from police files, data were also obtained from the Director of the Federal Prosecution Service (B.C. Region) on 836 drug offences cases which had been sentenced in B.C. in 1998. Fifty of these cases involved marihuana growing operations. In each case, information was available on the sentence ordered by the court and on the sentence recommended by the prosecution.

Finally, published data on adult felony sentencing for the fiscal years 1997 and 1999 was obtained from the State of Washington Sentencing Guidelines Commission. That information was supplemented by interviews with two state prosecutors from Whatcom County, one member of the defence Bar and former part time judge in King Country.

CASES REVIEWED

During the period between June to October, 2000, the research team identified a total of 1,123 police files (hard copy or electronic), each pertaining to a marijuana growing operation reported in British Columbia to the R.C.M.P. detachments of Richmond, Surrey or Mission (See Table 1). The figures presented in Table 1 cover all cases that had come to the attention of police in these detachments between January 1, 1997 and June 30, 2000.

TABLE 1
Grow Operations: Number of Complaints Received by Three R.C.M.P.
Detachments in B.C.
Between January 1, 1997 and June 30, 2000.

YEAR	SURREY	RICHMOND	MISSION	TOTAL
1997	92	38	49	179
1998	184	44	50	278
1999	242	69	57	368
2000 (6 months)	147	127	24	298
OVERALL	665	278	180	1123

Files relating to complaints that had not yet been investigated obviously contained very little information. Overall, 89% (1,002 cases) of the complaints received had been investigated at the time the data collection took place. Understandably, many of the most recent complaints received had not yet been investigated. In addition, the Mission Detachment reported a high number of uninvestigated complaints for each of the years reviewed. In total, 11% of the cases identified had yet to be investigated (See Table 2).

TABLE 2
Grow Operations: Percentage of Cases yet to be Investigated
(January 1, 1997 - June 30, 2000)

YEAR	SURREY	RICHMOND	MISSION	TOTAL
1997	0	0	35	9
1998	1	0	12	3
1999	7	6	9	7
2000 (6 months)	7	43	29	24
OVERALL	4	21	19	11

Note: All percentages in this and subsequent tables have been rounded to the nearest whole number.

In December 2000, the research team also identified and reviewed a total of 24 cases of complaints in relation to marihuana grow operations received by the Red Deer R.C.M.P. Detachment, in Alberta, between January 1, 1997 and June 30, 2000, as well as 12 cases of similar complaints received by the R.C.M.P. Lloydminster Detachment during the same period. The Lloydminster Detachment polices an area which spreads across the border between Alberta and Saskatchewan. Of the 12 complaints received by Lloydminster Detachment, 3 concerned offences committed in Alberta, 6 concerned offences committed in Saskatchewan, 2 were unfounded, and one had not yet been investigated.

THE EXTENT OF THE PROBLEM

According to the Canadian Centre for Justice Statistics, offences involving cannabis (possession, trafficking, importation, and cultivation) account for the vast majority of drug crimes in Canada. In 1997, more than seven offences in 10 involved cannabis and overall a total of 6,632 marihuana cultivation offences were reported in Uniform Crime Reports (UCR). Of these incidents, 2,066 cases, or 31%, were reported in British Columbia. In 1999, cannabis offences accounted for three quarters of all drug

offences, and 15% of them involved cultivation.

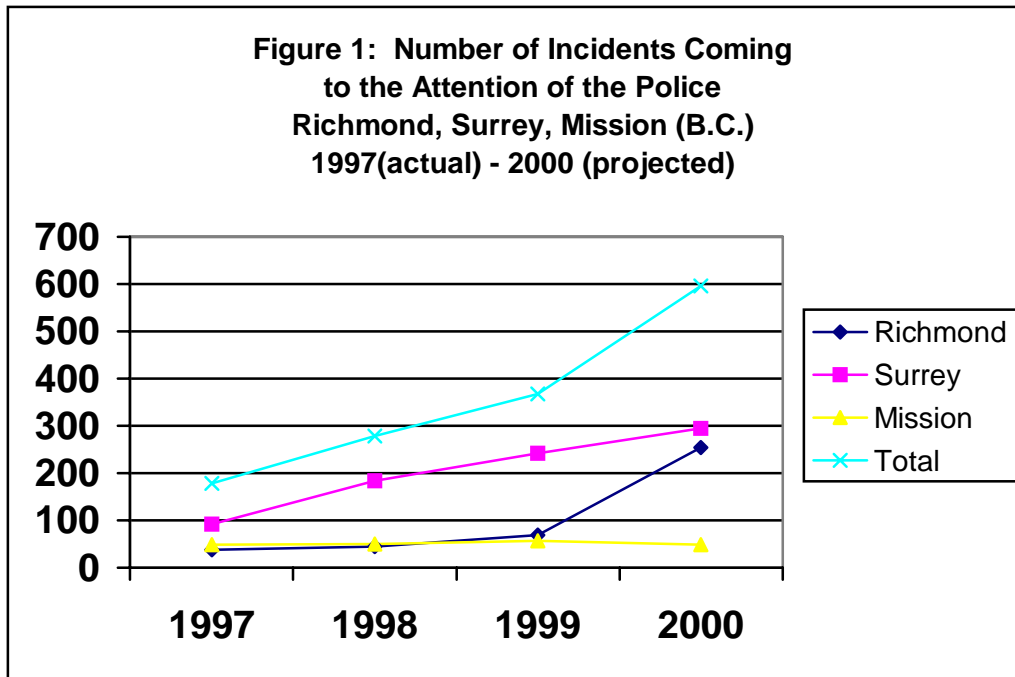
TABLE 3
Marihuana Cultivation Incidents by Province
Uniform Crime Reporting Survey, 1997
Source: CCJS

	NFDL	PEI	NS	NB	QUE	ONT	MAN	SASK	ALTA	B.C.	TOTAL
Cultivation	13	25	271	265	1915	1536	198	84	230	2066	6626

Compared to 1996, for the country as a whole, the cultivation offence rate increased by 30% in 1997⁵. Nationally, the official rate of cannabis cultivation offences climbed from a rate of 4 per 100,000 population in 1987 to a rate of 29 per 100,000 in 1999.

It is readily apparent from the files reviewed during the present study, that the number of marihuana grow operations that came to the attention of the R.C.M.P. in the three B.C. jurisdictions studied had increased dramatically over the period studied (See Figure 1). The Surrey Detachment, for instance, assuming that the discovery rate in the latter six months of 2000 remains the same as it was in the first six months, will have received a total of about 300 complaints during this year. That is more than triple the total number of complaints received for 1997. Similarly, in 2000, Richmond R.C.M.P. can expect to open about 250 files, a six-fold increase over 1997 and more than triple the 1999 total. Interestingly enough, the number of cases per year in Mission has remained fairly constant at about 50 over the 3 ½ year period. Overall, for the three detachments combined, it is expected that some 600 grow operations will be uncovered in the year 2000, more than triple the 1997 total of 179.

5. Tremblay, S. (1999). "Illicit Drugs and Crime in Canada", *Juristat*, Canadian Centre for Justice Statistics, Ottawa, March 9, 1999.; Tremblay, S. (1999). "Crime Statistics in Canada", *Juristat*, Vol. 20, no. 5, July, 2000.



Similar increases in the number of complaints received or cases investigated were not observed in Red Deer nor in Lloydminster. And there is apparently no evidence of an increase in the number of grow operations coming to the attention of State Prosecutors in Whatcom County (USA).

The serious increase in the number of complaints received by the three R.C.M.P. detachments in B.C. is particularly alarming given the fact that most of the complaints received are founded. As Figure 2 illustrates, 91% of incidents which had been investigated by the three detachments during the 42 months period proved to be founded, a figure which remains fairly constant over the study period.

**Figure 2:
Percentages of Investigated Complaints
which were Founded -Three B.C. Detachments
January 1997 to June 2000**

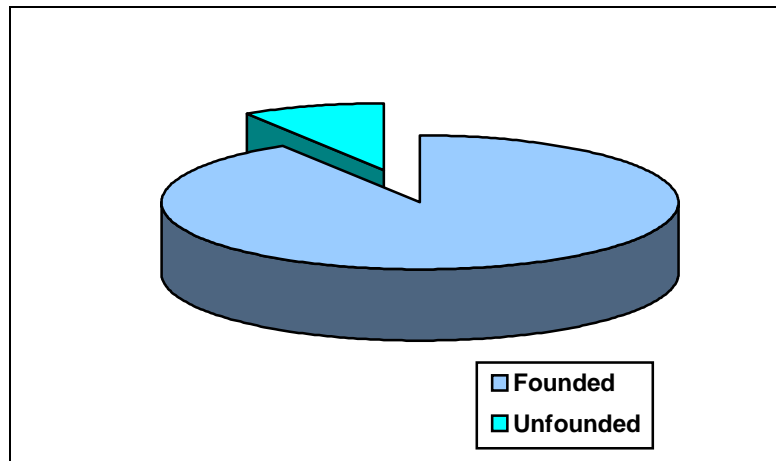


Table 3B compares the three B.C. detachments, over the 42 months period, in terms of the percentage of investigated cases that proved to be unfounded.

