Date: 20231013
Docket: CI 20-01-28204
(Winnipeg Centre)
Indexed as: Lavoie v. The Government of Manitoba
Cited as: 2023 MBKB 146

COURT OF KING'S BENCH OF MANITOBA
(GENERAL DIVISION)

B E T W E E N:

JESSE CONNER LAVOIE,	)	Kirk Tousaw and
	)	Jack Lloyd
applicant,	)	for the applicant
- and -	)	
THE GOVERNMENT OF MANITOBA,	)	Deborah Carlson and
	)	Kathryn Hart
respondent.	)	for the respondent
	)	JUDGMENT DELIVERED:
	)	October 13, 2023

McCARTHY J.

[1] This is an application advanced under s. 52(1) of the ***Constitution Act, 1867***, S.C. 2022, c. 6, seeking a declaration that s. 101.15 of ***The Liquor, Gaming and Cannabis Control Act***, C.C.S.M. c. L153 (the "***LGCCA***") of Manitoba is *ultra vires*, unconstitutional and of no force or effect. In the alternative to striking down the challenged provision, the Applicant seeks an order reading down the ban to remove all penal sanctions.

[2] Jesse Conner Lavoie (the "Applicant"), is a resident of Manitoba who was previously a user of cannabis for medical purposes and now wishes to grow and use his own cannabis for personal and recreational purposes. He argued that he has been adversely affected by the unconstitutional imposition of s. 101.15 prohibiting and heavily penalizing such activity.

LEGISLATIVE BACKGROUND

[3] On June 19, 2018, Parliament passed Bill C-45 which on October 17, 2018, came into force as the federal ***Cannabis Act***, S.C. 2018, c. 16. The purpose of the new legislation was to decriminalize possession, sale and use of cannabis in Canada by excluding it from the application of the criminal prohibitions set out in the ***Controlled Drugs and Substances Act***, S.C. 1996. c. 19 (the "***CDSA***"). There are, however, some restrictions remaining. For instance the ***Cannabis Act*** prohibits the possession and cultivation of any more than four plants for personal use by anyone over the age of 18.

[4] As part of the move toward decriminalization the provinces were encouraged to enact laws and regulations within their constitutional areas of jurisdiction to regulate how such things as the storage, sale and distribution of cannabis would occur in each province. Most also regulated such things as locations for use, driving while impaired by cannabis, and the minimum age for purchase and use of cannabis.

[5] In anticipation of the enactment of the ***Cannabis Act*** the Government of Manitoba introduced Bill 11 on December 5, 2017, which proposed several amendments to Manitoba's existing liquor and gaming legislation in order to also regulate cannabis use. On June 4, 2018, ***LGCCA***, came into force. At that time s. 101.15, which prohibits

possession and cultivation of any cannabis plants for personal use in Manitoba, was added to the ***LGCCA.***

[6] Manitoba also amended ***The Preset Fines and Offence Descriptions Regulation***, Man. Reg. 96/2017 ("***Preset Fines Regulation***") enacted under the ***Provincial Offences Act***, C.C.S.M. c. P160 to establish set fines for contravention of the new provisions relating to the distribution, use and sale cannabis.

[7] While some other provinces further restricted the number of cannabis plants permitted to be grown in a personal residence to less than four, the only provinces to completely prohibit home cultivation were Manitoba and Quebec.

[8] The provisions of the Quebec ***Cannabis Regulation Act***, CQLR c C-5.3 ("Quebec legislation") banning home cultivation were the subject of a court challenge which found its way to the Supreme Court of Canada (the "SCC") in ***Murray-Hall v. Quebec (Attorney General)***, 2023 SCC 10 ("***Murray-Hall***"). In a unanimous decision of that Court the impugned provisions of the Quebec legislation were found to have been a valid exercise by the Quebec legislature of the powers conferred upon it by s. 92(13) and (16) of the ***Constitution Act, 1867***.

[9] The SCC found that the prohibition of home cultivation was a means to achieve the regulatory purpose of the Quebec Act, which the Court found to be "… the creation of a state monopoly that oversees each step leading up to the purchase of cannabis by citizens in order to protect the health and security of the public" (***Murray-Hall***, at para. 38).

[10] The Court went on to state that:

> [38] … The prohibitions set out in ss. 5 and 10, along with the other controls put in place by the Act, are the machinery of this undertaking. Specifically, prohibiting the possession and cultivation of cannabis plants contributes to the effectiveness of the state monopoly by steering consumers to the only legally authorized source of supply, that is the state-owned enterprise.

