

# TRANSCRIPT

## LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

### **Inquiry into the use of cannabis in Victoria**

Melbourne—Wednesday, 9 June 2021

*(via videoconference)*

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Mr Lee Tarlamis

Ms Sheena Watt

**WITNESS**

Professor Tom Decorte, Director, Institute for Social Drug Research, Ghent University.

**The CHAIR:** Welcome back, everyone. As I know you are aware, this is the Legislative Council Legal and Social Issues Committee's public hearing into the Inquiry into the Use of Cannabis in Victoria. We are very pleased to welcome Professor Decorte from Belgium, who will be joining us in a moment.

Professor, if I could just let you know that all evidence taken today is protected by parliamentary privilege as provided by the *Constitution Act* in Victoria and is further subject to the provisions of the Legislative Council standing orders. Therefore any information that you provide during this hearing is protected by law. You are protected against any action. However, if you repeat some statements outside this hearing, you may not have the same protection, with the proviso that these are Victoria, Australia, laws and I am not sure how much protection they are actually going to provide you in Belgium. However, thank you very much.

As you can see, this is being recorded. We will send you a transcript of this hearing today, and I would encourage you to have a look at that because ultimately it will make its way onto the committee's website but also obviously form part of our report.

As I mentioned, this is an inquiry into the use of cannabis. We received your book and your submission, so we understand that you have got great knowledge and a great interest in this area. If you would like to make some opening remarks for 5 or 10 minutes, then we will open it up for the committee discussion.

**Prof. DECORTE:** Okay. Thank you very much, Ms Patten, and thank you very much to the other members of this committee for this invitation and this opportunity to share some thoughts and have a dialogue about this important issue.

I might want to start by clarifying that I am a criminologist and an anthropologist, as a background, but I am looking at this phenomenon, at this issue, from a public health perspective. For me it is quite clear—and I do think there is quite a broad consensus in the academic world about this—that the prohibition of cannabis has failed, and that the repressive strategy to tackle the phenomenon has clearly failed. We have not seen any significant decrease in cannabis use in most Western societies, we have not seen a decrease in problematic use, we have not seen a reduction in the physical and psychosocial damage that cannabis abuse can cause and we have not seen significant decrease of negative consequences for society, such as crime and public nuisance. Moreover, again from a public health perspective, it is important to stress that we seem to have failed to protect the vulnerable groups in society, including youth and other vulnerable subsets. This has everything to do with the paradox of repression, I would say. It is not effective, it is not working, and that is why regulation of the phenomenon seems to be a better strategy in combating, in struggling, in waging a war on cannabis use. So this whole debate is not about whether or not cannabis does contain risks and whether cannabis use includes risks for health, but it is all about a better strategy to fight the phenomenon and to get a better grip and more control over the phenomenon. And it seems to me that regulation offers a wide range of tools to nudge the behaviour in the desired direction. And we need to remind ourselves that the word 'legalising' is just describing the process of making something which is completely illegal into some behaviours that can be legally regulated. So legalisation is just a process, and the regulatory framework resulting from legalising is the product, or the outcome.

And it is true that one potential outcome of legalising cannabis could be a commercial model, hypothetically. We could and we do have the option as a society to regulate cannabis like we did regulate alcohol or like we regulated tobacco, let us say, 20 years ago. But for me it is very important to stress that there are important historical lessons to be drawn from our regulatory approach to alcohol, tobacco and even pharmaceutical drugs. So we have been faced—with big tobacco, with big alcohol, with big pharma—with a commercial model, and there are important lessons to be drawn, because once you create these multibillion-dollar industries you will see aggressive marketing for the products. These multinationals ultimately have the same goal as the organised criminals behind illegal cannabis production, which is selling and promoting as much of the product as they can, and they will never stop looking for new target groups and for profitable ways of marketing and branding the product. They will continue to develop products particularly appealing to young people. They will always show great resistance to measures from the government to try to restrict supply, and we will see a lot of attempts from the industry to influence the regulatory development. They have huge budgets. They have huge

resources for lobbying, for trying to influence scientific research, for trying to minimise and to disguise the health risks of cannabis products that they try to sell. They may even engage in corrupt practices, as we have seen with big alcohol and big tobacco and big pharma. Having said that, of course there are positive lessons to be learned from the regulatory approach to these products, because we have seen that some of the regulatory responses in these fields, like minimum pricing, restrictions on density of retail outlets, plain packaging and restrictions on advertising, have shown to be very useful and very helpful.