TABLE 3B
Grow Operations: Percentage of “Unfounded” Cases
(B.C. January 1, 1997 - June 30, 2000)

YEAR	SURREY	RICHMOND	MISSION	TOTAL
1997	3	3	16	6
1998	9	16	9	10
1999	9	6	13	9
2000 (6 mths)	7	12	35	11
OVERALL	7	10	15	9

The percentage of “unfounded cases” is noticeably higher in Mission, where the Detachment reports a chronic lack of resources to devote to the investigation of marihuana grow operations. The number of cases that had yet to be investigated was similarly relatively higher in Mission. Police investigators have suggested that the two observations may in fact be related. In their opinion, delayed investigations of complaints can be expected often to result in unfounded cases. Since a crop can be produced within a period of approximately three months, investigations which take more than that amount of time to lead to a search often do not result in a seizure because the grow operation has had sufficient time to be completed, dismantled or relocated.

Interestingly, the only two unfounded cases recorded in Lloydminster were the two cases that had the longest known time lapsed between the report of the offence and the subsequent search by the police. Evidence of a past grow is deemed a “founded” case.

TABLE 4
GROW OPERATIONS: SUMMARY TABLE OF COMPLAINTS RECEIVED BY THREE R.C.M.P.
DETACHMENTS IN B.C., & NUMBER AND PERCENTAGE OF CASES FOUNDED
 (January 1, 1997 - June 30, 2000)

Year	No. of Complaints Received	No. of Complaints Founded	Percentage of Complaints Founded
1997	179	153	94
1998	278	244	90
1999	368	311	91
2000 (6 months)	298	203	89
OVERALL	1123	931	91

Assuming that the same proportion of cases yet to be investigated will also prove to be founded, the total number of founded complaints will exceed 1,000 for the three jurisdictions over the 4 years (See Table 4). Furthermore, as will be discussed later, the average number of plants per operation grew steadily over the same period.

While the amount of police resources available for drug enforcement assignment is likely to affect the ratio of investigated to uninvestigated files, it does not appear that the increase in the number of cases is a result of increased levels of enforcement. That is to say, it is not because police officers are actively looking for grow operations, rather they are responding to complaints or anonymous tips, or happened upon the grow operations in the course of routine checks, while serving warrants or responding to other crimes (See Tables 5 and 6). In Richmond and Mission, “Crime Stoppers” tips constituted by far the most frequent source of initial information, while in Surrey complaints from landlords and B.C. Hydro each outnumbered these anonymous tips. Some investigators mentioned that some of the anonymous calls received (Crime

Stoppers) might have been placed by competing groups of criminals. Only about one in ten cases (11%) across the three jurisdictions, for the period studied, resulted directly from a GIS investigation.

TABLE 5
Grow Operations: Percentage of Initial Sources of Complaint in Three B.C. Jurisdictions
 (January 1, 1997 - June 30, 2000)

SOURCE	SURREY	RICHMOND	MISSION	TOTAL
Crime Stoppers	14	38	35	22
Landlord	26	11	5	19
B.C. Hydro	22	25	0	15
G.I.S. investigation	15	19	6	11
Response to another crime	4	2	26	11
Serving a warrant	9	6	4	7
Fire Department	5	4	4	5
Routine checks	4	18	4	4
Other (e.g. neighbours, relatives, etc)	1	0	21	7

TABLE 6
Three B.C. RCMP Detachments: Percentage of Initial Marihuana Grow Operation
Complaints from Different Sources by Year

SOURCE	1997	1998	1999	2000 To JUNE 30	COMBINED
Crime Stoppers	36	17	21	17	22
Landlord	11	22	19	22	19
B.C. Hydro	24	17	13	10	15
G.I.S. investigation	4	8	13	15	11
Response to another crime	10	9	12	12	11
Serving a warrant	2	7	9	7	7
Fire Department	3	8	6	3	5
Routine checks	3	4	2	6	4
Other (e.g. neighbours, relatives, associates)	6	9	5	8	7

In Alberta and Saskatchewan, the number of marihuana cases initiated after receiving a tip from “Crime Stoppers” or an informant was also very high: 63% in Red Deer, and 40% in Lloydminster.

It is perhaps a telling sign, in terms of the burden on police resources, that as the number of cases continued to rise dramatically from year to year in the three B.C. jurisdictions, so did the average incident response time. Table 7, for instance, shows that the average number of days elapsed between a “Crime Stoppers” tip and the date of a resulting search increased from 20 in 1997 to 65 in 1999. In contrast, the average response time in similar cases in both Red Deer and Lloydminster is less than 48 hours.

TABLE 7
Grow Operations: Average Number of Days Elapsed from Date of Complaint to Date of
Search in Cases where Crime Stoppers was the Source of Complaint; 1997-1999.

YEAR	SURREY	RICHMOND	MISSION	AVERAGE
1997	17 days	6 days	61 days	20 days
1998	41 days	27 days	5 days	31 days
1999	85 days	7 days	70 days	65 days

Note: Cases from the year 2000 were excluded from the analysis due to the large proportion of complaints that had yet to be investigated.

THE SIZE AND NATURE OF GROW OPERATIONS

As might be expected, there are great differences among the various cases of marihuana grow operations uncovered in the three B.C. jurisdictions. While most were set up in rented houses, some were located in leased warehouse space or in farm outbuildings; others were established as “outside” operations on vacant land. While plants were seized in almost every case (See Table 8), the number of plants involved varied greatly across operations - from 0 to 6,000+ plants seized. While growing equipment was usually found at the grow site, the amount varied widely, suggesting various levels of sophistication in production technology and capacity. These differences make it difficult to refer to a “typical” grow operation.

It is also difficult to describe accurately the size and nature of grow operations using numbers (e.g., actual number of plants, amount or value of damage), because the numbers are not necessarily included in police reports, and there is often a substantial difference between what officers find during a search and what they know from their experience and expertise about what is really involved in an operation. For instance, in a search, officers may only find a few plants (or none at all), but the “shake” (dry leaf stalk remnants) or equipment found may make it obvious to them that the operation is a very large and sophisticated one involving a large number of plants. Since the numbers used are based upon the plants actually seized at the time of the search, those presented here should be treated as an underestimation of the size of grow operations in Surrey, Richmond and Mission.

TABLE 8
Grow Operations: Percentage of Cases in which Marihuana Plants were Seized
 (January 1, 1997 - June 30, 2000)

YEAR	SURREY	RICHMOND	MISSION	TOTAL
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1997	93	97	81	92
1998	85	89	90	86
1999	84	84	76	83
2000 (6mths)	73	80	64	75
Average	83	86	80	84

Across the three B.C. jurisdictions for the period studied, the average number of plants seized per case was 185 (See Table 9). Also shown in Table 9 is that grow operations uncovered, on average, are becoming larger, with the average seizure increasing from 172 plants in 1997 to the current year's average of 220. A similar pattern was not observed in Red Deer, nor in Lloydminster.

TABLE 9
Grow Operations: Average Number of Plants per Seizure by Year and Jurisdiction
 (January 1, 1997 - June 30, 2000)

YEAR	SURREY	RICHMOND	MISSION	TOTAL
1997	149	196	224	172
1998	147	242	150	161
1999	153	146	472	191
2000 (6 months)	226	228	89	220
OVERALL	165	199	268	185

Note: The range is from 0 to more than 6,000 plants.

The vast majority of grow operations in the three B.C. jurisdictions involved far more plants than could reasonably be claimed to be cultivated for "personal use" (i.e. at least more than 10 plants). For instance, as shown in Table 10, 71% of all cases reviewed involved more than 25 plants, and 60% of seizures were in excess of 50 plants. Table 10 also confirms the trend toward larger seizures over time. It is of interest to note that for the January - June 2000 period, over half (53%) involved more than 100 plants and almost one third (31%) exceeded 200 plants.

TABLE 10

**Grow Operations: Three B.C. RCMP Detachments - Percentage of Searches
Involving More than 25, 50,100, and 200 Plants**
(January 1, 1997 - June 30, 2000)

YEAR	> 25 plants	> 50 plants	> 100 plants	> 200 plants
1997	71%	58%	42%	27%
1998	62%	51%	35%	21%
1999	75%	62%	45%	25%
2000 (6 months)	82%	72%	53%	31%
OVERALL	71	60	43	25

Table 11 summarizes some information on other selected characteristics of the marihuana grow operation cases reviewed in B.C. Overall, seizures included firearms 8% of the time, although these firearms were rarely handguns or prohibited weapons (in the majority of cases they were rifles and shot guns); other types of weapons were found in 1% of cases. In 3% of cases children were found to be living at the site (and in many of these cases the Ministry for Children and Families was contacted by the police). Dogs, most often guard dogs, were present at the time of search in 10% of cases. Other drugs were rarely present at the scene and, when they were, only in very small quantities.

