

Decriminalizing drug possession in Canada: Recent developments

Matthew Bonn, Canadian Association of People who Use Drugs

Sandra Ka Hon Chu, HIV Legal Network

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- We declare no potential for conflict(s) of interest.

Learning Objectives

After this workshop, participants will:

- Have a better understanding of the **harms and costs of criminalizing simple drug possession** and drug prohibition more broadly;
- Become familiar with some **recent legal and political developments** related to decriminalization in Canada; and
- Know and understand the **rationale behind a civil-society led model of decriminalization** that respects and protects the human rights of people who use drugs.

Setting the Scene: Criminalization across Canada

Controlled Drugs and Substances Act

Possession of substance

4 (1) Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II or III.

Punishments range from a fine to terms of imprisonment 6 months – 7 years.

Setting the Scene: Criminalization across Canada



Setting the Scene: Black & Indigenous communities

Black & Indigenous communities disproportionately charged, prosecuted, incarcerated for drug offences:

- Data from Toronto police 2003-2013 indicate Black people with no criminal convictions 3 × more likely arrested for cannabis possession than white people with similar backgrounds (*Toronto Star, 2017*)
- **Black and Indigenous people dramatically overrepresented in drug charges** by Vancouver police: Black people accounted for 6.4% of trafficking & possession charges since 2014, but only 1% of city's population; Indigenous people faced 18% of trafficking & possession charges, but just 2.2% of city's population (*FOI request, 2020*).
- 2018 report & 2020 study found Black and Indigenous men and women overrepresented in cannabis possession arrests across Canada (*Vice News, 2018; A. Owusu-Bempah & A. Luscombe, 2020*).
- 20% of Black federal prisoners incarcerated for drug offence (*Office of the Correctional Investigator*). In 2017, **54% of Black women in federal prisons serving sentences for drug offences**. Federally sentenced women 2× more likely to serve sentence for drug-related offences as their male counterparts, while Indigenous and Black women are more likely than white women to be in prison for that reason (*Office of the Correctional Investigator*).

Setting the Scene: Costs of enforcing criminal drug laws

More than \$6.4 billion of policing, courts and correctional costs in 2017 could be attributed to the use of criminalized substances:

- includes costs associated with enforcement of drug laws; &
- “the impact of violent and non-violent crimes that would not have occurred without some substance use.”

(Canadian Institute for Substance Use Research and the CCSA, 2020)

Significant evidence from various jurisdictions outside of Canada that removing criminal sanctions for simple drug possession can result in direct savings to the criminal legal system.

CACP report, July 2020: “The compelling case for transformative change”

- Agrees that **decriminalization for simple possession is effective way to reduce public health and public safety harms** associated with substance use.
- Endorses **alternatives to criminal sanctions** for simple possession, requiring “integrated partnerships and access to diversion measures.”
- “In a decriminalized regime, drug possession remains illegal, but the nature of the penalty for possessing a small or predetermined amount of drugs (for personal consumption) is either reduced/changed from a criminal conviction **to a fine or other type of sanction.**”
- “...**criminal penalties are still applicable to illegal drug manufacturers, dealers, and traffickers.**”
- **Police play key role in diverting people to treatment and other social support services:** “frontline officers would continue to be the first point of contact for any diversion model.”

Findings and recommendations report



Decriminalization for Simple Possession of Illicit Drugs:
Exploring Impacts on Public Safety & Policing

Special Purpose Committee on the Decriminalization of Illicit Drugs
July 2020

Setting the Scene: Police forces across Canada

Wayne Gallant, president of New Brunswick Association of Chiefs of Police & New Brunswick police chiefs

Julia Cecchetto, president of Nova Scotia Chiefs of Police Association & chief of the Kentville Police Service

Scott Tod, North Bay Police Chief

Inspector Dan Despatie, Sudbury Community Drug Strategy Group

Regina Police Service

Saskatoon Police Service

Saskatchewan Association of Chiefs of Police

Del Manak, Victoria Police Chief

Vancouver Police Department

Setting the Scene: Health authorities across Canada

- Dr. Bonnie Henry, PHO of B.C.
- Dr. Patricia Daly, chief MoH, Vancouver Coastal Health
- Winnipeg Regional Health Authority
- Dr. David Colby, MoH of Chatham-Kent
- North Bay Parry Sound District Health Unit
- Mylene Drouin, director, Montreal public health department
- Dr. Jennifer Russell, MoH of New Brunswick
- Dr. Eileen de Villa, MoH of Toronto
- **Dr. Theresa Tam**, Canada's Chief Public Health Officer: All approaches must be considered, including “**moving toward a societal discussion on decriminalization.**” (*August 2020*)