So the main point I would like to stress in my opening statement is that, yes, it is well worth thinking about regulating the market—probably much better than keeping it under a system of prohibition. But if you want to do so, it does make sense to look at these historical lessons and to choose a very conservative regulatory approach. And I have written some scenarios and worked on some scenarios with fellow academics in the field suggesting that it is way better to start with a very conservative regulatory approach. Maybe even choose a middle-ground option, such as legalising and regulating home cultivation and a non-commercial model—for example, involving cannabis social clubs. And if the members of the committee want to talk later on about this particular model, I am very happy to do so, because I have done quite some research on that model. But the most important thing is that we need to learn from the experiments elsewhere in the world with cannabis of course. And to finalise my opening statement, it is quite clear that we should not decriminalise use of cannabis but keep the supply and production criminalised, as they did in the Netherlands. This is a model that has now shown its shortcomings. You should take the opportunity when regulating the cannabis market to address important social equity issues.

Some experiments elsewhere in the world have also shown it is very important when you regulate the market that there is enough forward planning, adequate resourcing of the regulatory agency, that you need enough detailed regulation of the retail outlets, that there should be enough engagement with key health stakeholders, that it is very important from a government point of view to communicate very clearly about the policy aims to the general public and to make sure that you have a good system for monitoring potential adverse effects. The early experiments with regulated cannabis markets, notably in the Americas, have also shown some of the particular challenges with cannabis of implementing regulatory controls of pesticides and fertilisers and regulating product potency. I would like to stop there and take your questions.

**The CHAIR:** Thank you. That was great. I will start off the questions, and then we will go to Deputy Chair Tien, Georgie and then Kaushaliya.

In this notion of a very measured approach to regulation that you have suggested, and you have placed some scenarios, we have seen in Australia the ACT legalise the personal growing of cannabis, and that was seen as a measured, small approach, but when we spoke to them they advised that probably 80 to 90 per cent of the cannabis consumed in the ACT was still purchased illegally, so there was still a criminal approach there. You mentioned don't do that, so how do you do that without setting up a broad commercial market?

**Prof. DECORTE:** Well, first of all, if I understand you correctly, the issue of home cultivation, in my personal view, should be part of any regulatory model because this is a way of allowing people to legally self-produce cannabis for their own personal consumption. It is part of giving back the autonomy and the freedom to people to produce the type of cannabis that they prefer. But having said that, it is quite clear that if you only regulate and only allow legally for home cultivation, this will only cover, I do not know, maybe 10 or 15 per cent of the cannabis cultivation and the demand for cannabis in a society.

I would almost compare it to growing potatoes. You could say the only way to eat potatoes and to consume potatoes is if you grow them yourself, but you have to keep in mind that for many people eating and consuming potatoes is just a very marginal phenomenon in their life or part of their life. They do not have the time because they are busy. They do not have the space to grow potatoes. They would like to taste different types of potatoes et cetera. It is almost the same with the cannabis plant. If you only allow for home cultivation, there will be a demand for different varieties of cannabis. There are so many people consuming cannabis nowadays who would like to have a taste of different types of cannabis every once in awhile.

It is true that home cultivation in itself will never cover the demand for cannabis and the tastes, the preferences of the consumer population. So at least minimally, apart from home cultivation, I would say it is important to create another legal channel of cannabis supply. I would like to point at the Uruguayan model because it is quite different from the models that we have seen in the US in different states and in Canada. In Uruguay you have

three legal supply channels for cannabis. One is home cultivation, so limited to six plants per household, and the second one is cannabis social clubs, which are non-profit organisations which have limits in terms of the number of plants they can grow, the number of grams they can produce and the maximum number of members they can have. This model started out quite slowly once Uruguay decided to legalise, but a lot of that had to do of course with the administrative burden because they made it quite difficult and included a lot of red tape for people trying to create a cannabis social club before they could actually start. But now, several years later, there are over 180, if I am correct, cannabis social clubs which are small NGOs that are legally producing cannabis and distributing cannabis to the members.

