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Community Response to Marijuana Grow Operations: *A Guide Towards Promising Practices*

Fire Chief Len Garis
City of Surrey, British Columbia

**Darryl Plecas, Irwin M. Cohen,
and Amanda V. McCormick**
University of the Fraser Valley

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MESSAGE FROM THE MAYOR

This guide presents what the City of Surrey has learned about dealing with the problem of marijuana grow operations over the last five years.

Because all British Columbians have the right to live in safe, crime-free neighbourhoods, I believe that communities need to work together to share promising practices.

One of our primary reasons for creating this guide is a concern about how our success has affected other communities. Recent research shows that marijuana production in Surrey declined more than 80% from 2004 to 2008, a greater decrease than seen in the rest of the Lower Mainland and British Columbia. While this is a strong endorsement of our efforts, it also indicates that the problem is likely being displaced to other communities – particularly those without safety inspection programs.

This guide outlines how communities can now come together to present a united front against this threat by using all the tools available. These tools include both the traditional criminal approach and new administrative approaches, such as safety inspections.

In Surrey, we found better ways to identify grow operations and to make sure the properties they used were remediated at the expense of the owners. Our Electrical and Fire Safety Inspection program has made Surrey a safer community by making us less attractive to marijuana growers. Our hope is that this guide will do the same for communities across British Columbia and elsewhere.

I would like to acknowledge the efforts of the collaborative multi-agency team that has contributed to our success, in particular: Fire Chief Len Garis and Surrey Fire Department staff; Dr. Darryl Plecas, Dr. Irwin Cohen, and staff at the University of the Fraser Valley; and Chief Superintendent Fraser MacRae, Surrey RCMP detachment, and other participating members.



Dianne Watts
Mayor
City of Surrey, British Columbia



This guide outlines how communities can come together to present a united front against this threat.

Introduction

Growing marijuana in Canada continues to be a lucrative business, estimated at \$6 billion per year in British Columbia alone.¹

RCMP statistics have shown that the number of marijuana plants seized across Canada between 1993 and 2007 increased eight-fold, from about 238,000 plants in 1993 to almost 1.9 million per year in 2007. During that same time frame, the amount of marijuana seized grew almost seven-fold, from 7,314 kilograms to 49,918 kilograms. About 90% of the seizures occurred in British Columbia, Ontario, and Quebec, although some displacement of grow operations to the Prairies and the Maritimes occurred.²

The RCMP has identified an increased number of grow operations in rural communities and remote areas in Canada, and notes that marijuana trafficking remains highly profitable for organized crime. Far from being small independent outfits, grow operations are considered by the RCMP to be money machines that fund major crime networks. British Columbia's Organized Crime Agency estimated that organized crime groups control 85% of British Columbia's marijuana trade. According to the RCMP, most crime groups in Canada are involved at some level with the marijuana trade.³ Over the years, this issue has taken up a growing share of anti-drug policing resources, to the point that marijuana grow operations constitute more than half of all drug cases for some Canadian police forces.⁴

While Canada's marijuana industry has thrived, the criminal justice system has struggled to keep pace. Despite a greater coordinated response at the provincial level, and the widespread introduction of dedicated marijuana police teams, the problem persists, as the continuing atmosphere of high reward and low penalties draws more criminals to this lucrative illegal industry. In British Columbia, the proliferation of organized criminal groups has forced police to concentrate on the greatest threats, allowing smaller groups to become more sophisticated and experienced. It is estimated that in 2007 and 2008, police had the capacity to investigate approximately 23% of known organized crime groups, down from 30% in 2003.⁵

For many years, marijuana grow operations were viewed as a criminal problem, and therefore beyond the jurisdiction of communities. Indeed, grow operations were widely viewed as a victimless crime by both the public and government. However, during the last decade, the development of improved data about grow operations has prompted all levels of government to gradually realize that this attitude was not only preventing effective action against grow operations, but also exposing



Marijuana grow operations: no longer just a criminal justice problem.

¹ Based on comments by RCMP "E" Division Deputy Commissioner Gary Bass at a May 2, 2008 Consultation Workshop to Eliminate Use of Hydroponic Equipment in Marijuana Grow Operations.

² *Drug Situation in Canada – 2001 and 2007*, the RCMP Criminal Intelligence Directorate (2002/2008).

³ Information in this paragraph derived from: RCMP Criminal Intelligence Directorate (2008); *Eliminating Residential Grow Operations – An Alternative Approach*, by Surrey Fire Chief Len Garis (2005); The Organized Crime Agency of British Columbia's Annual Report (2001).

⁴ RCMP Criminal Intelligence Directorate (2004).

⁵ RCMP "E" Division Deputy Commissioner Gary Bass (2008).

communities to a wide variety of public safety hazards, including fire, electrocution, unsafe structural alterations, and health risks. For example, largely due to unsafe and illegal electrical practices, the likelihood of a grow operation catching fire is one in 22 – that is, a home with a grow operation is 24 times more likely to catch fire than a typical home.⁶

With the recognition of the negative effect of grow operations on neighbourhoods comes an obligation to respond. This is true for all levels of government. No longer apathetic about grow operations, communities across the country are taking action to protect the safety of their citizens – in some cases using non-traditional thinking that is proving to be an effective complement to traditional approaches. The impressive results of some of these approaches are outlined in this guide.

However, even as new measures are implemented, the marijuana industry adapts its practices. For example, in British Columbia, legislation was introduced that gave communities direct access to electricity consumption records, helping them identify properties with unusually high power use – a key indicator of a grow operation. This important tool supported the widespread implementation of municipal safety inspections in communities across British Columbia. How did the marijuana growers adapt? Increasing numbers are resorting to stealing power, rather than paying for it. As well, more and more grow operations moved to areas that either did not have inspection programs, or did not have the municipal governance structure necessary to establish them.

The marijuana industry quickly adapts to obstacles, and continues to threaten the safety of British Columbia citizens. Give this, it is important that communities make use of the tools available to them to address this threat, and seek support from other levels of government to pursue innovative approaches.

This guide is intended to provide communities with promising practices and information to help them develop their own unique responses to the grow operation public safety threat. Accompanying this guide is a collection of policies and procedures associated with Electrical and Fire Safety Inspection initiatives currently in practice in the Lower Mainland⁷, intended to be used as reference materials. The guide is organized in a question/answer format to make it easier for the reader to find the required information.

Marijuana: a growth industry

- Estimated at \$6 billion per year in B.C.
- Eight-fold increase in plants seized across Canada from 1993 to 2007
- 90% of marijuana seizures in Canada occur in B.C., Ontario and Quebec
- Organized crime groups are believed to control 85% of B.C.'s marijuana trade
- Capacity of police to investigate organized crime groups has decreased to 23% in 2007/08 from 30% in 2003
- A home with a grow operation is 24 times more likely to catch fire than a typical home

⁶ *Marijuana Growing Operations in British Columbia Revisited 1997-2003*, by Dr. Darryl Plecas, Aili Malm, and Bryan Kinney (2005), The Centre for Criminal Justice Research at the University of the Fraser Valley.

⁷ Lower Mainland refers to the region in southwest B.C. encompassing communities in Metro Vancouver and the adjacent Fraser Valley.