PPSC Directive, August 2020

5.13 Prosecution of Possession of Controlled Substances Contrary to s. 4(1) of the CDSA

- PPSC responsible for prosecuting CDSA drug offences.
- Directs prosecutors to **focus on the “most serious cases” raising public safety concerns** for prosecution and to otherwise pursue “suitable alternative measures and diversion from the criminal justice system for simple possession cases.”
- Acknowledges that criminal sanctions, as a primary response, have “a limited effectiveness” as a deterrent and as a means of addressing public safety concerns when considering the “harmful effects of criminal records and short periods of incarceration.”

PPSC Directive, August 2020

“**Most serious manifestations of harms**” justifying criminal prosecution response:

- Poses risk to safety or well-being of children (e.g. in vicinity of children, or person in position of trust / authority in respect of children);
- Risks health or safety of others (e.g. driving, operating machinery, possessing weapon, performing activity posing a risk to public health or safety);
- Risks a community's efforts to address consumption of controlled substances in accordance with own community approaches (e.g. isolated or remote communities);
- Associated with another CDSA or *Criminal Code* offence;
- In a custodial facility, jail or penitentiary;
- Committed by a peace officer or public officer, where relevant to the discharge of their duties.

Setting the Scene: Private Members' Bills, 2020-2021

Liberal:

Bill C-235: repeal of s. 4 of the CDSA

Bill C-236 (“evidence-based diversion measures”): requires officers to *consider* measures other than judicial proceedings to deal with individuals in alleged possession of drugs for personal use:

- i.e. “take no further action”; a warning; or “refer the individual to a program, agency or other service provider in the community that may assist the individual”.

NDP:

Bill C-286: repeal of s. 4 of the CDSA and expunge s. 4 convictions

Senate:

S-229: Minister of Health must develop a national strategy for decriminalizing illegal substances and repeals s. 4 of the CDSA

Setting the Scene: Bill C-22

To address “the over-incarceration of Indigenous peoples as well as Black and marginalized Canadians” Bill C-22 would have **repealed mandatory minimum penalties for all drug offences**.

Key Principles:

- problematic substance use “should be addressed primarily as a health and social issue”
- interventions should be founded on “evidence-based best practices and should aim to protect the health, dignity and human rights of individuals who use drugs”
- “criminal sanctions imposed in respect of the possession of drugs for personal use can increase the stigma associated with drug use and are not consistent with established public health evidence”

Requires officers to *consider* measures other than judicial proceedings to deal with individuals in alleged possession of drugs for personal use:

- “take no further action”;
- warning; or
- “refer the individual to a program, agency or other service provider in the community that may assist the individual”.

Setting the Scene:

Local requests for exemptions

Vancouver

In Nov. 2020, Vancouver City Council adopted motion for Mayor to “request a federal exemption from the *Controlled Drugs and Substances Act* to decriminalize personal possession of illicit substances within the City’s boundaries for medical purposes” and submitted its proposal in May 2021.

B.C.

Minister Malcolmson: “Are you willing to consider a Section 56 exemption to the *Controlled Drugs and Substances Act* for BC to decriminalize the possession of small amounts of controlled substances for personal use, as a way to reduce stigma as a barrier to treatment? (Feb. 2021).

Toronto

In June 2021, Toronto Board of Health directed Dr. de Villa to convene a working group to develop a “health and social equity-based alternative approach to drug decriminalization” for the City of Toronto.



Recent decriminalization statistics

“In the past 12 months, **courts across Ontario have withdrawn or stayed 85 per cent of drug possession charges in the system before they ever reached trial**, according to public data analyzed by CBC Toronto.

By comparison, 45 per cent of such charges were dropped in 2019, prior to the pandemic.”