The most disturbing characteristic presented in Table 11 is the involvement of fire in 5% of cases. While 5% may seem on the face of it to be a fairly small number, a one-in-twenty probability of building fire for any type of structure, residential or commercial, is so far beyond the level of normal risk as to be entirely off the scale. In virtually all cases, the fire appeared to be the result of tampering with the buildings electrical installations, invariably attempting to by-pass B.C. Hydro's meter and divert energy⁶.

TABLE 11
**Grow Operations: Three B.C. RCMP Detachments - Percentage of Incidents in Which a
Potential Danger/ Harm was Present at the Time the Search was Conducted**
(January 1, 1997 - June 30, 2000)

	% times	% times other	% times a fire	% times	% times dog
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6. Fire was not involved in any of the 34 cases from Red Deer and Lloydminster. However, it should be noted that these operations did not tend to involve energy diversions or the tampering with electrical installations.

Year	firearm was seized	weapons were seized	was involved	children were present	was present
1997	13	1	3	5	11
1998	7	1	8	3	12
1999	10	2	6	3	10
2000 (6 months)	5	1	3	3	3
OVERALL	8	1	5	3	10

Note: In two cases where children were present, a fire was also involved.

Since marihuana growing operations conducted indoors require large amounts of electricity to power lights which help to accelerate plant growth, operators often steal electricity. This is done by “diverting it”, tampering with the meter or by-passing it altogether so that B.C. Hydro cannot measure how much electricity has been consumed⁷.

Theft of hydro services (through energy diversion) is therefore frequently associated with marihuana grow operations. It is also a problem in terms of the risk of electrocution which it creates for individuals involved with the grow operations and their children, landlords, neighbours, law enforcement officers, firefighters, and B.C. Hydro employees. Electricity, it must be remembered, is a potentially lethal problem, particularly when the equipment has been tampered with and rendered unsafe. The electrical meter in a residence may indicate no activity, when in fact a lot of electricity is being transferred and a great danger exists. Fire often results from the crude and unsafe methods of diverting energy.

Grow operations do not always involve a theft of hydro services. In the three B.C. jurisdictions studied, grow operations involved a theft of hydro services (by way of a meter by-pass) in roughly a quarter of the cases (24%). The smaller operations generally did not. In addition, many cases were in fact detected as a result of B.C. Hydro noticing an unexplained or sudden increase in the amount of energy consumed at a particular location. While the researchers collected data on the presence or

absence of a hydro by-pass in each case, interviews with drug investigation officers in all three jurisdictions indicated that the information derived from the files was likely to produce an underestimation of the number of cases involving theft of hydro services since this matter was not necessarily recorded (or even investigated) in all cases. It was also reported that the methods used by operators to divert energy were becoming more sophisticated and sometimes harder to detect.

TABLE 11B
Source of Potential Harm: Percentage of Grow Operations Involving an Electric Meter By-Pass - By year and by Jurisdiction - 19997-2000

Year	Surrey	Richmond	Mission	All three detachments
1997	29	30	19	27
1998	23	27	8	21
1999	19	28	18	21
2000 (6 mths)	23	52	9	31
Overall	22	36	14	24

As can be observed in Table 11B, the proportion of cases involving theft of hydro services is apparently stable in the three B.C. jurisdictions during the period studied. There is one noticeable exception to this pattern: the huge increase in the percentage of cases involving a hydro meter by-pass in Richmond between 1999 and 2000. This is not inconsistent with the information obtained during an interview with the Manager of B.C. Hydro Security Services who revealed that B.C. Hydro had been keeping its own statistics on known cases of marihuana growing operations for the last eight or nine years. According to these statistics, the number of known cases of marihuana growing operations involving theft of services had apparently remained more or less constant at approximately 200 to 250 cases per year. However, between April 1, 1999 and March 31, 2000, that number almost tripled. B.C. Hydro investigated a total of 712 electricity

7. B.C. Hydro (2000). *Electricity Diversions and Marihuana Grow Operations - What Hydro is Doing to Combat this Problem*. Vancouver, B.C. Hydro, May 2000.

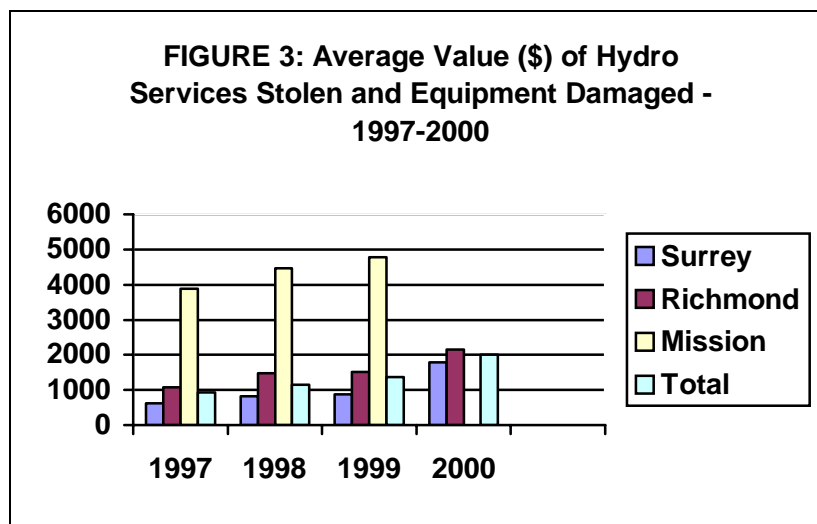
diversion cases. The increase, it was also explained, may also be a function of increased vigilance and detection on the part of both law enforcement and B.C. Hydro.

As shown in Table 12, the dollar value of theft (and/or damage to B.C. Hydro equipment) involved in each marihuana grow operation involving an electrical meter by-pass has grown steadily since 1997, and this is true, even if one takes into account B.C. Hydro price increases over the period. The average dollar value of theft of hydro services (including damage to equipment) has increased by about 50% from 1999 to the first six months of 2000, from \$1,366 to \$2,012. The latter value represents more than double what it was in 1997. The value of the theft/damage was, on average, much higher in Mission than in the other two jurisdictions.

TABLE 12
Average Value of Hydro Services Stolen and Damage to Hydro Equipment when Electrical By-pass was Involved and the Amount had been Estimated by B.C. Hydro
(January 1, 1997 - June 30, 2000)

YEAR	SURREY	RICHMOND	MISSION	AVERAGE
1997	\$611	\$1,080	\$3,888	\$923
1998	\$821	\$1,480	\$4,461	\$1,141
1999	\$880	\$1,511	\$4,784	\$1,366
2000 (6 mths)	\$1,793	\$2,148	-	\$2,012

Note: The largest amount recorded for a single grow operation was \$13,000.



In terms of general damage to rental property (“renovation” for production purposes), there were many cases in which such damage was considerable; however, rarely did case files contain estimates of its exact extent. Furthermore, that information was not as a rule brought to the attention of the court as a separate charge or as a consideration for restitution.

SUSPECTS ASSOCIATED WITH GROW OPERATIONS

Marihuana grow operations often involve more than one suspect. As shown in Table 13, the average number of suspects per founded case is 1.3. Eighty percent of suspects (80%) were male. The average age of suspects was 34 years. With respect to all three of these characteristics, there is very little variation across the three jurisdictions. In terms of the proportion of suspects identified as being of a racial minority, however, two interesting patterns emerge. Firstly, there are differences by detachment in terms of the ethnic background of suspects. Richmond, at 39%, has by far the highest percentage of suspects identified as belonging to a minority ethnic group, almost twice that of Surrey (20%), while in Mission the proportion of minority suspects is

negligible. Clearly the dynamics of ethnic involvement in marihuana cultivation are different in Mission than in those two jurisdictions south and to the west of the Fraser River. Secondly, in terms of identifiable minorities, it is clear that suspects identified as Vietnamese account for most of the ethnic minority involvement in founded cases of marihuana cultivation in both Surrey and Richmond.

TABLE 13
Grow Operations: Selected Characteristics of Suspects Involved in Three B.C. Jurisdictions
 (January 1, 1997 - June 30, 2000)

CHARACTERISTICS CONSIDERED	SURREY	RICHMOND	MISSION	TOTAL
Average number of suspects per search	1.30	1.20	1.20	1.30
Percentage of suspects who were female	21%	19%	22%	20%
Average age of suspects	34	34	37	34
Percentage of suspects from minority ethnic groups	20%	39%	3%	22%
Percentage of suspects identified as Vietnamese	16%	38%	0%	19%

Furthermore, while Vietnamese involvement is specific to Richmond and Surrey, it is also a fairly recent development⁸. Table 14 shows that in the areas policed by these two detachments, Vietnamese involvement has escalated significantly over the last two years, and has doubled in the first half of 2000 over the percentage recorded for the previous year. By 2000, 42% of the suspects in Surrey and 64% of the suspects in Richmond were Vietnamese.