Community Responses to Grow Operations

As implied in the Introduction, communities across Canada are experiencing the problems that accompany marijuana grow operations, including a variety of safety risks. In response, communities in three Canadian provinces – British Columbia, Alberta, and Ontario – have taken pioneering and decisive action to protect the safety of their citizens against these risks. This guide provides an accounting of the design, implementation, and outcomes of these actions, beginning with British Columbia.

What has British Columbia done in response to grow operations?

There were two significant approaches taken in British Columbia to respond to the proliferation of marijuana grow operations. The first was the introduction of the Nuisance (Controlled Substance) Bylaw, developed by the Union of British Columbia Municipalities in 2005. The second was the use of residential public safety inspections purposefully applied to the problem of marijuana grow operations.

Since its introduction, the Nuisance (Controlled Substance) Bylaw has been adopted by a number of municipalities, particularly within the Lower Mainland area of British Columbia. While individual communities have modified the bylaw to suit their particular needs, all controlled substance bylaws are intended to protect residents from the health and safety dangers associated with the production of marijuana and other controlled substances.

Residential public safety inspections to deal with the challenge of marijuana grow operations were first employed in the City of Surrey and the City of Abbotsford in 2005, and were subsequently adopted in eight other British Columbian communities. Again, the methods adopted varied from community to community.

What was the significance of these two approaches?

The importance of these two approaches was that they placed the problem of marijuana grow operations within the context of public safety, rather than considering this issue exclusively as a criminal justice matter.



Typical electrical concerns associated with grow operations.

What is the purpose of British Columbia's nuisance (controlled substance) bylaws?

Controlled substance bylaws enable communities to conduct inspections for electrical, fire, health, and other public safety reasons, and to ensure unsafe properties are remediated at the expense of the property owner. In some bylaws, property owners/landlords are required to inspect properties on a prescribed basis, as provided for in the *Residential Tenancy Act* (sec. 29). The bylaws address not only contraventions of City bylaws, but of the *British Columbia Building Code*, the *British Columbia Fire Code*, the *Health Act*, and the *Safety Standards Act*. Importantly, the only focus is public safety; the bylaws do not address the criminal element of producing controlled substances.

What are the typical prohibitions associated with nuisance (controlled substance) bylaws in British Columbia?

Prohibitions in British Columbia's bylaws usually include:

- **building alterations** to facilitate the production of a controlled substance;
- the **storage or use of dangerous goods** in quantities prohibited by the *Fire Code*;
- the **growth of mould or fungus** as a result of the production of a controlled substance; and
- **unsightly properties or the emission of odours, fumes, or particulates** that disturb others.

What are the procedures of public safety inspections?

Typically named either Public Safety Inspections or Electrical and Fire Safety Inspections (EFSI), the inspection programs generally involve the following procedures:

- Addresses of suspected grow operations are identified by:
 - the public through tips called in to police non-emergency or Crime Stopper phone lines, and/or
 - the analysis of electricity consumption records provided through provincial legislation by BC Hydro.
- The addresses are reviewed to ensure they are not part of an existing criminal investigation. A drive-by visit is conducted to look for grow operation indicators or other potential uses of excessive electrical power. An examination of city records on the property and police checks on vehicles at the site are also conducted.
- Notices are posted on the property and couriered to the owner to set up an inspection date.
- An inspection is conducted for the purpose of identifying any electrical, fire, health, and/or other safety risks.
- Depending on the practices of the particular public safety inspection team, as well as the condition of the building, the next steps could include: an electrical repair order being issued, electricity and/or water service being disconnected, or the occupancy permit being revoked.
- After the site is remediated and re-inspected by certified professionals at the expense of the property owner, services and/or occupancy permit are restored.

What is the composition of public safety inspection teams?

Inspection teams typically include a fire inspector, building inspector, electrical advisor, and police officer(s), supported by a clerk and/or program manager. Health authority representatives may also be present. Due to court challenges (discussed in greater detail below), communities have adjusted their operational guidelines to minimize police involvement in the inspections. Officers now typically do not enter the property with the team, but stay in the vicinity and remain in radio contact, ready to provide support and keep the peace, if necessary.

What has been the success of British Columbia’s public safety inspection teams?

Across the Lower Mainland of British Columbia, approximately 2,800 inspections took place between 2004 and the first part of 2009, with about 72% of inspections confirming the presence of a grow operation and rendering the property safe.⁸ Some programs were more successful in this area than others. For example, Langley found grow operations at 97% of its 236 inspections, Mission (79% of its 81 inspections), Surrey (76% of 1,370 inspections), Coquitlam (76% of 195 inspections), and Abbotsford (66% of 618 inspections). Port Coquitlam, Pitt Meadows and Richmond all discovered grow operations at about 42% of their inspections, which numbered 98, 47, and 158 respectively.

| City | Number of Inspections | Confirmed Presence of Grow Operation |
|----------------|-----------------------|--------------------------------------|
| Langley | 236 | 97% |
| Mission | 81 | 79% |
| Surrey | 1,370 | 76% |
| Coquitlam | 195 | 76% |
| Abbotsford | 618 | 66% |
| Port Coquitlam | 98 | 42% |
| Pitt Meadows | 47 | 42% |
| Richmond | 158 | 42% |

How effective were British Columbia’s public safety inspections in permanently closing down grow operations?

A 2007 study of Surrey’s program showed that, under the right circumstances, inspection programs could be very successful in preventing grow operations from re-establishing, regardless of whether they were addressed by communities or police.⁹ The research findings indicated that before Surrey introduced its 2006 Controlled Substances Property Bylaw, grow operations addressed through the inspection program re-established 13% of the time and those addressed by the RCMP re-established 4% of the time. After the introduction of the bylaw, which included the imposition of substantial financial penalties, the number of post-inspection re-establishments dropped to 0% and post-criminal re-establishments dropped to 1%.

Furthermore, to provide informed advice to local governments, the Vancouver law firm Bull, Housser & Tupper studied British Columbia’s controlled substance bylaws.¹⁰ They concluded that: “Generally, controlled substance property bylaws are regarded by local governments as being relatively successful in terms of reducing the risk of fire and unsafe properties in communities, with the added feature of a cost-recovery mechanism.” The approaches also created a “united front” against grow operations among neighbouring communities that adopt the bylaws.

⁸ Survey conducted by Surrey Fire Service Deputy Fire Chief Dan Barnscher, 2009.

⁹ *An Alternative Response Model to Marijuana Grow Operations: The Electrical Fire and Safety Investigation Initiative as a Case Study* (2007), Parvir Girn, School of Criminology and Justice, University of the Fraser Valley, B.C.

¹⁰ *Getting By with a Little Help from Their Friends: Grow Ops and Illegal Suites*, a presentation by Dan Bennett and James Goulden on June 12, 2009 at Bull, Housser & Tupper’s Local Government Seminar 2009: Hard Times in the City.

To better evaluate the success of its program, the City of Surrey commissioned a study by the Centre for Criminal Justice Research at the University of the Fraser Valley (UFV). Released in June 2009, the report *Police Statistics on Marijuana Drug Files in Surrey, the Lower Mainland, and the rest of British Columbia 2004-2008: A Comparative Analysis*¹¹ concluded that Surrey experienced a 69% reduction in marijuana production files from 2004 to 2008, while the Lower Mainland saw a 67% reduction and the rest of British Columbia had a 65% reduction during that time frame. When the public safety inspection cases were removed from the police data, Surrey's decline in production files from 2004 to 2008 was 81%.