THE ISSUES

a) Is s. 101.15 of the ***LGCCA*** *ultra vires* the powers of the Province of Manitoba and therefore unconstitutional?

b) If s. 101.15 of the ***LGCCA*** is unconstitutional, what is the appropriate remedy? and

c) Costs.

[11] The Government of Manitoba (the "Respondent"), argues that the regulatory scheme put in place to regulate cannabis, and the purpose and effect of the legislation in Manitoba and Quebec are substantially the same and, as such, the decision of the SCC in ***Murray-Hall*** is dispositive of the issues before this Court.

[12] The Applicant, on the other hand, argues that the overall provincial scheme for the regulation of cannabis, the specific provisions enacted, and the purpose and effect of the legislation in Manitoba are all sufficiently different from those in Quebec to distinguish the decision in ***Murray-Hall***.

[13] He argues that several determinative factors in the finding that the Quebec provisions were constitutional included: the fact that the Quebec legislature had chosen to create a completely state run monopoly over all aspects of the purchase, sale and use of cannabis in Quebec; that the pith and substance of the Quebec provisions was to

ensure the effectiveness of that state monopoly; that the stated purpose of the legislation was to protect the health and security of the public, and young persons in particular; that the scheme and stated purpose of their legislation included regulation of "cultivation"; and that the Quebec legislation imposed relatively modest fines for contravention of the prohibitions against cultivation.

[14] In contrast, he argues that Manitoba has not created a state-run monopoly with respect to cannabis, but rather regulates the private retail purchase, distribution and sale of cannabis by licensing private entities for delivery of those services. Further, the stated purpose of the Manitoba legislation relates only to the purchase, distribution and sale of cannabis within the province in a manner that is in the public interest. The legislation does not mention "health and safety" and does not purport to regulate the "cultivation", or consumption of home grown cannabis as the Quebec legislation does. And finally he argues that the Manitoba scheme carries with it severe potential penal consequences similar to those previously imposed under the ***CDSA*** and the ***Criminal Code***, R.S.C., 1985, c. C-46 and much higher than those in Quebec.

[15] The Applicant argues that the above differences, taken together, are sufficient to distinguish the facts and analysis in ***Murray-Hall***, from the case at bar.

[16] He emphasizes the warning issued by the SCC that "… It is not just a matter of finding that the prohibitions against possession and cultivation exist; it is important to look at *why* they are incorporated into the provincial Act's very specific regulatory scheme." [emphasis in original] (***Murray-Hall***, at para. 36)

[17] The Applicant submits that, unlike the analysis with respect to the Quebec legislation, when one applies the analytical framework set out below to the very specific regulatory scheme in Manitoba, it becomes clear that the impugned provision in the Manitoba ***LGCCA*** is in pith and substance criminal law and, therefore, *ultra vires* the jurisdiction of the Respondent.

[18] With respect to the issue of federal paramountcy initially raised by the Applicant, both parties agree that ***Murray-Hall*** is dispositive of that issue. The Applicant concedes that the finding by the SCC that the Quebec prohibition on home cultivation neither creates an operational conflict with the ***Cannabis Act***, nor frustrates that Act's purpose, applies equally in this case. The Applicant has therefore abandoned his challenge to the Manitoba legislation on that ground.

[19] Having considered the above arguments, I agree with the Applicant that the decision in ***Murray-Hall*** is not necessarily dispositive of the application before this Court. I accept the Applicant's argument that the regulatory scheme in Manitoba is not a complete government monopoly as was established in Quebec. I also accept that the text of the Manitoba legislation governing the regulation of cannabis is sufficiently different from that enacted in Quebec that the decision in ***Murray-Hall*** is not automatically determinative of the constitutional challenge to s. 101.15 of the ***LGCCA***.

[20] A careful analysis of s. 101.15 of the ***LGCCA***, the complete regulatory scheme, and the context of its enactment are required to determine its constitutionality.

ANALYTICAL FRAMEWORK

[21] The parties agree that the analytical framework set out by the SCC in ***Murray-Hall*** is the correct framework to be applied in this case. It is the outcome of the application of that framework upon which the parties disagree.