TABLE 14
Grow Operations: Percentage of Suspects Identified as Vietnamese

8. All suspects involved in the 34 cases from Red Deer and Lloydminster, except one who was a refugee from Africa, were Caucasian Canadian citizens.

(January 1, 1997 - June 30, 2000)

YEAR	SURREY	RICHMOND	MISSION	TOTAL
1997	0	21	0	4
1998	6	19	0	7
1999	22	36	0	21
2000 (6 mths)	42	64	0	46
OVERALL	18	38	0	19

ACTION TAKEN

One of the goals of the study was to determine the range of measures taken once a marihuana grow operation had been uncovered; that is, the nature of the criminal justice response to these incidents. In many cases, we learned, officers simply seized the drugs and equipment without charging anyone, an action known as a “no case seizure”. Among the reasons identified in the file documents for this method of response were:

1. no suspect could be identified;
2. the amount of drugs involved was relatively small;
3. the investigating officer determined that it would be difficult to demonstrate that reasonable grounds existed in order to obtain a search warrant; or,
4. the case involved a “consent search”.

Across all three B.C. jurisdictions for the period reviewed, an average of 40% of investigated complaints resulted in “no case seizures” and has declined steadily from a high of 52% in 1998. According to the Canadian Centre for Justice Statistics, police departments in British Columbia reported the lowest charge rate (47%) for drug offences among provinces and territories ⁹.

The percentage of “no case seizures” varies by year and also by jurisdiction, with few clear or consistent patterns emerging from the data. Table 15, while showing a

9. Tremblay, S. (1999). “Illicit Drugs and Crime in Canada”, *Juristat*, Canadian Centre for Justice Statistics, Ottawa, March 9, 1999.

trend towards a decreasing proportion of “no case seizures” over time in Richmond, and no pattern at all in Surrey, shows a fairly consistent rate over time in Mission. Overall, Surrey has the lowest cumulative rate (33%), while Richmond and Mission “no case seizure” rates are at 52% and 55% respectively. The proportion of “no case seizures” in the three jurisdictions appears to be declining from the high of 52% in 1998¹⁰.

TABLE 15
Grow Operations: Percentage of Cases Dealt with as
“No Case Seizures”
 (January 1, 1997 - June 30, 2000)

YEAR	SURREY	RICHMOND	MISSION	TOTAL
1997	3	50	43	21
1998	47	70	55	52
1999	35	62	63	45
2000 (6 months)	35	31	50	35
OVERALL	33	52	55	40

In terms of charge rates for “case seizures”, Table 16 reveals that, for all three detachment areas combined, charges were laid 96% of the time against at least one of the suspects, with little variation from area to area. Apparently as a result of plea bargaining practices, it appeared that charges were infrequently laid against more than one suspect in each case¹¹. In the case of a male/female couple of suspects, it was usually the male suspect who was charged. In cases where charges were not proceeded with or were stayed, the reason most often mentioned in the files for the decision was that the prospect of obtaining a conviction was minimal for one reason or another, often because the search had not been properly conducted. Fairly long delays in having the matter dealt with in court were frequently observed, particularly in Mission.

10. By contrast, only one out of 10 cases in Lloydminster and one out of 24 cases in Red Deer were no-case seizures. (In the one case in Lloydminster, 2 plants were seized by officers responding to an attempted suicide call).

11. The pattern was clearly different in Red Deer and Lloydminster where all suspects involved were usually prosecuted.

TABLE 16
Grow Operations: Percentage of “Case” Seizures
Leading to Charges Being Laid
 (January 1, 1997 - June 30, 2000)

YEAR	SURREY	RICHMOND	MISSION	TOTAL
1997	95	94	92	95
1998	93	91	55	87
1999	99	95	87	97
2000 (6 months)	97	96	75	96
OVERALL	96	95	90	94

In cases where a charge or charges had been laid in one of the three B.C. jurisdictions, and for those years in which it can be safely assumed that the cases had cleared the courts (1997 and 1998), convictions were obtained in over 60% of them, but not always for the “cultivation/production offence” (See Table 17). In many instances, the conviction was obtained in relation to a charge of “possession” or “possession for the purpose of trafficking”. For those same two years, however, and while using a slightly different measure of conviction rate, it is also clear that less than one in three of all identified suspects were actually convicted of cultivation or any charge related to the grow operation. As Table 18 shows, using this measure, Surrey has the highest conviction rate (34%), followed by Richmond and Mission. More time will be needed before an analysis of additional court outcome data from 1999 will be able to indicate whether there is any significant trend in conviction rates over time.

TABLE 17
Grow Operations: Percentage of Cases where Charges Were Laid
And Where at Least One Accused in the Case is Convicted - 1997-1999

YEAR	SURREY	RICHMOND	MISSION	TOTAL
1997	64	65	42	61
1998	65	50	50	62
1999	31	14	8	27
OVERALL	42	26	29	38

Note: Many of the cases of years 1999 were still pending, awaiting trial or disposition

TABLE 18
Grow Operations: Percentage of Identified Suspects
Who Have Since Been Convicted (1997-1999)

YEAR	SURREY	RICHMOND	MISSION	TOTAL
1997	34	26	15	30
1998	34	13	15	24
1999	15	4	2	12
OVERALL	21	9	9	17

Note: Many of the cases from 1999 were still pending, awaiting trial or disposition

Less than 1 in 4 founded cases (22%) over all jurisdictions for the time period studied have resulted in at least one conviction, although many cases have not yet cleared the courts. For 1997 and 1998, the two years for which all cases had likely cleared the courts, 46% and 28% respectively of founded cases resulted in at least one conviction.

SENTENCING OF CONVICTED MARIHUANA GROW OPERATORS

National data on the sentencing of offenders convicted in Canada in relation to a marihuana grow operation are not available. Although the Adult Criminal Court Survey (1996-97) collected information from provincial and territorial courts in seven provinces and the Yukon, it did not distinguish between types of drugs. Furthermore, British Columbia was not one of the eight jurisdictions covered by the survey. Nevertheless, it was learnt from the survey that, for all eight jurisdictions combined, 64% of convicted drug traffickers were sentenced to imprisonment (the median sentence was 4 months). Courts in Alberta, Yukon and Newfoundland imposed the highest proportion of prison sentences for drug trafficking.

A. Sentences in Richmond, Surrey, and Mission

Those accused of involvement in grow operations are often charged with multiple offences (e.g., cultivation, possession for the purpose of trafficking, theft of Hydro services). In many cases, those accused will plead guilty to one charge based on an agreement with the Crown that other charges will not be proceeded with. Accordingly, in the cases reviewed, some offenders were convicted of only one of the offences they were charged with, while others were convicted of two or three separate charges. It was also found that, in many instances, those convicted received multiple dispositions, even on a single charge (e.g., some combination of prison, probation, fine or restitution). Tables 19 and 20 make it clear that there is a fair amount of overlap in this regard among dispositions handed down to convicted offenders.

TABLE 19
Grow Operations in Three RCMP Jurisdictions: Percentage of Times Where Selected Penalties Were Awarded as Part of Sentence
 (January 1, 1997 - June 30, 2000)

DISPOSITION	SURREY	RICHMOND	MISSION	TOTAL
Prison	27	27	50	29
Conditional prison	19	23	0	18
Probation	55	50	8	51
Fine	43	32	58	43
Community service hours	5	41	0	9
Restitution	10	14	17	11
Conditional or absolute discharge	7	0	0	6

In terms of the types of sentences awarded, Table 19 shows that probation was an included disposition in over half of the convictions (51%), fines 43%, prison 29%, a conditional prison sentence 18%, and restitution was included in 11% of these cases. Table 20 shows that, where sentences involved restitution¹² or community service hours, these were always in addition to at least one other disposition. Probation was

¹². In all cases where restitution was ordered, the order was usually in favour of B.C.Hydro. In one case, the order was in favour of the R.C.M.P. Restitution was not ordered in favour of the landlords or neighbours.

awarded in combination with at least one other disposition in 89% of cases, while imprisonment and conditional imprisonment were awarded as part of a sentence 74% and 68% of the time respectively. Where fines were awarded, this penalty was handed down in conjunction with at least one other disposition 54% of the time.

TABLE 20
Grow Operations - Three B.C. Jurisdictions: Percentage of Times that a Disposition Was
Awarded Along with Another Penalty
 (January 1, 1997 - June 30, 2000)

DISPOSITION	SURREY	RICHMOND	MISSION	COMBINED
Prison	86	50	17	74
Conditional prison	69	60	-	68
Probation	88	91	100	89
Fine	56	57	29	54
Community service hours	100	100	n/a	100
Restitution	100	100	100	100
Conditional or absolute discharge	9	-	-	9

Because the overlap in dispositions per conviction makes it difficult to clearly identify sentencing patterns, convictions were analyzed with regard to the most serious penalty awarded in each case. Table 21 displays the sentencing pattern across the three jurisdictions in terms of the proportion of convictions for which each respective disposition constitutes the most serious form of punishment awarded. A prison sentence was the most serious penalty in 29% of the convictions, a conditional prison sentence in 18% and probation in 27% of the cases (See Figure 4). A fine was the most serious penalty awarded in 20% of convictions. Thus, some form of custodial sentence (prison or conditional prison) was handed down in almost one-half (47%) of the cases resulting in a conviction.

