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A Review of Canadian Legislative Initiatives to Address Substance Use

Disclosures



United States Government – the views and opinions herein are those of the author and do not necessarily represent the view of the United States Government or its Components.



University of Western Ontario – currently working on updating the professionalism curriculum.

Disclaimer

This presentation is an abridged compilation of legislative updates and **should not** be interpreted to represent legal advice or create a lawyer/client relationship.

I am not a lawyer in the province of Ontario.

Objective

Learn about the Canadian legislative initiatives for managing addictions and substance use over the last two years.

Methods

Reviewed the last two years of proposed and passed legislation in the federal and provincial jurisdictions across Canada.

Inclusion Criteria: related to addiction and substance use

Exclusion Criteria: budget bills

Setting the Stage: Controlled Drugs and Substances Act

“An Act respecting the control of certain drugs ...” The objectives are identified as the “protection of health and public safety.”

R. v. Malmö-Levine, 2003 SCC 74.

At its core – the CDSA is a criminal statute and falls under federal jurisdiction per s. 91(27) of the *Constitution Act, 1867*.

Setting the Stage: Controlled Drugs and Substances Act

s. 4(1) – unauthorized possession Schedule I to III

s. 4(2) – double doctoring Schedule I to IV

s. 5 – trafficking; s. 6 – importing and exporting

Schedule I – opiates, cocaine, amphetamines

Schedule II – synthetic cannabinoids

Schedule III – methylphenidate, psilocybin

Schedule IV – benzodiazepines, barbiturates, steroids

Federal Government

Removal of mandatory minimum penalties.

Diversion principles and mechanisms.

Federal Government

Bill C-5 (2022) removed the minimum mandatory penalty for **all** CDSA offenses, including trafficking, importing, exporting, and production.

(Many of the mandatory minimum penalties were already constitutionally vulnerable under *Charter* s. 12 for being grossly disproportionate.) *R. v. Lloyd*, 2016 SCC 13.

Federal Government

Bill C-5 (2022) creates diversion principles:

- “Problematic substance use should be addressed primarily as a health and social issue.”
- “Interventions should be founded on evidence-based best practices ...”
- “Criminal sanctions ... can increase the stigma associated with drug use ...”
- “Interventions should address the root causes of problematic substance use ...”
- “Judicial resources are more appropriately used in relation to offences that pose a risk to public safety ...”

Federal Government

Bill C-5 (2022) creates diversion mechanisms:

- Requires officers and prosecutors to consider the diversion principles in people charged with possession to consider whether no action, warning, or referrals to a program may assist the individual.
- Creates a system of recording warnings / referrals.

Bill C-5 (2022) also protected healthcare workers by codifying innocent possession.

- Possession within “the course of their duties” “and they intend to, within a reasonable period, lawfully dispose of it” is not an offence.

Federal Government

s. 56(1) exemption – Health Canada can grant exemptions to any component of the CDSA.

Examples:

- Physicians prescribing controlled substances.
- Nurses giving controlled substances.
- Possession while at a supervised consumption site.

<https://www.canada.ca/en/health-canada/services/health-concerns/controlled-substances-precursor-chemicals/policy-regulations/policy-documents.html>

Politics

Poilievre-backed motion calls for an end to safe drug policies and more cash for treatment



Conservative leader says government funded safe-supply programs are leading to more opioid deaths



[Peter Zimonjic](#) · CBC News · Posted: May 18, 2023 3:36 PM EDT | Last Updated: May 29

Federal Government

2003

Insite was the first government-sanctioned safe consumption site. Opened in 2003 under a s. 56 exemption.

2011

Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44.

The Federal Government did not renew the exemption.

2008

Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44

The SCC held that denying Insite's renewal was an arbitrary and disproportionate limitation on the s. 7 liberty interests of the staff and clients.

The Court looked at the evidence and found that the Insite exemption "does not undermine the objectives of public health and safety, but furthers them."

The Minister was ordered to grant an exemption.

British Columbia

Intervention: s. 56(1) exemption for **personal** possession of < 2.5 grams of opioids, cocaine, methamphetamines, and MDMA.

Status: time-limited from January 31, 2023 to January 31, 2026 subject to the Minister of Mental Health and Addictions.

Must be for personal use – no intent to traffic, export, or produce. No schools, airports, military, motor vehicles.

British Columbia

Intervention: allowing Nurse Practitioners to assess patients for involuntary admission under the Mental Health Act.

Status: originally passed in 2011 and coming into force as of February 2023.

Alberta

Intervention: Compassionate Intervention Act

Status: yet to be introduced

Compassionate Treatment Order – “will allow a family member, doctor, or police officer to make a petition to family court for a treatment order when someone is a danger to themselves or others.” (UCP).

CBC interview with Marshall Smith (Chief of Staff) clarified “intervention would be forced but treatment wouldn’t be, except in certain cases.”

<https://globalnews.ca/news/9643493/alberta-government-compassionate-intervention-act-explanation/>

Portugal Decriminalization

Dissuasion Commissions – legal expert, social worker, health professional; supported by psychologists and sociologists.

- Assess reasons for drug usage. Make appropriate referrals. Discuss health risks.
- Administrative sanctions – typically suspended if open to treatment or not addicted, regular reporting, written warnings, etc.
- Confidential process. Central register is only available to the Commissions.
- 10 days or less of drugs.

Oregon

Measure 110 – referendum (2020)

- Reduced possession offenses to a misdemeanor with a \$100 fine with no other criminal penalties.
 - 65% no show rate to court.
 - 10% have multiple violations.
- Dismissal of charge if the person produces a screening or treatment contact within 45 days.
 - Only 50 dismissals in > 2 years out of 6000 cases with Class E violations.
- Cannabis tax revenue available for grant funding – harm reduction, housing, etc.

Manitoba

Intervention: Addiction Services Act

Status: introduced, dead before 2nd Reading

The Act would require licensing of bed-based treatment services, supervised consumption services, withdrawal management services, and addiction treatment services.

- **Broad** regime to regulate.

Goal: “improve transparency and ensure these services are safe and accountable to individuals and their families.”

- Minister of Mental Health and Community Wellness

Ontario

Intervention: Right to Timely Mental Health and Addiction Care for Children and Youth Act (2022)

Status: introduced, unlikely to pass

Directs the Minister of Health to ensure mental health or addiction services are available within 30 days to a person less than 26 years old.

Nova Scotia

Intervention: repeal of the Crosbie Memorial Trust Fund Act

Status: passed

In 2003, the province created the Crosbie Memorial Trust Fund to support abstinence-based addictions services in the Annapolis Valley and the Crosbie House Society.

- Originally funded by criminal fines on people who committed drug/alcohol related offences.
- Funds exhausted.

Nova Scotia

Intervention: Protection of Children from Abusing Drugs Act (2021)

Status: dead after first reading

If the Court is satisfied that the child is abusing drugs, they may grant a protection order to confine the child in a protective safe house.

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Questions?

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