[22] As stated by the SCC:

> [22] "To decide whether a law or some of its provisions are constitutionally valid under the division of powers, courts must first characterize the law or provisions and then, on that basis, classify them by reference to the heads of power listed in ss. 91 and 92 of the *Constitution Act, 1867…*"

[23] At the characterization stage, what must be determined is the pith and substance of the impugned provisions. The SCC in ***Murray-Hall*** stated that "… [i]n its jurisprudence, the Court has described the aim of this exercise as being to identify the "dominant purpose" of the law …" (at para. 23).

[24] To determine the pith and substance of the law the Court is to look at both its purpose and its effects.

[25] In examining the purpose of the law, the Court should rely upon intrinsic evidence such as the actual text of the legislation, including any preamble and purpose clauses, and may also consider extrinsic evidence such as circumstances surrounding its enactment and minutes of legislative debates (***Murray-Hall***, at paras. 24 and 25).

[26] To examine the effects of the law, courts must consider both its legal effects and its practical effects (***Murray-Hall***, at para. 25).

[27] Overall, the "… textual analysis is the focus of the characterization exercise" (***Murray-Hall***, at para. 26).

[28] Where a specific provision which is part of a regulatory scheme is being challenged, the Court should begin by characterizing the impugned provision using a contextual analysis, rather than considering the validity of the provision in isolation or the validity of the law as a whole (***Murray-Hall***, at para. 30).

[29] Once the Court has characterized the pith and substance of the impugned legislative provision it must classify it under a head of power to determine whether it is within the jurisdiction of the enacting body.

ANALYSIS

Characterization of s. 101.15 of the LGCCA

Purpose

[30] In an effort to regulate cannabis upon its decriminalization, the Province of Manitoba chose to add cannabis to the already regulated areas of liquor and gaming, by amending its existing liquor and gaming legislation.

[31] The stated purpose of the ***LGCCA*** as amended is:

> Purposes of this Act
>
> 2 The purposes of this Act are
>
> (a) to ensure that liquor is purchased, sold, consumed and manufactured in a manner that is in the public interest;
>
> (b) to ensure that lottery schemes are conducted and managed honestly, with integrity and in the public interest; and
>
> (c) to ensure that cannabis is purchased, distributed and sold in a manner that is in the public interest; and
>
> . . .

[32] The Applicant argues that the pith and substance of s. 101.15 of the ***LGCCA*** is criminal law. He argues that the ban on home cultivation does not support the province's

purpose to regulate the purchase, distribution or sale of cannabis, but rather is intended to address what the Respondent perceives as a social evil by re- criminalizing home cultivation and imposing heavy handed penal sanctions.

[33] He points out that the existence of a valid legislative scheme does not mean that every provision of the legislation is necessarily constitutional (***General Motors of Canada Ltd. v. City National Leasing***, [1989] 1 SCR 641 at para. 46) and argues that the impugned provision must support and contribute to the purpose and overall scheme of the legislation.

[34] As previously stated, the overall structure of the provincial legislative schemes, and the precise wording of the Quebec and Manitoba legislation, are not identical. In Manitoba, the legislation creates a scheme which, in addition to the regulation of liquor and gaming, purports to control the purchase, sale, and distribution of cannabis by regulating private retailers. The express purpose is "… to ensure that cannabis is purchased, distributed and sold in a manner that is in the public interest" (s. 2 of the ***LGCCA***).

[35] The Applicant argues, that unlike the Quebec legislation which was found to have the very specific legislative purpose and scheme of creating a complete state monopoly over cannabis for the protection of the public from cannabis harms, *including* harms associated with cultivation, the Manitoba legislation does not create a state monopoly, and the stated purpose does not include protecting the public from cannabis harms associated with cultivation. He points out that while specific reference to "cultivation" is

present in the stated purpose in the Quebec legislation there is no such mention of cultivation in the ***LGCCA*** other than the prohibition provision itself.

[36] He also points out that in ***Murray-Hall*** the SCC found that:

> [45] … when viewed together with the other provisions of the provincial Act, ss. 5 and 10 do not have the separate and independent objective of prohibiting the possession and cultivation of cannabis plants for personal purposes…

[37] In contrast, the Applicant argues that s. 101.15 of the ***LGCCA*** prohibits cultivation without any connection to the stated purpose of the legislation to regulate the purchase, distribution and sale of cannabis in Manitoba. He argues that prohibiting home cultivation does not add anything to achieving the objective of the regime to regulate the private retail sale of cannabis in the public interest. He argues, that if one looks at *why* that provision is present it bears no connection to ensuring that the purchase, sale and distribution of cannabis in Manitoba occurs in the public interest. For that reason he submits that, in this case, the impugned provision does have a separate and independent purpose of prohibiting home cultivation.