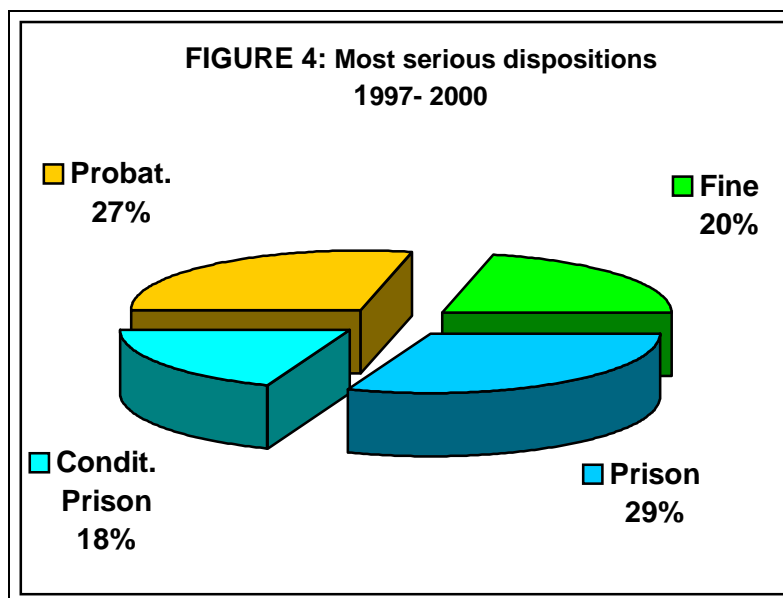


Table 22 summarizes the average “quantum” or amount of penalty awarded for each type of disposition in each jurisdiction. Overall, the average prison sentence was 3.4 months, while the average conditional sentence and the average probation term were 3.9 and 13 months respectively. The average dollar value for fines and restitution orders were both just over \$2,000.

Interestingly, Table 21 reveals that while Mission has the highest rate of imprisonment per conviction (50%), this jurisdiction also has the highest rate of fines (42%) and the lowest rate of probation (8%). Similarly, as shown in Table 22, the average prison term per conviction in Mission, at 4.8 months, is higher than for both Surrey (3.2 months) and Richmond (3.7 months), and the average probation term is lower, at 9 months per conviction versus 12 and 18 months for Surrey and Richmond respectively. It should be kept in mind however that in Mission, where probation was awarded, it was always awarded along with at least one other penalty, and that where a prison sentence was handed down, only 17% of the time was this done in combination with any other types of penalty (See Table 20).

TABLE 21

**Grow Operations - Three B.C. Jurisdictions: Percentage of Cases Where Prison
or Other Penalties Were Most Serious Disposition**
(January 1, 1997 - June 30, 2000)

DISPOSITION	SURREY	RICHMOND	MISSION	COMBINED
Prison	27	27	50	29
Conditional prison	19	23	0	18
Probation	27	36	8	27
Fine	20	14	42	20
Community service hours	0	0	0	0
Restitution	0	0	0	0
Conditional or absolute discharge	7	0	0	3

TABLE 22

**Grow Operations - Three B.C. Jurisdictions: Average Amount (Quantum) of Penalty
Awarded by Court by Jurisdiction (Range in Brackets)**
(January 1, 1997 - June 30, 2000)

DISPOSITION	SURREY	RICHMOND	MISSION	OVERALL
Prison (months)	3.2 (1-12)	3.7 (1-5)	4.8 (1.5-12)	3.4 (1-12)
Conditional Prison (months)	3.6 (1-9)	5.8 (2-12)	n/a	3.9 (1-12)
Probation (months)	12 (3-36)	18 (12-36)	9 (9)	13 (3-18)
Fine	\$2,151 (\$200-\$10,000)	\$1,686 (\$400-\$3,000)	\$1,750 (\$500-\$3,000)	\$2,075 (\$200-10,000)
Community Service Hours	66 (30-125)	38 (5-120)	n/a	43 (5-125)
Restitution	\$2,011 (\$200-\$4,336)	\$2,592 (\$315-\$5,888)	\$2,563 (\$2,266-\$2,861)	\$2,147 (\$200-\$5,888)

Table 23 summarizes the average penalty quantum per year for each of the dispositions awarded. While there is little *significant* variation between 1997 and 1998 within disposition categories, it is possible to entertain the notion that prison sentences may be getting longer, conditional sentences shorter and fines somewhat lower. There are, however, two caveats to keep in mind. Firstly, comparing only one year to a single other does not provide nearly enough evidence to be indicative of trends. Secondly, it is

premature to rely on sentencing data from 1999 and 2000 to confirm or refute such possible trends since the number of cases clearing the courts since 1998 is comparatively small¹³. Clearly, any informative analysis of penalty quantum trends over time will require more complete data on sentencing outcomes, at least for 1999 and 2000.

TABLE 23
Grow Operations - Three B.C. Jurisdictions: Average Amount of Penalty Awarded.
By Year (January 1997 to June 30, 2000)

DISPOSITION	1997	1998	1999	2000	COMBINED
Prison (months)	3.2	3.8	3.6	6	3.4
Conditional Prison (months)	5.7	2.8	3.6	9	3.9
Probation (months)	13.4	12	12.5	12	13
Fine (\$)	2,770	1,903	1,563	700	2,075
Community Service Hours	48	20	44	n/a	43
Restitution (\$)	2,091	2,467	1,721	1,150	2,147

The data were also analyzed to assess the variation in sentencing outcomes among different sizes of grow operations. Table 24 shows the average number of plants seized, by most serious penalty awarded, for each of the three jurisdictions. While there is an apparent relationship between the number of plants seized and the seriousness of the punishment, this relationship is not so precise that every increment in penalty is associated with an attendant increase in the number of plants. What is clear, however, is that the greater the number of plants seized, the more likely that a conviction will result in some form of custodial sentence (See Table 25). As Table 24 shows, the average number of plants per seizure where prison or conditional prison sentences were awarded (266 and 391 respectively) significantly differed from the average number of plants involved where lesser sentences were awarded (a maximum of 212).

TABLE 24

¹³. For 1997 and 1998 there were 61 and 62 cases respectively which resulted in at least one accused being convicted. For 1999 and 2000, there were at the time of review 27 and 4 such cases respectively (See Table 17).

Grow Operations: Average Number of Plants Seized Per Sentenced Offender Given Most Serious Penalty Awarded
(By Jurisdiction) (January 1, 1997 - June 30, 2000)

DISPOSITION	SURREY	RICHMOND	MISSION	COMBINED
No. of plants where prison was the most serious penalty	227	699	116	266
No. of plants where conditional prison was the most serious penalty	241	1235	n/a	391
No. of plants where probation was the most serious penalty	102	175	86	116
No. of plants where fine was most the most serious penalty	165	81	32	141
No. of plants where discharge was the most serious penalty	212	n/a	n/a	212
No. of plants where any sentence is awarded	171	546	78	209