Now, our experience with cannabis social clubs in many other countries around the world where it is a non-regulated phenomenon—where it is a model which was generated in a grey legal area—is that of course you see a lot of different phenomena like, for example, facade clubs. So people tell everybody that they have created a not-for-profit cannabis social club, but in reality they are producing large amounts of cannabis and they are distributing even to members that live in other countries. So it is a facade for a commercial enterprise, and often these commercial cannabis social clubs are supplied by criminal networks or are even cannabis social clubs that buy the bulk of the cannabis that they are distributing among their members on the black market.

So everything depends on how you regulate the market, and as of today we actually only have one example of a country which has legal regulation around the model of cannabis social clubs. And to add to that, there are three other instances of governments that tried to regulate the cannabis social club model, and these are three regions in Spain. They actually created legislation, but they have never come to the point where they have implemented the regulation. This has to do with the tension between the legal competences of the regions in Spain and the central government in Madrid. But there are some contexts around the world, in Uruguay and in some regions in Spain, where actually legislation is not being implemented but at least put on paper, that show how you can regulate the cannabis social club model.

**The CHAIR:** Thank you. Tien, Deputy Chair.

**Dr KIEU:** Thank you, Chair. Thank you very much, Tom, for appearing and giving us some of your expert opinions here today. You started out by saying that prohibition has failed and a more regulatory framework is perhaps a better strategy. So the question is actually, even if prohibition has failed but the other alternatives may or may not be successful, because when we look at prohibition, in parallel to prohibition we have a strong education and diversion system to educate and also to deter people from using cannabis in this space. Take, for example, the previous witness, who said that after many years in Europe there is no clear data to support. It is unclear. I am not saying it has failed, the regulatory or other approaches, but it is still very unclear. Take the example of the Netherlands. Do you think that is a successful model or not?

**Prof. DECORTE:** Well, the Dutch model dates back to 1976 when the Dutch government decided to start tolerating these places where cannabis could be sold to adult people, and this was actually already happening de facto. So what they decided in 1976 was, ‘Let’s tolerate these places where people can go in and buy a small quantity of cannabis’, and the idea back then in the 70s was very progressive, because you have to understand that at that time the rest of the world was still thinking in a purely prohibitionist type of strategy. And the intention of the Dutch was to try and change the discourse about drug use, and cannabis use in particular, and stress the fact that this was in fact something that you should tackle not as a criminal phenomenon but as a public health issue.

The other idea behind the Dutch system was that they wanted to separate the cannabis market from the market for other more dangerous drugs, like heroin. By creating places where you can go and buy cannabis and where no other illegal drugs are offered, you try to separate both markets. To that extent the Dutch model was a success, especially in the early years. But of course now we are almost 50 years further and the demand for cannabis has had an enormous increase.

Another element that is important to take into account when we look at the Dutch model is that at first they allowed a lot of coffee shops, and they allowed the coffee shops also to sell to foreign people—to cannabis tourists from Belgium, my home country, from Germany, from the UK, from France. And so the effect this had was that these coffee shops became very large. They were supplying cannabis to more than 3000 cannabis consumers a day, so there was a lot of public nuisance. The neighbours living next to these coffee shops were very unhappy, understandably, and these coffee shops also became magnets for dealers of other drugs, who

started hanging around the coffee shops and trying to sell other drugs to these thousands of people who came there to buy cannabis.

The other problem with the Dutch model—the very structural problem with the Dutch model—is that the Dutch, while tolerating the sale of small quantities to adults, up to 5 grams, never regulated the production and the supply side, so as these coffee shops grew bigger and had to supply cannabis to thousands of people a day, at the same time they were officially only allowed to have a stock of 500 grams of cannabis but they needed much more. The initial idea of the model was that these coffee shops would be supplied by small, home cultivators who brought the surplus of their home production to the coffee shop to be sold. But the demand was so high, the number of customers was so high, that these coffee shops at their back door, as they call it, had to interact with criminal entrepreneurs. And so in the Netherlands basically we have the same system as in Belgium: we have black, illegally produced, cannabis being sold to cannabis customers. The only difference is that they have tolerated shops that also have to pay taxes.

