

STREET LAW SMARTS #20

MARIJUANA

Possession of marijuana

Possession any amount of marijuana is a criminal offence under the *Controlled Drugs and Substances Act*. You don't have to own the marijuana to be charged, you just need to have it in your possession. This includes dried marijuana, seeds, hash and hash oil. It is legal to possess hemp.

The Crown prosecutor must prove two things beyond a reasonable doubt to convict you of marijuana possession:

- (1) you were in control of the marijuana, which means you had the marijuana with you or you placed the marijuana in a location you control (e.g. your car, bag, bedroom etc.); and
- (2) you knew the marijuana was there.

Having any amount of marijuana is illegal, but the more you have increases the likelihood of having a more serious penalty if you are found guilty, and raises your likelihood of being charged with trafficking.

What the police will do

Although they do not always charge you for smoking or having marijuana, the police can charge you for possession of marijuana no matter how small the amount (for example: they can charge you even if you just have a roach or a seed).

Trafficking or possessing marijuana for the purpose of trafficking

Trafficking marijuana, or possessing marijuana for the purpose of trafficking, is a more serious criminal offence than possessing marijuana for personal use. Penalties for trafficking marijuana can be much higher, all the way up to life imprisonment.

Trafficking marijuana means to sell it, distribute it, or to make it available to others. Money does not have to be exchanged for you to be found guilty of trafficking marijuana. You may be charged with trafficking marijuana if the police catch you selling or distributing marijuana to other people.

You may be charged with possessing marijuana for the purpose of trafficking if you are found with a large amount of marijuana. For example, if you consume a few grams of marijuana per day but are found with 10 pounds of marijuana, it will be difficult for you to prove that you were intending to use all 10 pounds on your own. If you are carrying little baggies that are typically used to distribute marijuana, or if you are carrying a scale

used to weigh marijuana, you may also be charged with possessing marijuana for the purpose of trafficking.

Recent changes to the *Controlled Drugs and Substances Act* have raised mandatory minimum sentences for trafficking and possession for the purpose of trafficking. If you are found guilty of trafficking or possessing for the purpose of trafficking more than 3kg of marijuana and certain aggravating circumstances exist (e.g. it is your second offence or you committed the offence near a school or with a young person under age 18), then you may face a minimum of one or two years jail time.

Getting arrested?

If arrested, you should immediately ask to speak to a lawyer or duty counsel. You should not make any statement before you have had the opportunity to speak with a lawyer. For more information, see:

Street Law Smarts #12: Stops and searches by police

Street Law Smarts #22: Appearing in criminal court

Street Law Smarts #1: Where to get legal help

Medical marijuana

There is a law that allows you to possess marijuana for medical purposes. But this law only applies if you get an exemption from the government, which is like a licence to use pot for medical reasons. Exemptions are very hard to get, and you must get one before you buy the marijuana. You cannot just tell the police that you use marijuana because you are ill or because you have a letter from your doctor.

To get an exemption, you must submit an application to the Federal Government's Department of Health. You can find information about the application process on their website, <http://www.hc-sc.gc.ca/>

As part of your application, you have to get a doctor to fill out a form saying that you need marijuana for medical reasons. Many doctors are unwilling to sign such forms because they don't believe there is sufficient scientific research about the benefits and dangers of marijuana. Exemptions are usually only given to people suffering from serious medical problems.