The UFV report also indicated that the entire province experienced a 37% reduction in overall marijuana files, including production, possession, and trafficking files from 2004 to 2008. Interestingly, the greatest declines occurred from 2007 to 2008, the years in which six Lower Mainland communities followed the example of Surrey and Abbotsford and created their own public safety inspection programs. Most of these programs relied on electricity consumption data made available with the passing in 2006 of the *Safety Standards Amendment Act – Bill 25* – which will be discussed in greater detail below.

What were some of the other successes noted in the UFV report?

Some of the other successes noted in the UFV report:

- Surrey experienced a 83% decrease in marijuana trafficking files from 2004 to 2008, compared to a 66% reduction in the Lower Mainland and a 68% reduction for the rest of British Columbia.
- While all jurisdictions in British Columbia saw a decline in overall marijuana files from 2004 to 2008, Surrey experienced the largest decline, at 68%, compared to 12% for the rest of the Lower Mainland and 45% in the rest of the province.

While these results were good news for Surrey, they also indicated that its successful public safety inspection program may have displaced some of the problem to other Lower Mainland communities, only half of which were conducting inspections during any part of the 2004-2008 study period.

Successes in Surrey:*

- Introduction of controlled substance bylaw reduced the re-establishment of grow-operations addressed by safety inspections from 13% to 0%
- Marijuana production files declined 81% from 2004 to 2008
- Marijuana trafficking files declined 83% from 2004 to 2008
- Overall marijuana files declined 68% from 2004 to 2008

* As noted in the report described in footnote 11.

¹¹ *Police Statistics on Marijuana Drug Files in Surrey, the Lower Mainland, and the rest of British Columbia 2004-2008: A Comparative Analysis* (2009) Dr. Darryl Plecas, Dr. Irwin Cohen, Tara Haarhoff, & Amanda McCormick. University of the Fraser Valley.

Given the early adoption and successes in Surrey and Abbotsford, how did they develop their public safety inspection processes?

Independently of each other, Surrey and Abbotsford began pilot projects in 2005 to provide their communities with a method to quickly, efficiently, and legally address grow operation safety risks.

Surrey's three-month pilot emerged from a multi-agency task force that formed in late 2004 to address the public safety hazards from grow operations, which had been quantified for the first time in a report by Plecas et al. (2005).¹²

Spearheaded by Surrey, the task force included representatives from the City of Surrey, the Ministry of Community Aboriginal and Women's Services, BC Hydro, the Fire Chiefs' Association of BC, the Ministry of Solicitor General, the Office of the Fire Commissioner, the Ministry of Attorney General, RCMP "E" Division, and the British Columbia Safety Authority. Statistics from the pilot are listed at right.

Abbotsford's pilot stemmed from escalating public concerns about the crime, violence, and safety hazards that grow operations brought to the city's neighbourhoods. A city-led task force was established, including representatives from Council and staff, citizens, the Ministry of Children and Family Development, the British Columbia Safety Authority, the real estate industry, and federal Crown Counsel. Statistics from the three-month pilot project are listed above right.

Both pilots became standard procedure in their respective communities and a model for the development of similar inspection programs in Coquitlam, Langley Township, Pitt Meadows, Richmond, Port Coquitlam, and Mission.

What gives communities the authority to conduct public safety inspections?

During the City of Surrey's pilot Electrical and Fire Safety Inspections project in 2005, it was recognized that any initial success could not be sustained without legislative changes requiring BC Hydro¹³ to report unusual energy consumption directly to local authorities. Data about unusual electricity consumption was a key component of Surrey's pilot project, and has become an important tool for communities to identify potential grow operations. At the time of Surrey's pilot, the province's *Freedom of Information and Protection of Privacy Act* prohibited BC Hydro from providing communities with addresses of sites with unusual consumption. Surrey RCMP members were able to obtain the data

Surrey's pilot:

- 420 police tips processed
- 119 grow operations rendered safe
- power disconnected at 78 sites
- seven-day notices issued at 11 sites
- 49 children referred to appropriate agencies
- 30 sites referred to the RCMP and BC Hydro for theft of power

Abbotsford's pilot:

- 120 tips received
- 32 homes inspected
- 30 grow operations rendered safe
- Children found at 10 sites, referred to Ministry of Children and Family Development
- Electrical bypasses found at 10 sites.

¹² *Marihuana Growing Operations in British Columbia Revisited 1997-2003*, by Dr. Darryl Plecas, Aili Malm, and Bryan Kinney (2005), The Centre for Criminal Justice Research at the University of the Fraser Valley.

¹³ BC Hydro is the Crown corporation that provides electricity to British Columbians.

through Freedom of Information requests during the pilot, but this was not considered feasible in the long-term. British Columbia's provincial government recognized the need for the new legislation after a lobby effort spearheaded by the City of Surrey. This led to the introduction and passing of Bill 25 (the *Safety Standards Amendment Act*) in April 2006. This piece of legislation provided British Columbia communities with direct access to electricity consumption data.

Further, in January 2009, the British Columbia provincial government changed the Contaminated Sites Regulation under the *Environmental Management Act*. The changes included a new requirement for the cleanup of illegal drug production sites at the expense of the property owner. Based on this new regulation, the Ministry of Environment (Ministry) initiates the remediation process for decommissioned drug production sites after being notified by a city, the RCMP, or other agency. Communities can withhold the site's occupancy permit until it has received confirmation from the Ministry that the site has been remediated. Further, all properties involved in a Ministry land remediation process since 1988 are listed in an online site registry that is available to the public.¹⁴ This legislation provided British Columbia's communities with another tool to address grow operation safety threats, and provides interested parties – such as communities, realtors, and potential homebuyers – access to information about current and past sites remediated through this process.

An endorsement for public safety inspections also came during the *Arkininstall v. City of Surrey* case in 2008. In his findings, Justice Bill Smart noted that deterring and shutting down marijuana grow operations was a valid provincial response, and that the *Safety Standards Amendment Act* does not relate “in pith and substance to criminal law or criminal investigative procedure. Its dominant purpose is facilitating the identification and inspection of grow operations in the interests of public safety.” Justice Smart further noted: “Although I do not find that the dominant purpose of the amendments was exclusively electrical safety, I am, nevertheless, satisfied that public safety was. I consider any criminal enforcement aspects, such as the freeing up of police resources, to be ancillary and incidental to the public safety objective of the legislation.”

What are some of the legal challenges associated with public safety inspections?

As noted by Bull, Housser & Tupper,¹⁵ the controlled substance bylaws that enabled the safety inspections have been subject to constitutional and *Charter of Rights and Freedom* challenges, leaving some uncertainty regarding the scope of a local government's power to enact and enforce such bylaws.

Arkininstall v. City of Surrey

This 2008 case, under appeal at the time of this writing, challenged both whether the *Safety Standards Amendment Act* (which enables the inspections) is valid provincial legislation, and whether the safety inspections were contrary to the *Charter*. The court confirmed the validity of the legislation and accepted that there is a valid provincial and local concern about public safety. However, it held that inspection teams cannot insist on a police presence during inspections as a matter of policy, although it allowed for the option of police attendance in cases of known drug dealers.

¹⁴ Information can be obtained through http://www.env.gov.bc.ca/epd/remediation/site_info/index.htm.

¹⁵ Bennett and Goulden (2009).