So 50 years later we have to acknowledge that if you decide to regulate a cannabis market, you cannot just suffice with decriminalising possession and legalising possession and use and the sale of small quantities but not regulate the back door or the whole supply chain, because from a public health perspective it does not make sense. You are actually creating shops where illegally produced cannabis, with all the pesticides and all the adulterants and all the other problems with illegally produced cannabis, is just the same as with a totally legal market. The Dutch are aware of that. They have now voted in a law to have an experiment in 10 cities where the coffee shops from those 10 cities will be supplied by legal producers—so producers who have received a licence. I believe there are 10 companies now in the Netherlands that have received a licence who will produce legal cannabis to be sold in the coffee shops of those 10 cities. Within four years there will be an evaluation of this experiment and then it will be decided in the Netherlands whether they will expand the whole system of legal regulation of production and supply in the Netherlands—which is what everybody expects, by the way.

**The CHAIR:** Thank you. Kaushaliya.

**Ms VAGHELA:** Thanks, Chair. Thanks, Professor Decorte. In your submission it says that in the places where cannabis has been legalised it could take about 10 years to fully understand the outcomes because there is a time lag. In Victoria if we, say, go on the path of the way alcohol and tobacco is sold, if cannabis use is regulated that way, do you think still the lag period will be 10 years or does it vary?

**Prof. DECORTE:** Well, it may vary a little bit but I do think that it takes quite some time before you can really assess all of the effects of your regulatory framework, and that is exactly why I propose to have a very conservative and very restricted type of framework, because if things go wrong, if there are adverse effects, you can adjust the model. If along the way you think that a not-for-profit model is not enough to cover the demand and to have a very significant impact on taking away the black market, you can still decide to allow more players into the market and you can go further along the road towards allowing, for example, licensed companies et cetera. The problem is when you go for a commercial model right away with little restrictions it is very hard for a government to turn back the clock and to implement restrictions along the road.

So my general advice would be: start very restrictive and if you see along the way by monitoring everything that is happening that you need to open up the field for more players and create more legal channels, you can still do that. But the tobacco model has shown us that once you have a multibillion industry which is almost unrestricted in its commercial practices it is very hard for a government to turn back the clock. Remember how hard it was for governments to introduce a public smoking ban, plain packaging, all of those other tobacco measures that now seem to have had their effect in curbing the smoking behaviour of the general population? So I tend to be very careful and to go into a two-phase model. That is what I am proposing also in some of my articles. First, create a not-for-profit model with a limited number of legal supply channels and regulate them very strictly. It is much easier from a government perspective, from a regulatory perspective, to loosen along the way if you think it is necessary than to first create an unrestricted commercial market and then try to restrict the commercial practices of these industries, because they become important. They are very rich. They have huge budgets to do lobbying with the government, with the politicians, with the regulatory agencies et cetera. So that is why I would propose to be careful in the beginning.

**Ms VAGHELA:** Thank you. If there is time, I will come back with a follow-up question. Thanks, Chair.

**The CHAIR:** Thanks, Kaushaliya. Georgie.

**Ms CROZIER:** Thank you very much, Professor Decorte—a very interesting discussion. I am taking out of this that despite all of these years of countries trying various models, there are still experiments going on and there are still trials going on and there are still mistakes being made. Your approach to have a two-phase approach—you talk about that conservative model, I think, that conservative approach, around legalising and regulation of a home model. Was that part of what you were saying earlier on in your presentation?

**Prof. DECORTE:** Yes.

**Ms CROZIER:** Yes. So my question is: how is that policed? How do you know that that usage is actually going to be for personal use, that you are not going to be selling that? How is that policed? How do governments regulate and police that?

**Prof. DECORTE:** Well, in terms of the phenomenon of home cultivation, it is true that this is a phenomenon that you can obviously regulate; you can allow people to have a maximum number of plants. But in terms of policing, it is not something that you can police proactively. It is of course a kind of legislation that you can enact—for example, when police have other reasons to go into a home because there is domestic violence or because there is an incident or because there is a fight with the neighbours and then they discover that you have more plants than you are legally allowed, then there is the opportunity to sanction those people. But home cultivation is something that you cannot police very actively by invading people's homes.

