

A PRIMER FOR MUNICIPAL AND PROVINCIAL GOVERNMENTS

# DECRIMINALIZING PEOPLE WHO USE DRUGS

MAKING THE ASK, MINIMIZING THE HARMS



## BACKGROUND

Between January 2016 and March 2020, more than 16,300 people in Canada were reported to have fatally overdosed.<sup>1</sup> Since the onset of the COVID-19 pandemic, record numbers of overdose deaths have been reported in multiple cities and provinces.<sup>2</sup> In September 2020, British Columbia experienced a 112% increase from the number of overdose deaths in the previous September,<sup>3</sup> and more people have died from overdose in the first eight months of 2020 than in all of 2019.<sup>4</sup> Alberta has experienced record high overdose deaths in 2020 with the majority of municipalities reporting 140% increases in emergency medical services (EMS) responses to opioid-related events from the first to second quarter of 2020.<sup>5</sup> In Toronto, EMS responded to 132 suspected opioid-related overdose deaths between April 1 and September 30, 2020, an increase from 59 during the same period in the previous year.<sup>6</sup> This reflects a 40% increase in overdose deaths across Ontario.<sup>7</sup>

As the COVID-19 pandemic and the overdose crisis sweep across Canada, all policymakers have an obligation to adopt evidence-based measures that uphold the health and safety of people who use drugs.<sup>8</sup> **This includes municipal and provincial governments, who can take immediate steps to minimize the harms of current drug laws by decriminalizing drug possession for personal use (i.e. “simple drug possession”) in their own jurisdictions.**

**This report outlines how they can do this through a request to the federal Minister of Health, who has a broad power to issue exemptions from the federal law criminalizing simple drug possession.** As outlined below, this approach is not novel, and employs an existing provision in the *Controlled Drugs and Substances Act* (CDSA) that already allows supervised consumption services to operate without risk of criminal prosecution.

In large part, a toxic drug supply is responsible for the catastrophic rate of fatal overdoses in Canada, and this toxicity has been exacerbated by pandemic-related disruptions to the criminalized drug market. But the illicit underground market is itself driven by Canada’s long-standing policy of drug prohibition, which makes it illegal to possess even small amounts of drugs for personal use under section 4(1) of the *Controlled Drugs and Substances Act* (CDSA). The criminalization of simple drug possession along with the attendant fear of drug seizures and arrests push some people who use drugs to do so in isolation, compromising their ability to take critical safety precautions, such as using a “buddy system” or accessing supervised consumption services (SCS).<sup>9</sup> It also creates significant barriers to health care and social supports by fuelling stigma, discrimination, shame, and blame.

The COVID-19 pandemic has further exposed the gross health inequities and structural factors that increase people’s vulnerability to the virus.<sup>10, 11, 12</sup> People who use drugs, and particularly those who are homeless or precariously housed,

are more likely to have chronic health issues (e.g. HIV, hepatitis C, and co-infections) that will increase their risk of experiencing severe complications should they contract SARS-CoV-2.<sup>13</sup> People who use drugs are at higher risk of COVID-19 infection<sup>14, 15</sup> and those with a history of overdose are more likely to have a chronic health condition (e.g. chronic pulmonary disease, diabetes, coronary heart disease), which increases their risk of progressing to a severe form of the illness.<sup>16, 17</sup> Indigenous communities also face increased health risks at the intersections of substance use and COVID-19, longstanding barriers to accessing healthcare, systemic racism, and ongoing colonization.<sup>18</sup>

At the same time, pandemic response measures have forced many harm reduction and addiction treatment services across the country to close or reduce the scope of their services.<sup>19, 20</sup> This has created disruptions in access to treatment (e.g. opioid agonist therapy) for those in care, which increases their risk of relapse in the context of a compromised illegal drug market, a reduction in access to harm reduction supplies,<sup>21</sup> and reduced access to supports for other basic needs (e.g. food, shelter, clothing, showers, daily respite) and to interpersonal connection and community.<sup>22</sup>