Monaco v. Coquitlam (City)

In this 2009 case, the court required that the municipality demonstrate, on the balance of probabilities, real evidence of a grow operation before revoking a resident's occupancy permit when injunction applications are made. The decision could affect the conduct of inspections and the type and quality of evidence required to satisfy future challenges to inspections.

How can local governments overcome these legal challenges?

Based on the two aforementioned cases, Bull, Housser & Tupper recommended that when preparing controlled substance bylaws, communities should:

- Use regulatory language, be aware of provisions of the *Criminal Code*, and be detailed about the team's conduct. There is no need to refer to federal criminal jurisdiction;
- Focus on public safety objectives, such as electrical hazards, strengthening neighbourhoods, and improving community safety;
- Consider including a definition of controlled substances rather than referencing the federal *Controlled Drug and Substances Act*;
- Consider providing only 24 hours notice for inspections rather than 48 hours notice; and
- Include an internal reconsideration process¹⁶ for files, to provide a non-biased look at the file prior to posting or conducting an inspection.

What are some recommendations for conducting public safety inspections?

In terms of conducting public safety inspections, Bull, Housser & Tupper recommended that communities:

- Develop operational procedures for the team and adhere to the bylaw's policies and procedures;
- Provide training and materials on the signs of hazards in grow operations;
- Keep good records of safety hazards, including pictures and detailed field notes;
- Gather specific evidence in as much detail as possible;
- Whenever possible, avoid puncturing walls or otherwise doing damage to the property; and
- Have clear guidelines for when to take corrective steps, such as disconnecting power or revoking occupancy.

The *Arkinstall* case did not fully resolve the validity of requiring a police presence in a bylaw. Depending on the appeal outcome, possible solutions include obtaining an entry or administrative warrant under section 275 of B.C.'s *Community Charter*, or hiring private security personnel, although such personnel may also require a warrant. As mentioned above, many communities have addressed this issue by having police officers remain outside the property line but stay in the vicinity and within radio contact.

¹⁶ An internal reconsideration process generally refers to having an independent validation process to proceed with an inspection in cases where the strength of the evidence might be weak.



What has Ontario done in response to grow operations?

While British Columbia has been instrumental in shifting communities towards viewing marijuana grow operations as a public safety issue, Ontario has been instrumental in taking full advantage of existing legislation to address the problem of marijuana grow operations. One of the precipitating events for Ontario occurred in 2003, when a City of Niagara Falls firefighter was burned and injured after getting tangled in some ventilation tubing while responding to a grow operation fire. The injuries strengthened the resolve of the Niagara Falls Fire Service to take a zero-tolerance stance regarding violations of the *Ontario Fire Code* that had an immediate effect on life safety.¹⁷ Working with the Niagara Regional Police and regional prosecutor, the department started seeking prosecutions for *Ontario Fire Code* violations on the basis that violations were a public safety risk.

Following these developments, Niagara Falls started enforcing sections of the *Ontario Building Code* to ensure that buildings were remediated. After the execution of a warrant, a parallel and independent investigation would take place under the authority of the *Fire Protection and Prevention Act*. The following day, provisions of the *Building Code* would be used to shut off utilities, issue orders to make the building safe, and issue an order prohibiting occupancy to prevent the owner from selling or renting the building before making it safe. Notably, remedial costs typically cost between \$60,000 and \$100,000.

The City of Niagara Falls has also worked with the Office of the Fire Marshal and police to support Arson by Negligence charges under the *Criminal Code of Canada* with information about the safety risks caused by electrical bypasses and structural changes typical of grow operations.

With the support of the provincial government, Niagara Falls' approach is being applied by Toronto and a growing number of other communities across the province. At the time of this writing, approximately 20 Ontario communities were enforcing the *Fire Code*.

Has Ontario's approach been successful?

In pursuing prosecutions for *Ontario Fire Code* violations, Niagara Falls has been successful, at times, in obtaining more meaningful consequences than might be obtained through criminal prosecution. Jail time on first offences is common and fines of \$100,000 have been awarded. For example, in June 2009, a Niagara Falls man received a nine-month jail term for *Fire Code* violations that included creating fire and shock hazards by altering a fuel-fired appliance and electrical wires.

Further, Arson by Negligence convictions by police, achieved with the assistance of the Office of the Fire Marshal, have resulted in lengthy jail sentences for grow operation fires. In March 2008, for example, a man

In pursuing prosecutions for Ontario Fire Code violations, Niagara Falls has at times obtained more meaningful consequences than might be obtained through criminal prosecution.

¹⁷ Interview with Niagara Falls Fire Services Deputy Chief Jim Jessop, Chair of the Judicial Task Force of the Provincial Advisory Group on illegal drug activity, August 2009.

pled guilty in the City of Burlington to negligent arson for a fire resulting from a butane extraction lab, and was sentenced to two years less a day in jail and two years probation.

Moreover, Niagara Falls' efforts resulted in a substantial drop in grow operations. In 2005, the city dealt with 53 grow operations. In comparison, in 2008, it dealt with 14 grow operations – a 74% reduction over four years.

How has the Niagara Falls experience benefited the rest of Ontario?

A learning curve can be expected with any new initiative. The City of Niagara Falls broke new ground with provincial prosecutions, but lost its first cases while learning what kinds of evidence were needed to prove the essential elements of the charge. It did not take many cases, however, for the city to start securing unheard-of sentences and fines for *Fire Code* violations.

Ontario communities are now able to reap the benefits of Niagara Falls' experience through the provincial Community Safety Enhancements unit. The prosecutor who worked closely with Niagara Falls now works for the unit and travels to communities around Ontario to share promising practices.

What is the authority in Ontario to address the problem of grow operations?

In December 2005, Ontario passed Bill 128 (the *Law Enforcement and Forfeited Property Management Statute Law Amendment Act*). This Act amended several provincial statutes with the aim of protecting communities from the hazards posed by illegal marijuana grow operations. The Act was developed in consultation with police, firefighters, municipalities, electricity distributors, and representatives from the banking, insurance, and real estate sectors.

The Act amended several other pieces of legislation in order to:

- double the fines under the Building Code Act, 1992;
- double the fines under the *Fire Protection and Prevention Act*, 1997;
- mandate, under authority of the *Municipal Act*, 2001, that an inspection of the building be conducted when police notify the municipal clerk in writing that a building contained a marijuana grow operation;
- protect the province's electricity distribution system; and
- make it easier to recover the proceeds of criminal activity.

These changes supported the City of Niagara Falls' aggressive and successful approach to grow operations, and the provincial government's anti-drug work, including its Community Safety Enhancements Unit.¹⁸

¹⁸ The Community Safety Enhancements Unit (CSEU) teaches communities to enforce the *Ontario Fire Code* in the same manner as the City of Niagara Falls, with the aim of reducing the safety hazards associated with grow operations. According to the Office of the Fire Marshal, a grow operation catches fire every 15 days in Ontario, and communities that enforce the *Fire Code* tend to see a decrease in grow operations. The Ontario government, through its Guns and Gangs initiative, established and funded the CSEU in 2007. Through the CSEU, a Provincial Advisory Group was formed to develop strategies to respond to illicit drug activity. Five action-oriented task groups identified promising practices and made recommendations to the Provincial Advisory Group in the areas of commercial, legislative and judicial, research and analysis, first responder, and inspection and remediation. Planned initiatives include registering unsafe building notices on the title of properties, and requiring all utility companies to move to smart grid technology to better pinpoint theft of power.