The cannabis social club model as it stands in Uruguay is a model which is very strictly regulated, with a lot of guidelines and restrictions implemented. And there is a regulatory agency which inspects each and everybody's club on an annual or twice-a-year basis to see if they adhere to all of the regulations in terms of safety of the grow installation; usage of fertilisers et cetera; the maximum number of plants; and the obligatory administration for these clubs in terms of who are their members et cetera. So these can be inspected and, if needed, they can be policed and sanctioned if people do not respect the—

**Ms CROZIER:** But those social clubs are still open to the black market and still open to abuse. It is not without those risks. I think you did say that in Uruguay there was lots of red tape, it was an administrative burden and there was a component for distribution for commercial use in some of these clubs. So what I am trying to ask is: there is no perfect model here—is that a fair statement?

**Prof. DECORTE:** Yes, but I do not think I said that the cannabis social clubs in Uruguay have turned into very commercial organisations or that they are often used by the black market as a kind of facade. This is what we saw in other countries that saw the model of cannabis social clubs arise, including in my own country but especially in Spain. This is what happens when you do not regulate the phenomenon. I do think that in some countries, including mine, there was some kind of a tolerance policy towards these cannabis social clubs. They were not regulated, but they were somehow given some tolerance policy—'The police will not raid these clubs, we will not sanction them, we will not bring them to court'. And this allowed for all kinds of cannabis social clubs to exist.

I do think that if you want this model you should not just tolerate it, you should regulate it—because there are many other elements that you could regulate. For example, I agree with what you said: there is no perfect model. Something in Uruguay that they have not included in the model but which has interesting potential is to make sure that you enact and prescribe that these cannabis social clubs also take up prevention roles and especially harm reduction roles—so activities in raising awareness among cannabis consumers about the risks of cannabis use and also teaching them and making them aware of safer use practices. This is a potential—

**Ms CROZIER:** Sorry to interrupt you, but where is that done the best? Because we have programs here in this state of harm minimisation, and we do not know the true success of rehabilitation on some of these issues. So, again, I question in practice how it actually works—it sounds alright in theory, but in practice. So I am trying to get a handle on if we want to protect young people from substance abuse and drug use, then where is it working, that harm minimisation, in your experience?

**Prof. DECORTE:** Yes, well, I do think that we need to disentangle two things. What I was talking about was harm reduction strategies in the places where cannabis is being sold to customers or to members—to have some harm reduction strategies in place there. This of course is something completely different than the more

general prevention strategies that a government, whatever the legal model in place, should invest in. I do think that you should not overestimate the importance of the model and the legal status, because what we are thinking about are ways to be able to talk to users and to influence them and to nudge their behaviour in the desired direction. This is not just done by legalising something and creating a few legal channels. It is very important in any drug policy that apart from the legal models for production and for sale and for retail outlets you also have a very good plan about general prevention, general awareness, general education—about the risks of drug use and the potential problems that people can have.

To add to that, we can focus on drug policy, but what is often forgotten in these debates about which regulatory model would be the best is that—I am sorry, I am looking for the exact word in English—the breeding ground for drug problems, the most fundamental causes of drug problems in our society, need to be tackled by having a poverty policy and an education policy and by including people. So drug policy is a part of a much broader social policy in society. I do believe that a society which excludes more members—where there is a larger amount of social inequity, where there is a lot of discrimination, where there is a lot of pain, where there is a lot of unwellness or ill being—will have more drug problems. So if you want to have less drug problems, including cannabis abuse and cannabis-related problems, it is also important to invest enough in a much broader social policy—because it is often the people that are excluded from society, the people that have unfinished trauma and pain, that get into trouble with drugs, whether it is cannabis or alcohol or any other drug, or different drugs together. I do not know if that makes sense.

**Ms CROZIER:** It does. I could go on for a lot longer but I know that we are out of time, so thank you very much.

**The CHAIR:** Thank you. It is a fantastic conversation.

**Dr KIEU:** I have a quick question.

**The CHAIR:** Well, Kaushaliya asked first, Tien. So Kaushaliya, a quick question with the professor, and then we will go to you, Tien, just to quickly finish up.

**Ms VAGHELA:** Yes. The professor mentioned the two-phased approach. I just want to understand it. So are you saying that the first phase would be the social club and then it would go to something like, say, the way alcohol and cigarettes are sold; is that what would work?

