

"I was totally shocked," says Mr. Serka.

In a March 1984 setback, the B.C. Court of Appeal overturned the trial judge's ruling that the seven-year minimum sentence was unconstitutional. Mr. Serka obtained leave to appeal that decision to the Supreme Court, making him the first to use the charter to challenge the act's minimum-sentence provision.

The high court's decision begins by asserting that a minimum mandatory term of imprisonment does not in itself

constitute cruel and unusual punishment. "Those who import and market hard drugs for lucre are responsible for the gradual but inexorable denigration of many of their fellow human beings," writes Mr. Justice Antonio Lamer for the majority. He concludes they deserve "long periods of penal servitude." What he found objectionable in the law is that it forces judges to subject a young person caught driving across the Canada-U.S. border with his first "joint of grass" to the

same minimum penalty as the professional drug smuggler, leading inevitably to "grossly disproportionate" prison terms. Declares Mr Justice Lamer in his 87-page decision: "It is not necessary to sentence the small offender to seven years in prison in order to deter the serious offender."

In a lone dissent, Mr Justice W.R. McIntyre insists that for a punishment to be considered cruel or unusual it must outrage the public conscience or be de-

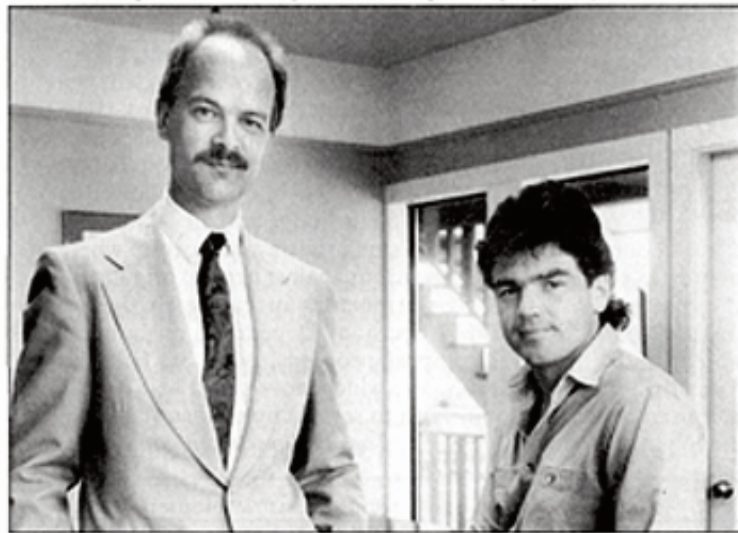
grading to human dignity, or go beyond what is necessary for the achievement of a valid social aim or be applied irrationally. None of these circumstances, he says, applies in Mr. Smith's case.

Neil Boyd, a lawyer and head of the Criminology Research Centre at Simon Fraser University in Burnaby, B.C., says the decision marks a "small victory in the war against ridiculous legal controls" and won't alter the tough sentences given to large-scale and repeat importers. And he foresees no rush to invalidate other compulsory minimum sentences such as life imprisonment for murder. "This decision isn't about minimum sentences. It's about the absurdity of drug laws that can sentence a guy to seven years for bringing a joint across the border while National Health and Welfare statistics show that 20% of Canadians are marijuana users."

It is now up to the B.C. Court of Appeal to reconsider Mr. Smith's sentence in light of the Supreme Court ruling. Since he has been paroled, that is a mere formality. Mr. Smith, who lives just outside Vancouver with his girlfriend and has been accepted into the prestigious Emily Carr College of Art and Design this fall, says he is not bitter about the publicity nor his time spent in jail. "I turned a negative situation into a positive one," he says. "That's something to go public about." *Lori Cohen*

#### Lawyer Serka and client Smith

*'Seven years is harsh for a small quantity of drugs.'*



JOHN COHEN