What has Alberta done in response to grow operations?

Again, while British Columbia has been instrumental in shifting communities towards viewing marijuana grow operations as a public safety issue, and Ontario has been instrumental in taking full advantage of existing legislation to address the problem of marijuana grow operations, Alberta – and in particular the City of Calgary – is unique in treating residential marijuana grow operations as commercial enterprises.

Prior to treating grow operations as commercial enterprises, the City of Calgary’s Council, in considering the problem of drug production sites, agreed in 2009 to change Calgary’s Fire Operations Bylaw in two key areas: to give the Fire Chief new powers to address the remediation and removal of unsafe structures, and to designate a fire inspector responsible for investigating properties, laying charges under the *Alberta Fire Code*, and determining and overseeing remediation. The bylaw amendment related to the work of the STOP Grow Ops Calgary Coalition formed in 2004 by Calgary Alderman Diane Colley-Urquhart.¹⁹ The coalition brought together 44 key stakeholders from the commercial sector, public safety agencies, the legislative/judicial sector, and community and business representatives. Among the coalition’s initiatives was the creation of coordinated takedown teams that included the police as well as inspectors for hazardous materials, health, fire, and city building and regulation violations. The teams used police search warrants to enter buildings, ultimately taking down 500 grow operations from 2004 to the end of 2008. In some cases, health authorities placed Unfit for Human Habitation or Notice of Health Hazard orders on the properties. However, the city’s lack of a strong mechanism for remediating these sites left more than 100 abandoned, unremediated grow operations scattered throughout Calgary.

Employing the amended bylaw, Calgary’s new approach involves reclassifying grow operations as commercial enterprises. As Alberta’s *Municipal Government Act* makes no distinction between residential or commercial structures, a Fire Safety Codes Officer will make a determination on the designation of the structure as being either a residential or a commercial greenhouse. With the commercial designation, the *Alberta Fire Code* can be utilized to force the owner to bring the structure up to current safety standards. Failure to comply can lead to a charge and demolition with costs applied to the property taxes or to a lien on the mortgage.



Alberta is unique in treating residential marijuana grow operations as commercial enterprises.

¹⁹ Information for this section from the presentation *The Calgary STOP Marijuana Grow-op Coalition: Five Years of Progress*, by Chair Diane Colley-Urquhart on June 18, 2009, and from the Office of Alderman Diane Colley-Urquhart, August 2009.

Additionally, during the summer of 2009, STOP Grow Ops Calgary Coalition partnered with utility companies to investigate electricity theft. New methods and technologies are being considered and piloted to identify promising practices for theft detection. The STOP Grow Ops Calgary Coalition has targeted theft of power to help shift the response to grow operations from enforcement to prevention. Being able to detect electricity theft not only can result in faster and more cost-effective investigations, it would also act as a serious deterrent to grow operations and remove serious public safety hazards from neighbourhoods.

Furthermore, Alberta's Emergency Management Agency initiated a cross-ministry working group in the summer of 2009 to create a provincial response to grow operations. Driven by the province's Deputy Ministers' team, this initiative intends to study the province's marijuana grow operation problem and develop a made-in-Alberta solution. Focus areas include protection for buyers of former grow operations, such as putting that information on the title of the property.²⁰

What has been the success of the STOP Grow Ops Coalition in Alberta?

The STOP Grow Ops Coalition model has been employed by other communities, including Edmonton, and its work was honoured in Alberta's 2008 Municipal Excellence Awards. The STOP Grow Ops Calgary Coalition's achievements have included:

- Creating a coordinated, multi-agency response to address the dangers of grow operations;
- Being instrumental in the creation of the provincial Safer Communities and Neighbourhoods department;
- Successfully advocating for provincial proceeds-of-crime legislation;
- Ensuring the Real Estate Board's offer-to-purchase contracts disclose if the house was ever a grow operation;
- Listing all former grow operations on the City's database and red-flagging them within the City system;
- Listing all former grow operations on the Alberta Health Services (formerly Calgary Health Services) website;
- Developing training manuals for first responder personal protective equipment, and training more than 400 first responders (these practices have been adopted by Alberta, Ontario, and Quebec);
- Developing consistent and standardized remediation practices; and
- Sharing their strategy and progress with other Canadian jurisdictions.

What are some of the future plans for Alberta's STOP Grow Ops Coalition?

After achieving success with its initial plan, the STOP Grow Ops Coalition determined that one key to its continuing success and sustainability is the ability to evolve and move forward based on the needs of its partners and the community at large. The STOP Grow Ops Calgary Coalition has recognized that smaller, more targeted groups can be more effective at achieving end results. New partnerships are still being created through the coalition's work, but now are being engaged on task-specific issues, refining procedures, and developing promising practices intended to reform the way municipalities deal with illegal drug factories.

²⁰ Information from Director of Operations Ernie Polsom, Alberta Emergency Management Agency.

What are some of the common practices from British Columbia, Alberta, and Ontario?

The three provinces discussed above use different strategies and tactics to address grow operation safety hazards, but the approaches also share some common attributes that should be considered by communities when developing their own response programs.

1. The focus on harms

Viewing marijuana grow operations through the lens of public safety places them squarely within the purview of local governments. It is this philosophy in which the work in British Columbia, Alberta, and Ontario is rooted. These three provinces demonstrate the impressive results that can be achieved when a community decides to take a more aggressive approach to protecting public safety through the use of bylaws and legislation. Further, particularly with respect to city-led inspections, the focus on public safety is necessary to avoid potential legal challenges and overlap with the criminal law, which is federal territory. On this point, the courts have sided with communities in terms of their right to conduct inspections on the basis that their programs and efforts are focused on public safety.

2. The focus on remediation

Communities have quickly come to realize that it is not enough to simply close down or interrupt grow operations. The substantial damage created by these illegal operations requires that the buildings be remediated before they are re-occupied or sold. Communities have a vested interest in ensuring the overall quality of their housing stock. Allowing former grow operations to remain unaddressed creates an aesthetic and safety problem within neighbourhoods, and could lead to the general deterioration of an area or neighbourhood, and a decline in property values. In addition, homebuyers want assurances that they are moving into a safe home, neighbourhood, and community.

The STOP Grow Ops Calgary Coalition experienced directly what could happen when a focus was placed on take-downs. In effect, approximately 100 abandoned, unremediated buildings were left scattered throughout the city. Calgary revised its approach to provide the city with greater powers, to ensure that the sites were either remediated or demolished, and to ensure that the city recouped all of its costs.

Common practices used to address grow operation safety hazards in British Columbia, Alberta, and Ontario:

1. The focus on harms
2. The focus on remediation
3. The focus on owners and landlords
4. Education and awareness
5. Calls to action for the involvement of other levels of government and agencies

In British Columbia, communities embarking on safety inspection programs have included remediation provisions in their enabling bylaws. And, in Ontario, the City of Niagara Falls continues to use the *Building Code* to demolish buildings, as well as working with mortgage lenders to ensure that owners are held responsible.



3. The focus on owners and landlords

Greater responsibility is being placed on landlords and owners for the activities taking place on their properties. Communities are telling landlords that it is no longer acceptable for them to cash their rent cheque each month without ensuring that their properties are not being used in ways that threaten the safety and peace of the surrounding community.