TABLE 25

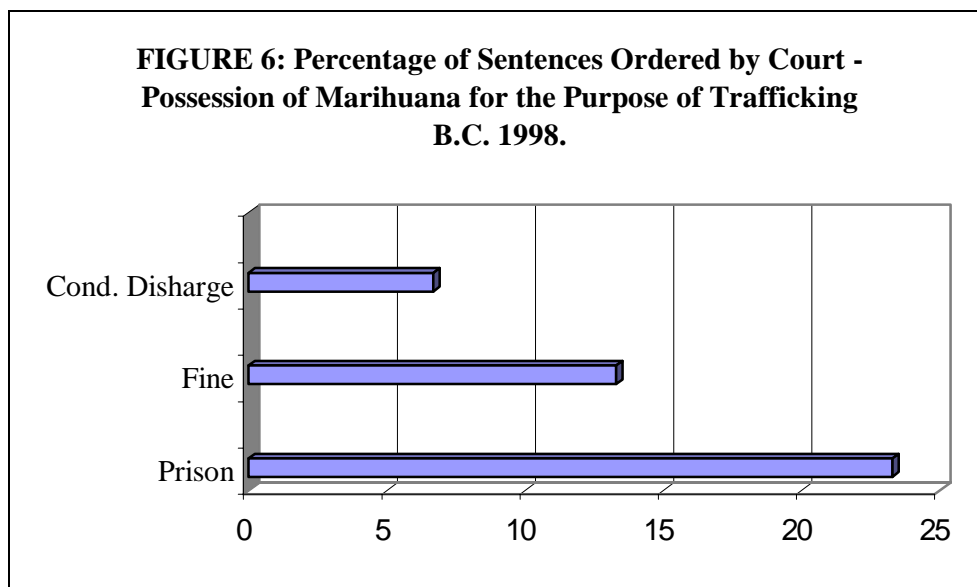
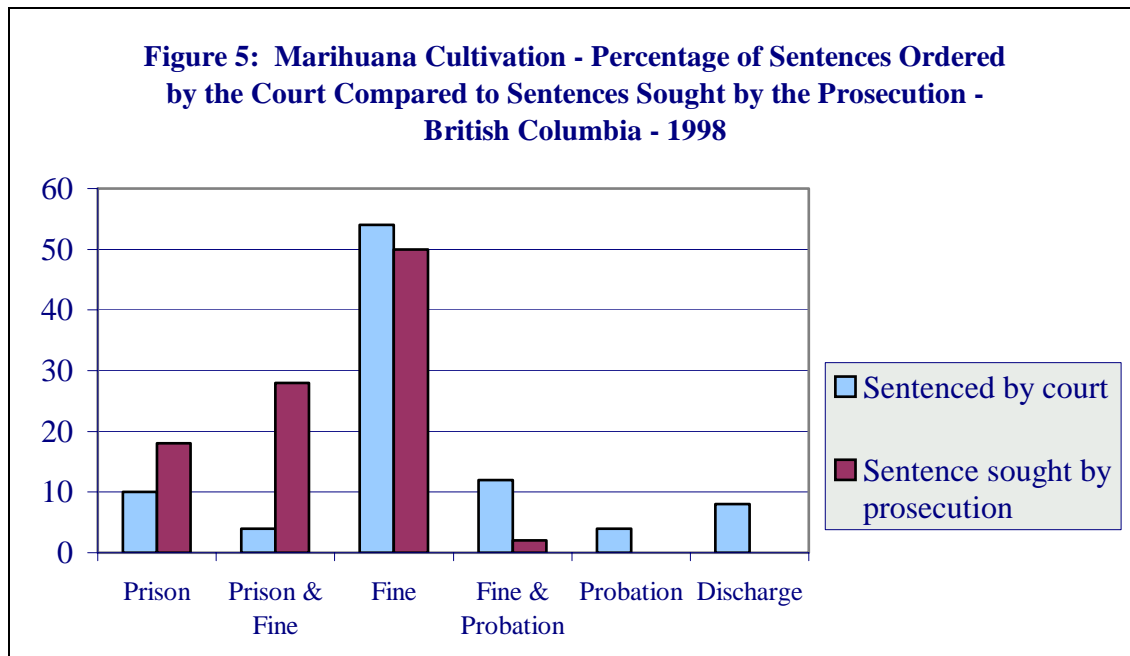
Grow Operations: Average Number of Plants Seized Overall and Seized in Cases Where the Offender was Convicted and Sentenced
(By Jurisdiction) (January 1, 1997 - June 30, 2000)

DISPOSITION	SURREY	RICHMOND	MISSION	COMBINED
Average number of plants in cases where an offender was convicted and sentenced	171	546	78	209
Average number of plants per case (overall)	165	199	268	185

B. Sentences in British Columbia

Data were obtained from the Director of the Federal Prosecution Service (B.C. Region) on 836 drug offences cases which had been sentenced in B.C. in 1998. Of these cases, 50 involved marijuana cultivation. The offender was sentenced to prison in 14% of the cases (suspended in 28% of these cases and accompanied by a fine in 28% of cases), a fine in 66% of the cases (accompanied by probation in 10% of these), a probation term in 8% of the cases, and a conditional or absolute discharge in 8% of

the cases. Figure 5 compares the sentences that were sought in these cases by the prosecution to the sentences ordered by the court.



The data set obtained from the prosecutors included 30 cases of offenders who had been sentenced in 1998 for the offence of possession of marihuana for the purpose of trafficking. 23% of them had been sentenced to prison, 17% to a suspended prison

sentence, 20% to a fine or a fine with probation, 7% to probation alone, 7% to community service orders, and 7% received a conditional discharge.

C. Sentences in two jurisdictions in Alberta

The data collected in Lloydminster for the period between January 1 1997 and June 30 2000 only produced six cases that had been sentenced in the Province of Saskatchewan and three cases sentenced in the Province of Alberta. In Table 26, the three cases sentenced in Alberta were added to the 20 cases sentenced in Red Deer during the same period.

TABLE 26
Sentences in Two Alberta Jurisdictions (Red Deer and Lloydminster) Compared to Sentences in Three B.C. Jurisdictions (Richmond, Surrey and Mission) Marihuana Grow Operations Jan 1 1997 - June 30 2000

		Prison	Cond. prison	Probation	Fine	CSO	Restitution	Absol. condit. disch.
Percentage of cases where penalty was most serious disposition	Alta	78%	4%	0%	22%	0%	0%	0%
	BC	29%	18%	27%	20%	0%	0%	0%
Percentage of cases in which penalty was part of the sentence	Alta	78%	4%	22%	26%	4%	0%	0%
	BC	29%	18%	51%	43%	9%	11%	6%
Sentence range	Alta	2-31 mths	12 mths	12-24 mths	\$1000 -5000	120 hrs	-	
	BC	1-12 mths	1-12 mths	3-18 mths	\$200-10000	5-125 hrs	\$200-5888	
Average amount of penalty	Alta	9.9 mths	12 mths	19.4 mths	\$2500	120 hrs	-	
	BC	3-4 mths	3.9 mths	13 mths	\$2075	43 hrs	\$2147	

A quick comparison of the average penalties involved in cases sentenced in the two Alberta jurisdictions, as opposed to the penalties imposed on average in the three

B.C. jurisdictions, reveals a noticeable difference in the sentences ordered. The difference is particularly noticeable with respect to the percentage of cases where prison is ordered as the most serious disposition (29% in B.C. *versus* 74% in Alberta). The average length of prison sentences ordered in these cases is nearly 3 times longer in Alberta than it is in B.C. and conditional prison sentences which are very rarely imposed in Alberta were imposed in 18% of the cases that were sentenced in B.C..

There is also some limited evidence that the number of marihuana plants involved in a grow operation, as an indicator of the sophistication of the operation, plays a more direct role in the determination of the sentence in Alberta than it does in B.C.¹⁴

D. Sentences in Washington State

In Washington State, cases of marihuana grow operations involving several hundred plants are normally prosecuted under federal law and sentenced in accordance with the federal sentencing guidelines. Growing operations involving 100 plants or less are typically prosecuted under State law. Under Washington State's *Uniform Controlled Substance Act*¹⁵, the manufacturing, the delivering, and the possession for the purpose of delivering marihuana are class "C" felonies carrying a statutory maximum sentence of 60 months imprisonment, plus 9 to 12 months of community supervision, and a fine of \$10,000. A second or subsequent offence becomes a class "B" felony and carries a statutory maximum of 120 months imprisonment, 12 months of community supervision, and a fine of up to \$10,000,00. The sentence carries a mandatory minimum fine of \$1,000 for a first offence and \$2,000 for a second or subsequent offence. The mandatory minimum period of community supervision is 9 months for a first offence and

14. See a newspaper account for the judge's reasons for a 18 months prison sentence in Red Deer: Kossowan, Brensa (1998), "Judge gives break to pot grower who won't squeal", *Red Deer Advocate*, 1998.

15 *Uniform Controlled Substances Act*, RCW Chapter 69.50.

12 months for a second or subsequent offence¹⁶.

In Washington State, the *Sentencing Reform Act* (SRA) of 1981 (RCW 9.94A) established specific rules for the sentencing of persons convicted of felony crimes. Under the Act, the sentencing judge is required to order a specific term of incarceration within a presumptive range (or “standard range”) that reflects both the seriousness of the crimes committed and the offender’s criminal history.

According to the Adult Sentencing Manual of the Washington State Sentencing Guidelines Commission,

“The goal of Washington’s sentencing guidelines system is to ensure that offenders who commit similar crimes and have similar criminal histories receive equivalent sentences. Presumptive-sentencing schedules are structured so that offenses involving greater harm to a victim and to society result in greater punishment. The guidelines apply equally to offenders in all part of the state, without discrimination as to any element that does not relate to the crime or to a defendant’s previous criminal record.”¹⁷

The SRA specifies a “seriousness level” for most felony offences, ranging from I for the least serious felonies to XV for the most serious (e.g. aggravated murder). Under the SRA, the manufacturing, delivering or possession with intent to deliver marihuana falls under seriousness level III.¹⁸

The SRA also provides specific rules for calculating the “offender score”, on a scale of 0 to 9 or more. Within a particular offence seriousness level, the calculation of the sentence is based on the offender’s score which is, in turn, based on the combined seriousness of past felony convictions and any convictions concurrent to the primary

16 If a possession offence involves less than 40g of marihuana, the prosecution may treat it as a gross misdemeanor.

17 State of Washington Sentencing Guidelines Commission, *Adult Sentencing Manual*, 2000.

18. Anticipatory offences are any attempt, solicitation, or conspiracy to commit a felony crime. In most cases, these offences are sentenced to 75% of the standard range for the completed crime. The sentencing of anticipatory VUCSA (Violations of the Uniform Controlled Substance Act) drug offences is more complicated. An attempt or conspiracy to commit a drug offence is typically sentenced as an “unranked” offence (0 - 12 months) following State case law (see State of Washington Sentencing Guidelines Commission, *Adult Sentencing Manual*, 1999).

offence. The following table displays the range of sentences prescribed under the sentencing guidelines for seriousness level-III offences.