As a result, people who use drugs are not only navigating new gaps in the resources and supports on which they rely, but also in the drug supply, increasing their risk of overdose, sexually transmitted and blood-borne infections (STBBIs), and other harms to their health.<sup>23</sup> This has created a situation in which parts of Canada have seen drug-related overdose deaths exceed deaths from COVID-19.<sup>24</sup>

Heightened law enforcement surveillance in the context of the pandemic also increases the risk of arrest, detention, and incarceration faced by people who use drugs.<sup>25</sup> In Canada, a significant proportion of people who use drugs have experienced prosecution and incarceration, and a significant number of people in prison have used drugs — and continue to use drugs while incarcerated.<sup>26</sup> However, behind bars, access to harm reduction

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and other health services is drastically curtailed,<sup>27</sup> contributing to far higher rates of HIV and hepatitis C in prison,<sup>28</sup> particularly among Indigenous prisoners.<sup>29</sup> At the same time, crowded prison settings mean people are unable to maintain physical distance or take other protective measures to minimize the risk of SARS-CoV-2 infection. This has contributed to a number of COVID-19 outbreaks in prison,<sup>30</sup> despite judicial efforts<sup>31</sup> and prosecutorial direction<sup>32</sup> to limit the number of incarcerated people during the pandemic. Efforts to curb the pandemic in prisons have also included measures such as indefinite lockdowns, extended periods of cellular isolation, and the suspension of programs and services, in contravention of prisoners' statutory and human rights.<sup>33</sup> These poor conditions of detention, including inadequate access to health care, disproportionately affect Indigenous and Black people, who are grossly overrepresented in federal and provincial prison systems.<sup>34</sup>

The need to decriminalize simple drug possession has been urgent since well before the onset of COVID-19. According to the Canadian Centre on Substance Use and Addiction (CCSA), among other organizations, a growing body of evidence supports decriminalization as an effective way to mitigate harms sometimes associated with substance use, particularly those harms associated with criminal prosecution for simple possession.<sup>35</sup> Now more than ever, this policy change will save lives and promote public health (as well as save public funds), and municipalities and provinces can take concrete steps to help make this happen.

# WHAT CAN LOCAL AND PROVINCIAL GOVERNMENTS DO?

The federal government has jurisdiction over the regulation of controlled substances. Under section 56 of the *Controlled Drugs and Substances Act* (CDSA), the federal Health Minister has broad power to exempt people and/or jurisdictions, including municipalities and provinces, from any or all the provisions of the CDSA, without needing to amend or pass legislation in Parliament:

“ 56 (1) The Minister may, on any terms and conditions that the Minister considers necessary, exempt from the application of all or any of the provisions of this Act or the regulations any person or class of persons or any controlled substance or precursor or any class of either of them if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.”

For years, the federal Health Minister has granted such exemptions throughout Canada to facilitate clinical studies and other research, the operation of supervised consumption services and overdose prevention sites, and the prescription of methadone and other controlled substances (see text box). Notably, SCS are settings

where drug possession is effectively decriminalized under such exemptions, and Health Canada has also granted class exemptions under section 56 to provinces that request them “in the public interest” to authorize emergency “overdose prevention sites.”

**Under the broad powers provided by the CDSA, the Health Minister can grant all people in a specific jurisdiction such as a province or municipality (or even all of Canada), an exemption from section 4 (1) of the CDSA (i.e. the criminal prohibition on simple possession) because to do so is “in the public interest.”** Exemptions can be granted proactively by the Health Minister, or in response to individual requests from people or jurisdictions.