Typical tactics include charging all costs associated with cleaning up a grow operation, including the city's costs, back to the owner. For example, in British Columbia, it is not uncommon for the controlled substance bylaws to call for a fee of \$5,000 to be paid to the city, in addition to any direct remediation costs. There is also a growing movement, both at the local and provincial level, to include a property's history as a grow operation on the property title, creating a permanent "fingerprint" that alerts future buyers. In some cases, this is being accomplished at the local level through bylaws; in other cases, such as in Alberta and Ontario, this approach is being considered at the provincial level.

4. Education and awareness

Communities taking steps to address grow operations commonly produce educational materials designed to inform property owners of the dangers of grow operations and how to spot them. In this way, communities can enlist the help of their residents in identifying and removing these safety hazards from their neighbourhoods. In effect, the city's team gets much larger.

Forums, websites, newspaper advertisements and articles, brochures, and presentations at City Council meetings are typical tools. Some examples include:

- In British Columbia, the City of Surrey regularly informs and warns property owners of its efforts through media coverage and city publications, such as its annual property tax newsletter;
- In Alberta, the City of Edmonton hosted a public presentation in May 2009 with a guest speaker from the City of Surrey to speak about British Columbia's alternative public safety approach;
- The City of Richmond, British Columbia has developed an online form to report suspected drug houses; and
- Communities throughout Ontario are being urged by the Office of the Fire Marshal to circulate news releases about *Fire Code* convictions.

Efforts are also being made to educate first responders. In Alberta, Edmonton Fire Rescue worked closely with the Alberta Emergency Management Agency to create a comprehensive video on grow operations for the fire service.

5. Calls to action for the involvement of other levels of government and agencies

While accepting their new role in relations to grow operations, communities have also realized their limitations in terms of funding, power, and reach. The successful efforts in British Columbia, Alberta and Ontario have all involved lobbying to engage other levels of government and agencies. Examples include, but are not limited to:

- In British Columbia, the City of Surrey joined with the City of Langley, the RCMP, and the University of the Fraser Valley in a presentation in April 2009 to the federal Standing Committee on Justice and Human Rights on four deterrents to grow operations;
- In Ontario, the City of Niagara Falls successfully lobbied the provincial government to use its successful approach as a model for communities around the province;
- In Alberta, the STOP Grow Ops Calgary Coalition was instrumental in the creation of the provincial Safer Communities and Neighbourhoods department and also successfully advocated for provincial proceeds-of-crime legislation;
- In British Columbia, the Union of BC Municipalities passed a number of resolutions calling for provincial government action on issues such as the regulation of hydroponics equipment used in grow operations, proceeds of crime legislation, and the development of a provincial grow operation strategy; and
- In British Columbia, the City of Surrey's lobby efforts helped to bring about the passing of the *Safety Standards Amendment Act* in 2006 that provided communities with direct access to electricity consumption records.

In many cases, the success of community efforts has relied on some degree of provincial government involvement.

What legislation exists in the rest of Canada to address the problem of grow operations?

Many of Canada's provinces have passed *Safer Communities and Neighbourhoods Acts*, which use civil law and give residents a way to confidentially register complaints about illegal activities in their neighbourhoods. These Acts target and shut down residential and commercial properties used for producing, selling, or using illegal drugs, as well as prostitution, solvent abuse, or the unlawful sale and consumption of alcohol. It also holds property owners accountable for what occurs on their property. Actions can include warning letters and court-issued orders that can close a property down for 90 days, causing the end of a tenancy. As well, individuals can be prohibited from engaging in certain undesirable activities.

Provinces/territories that have introduced *Safer Communities and Neighbourhoods Acts* include the Yukon, Alberta, Saskatchewan, Manitoba, Nova Scotia, Saskatchewan, Newfoundland and Labrador, and New Brunswick. *Safer Communities and Neighbourhoods Acts* have been introduced as private member's bills in Ontario and British Columbia, but was rejected by the Northwest Territories.

Safer Communities and Neighbourhoods Acts use civil law and give residents a way to confidentially register complaints about illegal activities in their neighbourhoods.

They have been introduced in many Canadian provinces. B.C. and Ontario remain exceptions at this time.

Manitoba's Act, introduced in 2002 and the first in Canada, is often cited as a success story. A government news release indicated that from 2002 to 2007, more than 200 drug, prostitution, and solvent abuse operations had been closed under the Act, and 1,386 complaints had been received.²¹

It should be noted that the Acts have come under fire by the BC Civil Liberties Association and other groups that say they threaten tenant rights and do not provide for a fair hearing.

To what extent is civil forfeiture legislation being used to respond to marijuana grow operations?

Civil forfeiture legislation is increasingly being used by provincial governments to remove the profit motive from marijuana grow operations. As with other illegal activities, this kind of legislation allows provinces to apply to the courts for orders to restrain or forfeit assets acquired through, or used to engage in, grow operations. These assets can include property, vehicles, jewelry, electronics, and money. Civil forfeiture is completely separate from criminal proceeds-of-crime provisions in the *Criminal Code* and does not impose any criminal penalty, fine or other punishment. Since Ontario introduced Canada's first civil forfeiture legislation in 2002, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, and Nova Scotia have passed similar legislation.

In August 2008, a report by British Columbia's Ministry of Public Safety and Solicitor General indicated that, in its first two years, the *Civil Forfeiture Act* saw almost \$4.5 million forfeited through 35 civil actions, and



Civil Forfeiture in B.C.:*

- Almost \$4.5 million forfeited through 35 civil actions
- More than \$1.1 million paid in crime prevention grants and victim compensation
- More than 90% of 166 referrals related to illegal drugs and money laundering

* As noted in the report described in footnote 22.

²¹ 200 Prostitutes, Sniff Operations, and Drug Dens Shut Down Under Safer Communities Act, released by the Manitoba Attorney General's office on January 25, 2007.

more than \$1.1 million paid out in crime prevention grants and victim compensation.²² More than 90% of the 166 referrals received connected to unlawful activity related to illegal drugs and money laundering.

Additionally, a Supreme Court of Canada decision in 2009 might serve to deter potential challenges to civil forfeiture acts across the country. In April 2009, the Supreme Court of Canada backed Ontario's *Civil Remedies Act* against a constitutional challenge in *Chatterjee v. Ontario*. The case, related to the 2003 seizure of \$29,000 and equipment commonly used in grow operations, was dismissed by the Ontario Superior Court of Justice in 2005 and the Ontario Court of Appeal in 2007. In delivering the Supreme Court's 7-0 ruling, Justice Ian Binnie wrote that the intent of the *Civil Remedies Act* to compensate its victims falls clearly within provincial jurisdiction.²³ "It would be out of step with modern realities to conclude that a province must shoulder the costs to the community of criminal behaviour, but cannot use deterrence to suppress it."

Why is additional provincial government involvement critical?

Without support from provincial governments, not only will the province leave open the door for a disproportionate displacement of grow operations to communities that are not able to fully implement effective initiatives, but the benefits of local efforts are destined to remain limited and fragmented. Only provincial governments are in the position to provide the necessary resources and overarching coordination needed to ensure that promising practices are applied on a larger scale. At times, provincial legislation is necessary to facilitate creative approaches developed at the local level. Further, while communities have helped to ensure the safety of their residents, public safety is also clearly a provincial mandate.