[38] The Applicant points out that possession of more than 30 grams of cannabis for personal use, which is not packaged for sale as required by the regulations; the sale of home grown cannabis; and the provision of cannabis to anyone under the age of 19, are already prohibited by other provisions of the ***LGCCA***. Therefore, prohibiting home cultivation does not add anything to achieving the purpose of the ***LGCCA*** and is not necessary to prevent access by young people, or sale to illicit markets or gangs because those activities are already prohibited under other valid provisions.

[39] The Applicant also points out, that under the Manitoba legislation, there is nothing preventing a person from bringing in, receiving, or consuming home-grown cannabis from

outside the province as long as it is under a 30 gram limit. He argues that this is inconsistent with the prohibition against cultivation within Manitoba.

[40] The Applicant argues that the complete ban on home cultivation adds nothing to achieving the scheme and purpose of the legislation which is to regulate the retail sale and distribution of cannabis within Manitoba, and that the ban is really a separate attempt to re-criminalize home cultivation.

[41] The Applicant further argues that an examination of the extrinsic evidence contained in legislative records and press releases at the time of debate and enactment of the ***LGCCA*** reveals that the motivation and intention behind the prohibition against growing and consuming homegrown cannabis is to address such issues as policing challenges, public safety and access by gangs.

[42] The Respondent, on the other hand, argues that the prohibition on home cultivation under the ***LGCCA*** is directed at removing access to an unregulated source of cannabis that poses public health and safety risks. Further, it argues that it preserves the integrity of the regulatory regime under which Manitobans can obtain non-medicinal cannabis legally only through a regulated retail environment.

[43] The Respondent argues that prohibition against home cultivation was included in the ***LGCCA*** as a means to limit the opportunity for minors, or the black market and gangs, to gain access to cannabis. It argues that home cultivation falls broadly under the objective of the legislation to control distribution in the public interest.

[44] In my view, the position of the Respondent on this issue is more persuasive. While I agree that the word "cultivation" is not contained in the stated purpose of the ***LGCCA,***

a review of the entire legislative scheme as it relates to cannabis suggests that the purpose of the legislation was to regulate all aspects of the purchase, distribution, and sale of cannabis in a manner that provided for the safety and protection of the public. To achieve that purpose the legislation requires that all cannabis made available for sale in Manitoba be obtained from government sources, that all suppliers be licensed, that there be prohibitions against sale to consumers under the age of 19, that the quantity of possession of cannabis from other sources be limited, and that in home cultivation be prohibited. While the ***LGCCA*** does not include a complete ban on possession of home-grown cannabis, it does ban the ability to grow it in Manitoba, which the legislature sees as a means of limiting access to cannabis from a source outside the government supply chain. The fact that they chose to allow possession of small amounts does not, in my view, mean that the limit on home gardens is not consistent with the purpose of the legislation.

[45] A review of extrinsic evidence with respect to the purpose of the prohibition against home cultivation suggests that the legislature, relying at least in part on the input of organizations such as the Canadian Association of Chiefs of Police, MADD Canada, and the Manitoba Real Estate Association, believed that prohibition of home cultivation would reduce the risk of access to cannabis by youth, the risk of the product being diverted to the black market, and prevent other health and safety concerns associated with growing plants in a home.

[46] Upon introduction of Bill 11 in the Legislative Assembly of Manitoba on December 5, 2017, Minister of the Hon. Heather Stefanson, Justice and Attorney General (as she then was) stated as follows:

> Bill 11 will establish a public -a private-public retail and distribution model for the safe and responsible retail sale of recreational cannabis in Manitoba.
>
> . . .
>
> Madam Speaker, this bill offers a safe and responsible approach to the federal government's cannabis legalization. The private sector will do what it does best in providing choice, customer service and competitive pricing, and the public sector will do what it does best in providing public protection through regulation, oversight and licensing. The bill will also help us accomplish our most important public policy objectives: it will keep cannabis out of the hands of our children, out of schools and away from the black markets.
>
> Public health and safety remains our government's No. 1 priority, and I'm proud to say that Bill 11 will help protect all Manitobans as we manage this significant public policy change together.

