
A GUIDE TO THE LAW IN ALBERTA REGARDING

POSSESSION OF CONTROLLED DRUGS AND SUBSTANCES

version: 2007

GENERAL

All information is provided for general knowledge purposes only and is not meant as a replacement for professional legal advice. If you have a personal legal question that requires legal advice, please consult a lawyer.

COPYRIGHT

Copyright 2007, Student Legal Services of Edmonton. All rights reserved. Copying any material, in whole or in part, is prohibited unless prior consent has been obtained. Some material may be subject to copyright from an outside source and thus there may be different restrictions on the reproduction of this material.

LIMITATION OF LIABILITY

Student Legal Services of Edmonton is not liable for any loss or damage caused by an individual's reliance on information or material obtained from Student Legal Services of Edmonton. By accessing the information, individual's agree that any usage is at their own risk.

INFORMATIONS AND OPINIONS

In some instances, information obtained by Student Legal Services of Edmonton may have been provided by outside sources. Even with the high standards set by Student Legal Services of Edmonton, we accept no responsibility for the accuracy and reliability of the material. Opinions and Informations provided by third parties does not represent that of Student Legal Services of Edmonton.

**POSSESSION OF CONTROLLED DRUGS AND
SUBSTANCES**

INTRODUCTION..... 2

CONTROLLED DRUGS AND SUBSTANCES ACT. 2

POSSESSION. 3

GETTING ARRESTED..... 3

 With a Warrant. 3

 Without a Warrant..... 4

ARE THERE DEFENCES AVAILABLE?. 6

WHAT SENTENCE CAN I GET FOR POSSESSION?
..... 6

REFERRAL NUMBERS..... 8

INTRODUCTION

The purpose of this pamphlet is to provide a basic guide to the law surrounding possession of controlled drugs and substances. It should not be used as a substitute for obtaining legal advice if you are charged with an offence. It is particularly important if you are charged with offences such as trafficking, possession for the purpose of trafficking, cultivating (or “producing”) or double doctoring, that you consult legal counsel. Possession of controlled drugs and substances is less serious. However, it is still a criminal offence and has significant consequences. One of the most serious consequences apart from penalties that a court can impose is prohibiting your entry into the United States; the American Government is quite strict in their general policy not to admit "excludable aliens", which includes persons with drug offences, into the country.

CONTROLLED DRUGS AND SUBSTANCES ACT

There are five basic categories of drugs that are controlled by the Controlled Drugs and Substances Act. These categories are all listed in schedules attached to the Act. Some drugs such as those listed in schedules 4 and 5, which include substances such as steroids and barbituates, can be possessed but must be obtained with a prescription, and are illegal to import, export or traffic, or to possess for the purpose of trafficking.

Schedules 1, 2, and 3 contain drugs which are illegal to possess. There are literally hundreds of drugs in these schedules.

The first schedule includes drugs such as heroin, morphine, cocaine, codeine and many other similar substances.

The second schedule contains cannabis (marijuana) products.

A GUIDE TO THE LAW IN ALBERTA REGARDING POSSESSION OF CONTROLLED DRUGS AND SUBSTANCES

The third schedule contains drugs like amphetamines, LSD, psilocybin and methamphetamines.

POSSESSION

It is an offence to be in possession of any controlled substance listed in schedules 1, 2, or 3. If in doubt about whether or not a particular substance is controlled and legal or illegal one should get legal advice or look specifically at the schedules in the Controlled Drugs and Substances Act. This Act should be available at any library, online, and to any criminal lawyer.

Generally speaking, if the substance appears to be a drug which has not been specifically prescribed to the person who has it in their possession or which is not sold over the counter, chances are it is controlled and therefore illegal to possess.

"Possession" has a particular meaning in law. It does not mean to "own". It is also not limited to one person. That is, more than one person can be in possession of the same substance. Generally speaking, to be in possession means to have something under one's control, to have knowledge of it and to consent to being in control of the substance. Simply not knowing that the substance is illegal, is not a defence. This is based on the principle that ignorance of the law is no excuse.