In British Columbia, in particular, the efforts have remained mainly grassroots because of a lack of provincial involvement in this issue. Significant gains can be made if there is willingness at the provincial level to support and promote innovative, non-traditional approaches. For example, the Ontario government quickly grasped the value of the City of Niagara Falls' efforts and is working to replicate the city's success across the province. Yet, British Columbia, the province with Canada's largest proportion of grow operations, has yet to support alternative approaches in a meaningful, long-term, and comprehensive way.

²² *Civil Forfeiture Office: A Two-Year Status Report* (2008). B.C.'s Ministry of Public Safety and Solicitor General.

²³ *Supreme Court rules against Thornhill man*. Joe Fantauzzi on April 23, 2009 in the *Georgina Advocate*.

What are some of the efforts by corporations and other organizations to respond to marijuana grow operations?

The work of various other agencies and organizations has also supported community-based efforts to address grow operation safety hazards.

1. Utilities

Aside from their energy conservation benefits, smart meters and grids have advanced surveillance capabilities that can pinpoint electricity thefts common by marijuana grow operations. Smart meters (also referred to as Advanced Metering Infrastructure or AMI) identify consumption in greater detail than conventional meters and communicate that information to the utility via a network. The 12-hour growing cycle for marijuana can be easily identified using this new technology.

Ontario is emerging as Canada's smart-metering leader having passed legislation in 2005 to make it mandatory for all of the province's electricity suppliers to install smart meters on every home by 2010. By July 2009, smart meters were in place in about two million homes and small businesses in Ontario; 2.7 million are still to be installed.²⁴ British Columbia passed its own smart-metering legislation in 2008 that requires the installation of smart meters across British Columbia by the end of 2012. To that end, BC Hydro is in the midst of replacing 1.8 million meters around the province with new digital meters. The project includes the installation of specialized devices that measure electricity to an area and reconciling that data with actual consumer consumption. Alberta has included smart metering in its energy strategy, but there is no legislative requirement in place for the use of smart meters for residential and farm properties. However, individual utility companies are moving in that direction. On its website, FortisAlberta states that it expects to have installed automatic metering infrastructure technology to all of its 400,000-plus customers by the end of 2010. More broadly, in Canada, the federal government has set up a \$191-million fund to spur development of smart grid projects.

In the summer of 2009, Calgary utility companies partnered with the STOP Grow Ops Calgary Coalition to investigate the use of methods and technology, such as smart meters, to detect the magnitude of Calgary's grow operation problem; to assess the viability of using smart meters, along with transformer heat assessments, to identify electricity theft in grow operations; and to change the focus of grow operation investigations from enforcement to prevention. City-wide implementation of this technology will be considered based on the pilot project results.

After achieving success in identifying grow operations via their electricity consumption records, the City of Surrey, British Columbia had hoped to launch a study with the University of the Fraser Valley that would match natural gas consumption records with known grow operations. However, Terasen – a British Columbia natural gas provider – was unable to provide individual gas consumption data due to the *Freedom of Information and Privacy Act*, the same legislation that initially prevented communities from accessing data directly from BC Hydro.

²⁴ *Grid gets smart*, Vito Pilioci. *Ottawa Citizen*, July 28, 2009.

2. Real estate associations

Recognizing the effect that marijuana grow operations have on their customers and the communities in which they work, realtors across the country have taken a variety of proactive measures. Since 2004, the British Columbia Real Estate Association's Property Disclosure Statement, used in residential purchases, has required sellers to disclose if their property was ever used as a marijuana grow operation or to manufacture illegal drugs.

Also, in British Columbia, members of the Fraser Valley Real Estate Board, the Chilliwack and District Real Estate Board, and the Real Estate Board of Greater Vancouver have initiated a Realty Watch program that teaches realtors to spot specific types of activity

associated to grow operations and to report these activities to the police. The Fraser Valley Real Estate Board also commissioned a discussion paper on the effects of illegal drug operations on housing in September 2008. The paper recommended the creation of a task force of stakeholders to explore the establishment of a comprehensive reporting process to inform the public of critical information related to grow operation properties, and the establishment of a consistent and reliable remediation process for these properties.

In Ontario, the Ontario Real Estate Association amended the Ontario Seller Property Information Statement in 2006 to ask sellers if their property had been used for the growth and manufacture of illegal substances. And, in Saskatchewan, the Property Condition Disclosure Statement that can be attached to Offer to Purchase documents includes questions about investigations, complaints, warnings, or applications of the Property under the *Safer Communities and Neighbourhoods Act*, which targets properties used for illegal activities.

Other efforts by Canada's realtors include distributing information brochures to customers, organizing forums, lobbying government for action, and educating agents about grow operations. Quebec's real estate association, Association Des Courtiers Et Agents Immobiliers Du Quebec, has held a conference that taught agents about the dangers of grow operations, how to detect grow operations, and how to avoid becoming involved in the sale of a former grow operation, including ensuring a Declaration of the Seller form is filled out.

3. The insurance industry

Increases in insurance claims for former grow operations have forced Canada's insurance industry to make policy adjustments, but the changes have varied. Some insurers are including wording to specifically exclude grow operations or to deny coverage for all criminal acts, including fire. Allianz Canada was reported to be using



A growing trend across Canada is to require property sellers to disclose if their property has ever been used to manufacture or grow illegal drugs.

a voiding provision at the contract level, while Co-operators, Wawanesa, and Optimum employ underwriting and require more proactive efforts by landlords, such as regular inspections. While the response from the insurance industry has varied, the net result is that landlords who try to make insurance claims for grow operation damages may find themselves at a loss.²⁵

The education of clients is another strategy being used. For example, Co-operators developed a brochure specifically for owners of rental properties about grow operations. The Insurance Bureau of Canada also distributes a brochure for landlords explaining how they can prevent their property from being used for a grow operation.

4. Fire services

Often, it is those on the front lines who have the clearest view of a problem and make the best whistle-blowers. In British Columbia, it was the Fire Chiefs' Association of British Columbia that initially urged the provincial government to take action on the dangers of grow operations in its 2004 report entitled *On an Urgent Matter of Public Safety*. The report brought a much needed public safety perspective to a problem that had previously only been viewed as a criminal justice issue,

British Columbia's public-safety approach to grow operations was initiated by a report from the Fire Chiefs' Association of British Columbia.

and led to the establishment of a multi-agency task force to address the problem. The resulting safety inspection demonstration project in the City of Surrey, along with a similar pilot in the City of Abbotsford, have served as a model that has been embraced by the fire service in the Lower Mainland of British Columbia.

Evidence of the value of grassroots action was also seen in Ontario, where the Niagara Falls Fire Service's hard-hitting approach to protecting public safety has become a model for the entire province.

²⁵ *This Bud's for you: Marijuana Grow Operations and other British Columbia Growth Industries* (2004) written for the Risk Management Council of Canada by Neil Carfra, Carfra & Lawton Lawyers.

What are some of the promising next steps or future initiatives?

Successes have been achieved by targeted efforts initiated by communities in British Columbia and across Canada. But, just as the marijuana industry adapts and changes when faced with obstacles, so too must the approach taken to defend our communities against them. The landscape is constantly changing, and government action at all levels is required to address this endemic, complex and evolving problem.

In response to the efforts described in this guide, marijuana growers have been hard at work finding new ways to avoid detection through means such as stealing electricity, generating their own power, and moving to areas with less capacity to identify and stop grow operations. The required response is to expand detection efforts to make it more difficult for these criminals to hide. The following initiatives focus on detection and, if implemented, are expected to have a significant impact on the marijuana industry and the safety of Canadian citizens. However, if no action is taken, resurgence in Canada's marijuana trade is inevitable and any gains achieved will be lost.