**FIGURE 7: Washington State Sentencing Guidelines
Standard Range (Seriousness Level III) of Sentences
for Marihuana Manufacturing, Delivering and Possession with Intent to Deliver Offences
Committed After July 24, 1999**

Level	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9+
III	2 m 1 - 3	5 m 3 - 8	8 m 4 - 12	11 m 9 - 12	14 m 12+ 16	20 m 17 - 22	2 y 2 m 22 - 29	3 y 2 m 33 - 43	4 y 2 m 43 - 57	5 y 51 - 68

Special scoring rules apply for drug offences. The standard range for marihuana manufacturing, delivering and possession with intent to deliver increases more rapidly than would be the case in other level-III offences. In 1989, the Legislature amended the scoring rules for drug offences. Adult prior and other current drug offences included in the offender score with a current drug offence counts as three points each, and juvenile prior drug offences count as two points each (RCW 9.94A, 360[12])¹⁹. Special scoring rules apply in cases of multiple offences when the current offences include two or more serious violent offences, or when the current offences include unlawful possession of a firearm, theft of firearms or possession of stolen firearms. Finally, the offender score also reflects whether the offence was committed when the offender was under community placement by adding a point to the offender's score.

The standard range for a first offence of marihuana manufacturing, delivering, or possession with intent to deliver is 1 to 3 months (with a median of 2 months), plus a minimum fine of \$1,000, and 9 to 12 months of community supervision.

19. RCW 9.94A.030 (19) provides: "Drug offense" means: (a) Any felony violation of Chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403); (b) Any offense defined as a felony under federal law that related to the possession, manufacture, distribution, or transportation of a controlled substance; or (c) any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this section."

TABLE 27

**Washington State - Adult Felony Sentencing Statistics 1997 and 1999 for
Marihuana Manufacturing, Delivering or Possession with Intent to Deliver²⁰**

Offence	Year	Number of cases	Months	Non-prison ²¹	Prison	Above range ²²	Below range
1st Offence	1997	489	2.4	100%	0%		
	1999	416	2.3	96.4%	3.6%	25	46
In school zone	1997	3	22.0	33.3%	66.7%	0	1
	1999	7	40.3	0%	100%	0	1
Second and subsequent offence	1997	69	14.5	56.5%	43.5%	4	3
	1999	77	12.0	66.2%	33.8%	5	7

The statistics computed by the Washington State Sentencing Guidelines Commission do not distinguish between cultivation cases and cases of offenders selling marihuana or possessing it for the purpose of delivering. These are all treated as equivalent offences. Furthermore, these statistics do not include federal cases. According to two State prosecutors interviewed, these cases predominantly did not involve marihuana manufacturing²³. As can be seen in Table 27, there were 416 cases in 1999 of first time offenders without prior criminal records who were found guilty of marihuana manufacturing, delivering, or possession with intent to deliver. The average sentence received by these offenders was 2.3 months, including 25 cases that were above the standard range and 46 which were below. The average sentence was not significantly lower than the 2.4 months average for this group of offenders in 1997. There were, in 1999, 77 cases of offenders convicted of a second or more offences of

20. Source: State of Washington Sentencing Guidelines Commission, *Statistical Summary of Adult Felony Sentencing - Fiscal Year, 1999*, Olympia (WA), January 2,000, and State of Washington Sentencing Guidelines Commission, *Statistical Summary of Adult Felony Sentencing - Fiscal Year, 1997*, Olympia (WA), January 1998.

21. Non-prison sentences include jail and work ethic camps.

22. This and the column to the right indicate the number of sentences which were above and below the standard range.

23. For instance, in Whatcom County there were only between 5 and 8 cases involving a marihuana grow

manufacturing, delivering or possession of marihuana with intent to deliver. The average sentence in these cases was 12 months of imprisonment in addition to a fine and a 12 month period of community supervision.

Sentence Enhancements (Washington State)

In recent years the State Legislature has added sentence enhancements to drug offences if the crime occurred in a corrections facility or in an area defined as a “protected area” (e.g. school zones, in the proximity of a school bus stop, in public parks, transit vehicles, etc). In 1999, there were 7 cases of sentence enhancements for in cases where the offence was committed near a school or a school bust stop. These cases received an average sentence of 40.3 months.

Sentence enhancements may also apply if a court finds that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime²⁴. All firearm and other deadly weapon enhancements are mandatory and must be served in total confinement and consecutively to all other sentencing provisions. For example, the weapon enhancement for a first offence (class C felony) in 18 months in the case of a firearm and 6 months in the cases of other deadly weapons²⁵. In 1999, there was only one case of sentence enhancement due to the presence of a deadly weapon. In that instance, the weapon was not a firearm.

Exceptional Circumstances (Washington State)

The standard sentence range is presumed to be appropriate for the typical felony

operation during the year 2000.

24. State of Washington Sentencing Guidelines Commission, 1999, pages 1-18 and 1-19.

25. RCW 9.94 A.310

case. However, judges may also, under “substantial and compelling circumstances” order an “exceptional sentence” outside of the presumptive range. RCW 9.94A.120(2) states that the court “may impose a sentence outside the standard sentence range for a given offense if it finds that there are “substantial and compelling reasons justifying an exceptional sentence.” An exceptional sentence must be a determinate sentence and cannot exceed the statutory maximum for the crime. The court, in those cases, must set forth in writing the reasons for its decision²⁶. The law provides a non-exhaustive list of factors, including both mitigating and aggravating circumstances, that the court may consider in deciding whether to impose an exceptional sentence²⁷. In cases involving violations of the *Uniform Controlled Substances Act*²⁸ relating to trafficking in a controlled substance, a number of aggravating factors are specifically identified. They include:

- “(a) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;
- (b) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;
- (c) The current offense involved the manufacture of controlled substances for use by other parties;
- (d) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;
- (e) The current offense involved a high degree of sophistication or planning, or occurred over a lengthy period of time, or involved a broad geographic area of disbursement; (...)²⁹⁻³⁰

Exceptional sentences include departures above and below the standard range,

26. State of Washington Sentencing Guidelines Commission, *Adult Sentencing Manual*, 2000, p. 1-22.

27. RCW 9.94A.390.

28. *Uniform Controlled Substances Act*, RCW Chapter 69.50.

29. State of Washington Sentencing Guidelines Commission, *Adult Sentencing Manual*, 2000, 1-23; see also: RCW 9.94A.390.

30. For a list of the reasons actually stated by the courts for aggravated sentences, see: “Table 17 - Aggravated Sentence Reasons”, State of Washington Sentencing Guidelines Commission, *Statistical*

as well as sentences in which the court orders a term of confinement within the standard range, but under terms of an exceptional sentence adds conditions not allowed as part of the standard range (e.g. treatment). Table 28 shows the sentence departures in the cases of marihuana offences in 1997 and 1999.

TABLE 28
Washington State - Sentence Departures and Direction;
Adult Felony Sentencing Statistics 1997 and 1999 for Marihuana
Manufacturing, Delivering or Possession with Intent to Deliver³¹

	YEAR	Exceptional Above	Exceptional Below	Exceptional Within
1st offence	1997	9	1	2
	1999	6	4	2
2nd & subsequent offences	1997	3	2	1
	1999	5	6	2

In 1999, there were a total of 12 sentence departures in cases involving a first-time offender (i.e. a departure in 2.8% of the cases, and 13 cases of sentence departure in cases involving an offender with criminal record (i.e. departures in 16.8% of the cases).

Sentencing Alternatives (Washington State)

First-time offenders convicted of drug delivery may be eligible for one of two sentencing alternatives: the Drug Offender Sentencing Alternative (DOSA) and the Work Ethic Camp (WEC). A third alternative, the First-Time Offender Waiver (FTOW), is apparently no longer available to drug offenders, but could be used during the period of time under comparison. In 1999, 138 first time offenders or a third of first time offenders

Summary of Adult Felony Sentencing - Fiscal Year, 1999, Olympia (WA), January 2,000, pp. 37-40.
³¹ Source: State of Washington Sentencing Guidelines Commission, *Statistical Summary of Adult Felony Sentencing - Fiscal Year, 1999*, Olympia (WA), January 2,000, p. 21, and State of Washington Sentencing Guidelines Commission, *Statistical Summary of Adult Felony Sentencing - Fiscal Year, 1997*, Olympia (WA), January 1998.

were sentenced under the First Time Offender Waiver dispositions of the law. The Drug Offender Sentencing Alternative was created in April 1995 as a way of providing drug treatment to offenders whose crimes are thought to be mainly a result of their addiction to drugs, while holding them accountable. To be eligible, offenders must have been sentenced to at least 12 months of imprisonment. A Work Ethic Camp is an alternative to a straight standard range sentence available for offenders with no current or prior convictions for violent or sex offences, and whose sentence is from 16 to 36 months. Offenders sentenced to WEC receive a standard range sentence, but if they complete all requirements successfully they are credited with 3 days for each day in WEC and are released to community custody upon completion of the 120- to 180-day program³².