**Prof. DECORTE:** Yes. I would like to refer again to the Uruguayan model, because they seem to have been able to have, let us say, 60 to 70 per cent of the black market eliminated by their legal model. So there is still 30 to 35 or 40 per cent of the black market which is still there, but they have a three-pillar approach: they have home cultivation, they have cannabis social clubs and they have legal sales through pharmacies. This is a three-tier or three-pillar model that already seems to be able after a few years to take away 60 to 70 per cent—it is a guess, of course; nobody knows exactly, but the figures they have are that 60 to 70 per cent of the black market is now taken over by the legal market. And, you know, you could expect that in Uruguay in a few years time they will reflect on, ‘Okay, what do we have to do next to take a further 20 per cent away from the black market and make sure that is covered by the legal market?’. It could be, of course, that you then decide, ‘Well, maybe we need to create, you know, a limited commercial market with just a few licensed companies and certain outlets where these products can be sold’, because it is true that many people in the academic world agree that home cultivation and not-for-profit models do not seem to be able to cover 90 or 95 per cent of the illegal market. But I do think it is a more careful approach, and I can see the arguments—and I do understand—of those that advocate we have to go directly for some kind of a commercial market with some licensed companies and some outlets. I think there are fair arguments to do so, but then you have to at least regulate it very restrictively—so, for example, a total ban on advertising, as we have seen with tobacco. It is not something you have to decide afterwards; you can do that right away. You could also regulate which type of cannabis products are allowed on the cannabis market, like cannabis-infused candies and all that strange stuff that we saw in the early states in the US. These are things that you can make impossible from the start, even when you allow for some commercial market.

**Ms VAGHELA:** Thank you.

**The CHAIR:** Thank you. Tien, just to quickly finish up.

**Dr KIEU:** Just a very quick and actually crucial question. You think that a regulatory approach might be a better strategy, so is there any correlation between some of the regulation in some countries and some models of cannabis and the use of hard drugs, where people graduate, people try to test new things, or the honey pot effect, when the dealers come and then peddle some new and harder drugs? Is there any correlation between the two when it has become regulated?

**Prof. DECORTE:** Thank you. This is an interesting question because it relates to one of those types of effects that we would probably need more time to be able to assess with figures and with data. But it is quite interesting to see that in some US states that legalised cannabis a few years ago and also in Canada there seem to be—I am going to be very careful in what I say—indications that there is some kind of a substitution effect going on, showing that in a state that legalised cannabis the global consumption of alcohol is going down, which could point at some kind of substitution effect. The same thing with prescribed opioid drugs. As you know, in North America it is a big problem. There are also some indications and first studies and first data which seem to show that as cannabis is legalised in particular areas the use of synthetic opioids is going down.

Now, if those early indications could be corroborated—so I am careful in what I am saying—if this is true, this would point at substitution effects which in my view, from a public health perspective, are interesting and are evolutions that I would consider positive, because, as you know, we can rank all the drugs that we know in our society according to the harm they can cause to the individual who consumes them and the harm they can bring to society and people around the consumer, and we know that alcohol is always on the top of the list. It is one of the hardest, one of the most risky drugs. It has more risks than cannabis, and it is also associated with more harm to the environment of the user in terms of violence, sexual violence, domestic violence et cetera. So if it is true that people, when cannabis is legalised, in global consume less alcohol, this is a public health benefit I would say. Of course we would like to see nobody use drugs and stay abstinent, but that is not a realistic goal. We will never have a drug-free world as it was stated for many years. We can try and strive for a society where there are less drugs, where there are less risky drugs and where there is less risky drug use. So if it is true that there is a substitution effect, this is quite interesting to follow up.

**Dr KIEU:** Thank you.

**The CHAIR:** Thank you, Professor. That was really fascinating, and I think we could have kept talking for hours, but unfortunately you need to carry on with your day and we probably need to end our day, and also to the people watching. So again, on behalf of the committee, we very much appreciate the time that you have given and also the documents that you have provided to the committee as well via a submission. As I mentioned at the outset, this has been recorded. You will receive a transcript. Please have a check and make sure that we did not mishear you or misrepresent you in any way. But, yes, thank you. It has been very helpful to the committee.

**Prof. DECORTE:** Thank you very much for the invitation, and I wish you a good night over there.

**The CHAIR:** Thank you, Professor. That brings our public hearing to an end. Thank you, everyone. Goodnight.

**Committee adjourned.**