Drug possession charges dropped across Ontario at an unprecedented rate



More than 85% of charges dropped before trial in the past 12 months, a CBC analysis finds



Dexter McMillan · CBC News · Posted: Sep 07, 2021 4:00 AM ET | Last Updated: September 7



How do we get there? *De facto* decriminalization

Moratoria on enforcement of drug laws:

- U.S. cities and states in context of COVID pandemic (e.g. Baltimore State Attorney, Brooklyn District Attorney).
- *Partial* decriminalization in most provinces with PPSC Directive or Bill C-22.
- Health Minister could issue nation-wide s. 56 federal exemption from s. 4 of CDSA, “in the public interest” (endorsed by Toronto Board of Health).
- Could also make *local* (e.g. municipal, provincial) request for s. 56 exemption from s. 4 of CDSA.

How do we get there? *De jure* decriminalization

Constitutional and supreme courts around the world have determined that laws prohibiting possession and use of drugs violate human rights:

- In 2015, **Mexico**'s Supreme Court ruled that administrative bans on the recreational consumption of cannabis was unconstitutional.
- Courts in **Chile, Spain, Colombia** and **Argentina** have ruled that private use of drugs should not be subject to any state sanction.
- Last considered in **Canada** by Supreme Court in *R. v. Malmö-Levine* 2003 SCC 74: "Advancing the protection of [vulnerable individuals] through criminalization of the possession of marijuana is a policy choice that falls within the broad legislative scope conferred on Parliament. Equally, it is open to Parliament to decriminalize or otherwise modify any aspect of the marijuana laws that it no longer considers to be good public policy."

Federal law reform, i.e. through a federal bill.

CAPUD constitutional challenge (Aug 2021)

Decriminalize Now!

It's time to decriminalize drugs now across
Canada

CAPUD is suing Canada to remove criminal
penalties on drug use

#DrugDecrimCanada

Key features of (draft) civil society platform



Photo: Toronto.com

Among other measures, the proposed drug policy includes:

1. Fully decriminalizing all drug possession for personal use, as well as the sharing or selling of limited quantities of drugs.

This requires the removal of criminal sanctions and all other penalties (administrative or otherwise) as follows:

- **A full repeal of section 4 of the CDSA**

Key features of (draft) civil society platform

Amendments to section 5 of the CDSA, which criminalizes trafficking and possession for the purpose of trafficking, to **permit trafficking for subsistence, to support personal drug use costs, or to provide a safe supply (“necessity trafficking”)**



Photo: @DanaLarsen

Key features of (draft) civil society platform

Removal of all sanctions and interventions associated with simple drug possession, or with sharing or selling limited quantities of drugs, including:

- administrative penalties, e.g. fines, “health assessments,” dissuasion commissions
- confiscation of substances, paraphernalia or medical supplies
- geographic, drug use, or personal contact restrictions or curfews
- drug treatment courts as a coercive alternative to criminal sanction
- other coerced or involuntary treatment or other health interventions



Photo credit: Toronto.com

Key features of (draft) civil society platform



Photo credit: Toronto.com

- Automatic expungement of previous convictions for simple **drug possession** and for necessity trafficking
- Expungement of previous convictions for breaches of police undertakings, bail, probation or parole conditions associated with charges for these acts

Key features of (draft) civil society platform



Photo: Jesse Winter

Clear rules and **strict limitations relating to when police can stop, search and investigate a person for drug possession**

Removal of police and other law enforcement as ‘gatekeepers’ or ‘liaisons’ between people who use drugs and health services, to be replaced by credible, skilled, and trained workers with lived experience and other frontline workers

Key features of (draft) civil society platform

2. **Redistributing resources** from the enforcement of these harmful drug laws to non-coercive, voluntary policies, programs and services that protect and promote people's health and human rights, including **health, education, housing and social services that support people who use drugs and promote the safety and well-being of communities.**



Photo: Saul Loeb/AFP

CAPUD litigation: need for support

Spread the word:

<https://www.gofundme.com/f/Support-CAPUD-in-its-Drug-Decrim-Action>

Support CAPUD in its Drug Decrim Action



 Natasha Touesnard is organizing this fundraiser.

(French version below)

The overdose epidemic continues to claim countless lives (nearly 24,000 since 2016) of persons who use drugs (PWUDs), with no end in sight. Numbers continue to grow as the COVID-19 pandemic and

\$2,830 raised of \$50,000 goal

26 donors | 126 shares | 33 followers

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Thank you

matt.bonn@capud.ca

schu@hivlegalnetwork.ca