Promising Next Steps:

1. Regulation of hydroponic shops
2. Regulation of medical marijuana grow operations
3. Detection/surveillance technology
4. Tax audits of illegal drug production income

1. The regulation of hydroponic shops

Currently, there is no regulation or inspection requirement for sales of hydroponic equipment for residential settings, even though this high-wattage equipment, if improperly installed, could pose a safety risk, even for legal indoor gardening.²⁶ Given the prevalence of hydroponics used for marijuana production, any reduction or restriction to hydroponic grow operations would have a significant effect on the overall marijuana trade. Regulation of hydroponics equipment sales may cause some inconvenience to vendors and legitimate residential users, but these are far outweighed by the public safety benefits and the potential to disrupt a key income source for organized crime. The regulation of hydroponics equipment sales was among the recommendations of the National Coordinating Committee Working Group on Marijuana Grow Operations.²⁷

2. The regulation of medical marijuana grow operations

Canadian fire departments have found that growers licensed under Health Canada's Marijuana Medical Access Regulations do not adhere to zoning, fire, and safety regulations. The MMAR regulations themselves indicate that they do not "supersede other legislation, including municipal bylaws. Individuals licensed under the MMAR

²⁶ Based on comments by electrical engineer Richard van Leeuwen at a May 2, 2008 Consultation Workshop to Eliminate Use of Hydroponic Equipment in Marijuana Grow Operations.

²⁷ *NCC Working Group on Marijuana Grow Operations, Report and Recommendations to Ministers* (2003).

are required to observe all other laws, including bylaws such as zoning, fire, and safety regulations”. Still, “it is not the mandate of Health Canada to verify the safety standard of each production site”.²⁸ As an example of this contradiction, when Ontario’s Niagara Falls Fire Service inspected a residential MMAR grow operation on June 20, 2008, it discovered numerous violations of the provincial fire code, building code and electrical safety code. A family with two young children lived in the house, which contained the grow operation in its third storey. This was the second such site inspected by the department within a year.

In British Columbia, the City of Surrey’s Electrical Fire Safety Team inspected nine residential MMAR grow operations between 2006 and early 2009. Violations of municipal regulations were found at all nine sites, as well as numerous violations to the provincial electrical code, building code, and fire code. Of these nine sites, five required immediate electrical remediation, and there was also evidence of improper chemical storage, mould and excess moisture, electrical violations, fire hazards, and structural changes that would help spread flames and heat in a fire.

As of July 4, 2008, 2,017 Canadians had MMAR licenses to grow medical marijuana, an increase from 586 in July 2005. However, as the numbers of licenced operations steadily rises, there still remains no mechanism to inform communities of their existence. The public safety concerns of communities that host these MMAR operations could be addressed by Health Canada requiring electrical, fire, and building inspections as part of the MMAR license approval process, and by Health Canada informing local governments of MMAR licenses issued in their communities to allow the communities to ensure that the sites comply with provincial and local regulations.

3. Detection/surveillance technology

In all fields, scientific innovations can help find better ways to do things. Certainly, a technological advantage would benefit Canadian communities struggling to protect their residents from safety hazards associated with the quickly adapting and evolving marijuana industry. However, funding for research and development is not readily available. As part of its ongoing efforts to eliminate marijuana grow operations, the City of Surrey has self-funded research into an electromagnetic radiation analyzer that can detect, from a moving vehicle, the high-wattage hydroponics equipment used in grow operations. The equipment shows promise, but there are limits to a city’s capacity or civic taxpayers’ willingness to fund scientific research of this type. Another important research project should examine the use of airborne long wave hyperspectral imagery to detect clandestine drug labs. Hyperspectral imaging sensors have wide-area surveillance and detection capabilities that offer investigative



²⁸ Communication from Ronald Denault, Manager Marihuana Medical Access Division Drug Strategy and Controlled Substances Programme, dated February 2, 2008.

agencies and first responders the ability to detect chemical production threats before they can become a public menace. However, an application to a grant program for this project was rejected.²⁹ Funding for these and other potential scientific advancements could enable the authorities to out-manoeuvre the marijuana growers and keep neighbourhoods safe from grow operation safety hazards.

4. Tax audits of illegal drug production income

Organized crime groups gain considerable income from growing marijuana and producing other drugs, but this income is neither declared nor taxed. However, proceeds of crime in Canada are taxable and the Canada Revenue Agency (CRA) operates a Special Enforcement Program (SEP) that conducts audits or undertakes other civil enforcement actions on individuals suspected of earning income from illegal activities. Through the SEP, the CRA conducted more than 1,100 audits in 2007-08 of taxpayers suspected of earning income illegally. These audits resulted in the identification of \$82.2 million in additional taxes owing. The main benefit to communities from such audits is deterrence. Economic sanctions can be successful in deterring grow operations, as evidenced in the City of Surrey following the introduction of Electrical and Fire Safety Inspections and a cost-recovery Controlled Substances Property Bylaw. Prior to the bylaw, 4% of police files and 13% of EFSI grow operations responded to later re-established; however, after the bylaw was introduced, the number dropped to 1% of police files and 0% of EFSI files.

What is required is greater intelligence-sharing between police, communities, and the CRA to ensure that those profiting from growing marijuana or producing drugs pay taxes on those profits. This concept was also recommended by the National Coordinating Committee Working Group on Marijuana Grow Operations.³⁰ To achieve this, legislation should be introduced that directs the police and communities to inform the CRA of all individuals prosecuted for or suspected of illegally growing or producing drugs, and directs the CRA to review the information and take appropriate action.

²⁹ A 2008-2009 CRTI research proposal was made by a cross-Canada project team including representatives from Defence Research & Development Canada, Canadian Police Research Centre, Telops Inc., McGill University, University of Victoria, RCMP Clandestine Laboratory Investigation Team, Abbotsford Police Department, Quebec Ministry of Public Security, Sûreté du Québec, and the City of Surrey.

³⁰ NCC Working Group on Marijuana Grow Operations (2003).



Conclusion

Given the information presented in this guide, what general conclusions can be reached?

Communities can act effectively on their responsibility to protect their citizens from the public safety threats associated with growing marijuana. The problem and hazards are well documented and the focus on public safety is securely within the jurisdiction of communities. A variety of tools and templates are now at the disposal of local government, including this guide. Further, there is growing evidence that the success of the initiatives in Surrey and other communities are displacing the problem to areas that offer less resistance to grow operations. By working together, communities can present a united front to the marijuana industry that leaves no place for growers. In contrast, by doing nothing, communities put the safety of their citizens at risk. Still, the willingness of communities to protect the safety of their neighbourhoods does not relieve other levels of government from their responsibilities. The marijuana industry's ability to adapt to obstacles requires a similarly evolving response that comes from all levels of government.

Clearly, there is a place for a criminal justice approach in responding to grow operations. However, to the extent that communities are primarily concerned with public safety, alternative methods and approaches must be explored and pursued. For communities, local governments must take full advantage of their bylaws, provincial legislation, and other mechanisms outlined in this guide. For provincial and federal governments, this means providing legislation, regulation, and funding to support communities in their efforts to safeguard their citizens.