[47] Again, on December 7, 2017, Vol. LXXI NO.12B, Minister Stefanson stated:

> Madam Speaker, the second phase of our approach is what we are here to discuss, and I'm proud to tell this House that Bill 11, The Safe and Responsible Retailing of Cannabis Act, responds to the concerns of the people of Manitoba and experts on the front lines. It will help keep cannabis out of the hands of our kids, away from the black market, by establishing a minimum age of 19, banning home cultivation and establishing a hybrid retail and distribution model that empowers municipalities.
>
> . . .
>
> … keeping cannabis out of the hands of our youth and away from the black market is also why we chose to prohibit home cultivation of cannabis. Prohibiting home cultivation is supported by the Canadian Association of Chiefs of Police, MADD Canada, the Manitoba Real Estate Association and many others. They support this decision because they know that home cultivation will result in increased access to cannabis by youth and greater risk of the product being diverted into the black market. It's simply just not worth the risk.

[48] And, on April 23, 2018, Vol. LXXI No. 38 the Hon. Cameron Friesen, Minister of Finance, stated:

> … We'd like to see the federal government continue to consider the idea of backing up that implementation date. Nevertheless, we know there'll be tremendous cost to Manitoba as a result of legalization. That cost will come in the area of roadside

> policing. It will be in the area of education, certainly health. There are mental health dimensions that are very, very large for the legalization of cannabis. There are justice and corrections issues that will undoubtedly arise and intensify. All of these will add a cost for the Province. I believe it's - the provinces are agreed on many things, one of which is the fact that the provinces will be the majority payer of the costs of implementation of these new rules.

[49] The stated purpose of the legislation is the public interest, which is certainly very broad and could encompass many objectives including those which are primarily the concern of criminal law. However, a review of the extrinsic evidence supports the Respondent's contention that the dominant objective of the legislation was protecting public health and safety by ensuring that the legal supply of cannabis for sale in Manitoba was through government sources and that the primary way to obtain cannabis legally was to purchase it from a government licensed and regulated retailer. The Respondent saw prohibiting home cultivation as a means to achieve that purpose.

[50] The wisdom, policy, or efficacy of the law in achieving its purpose is not relevant to the question of the *vires* of the legislation. The legislature "…is the judge of whether a measure is likely to achieve its intended purposes; efficaciousness is not relevant to the Court's division of powers analysis…" (***Reference re Firearms Act (Canada)****,* 2000 SCC 31, at para. 18, and ***Murray-Hall***, at para.44).

[51] With respect to the constitutional challenge to the home cultivation prohibition in Quebec the SCC in ***Murray-Hall*** stated "… [i]ndeed, this court has pointed out on several occasions that considerations relating to the efficacy or wisdom of the means chosen are not helpful at the characterization stage…" (at para. 44).

[52] Therefore, the role of this Court is not to consider the effectiveness of the means chosen by the legislature to achieve its purpose. Rather, in this case where the Applicant

is not disputing that the dominant purpose of the legislation as a whole is legitimately within the jurisdiction of the enacting legislature, the Court at the characterization stage of the analysis must only be satisfied that the impugned provision is established to be a means to achieve the legislative purpose of the ***LGCCA***.

[53] The Applicant has not satisfied me that the inclusion of the prohibition in the legislation was done primarily for the separate and independent purpose of prohibiting an activity that the government saw as morally or socially undesirable. While I acknowledge that there are references in the extrinsic evidence to keeping cannabis out of the hands of gangs and to challenges in policing, which may be seen as primarily criminal law concerns, the majority of the extrinsic evidence relating to the prohibition cites health, safety and protection of youth, including by keeping cannabis out of illicit markets, as the main concerns being addressed. The fact that there were additional purposes related to law enforcement and corrections does not change the characterization.

Effects

[54] As part of the analytical framework for characterizing the impugned, provision the Court must also consider the legal and practical effects of the legislation. As stated by the SCC in ***R. v. Big M Drug Mart. Ltd***, [1985] 1 SCR 295, at p. 331, either an unconstitutional purpose or and unconstitutional effect can invalidate a law.

[55] In this case, the Applicant argues that the effect of the prohibition is to re- criminalize any possession or cultivation of cannabis plants within one's home.

[56] He argues that the penal consequences arising out of contravention of s. 101.15 of the ***LGCCA*** are severe and significantly beyond the relatively small fines set out in the Quebec legislation. He points out that the relatively minor nature of the set fines in Quebec were a consideration in ***Murray-Hall*** in determining that the provision was not punitive (at para. 18).

