Initial Problem: Applicability of “de minimis” to drug offences.

Clarification: What does “de minimis” mean?

| Source | Technique | Key Findings |
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| Black’s Law Dictionary | Searched “de minimis” | de minimis non curat lex (də min-ə-mis non kyoor-at leks) [Latin] (16c) The law does not concern itself with trifles. — Often shortened to de minimis. |
| Words and Phases | Searched “de minimis” | Applicability to drug offences not addressed |
| Canadian Encyclopedic Digest | Browsed Criminal Law — Defences > VI — Other Defences > 5 — Defences to Drug Offences  (b) — De Minimis Non Curat Lex | In some situations, yes. Unclear about how small the amount must be: what can be “used, measured, or scientifically analyzed”  Cases to note up:  *R v Marusiak* (2002), 5 CR (6th) 182  *R v Harrison*, 2018 ABQB 820  -Starting with more recent cases, as techniques for detecting traces of drugs have dramatically improved since the 1970s |
| Canadian Abridgment | Followed link from CED above to CRM.XXI.6 Criminal law — Defences — De minimis non curat lex  Used Search Within to search for “drug.” | Eight results. Most relevant:   1. *R v Brett*, 41 CCC (3d) 190, 53 C.R. (3d) 189 (BC): “ Here, upon the basis of the statement made by the accused to the police officer, it is apparent that the accused was admitting knowledge and control of the prohibited **drug**, and therefore upon the basis of his statement the Crown had proved possession of a prohibited **drug**. Thus the charge was made out by the Crown.”    1. Note-up: *R v Mete*, 81 WCB (2d) 553: “256 Whether the principle of de minimis non curat lex has application as a defence in criminal law is an open question. See R. v. Kubassek [2004 CarswellOnt 3425 (Ont. C.A.)] at para 18 where the Ontario Court of Appeal did not find it necessary to decide this issue.   257 In this case, it is also unnecessary to decide the issue of whether de minimis non curat lex is applicable. This case can be decided on whether the Crown has established that Mr. Mete had knowledge of the possession of cocaine.” *Mete* not considered in regards to this issue.   * 1. *R v Brown*, 171 CRR (2d) 227, 77 WCB (2d) 169, “112 Based upon the facts as I have found them, when Officer Hart looked in the vehicle he believed he saw a piece of marijuana. Possession of marijuana is an offence under the Controlled Drugs and Substances Act. That statute does not contain an exemption for possession of minimal amounts of prohibited drugs.”      1. Note up: *R v Kubassek* (2004), 188 CCC (3d) 307, 189 OAC 339 (Ont CA): Excellent discussion of applicability of maxim generally (not specific to drugs). However, court declines to address if applicable to criminal offences.  1. *R v Ling* (1954), 109 CCC 306, 19 CR 173.    1. Note up: *R v Marusiak*, [2003] 1 WWR 151, 324 AR 159: “14 The principle behind this ancient legal maxim in connection with narcotics is that the law should not concern itself with very small quantities of drugs. Numerous Canadian authorities have considered this doctrine in determining whether a possession violation exists. Canadian Courts have not uniformly adopted one approach. Therefore, each case is greatly influenced by the facts.” Also paras 15-27. Cited: Bruce A. MacFarlane, Q.C., Robert J. Frater and Chantel Proulx, Drug Offences In Canada, 3rd ed. (Aurora: Canada Law Book Inc., 2000). |
| Canadian Abridgment | Followed link from CED above to CRM.XX Criminal law — Illegal drugs  Searched “de minimis” | 1 Result. Not relevant. |
| Bruce A. MacFarlane, Q.C., Robert J. Frater and Chantel Proulx, *Drug Offences In Canada*, 3rd ed. (Aurora: Canada Law Book Inc., 2000). | Has been replaced by 4th ed. Looked in Index for De Minimis. | 30:60 — DEVELOPMENT OF THE DE MINIMIS DEFENCE: Excellent discussion of historical roots. “In more modern times, the de minimis issue has rarely arisen in drug cases — due, perhaps, to greater discretion being exercised by police and the Crown in small quantity cases. As a consequence, the law surrounding this doctrine is for the most part now being developed in non-drug cases. The pattern emerging — if indeed there is a pattern — is to avoid deciding whether de minimis is a general defence to criminal charges, and to reject its application in those rare instances where it is raised in drug cases.”  30:80 — CONCLUDING OBSERVATIONS  The “quantity” issue can be considered on any one of at least three different levels. First, on the basis of the de minimis maxim; secondly, that from the standpoint of statutory construction, the “mischief” behind the legislation precludes a prosecution where the quantity is so small that it is completely useless and valueless; thirdly, that the fact of the minimal quantity should, in the absence of evidence to the contrary, give rise to an inference that the defendant lacked either control over or knowledge of the substance — both of which are required to constitute possession: see c. 4, Possession.  The older Canadian cases have tended to emphasize the first approach, but more recently the third has been given careful consideration by the courts.  …  In summary, therefore, it appears that the following principles of law emerge from the existing case law in Canada:  1. In many cases, the mere fact of the minute quantity of a controlled substance in the custody of an accused will, in the absence of evidence to the contrary, entitle the trier of fact to infer that the accused lacked the requisite knowledge of or control over the substance in question.  2. Where an accused is found in possession of a small quantity of a controlled substance which is incapable of being used in the normal fashion only by reason of the quantity involved, the issue of quantity is irrelevant to the question of guilt (although, of course, it may be relevant to whether the Crown has succeeded in establishing some of the other essential ingredients of the charge).  3. Where the evidence supports the view that the small quantity of the substance seized was simply the remnant of a larger quantity which was once in the possession of the accused, the accused cannot, on the basis of quantity alone, be excused from criminal liability providing that the larger quantity falls within the terms of the indictment.  4. Where the accused is in possession of a substance that is neither capable of use, nor intended or designed to be used, s. 2(2)(*b*)(ii) of the *Controlled Dugs and Substances Act* may serve to establish that the substance is not a “controlled substance” within the mean of the Act. |
| Index to Canadian Legal Literature | Searched Find All: “de minimis drug.” Zero results  Searched Find All: “de minimis” | No clearly relevant results. |
| AccessCLE | Searched for “de minimis” | 83 results, none obviously relevant |