



R v. Parker

[2000] OJ No. 2787, 135 OAC 1

Country: Canada

Region: Americas

Year: 2000

Court: Ontario Court of Appeal

Health Topics: Chronic and noncommunicable diseases, Controlled substances, Health care and health services, Hospitals, Informed consent, Medicines

Human Rights: Right to bodily integrity, Right to health, Right to liberty and security of person, Right to life

Facts

Terrance Parker suffered from severe epilepsy since he was a young child. He could substantially reduce the incidence of seizures by smoking marihuana, but he had no legal source of marihuana.

Parker was charged with cultivating marihuana under the Narcotic Control Act and with possession of marihuana under the new Controlled Drugs and Substances Act.

Parker argued that the prohibition on the cultivation and possession of marihuana in the two statutes was unconstitutional and infringed his rights under s. 7 of the Canadian Charter of Rights and Freedoms. Because Parliament made cultivation and possession of marihuana illegal, he faced the threat of imprisonment to keep his health.

The trial court held that Parker required marihuana to control his epilepsy and that the prohibition against marihuana infringed Parker's rights under s. 7 of the Charter. The court stayed the charges and read an exemption for persons possessing or cultivating marihuana for their "personal medically approved use" into the legislation.

The Crown appealed. It argued that the trial judge made a factual error in finding that Parker required marihuana for medical purposes.

The Crown also argued that the legislation was valid and was not unconstitutional simply because no drug company attempted to have marihuana or cannabidiol (CBD) licensed for sale through prescription.

The Crown argued that Parker could have applied for a special exemption from the Minister of Health under s. 56 of the Controlled Drugs and Substances Act.

Decision and Reasoning

The court held that the trial judge was right in finding that that Parker needed marihuana to control the symptoms of his epilepsy.

The court held that the prohibition on the cultivation and possession of marihuana is unconstitutional. The Court held that forcing Parker to choose between his health and imprisonment violated his right to liberty and security of the person and was not in accordance with the principles of fundamental justice.

The court held that the possibility of an exemption under s. 56 of the Controlled Drugs and Substances Act, dependent upon the unfettered and unstructured discretion of the Minister of Health, was not consistent with the principles of fundamental justice.

The court upheld the trial judge's decision to stay the charges against Parker.

The court held that it was not the place of the trial judge to read a medical use exemption into the legislation, but that it is a matter for Parliament. The court held the prohibition on the possession of marihuana in the Controlled Drugs and Substances Act to be of no force and effect, but the declaration of invalidity was suspended for a year to give Parliament time to amend the legislation to comply with the Charter.

During this period, Parker, was entitled to a personal exemption from the possession offence under the Controlled Drugs and Substances Act for possessing marihuana for his medical needs. Since the Narcotic Control Act was repealed by Parliament, there was no need to hold it unconstitutional.

Decision Excerpts

â€œThe state has not violated Parker's rights simply because epilepsy in and of itself represents a danger to his life or health. However, to prevent his accessing a treatment by threat of criminal sanction constitutes a deprivation of his security of the person. Based on the evidence, the marihuana laws force Parker to choose between commission of a crime to obtain effective medical treatment and inadequate treatment.â€• (Para 107)

Â â€œThe blanket prohibition on possession and cultivation, without an exception for medical use, does little or nothing to enhance the state interest. To the extent that the state's interest in prohibiting marihuana is to prevent the harms associated with marihuana use including protecting the health of users, it is irrational to deprive a person of the drug when he or she requires it to maintain their health. â€ If the purpose of the marihuana prohibition is to protect the health of users and thereby eliminate the related costs to society, the overbroad prohibition preventing access to the drug to persons like Parker, who require it to preserve their health, defeats that objective.â€• (Para 144)

Â â€œThe Crown says that it is not the fault of the legislation, but the fact that no one has come forward to attempt to comply with the legislation to obtain new drug approval. The practical unavailability of marihuana due to the administrative structure prevents Parker and people like him who require the drug for medical purposes from obtaining a prescription for the drug because of the absence of a legal supply. Put simply, the expense for Parker in obtaining a legal source of the drug through the new drug approval procedure established by the state makes the defence held out under the legislation practically unavailable.â€• (Para 156)

Â â€œThe court cannot delegate to anyone, including the Minister, the avoidance of a violation of Parker's rights. Section 56 fails to answer Parker's case because it puts an unfettered discretion in the hands of the Minister to determine what is in the best interests of Parker and other persons like him and leaves it to the Minister to avoid a violation of the patient's security of the person.â€• (Para 187)

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