GETTING ARRESTED

A person can be arrested in two ways: with a warrant or without a warrant.

1. With a Warrant

A warrant is a court order to arrest a person based on information the police have that he has committed, or is in the process of committing, a crime. The officer must show the person being arrested the warrant either at the time she arrests you or within a reasonable time after she arrests you.

A GUIDE TO THE LAW IN ALBERTA REGARDING POSSESSION OF CONTROLLED DRUGS AND SUBSTANCES

2. Without a Warrant

An arrest can be made without a warrant if:

- a. a person is found in the act of committing a criminal offence;
- b. the officer has reasonable and probable grounds to believe that he has committed an indictable offence; or
- c. the officer has reasonable and probable grounds to believe that he is about to commit an indictable offence.

The law under which the person is charged will state whether the offence is indictable or a summary conviction offence. The main difference between the two is that indictable offences carry more serious penalties than do summary conviction offences.

Until a person has been arrested she is (generally) not under any obligation to cooperate with the police. However, once she has been arrested she must submit peacefully (even if she knows or believes she is innocent). If she does not submit peacefully she may be charged with resisting arrest, obstruction of justice, obstructing a peace officer, or assaulting a peace officer.

When a person has been arrested the officer **MUST** give her reasons for the arrest and immediately inform her of her right to contact legal counsel (a lawyer) without delay. The officer **MUST** also inform her of all available options including 1-800 numbers for Lawyer Referral Service and the Legal Aid Society, if they are available in the jurisdiction (the area) she has been arrested in. The officer must also give the person an opportunity to exercise her right to contact a lawyer as soon as is reasonable to do so.

A person may remain silent when stopped and questioned by the police, but he may have a legal obligation to provide the officer with his correct legal name. It may be in a person's best interests to provide his correct legal name, otherwise he may be detained. Once a person has been lawfully arrested the officer has a right to search him, his belongings, and the area around him, for evidence

A GUIDE TO THE LAW IN ALBERTA REGARDING POSSESSION OF CONTROLLED DRUGS AND SUBSTANCES

of the alleged offence or a weapon. If a person has not been arrested, for example if he is pulled over by the police for a roadside check stop, the officer can only search the area that is in his plain view. The officer cannot enter a vehicle to search it. She may use a flashlight to look into the vehicle under these circumstances. Also, a police officer can search a person, even before he is arrested if he gives express consent for them to do so, provided the consent he gives is an informed consent. This means that he must be aware that he has the right to refuse the search. A person cannot be forced or pressured into consenting to be searched. However, a person should not physically resist a search.

Once you have been arrested the officer will make a decision about whether to release you on an APPEARANCE NOTICE or take you to the police station. In most minor cases you will be released on an appearance notice. The notice will state that you are suspected of committing the offence listed and it will order you to appear on at least two separate occasions. The first of these appearances will probably be at a local police station to have your finger prints and photograph taken. The second date is likely to order you to make an appearance at the local courthouse to enter a plea of either guilty or not guilty to the charge(s) against you.

It is VERY IMPORTANT that you attend both of these places at the dates and times listed. If you don't you will be charged with another offence for FAILING TO APPEAR and a WARRANT FOR YOUR ARREST will also be issued.

The police also have the option of taking you to the police station where you may be kept in jail. This may be done if they believe it is necessary to preserve evidence of the offence or properly identify you, or that detaining you is necessary to protect the public (that is to prevent the commission of further offences), or if they believe it is necessary to ensure you will attend your court dates. You will have the right to appear before a Justice of the

A GUIDE TO THE LAW IN ALBERTA REGARDING POSSESSION OF CONTROLLED DRUGS AND SUBSTANCES

peace or a Judge within 24 hours of your initial arrest. This appearance is called a BAIL HEARING (or an INTERIM RELEASE or SHOW CAUSE HEARING). This is where the Prosecutor may attempt to convince the Judge or Justice that you should not be released prior to your trial. After the Justice or Judge has heard from both sides they will decide whether or not to release you, and if so, what conditions should apply.