## Background on section 56 exemptions

Section 56 of the CDSA allows the Minister of Health to exempt any person or class of persons or any controlled substance from the application of all or any provisions of the CDSA or the regulations if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose “or is otherwise in the public interest.” This power has been used over the years as follows:

- Before legislative amendments in 2015, section 56 exemptions allowed for the operation of supervised consumption services, such as Insite in Vancouver, without risk of criminal prosecution. Since the CDSA was amended in 2015 and then again in 2017, exemptions specifically related to SCS for a “medical purpose” now fall under the newly added section 56.1.<sup>36</sup> But the original section 56 remains and provides a broader power to issue exemptions in other instances whenever this is “in the public interest.”
- Prior to regulatory amendments in 2018, section 56 exemptions were issued to permit practitioners to prescribe, sell, provide, or administer methadone.<sup>37</sup> (The 2018 amendments removed the need for issuing individual exemptions to individual doctors, so as to facilitate greater access to this treatment.)
- Section 56 exemptions are issued to allow researchers who require a controlled substance for clinical studies or other research purposes to legally purchase, possess, and use a specified quantity of the controlled substance.<sup>38</sup>

- Section 56 has been used to respond to the current overdose crisis by issuing class exemptions to provinces that request them for temporary “overdose prevention sites” on the basis that this is “in the public interest.”<sup>39</sup> To facilitate the response to COVID-19, Health Canada also issued temporary class exemptions to all provinces and territories enabling provincial or territorial Ministers of Health to approve the operation, without risk of prosecution under the CDSA, of “Urgent Public Health Need Sites” (UPHNS) in their jurisdictions, and provincial/territorial health ministers are also authorized to further delegate UPHNS approval to municipalities.<sup>40</sup>
- In response to COVID-19, Health Canada issued a section 56 exemption relaxing rules for pharmacists and prescribers in dealing with controlled substances — i.e. by permitting pharmacists to extend, renew, and transfer prescriptions to other pharmacists, permitting practitioners to verbally prescribe prescriptions of controlled substances, and allowing an individual to deliver controlled substances to patients at their homes or an alternate location. This step was taken in order to enable people who use drugs to adhere to public health guidance about physical distancing and self-isolation while accessing controlled substances.<sup>41</sup>

These examples illustrate that the power to issue exemptions from prohibitions under the CDSA has been used on many occasions to protect the health of individuals and public health — including exempting entire categories of people and/or applying in an entire jurisdiction such as a province.

Exemptions can be granted proactively by the Health Minister, or in response to individual requests from people or jurisdictions.



Granting a section 56 exemption is a simple, straightforward action that is entirely within the immediate power of the federal government. In Canada, more than 170 organizations across the country have already called on the federal government to urgently issue this exemption to free all people in Canada from the prospect of being arrested for simply having drugs for their own personal use.<sup>42</sup> As the federal Minister of Health stated in July 2020, she is “excited to explore all possibilities to reduce the criminalization of people who use substances.”<sup>43</sup> In August 2020, the federal Minister of Health also wrote all provincial and territorial Ministers of Health and regulatory colleges to encourage action at all levels of government “to prevent further deaths from the contaminated illegal drug supply and COVID-19,” including by providing “people who use drugs with a full spectrum of options for accessing medication, depending on their individual circumstances, that will help them avoid the increased risks from the toxic drug supply.”<sup>44</sup>

Given these statements, and the extensive evidence in support of decriminalization, advocates continue to press the federal government to repeal section 4(1) of the CDSA. In the interim, we are also urging the federal government to issue a section 56 exemption to all people in Canada so simple drug possession is *de facto* decriminalized across the country. **But municipalities and provinces can also communicate their support for decriminalization by formally requesting a section 56 exemption in their jurisdiction from the federal government.**

## WHO CAN MAKE THIS REQUEST?

There is no restriction in the CDSA as to who may request an exemption or be issued an exemption: section 56 says that the Minister may exempt “any person or class of persons” and set “any terms and conditions that the Minister considers necessary.” However, having a formal request from a municipality or a province would be a clear basis on which to grant the exemption.