[57] The Applicant also relies upon the decision of the SCC of Canada in ***R v. Morgentaler***, [1993] 3 SCR 463, which states at pp. 511-512 that:

> …the relatively severe penalties provided for by the Act are relevant to its constitutional characterization… Of course, s. 92(15) of the *Constitution Act, 1867* allows the provinces to impose punishment to enforce valid provincial law, and the mere addition of penal sanctions to an otherwise valid provincial legislative scheme does not make the legislation criminal… However, the unusual severity of penalties may be taken into account in characterizing legislation…

[58] He notes that the pith and substance of the impugned law in ***Morgentaler*** was found to be criminal despite the fact that the penal consequences were limited to substantial fines. The SCC in that case stated at p.498 "… the provinces may not invade the criminal field by attempting to stiffen, supplement or replace the criminal law…or to fill perceived defects of gaps therein".

[59] The Applicant argues that the potential penalties set out in the ***LGCCA***, of fines of up to $100,000.00, imprisonment of up to a year, and forfeiture of personal property, are severe and are indications that the purpose of s. 101.15 is to penalize conduct that the legislature does not approve of, rather than as a measure to enforce its regulatory scheme.

[60] He points out that even the currently set fines under ***The Provincial Offences Act*** for cultivation are more than double the fines for most other contraventions. For

instance, the fine is $2,542.00 for possession of even a single cannabis plant, but $672.00 for unauthorized purchase, possession of more than 30 grams in a public place and providing fake ID to a youth for the purchase of cannabis. The fines are also much higher he argues than the relatively modest range of $250.00 to $750.00 in Quebec for the same offence.

[61] The Respondent argues that the potential penalties beyond the currently set fines pursuant to the ***Preset Fines Regulation*** do not apply only to cultivation of cannabis and were not added solely as a penalty for that offence. The potential penalties in the ***LGCCA***, including forfeiture of personal property to the Crown, apply to the entire scheme of the ***LGCCA***, the constitutionality of which is not challenged.

[62] The issue is whether the significant fines, taken alone or together with the other factors outlined above, suggest that the dominant purpose of the impugned provision is to replace the previously criminalized activity of cultivation with a new provision to criminalize the behaviour in Manitoba on the basis of social and moral values and considerations of social acceptability.

[63] In the circumstances, I find that the penalties, including the currently set fines, although very significant, are not so punitive as to demonstrate that the true purpose of the prohibition is to re-criminalize the activity of growing cannabis at home. Of note, the same penalties apply to unauthorized cannabis sale, supply for the purpose of sale, supply to an intoxicated person, supply to a young person, or obstruction of an inspector, as apply to home cultivation in contravention of the ***LGCCA.*** The activity of home cultivation has not been singled out for uniquely harsh punishment.

[64] Further, while the ***LGCCA*** contains other potential penalties including imprisonment, the ***LGCCA*** also applies to regulation of liquor and lotteries offences and commercial distribution and sale of cannabis. Such penalties were not included solely as a penalty for cultivation of cannabis and currently do not apply to contravention of that provision.

[65] The fines for home cultivation, while certainly approaching the range that could be seen as unduly harsh, were in my view imposed as a means to enforce the regulatory scheme governing cannabis in Manitoba.

Classification of s. 101.15 of the LGCCA

[66] The question at the classification stage is whether the impugned provision falls within the federal criminal law power under s. 91(27) of the ***Constitution Act, 1867*** or within the powers conferred on the provinces over property and civil rights and matters of a merely local and private nature by s. 92(13) and (16).

[67] The Respondent argues that s. 101.15 of the ***LGCCA*** falls squarely within provincial jurisdiction over property and civil rights, matters of the local or private nature and licensing businesses, pursuant to s. 92(13) and (16) of the ***Constitution Act, 1867***.

[68] The Applicant, on the other hand, argues that the impugned provision has all the characteristics of criminal law, being "… a valid criminal law purpose backed by a prohibition and a penalty…" (***Reference re Firearms Act (Can.)***, at para. 27, citing ***RJR-MacDonald Inc. v. Canada (Attorney General)***, [1995] 3 S.C.R. 199, ***R. v. Hydro-Quebec***, [1997] 3 S.C.R. 213, and ***Reference the Validity of Section 5(a) Dairy Industry Act***, [1949] S.C.R. 1 (the "***Margarine Reference***").