ARE THERE DEFENCES AVAILABLE?

If you are charged with possession of a controlled substance, you should get legal advice. A person trained in criminal law can advise you whether or not there is a defence, whether proper procedures were followed by the police and what effect improper procedures might have on the charge. If the search was illegal, this could result in the evidence being excluded. The Crown must also prove that the substance was in fact the controlled substance they are alleging. Often times, this is done by a certificate of analysis for the controlled substance which must be served upon you before trial.

WHAT SENTENCE CAN I GET FOR POSSESSION?

The potential or the probable sentence for possession depends upon several things:

1. The type (or schedule) of the controlled substance;
2. The quantity;
3. Whether the Crown proceeds by way of summary conviction or by indictment.

In addition, the general circumstances surrounding the offence and the personal circumstances of the person being sentenced are considered by a sentencing judge. If a person has a prior criminal record, especially a drug record, the sentence will be more harsh than if the person has no previous involvement with

**A GUIDE TO THE LAW IN ALBERTA REGARDING
POSSESSION OF CONTROLLED DRUGS AND SUBSTANCES**

the law. The maximum sentences which can be imposed for possession are as follows:

1. Marijuana (schedule 2) - up to \$1,000.00 and six months in jail if the amount is less than 30 grams (or one (1) gram of hash);
2. If the amount of marijuana is more than 30 grams (or more than one (1) gram of hash) the maximum penalty is five (5) years less a day in prison, if the crown proceeds by indictment. Maximums are less if the crown proceeds by summary conviction.
3. In the case of schedule one (1) drugs (such as heroin, cocaine or morphine) - the maximum penalty if the crown proceeds by indictment is seven (7) years in jail. If the crown proceeds by summary conviction, the maximum penalty is less.
4. For schedule three (3) drugs - the maximum penalty by indictment is three (3) years and less for summary conviction.

Generally speaking possession of marijuana in small amounts will result in a fine. If there are prior related convictions, jail is a possibility. If the quantity is substantial, the chances of jail increase.

For other types of drugs or controlled substances, especially those in schedule (1), a small amount may be dealt with by a substantial fine. However, there is a risk of jail for even a small amount of cocaine or heroin. Again the chances of jail increase and the amount of any fine increases if there are prior related convictions.

**A GUIDE TO THE LAW IN ALBERTA REGARDING
POSSESSION OF CONTROLLED DRUGS AND SUBSTANCES**

REFERRAL NUMBERS

Lawyer Referral Services/Dial-A-Law. 1-800-661-1095
*Lawyer Referral will provide you with the names of three lawyers who practice in the area of law which you need help in. Once you select a lawyer a half hour interview with that lawyer is free.
Dial-A-Law provides free pre-recorded information which may be of assistance to you without going any further.*

Legal Aid Society of Alberta. 427-7575

Student Legal Services of Edmonton. 492-2226
Corona Criminal Law Project. 425-3356
If you cannot afford a lawyer, and Legal Aid will not accept you and the Crown has proceeded in your case by summary conviction then you may apply to Student Legal Services for assistance. Student Legal Services represents the lower income earners of Edmonton and the surrounding areas and will act as your legal agent in all matters relevant to your case which take place in the Provincial Court of Alberta - Criminal Division.

Native Counselling Services. 423-2141
Native Counselling provides court services and legal information for both Aboriginal and non-Aboriginal persons.

AADAC - Recovery Centre. 427-4291
AADAC -Day Counselling and Treatment. 427-2736

George Spady Centre. 424-8335
The George Spady Centre provides overnight accommodation for the public inebriate and offers a 3 day detox program for abusers of alcohol and drugs.

Narcotics Anonymous. 421-4429