In the first 10 months of 1997, 52 % of first-time drug offenders were sentenced to Work Ethics Camps, 37% of them were sentenced to Standard Range Prison sentences, 41% received DOSA sentences, and one percent received jail sentences³³. An evaluation study revealed that there were no significant differences in the rate of recidivism among the offenders receiving different sentence options³⁴.

E. Tentative Comparison Between Sentences Ordered in Canada and the Sentences that Would Be Awarded in Similar Cases in Washington State.

An attempt was made to apply the sentencing guidelines in force in the State of Washington to 80 cases of marihuana growing operations that took place and were

32. State of Washington Sentencing Guidelines Commission, *Adult Sentencing Manual*, 2000, 1-28; see also Engen, R.L. and Steiger, J.C. (1997). *Trading Time for Treatment: Preliminary Evaluation of the Drug Offender Sentencing Alternative (DOSA)*. Olympia, Washington: Sentencing Guidelines Commission, State of Washington, January 1997.; and, Du, C. and Phipps, P. (1997). *Trading Time for Treatment: second Year Evaluation of the Drug-offender Sentencing Alternative (DOSA)*. Olympia (Washington): Sentencing Guidelines Commission, State of Washington, December 1, 1997.

33. Du, C. and Phipps, P. (1997). *Trading Time for Treatment: second Year Evaluation of the Drug-offender Sentencing Alternative (DOSA)*. Olympia (Washington): Sentencing Guidelines Commission, State of Washington, December 1, 1997, p. 5.

sentenced in Surrey and Richmond. The information contained in each offender's criminal record was used to predict the sentence that would likely have been ordered in the State of Washington on the sentencing guidelines. It was assumed that, in each case, exceptional circumstances would not be invoked, that sentence enhancements would not be sought nor granted and that the offender would not be eligible for a sentencing alternative. The comparison yielded by this method should be treated with great caution as the procedure to generate the projections under the Washington State sentencing guidelines is still very exploratory and tentative in nature.

Table 29 shows that, out of the 30 first-time offenders who would be expected to receive a 1 to 3 month prison sentence (median 2 months) under Washington State Sentencing Guidelines, only 14 (47%) had actually been sentenced to a prison term in Canada. Further, in half of these cases, the sentence was a conditional one. The average length of the prison sentences was 3.6 months and, in 5 cases, the prison sentence was accompanied by probation (averaging 10.8 months in length). Seven or 23.5% of these first time offenders were sentenced to a period of probation (averaging 12.9 months in length). Of these seven offenders, five were also fined (an average of \$2,400). For first-time offenders who received a fine alone, the average amount of the fine was \$2,100.

Washington State guidelines are designed to ensure that past and concurrent offences (particularly drug offences) are the chief factors determining the severity of the sentence, and this, in a way which is not directly paralleled in Canadian law and sentencing practices³⁵, Table 29 therefore also shows that there are very important differences in the sentences that are likely to be ordered in the two jurisdictions where offenders with a criminal record are concerned. Offenders who qualify for a score of 9 or more under the Washington State Sentencing Guidelines would be expected to

35. See J. V. Roberts, "The Role of Criminal Record in the Sentencing Process", in Tonry, M. (Ed.) (1997) *Crime and Justice: A Review of Research*. Chicago: University of Chicago Press. pp. 303-362.

receive a sentence of imprisonment of between 51 and 68 months (median sentence is 5 years). In Canada, only 52% of these offenders actually received a prison sentence (on average 5.1 months). Less than 10% of Canadian offenders with a previous drug offence received a prison sentence, whereas they would automatically have faced a sentence of between 3 and 16 months under the Washington State Sentencing Guidelines.

An offender's criminal history clearly plays a more important role in the sentencing of offenders in Washington State. An offender's past crimes affect his treatment by the criminal justice system but there is considerable variation in the way that different jurisdictions define criminal record and respond to recidivist offenders. As noted by Roberts, advocates of general and specific deterrents usually support a "recidivism premium" on the grounds that recidivists are more likely to re-offend and need stronger disincentives³⁶.

TABLE 29
Sentence Received by 80 Canadian Offenders in Surrey and Richmond, and their Likely Score and Presumptive Range of Prison Sentence Under Washington State Guidelines.

Most serious Disposition Ordered in Canada	Score and presumptive range of prison sentence ³⁷ for same offenders under the Washington State Sentencing Guideline.			
	1 st Time Offenders - Score 0	Scores 1 to 4	Scores 5 to 8	Score 9 +
	2-3 months	3-16 months	17-57 months	51-68 months
Prison	2	2	0	4
Prison conditional)	7	3	3	2
Prison + probation	5	6	3	5
Probation	7	6	1	6
Fine	9	4	1	4
Total	30	21	8	21
Percentage	38%	26%	10%	26%

³⁶ *Idem* p.303

³⁷ The prison sentences are always accompanied by a minimum fine of \$1,000 (1st offence) and \$2,000 (2nd offence) up to a maximum of \$10,000, as well as community supervision of 9-12 months (1st

The consequences of a conviction for an offence relating to marihuana cultivation are clearly more severe in the State of Washington and in the Province of Alberta than they are in the Province of British Columbia. The fact that B.C. is the only one of the three jurisdictions to have experienced a major increase in the number of marihuana grow operations coming to the attention of the police cannot therefore be dismissed as a mere coincidence.

Appendix 1
List of Data Elements Collected from Police Files

Marihuana Grow Operations Study - B.C.

Background	
1	ID
2	Year
3	File number
4	Statistics Canada Code
5	Statistics Canada Code
6	Street Number
7	Street Name
8	City/Town
9	Agency/Police Force
10	Date - Offence reported
11	Date - Search Attended
12	Time Elapsed
13	Source of Complaint
14	Status of Complaint
Type of Grow / Drug Seized	
15	Number of Marihuana Plants
16	Number of Stages of Growth
17	Number of kilos marihuana
18	Drugs Seized - Heroine
19	Drugs Seized - Cocaine
20	Other Drugs Seized - Other
21	Amount of Cash Seized
22	Type of Grow
Grow Facility	
23	Type of Facility
24	Owned/Rented
25	Length of Tenancy
26	Name of Owner
27	Owner Location
28	Management Co.
29	Amount Rent Paid
30	Rent Paid Cash
Security	
31	Alarm System Present
32	Video camera/monitor present
33	Guard Dog Present
34	Booby Trap Present
35	Number of Handguns
36	Nbr. other restricted weapons
37	Number of Long Guns
38	Other Weapons Present
Equipment Seized	
39	Number of 400W Lamps
40	Number of 600W Lamps

41	Number of 1000W Lamps
42	Plant nutrients and Pesticides
43	Water or Air Pump
44	Timers
45	CO2 Generator
46	CO2 Cylinder
47	Scales/ Ziplock Bags
48	Electrical wire/box/equipment
49	Humidifier / Heaters
	Charge / No Charge
51	Case / No Case
52	Charge / No Charge

FOR EACH ACCUSED/OFFENDER

Accused/Offender Identification	
1	Name
2	DOB
3	FPS Number
4	Gender
5	Ethnicity
6	Citizenship
7	Link with criminal organization
Production Charge	
8	Plea on Production Charge
9	Proceed/Stay of Proceedings
10	Disposition - Prison
11	Disposition - Prison Conditional
12	Disposition - Probation
13	Disposition - Fine
14	Disposition - CSO
15	Disposition - Restitution
16	Unconditional Discharge
Possession Charge	
17	Plea on Possession Charge
18	Proceed/Stay of Proceedings
19	Disposition - Prison
20	Disposition - Prison Conditional
21	Disposition - Probation
22	Disposition Fine
23	Disposition - CSO
24	Disposition - Restitution
25	Unconditional Discharge
Theft Hydro Charge	
26	Plea on Theft Charge
27	Proceed/Stay of Proceedings
28	Disposition - Prison
29	Disposition - Prison Conditional
30	Disposition - Probation
31	Disposition - Fine
32	Disposition - CSO
33	Disposition - Restitution
34	Unconditional Discharge
Other Most serious C.C. Charge	
35	Section Number:
36	Plea on Criminal Code Charge
37	Proceed/Stay of Proceedings
38	Disposition - Prison
39	Disposition - Prison Conditional
40	Disposition - Probation
41	Disposition - Fine
42	Disposition - CSO
43	Disposition - Restitution

44	Unconditional Discharge
	Appeals
45	Appealed
46	Appeal Successful or Not
Criminal History Data	
<u>Derived from CPIC</u>	
Past convictions - non drug offences	
Past convictions - drug offences	
Province of previous conviction	