[69] The Applicant argues that the Respondent's reference in the extrinsic evidence to issues relating to policing, justice and corrections, in addition to keeping cannabis out of the hands of children and away from the black market, are all indicia of criminal law objectives which broadly defined include legislating with respect to "… the traditional field of criminal law, namely public peace, order, security, health and morality…" (***Labatt Breweries of Canada Ltd. v. Attorney General of Canada***, [1980] 1 SCR 914, at p. 933, citing the ***Margarine Reference***).

[70] However, as stated by the SCC in ***Murray-Hall*** "…penal regulatory measures adopted by the provinces with regard to decriminalized activities are not necessarily attempts to legislate in criminal matters…" (at para. 68).

[71] Further, the Court found that "… [a]lthough public peace, order, security, health and morality are classic criminal law purposes, the provinces may consider such imperatives in designing their own regulatory schemes…" (at para. 69).

[72] Here, while the legislature considered issues such as policing and limiting access to cannabis by youth and gangs when it enacted the impugned provision, that alone is not sufficient to indicate an encroachment into the realm of criminal law.

[73] The question here is whether, in prohibiting the possession and cultivation of cannabis plants in personal homes, the Manitoba legislature exercised the power conferred upon it by s. 92(15) to enact penal measures in order to enforce an otherwise valid law (see ***Murray-Hall*** at para. 71).

[74] As set out above, I have found that s. 101.15 of the ***LGCCA*** is a measure imposed to ensure that cannabis consumed in Manitoba is primarily obtained from a fully regulated

source. It is also intended to be a means to protect against access to cannabis by children in the home, and to prevent excess product from finding its way into the unregulated market. The dominant purpose of the prohibition on home cultivation is to advance the objectives of public health and safety.

[75] As stated by the SCC in ***Murray-Hall***:

> [71] … provincial legislative action in the field of public health is grounded primarily in broad and plenary jurisdiction over property and civil rights (s. 92 (13)) and residual jurisdiction over matters of a merely local or private nature in the province…

[76] The intrinsic and extrinsic evidence as examined above suggests that the Manitoba legislature viewed home cultivation as a practice to be avoided in order to ensure control over the supply and distribution of cannabis to consumers in Manitoba. I am not satisfied that the dominant purpose, or primary motivation behind the prohibition, was to suppress a social evil or condemn an activity to which the legislature generally disapproved.

[77] The fact that both the ***Cannabis Act*** and the ***LGCCA*** address home cultivation, and do it differently, does not affect the constitutionality of the Manitoba legislation. As stated by the SCC in ***Murray-Hall*** " …[t]he regulation of the use of drugs, including cannabis, has both federal and provincial aspects, which makes it conceivable that laws enacted by both levels of government will apply concurrently…" (at para. 77).

[78] At the end of the day, I find here that the prohibition set out in s. 101.15 of the ***LGCCA*** does not have a separate punitive purpose, but rather was seen as a means of regulating and controlling access to cannabis in the interests of the public.

[79] Whether a lesser, or other, provision would have served the same purpose, or whether it runs contrary to the advice of experts, or of federal representatives when

enacting the federal ***Cannabis* Act**, is not for the Court to consider. The only issue to be decided is whether enactment of the impugned law is within the jurisdiction of the province to enact. I find that it is.

CONCLUSION

[80] The Applicant has failed to meet his onus of proving that s. 101.15 is in pith and substance criminal law, rather than an area under provincial jurisdiction. Rather, I have found that the pith in substance, or the dominant purpose, of the prohibition against home cultivation in Manitoba is to support the provincial government scheme enacted to control and regulate the purchase, distribution, and sale of cannabis in a manner consistent with the public interest. The public interest objective of the Respondent in prohibiting home cultivation of cannabis, despite the approach taken in most other provinces and in the federal ***Cannabis Act***, was to protect the health and safety of the public, including limiting access to cannabis by youth, and preventing home-grown cannabis from finding its way into unregulated or illicit markets. These objectives fall under the provincial jurisdiction over property and civil rights, matters of a local or private nature, and licensing of businesses pursuant to ss. 92(13) and (16) of the ***Constitution Act, 1867*** and the prohibition against home cultivation is, therefore, not *ultra vires* the jurisdiction of the provincial legislature.

[81] Accordingly, Mr. Lavoie's application is dismissed.

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McCarthy J.