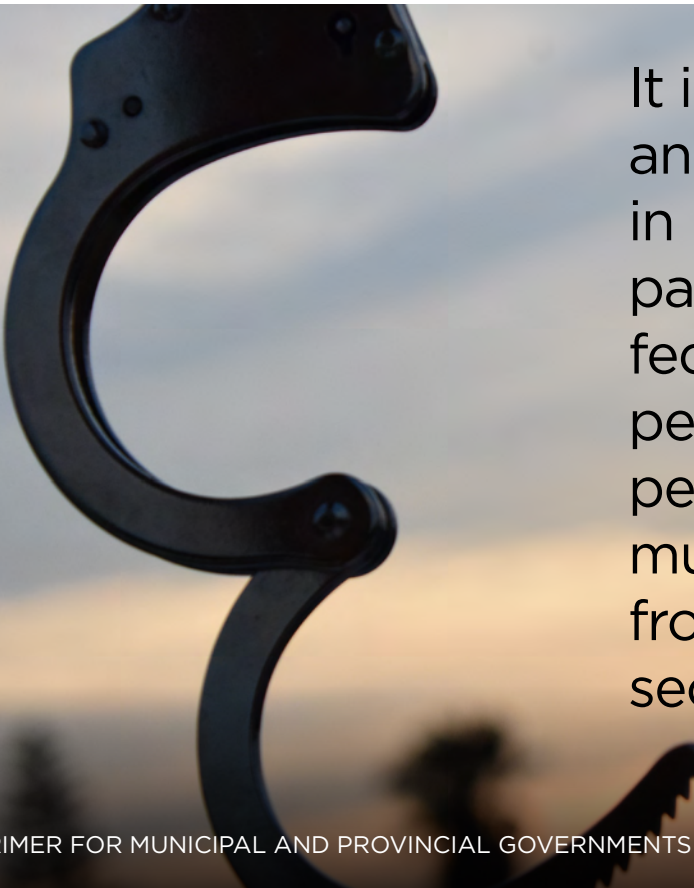
### **On behalf of a municipality, authorities such as the following could make a request:**

- City council
- Municipal board of health
- Local Medical Health Officer

### **On behalf of a province, authorities such as the following could make a request:**

- Chief Provincial Health Officer
- Premier or Provincial Minister (e.g. of Health, Mental Health and Addiction, Justice and Attorney General, Public Safety, Solicitor General)
- Chief Public Health Officer

Such requests are in keeping with previous uses of section 56 to grant exemptions. As discussed above, on the basis that it is “in the public interest,” Health Canada has granted “class” exemptions under section 56 to provinces/territories for the operation of temporary “overdose prevention sites”<sup>45</sup> and “Urgent Public Health Need Sites” (UPHNS) in their jurisdictions. Provincial/territorial health ministers are also authorized, under such exemptions from the CDSA, to further delegate UPHNS approval to municipalities — meaning these public health services can operate without risk of criminal prosecution for offences such as drug possession.<sup>46</sup> Any authorized representative of a province or municipality can request a section 56 exemption that would protect people within its jurisdiction from criminal prosecution for simple drug possession under section 4(1) of the CDSA. It should also be recalled that provincial and local medical officers of health have broad powers and obligations to protect public health within their jurisdictions;<sup>47</sup> requesting a section 56 exemption from the federal Health Minister is entirely in keeping with their role and responsibility.



It is in the public interest, and even more so now in light of the COVID-19 pandemic, to issue a federal exemption to all people in Canada, or all people in a province or municipality that requests it, from criminalization under section 4(1) of the CDSA.

All exemptions — whether federal, provincial, or municipal in scope — should apply to all cases of simple drug possession, regardless of the substance in question.<sup>48</sup> It is in the public interest, and even more so now in light of the COVID-19 pandemic, to issue a federal exemption to all people in Canada, or all people in a province or municipality that requests it, from criminalization under section 4(1) of the CDSA.

**It is essential that criminal sanctions not be merely replaced with administrative sanctions.** Meaningfully addressing the harms of the prohibition of simple drug possession requires the removal of all criminal sanctions and other punitive measures by the state for the possession of substances for personal use, such as administrative penalties, fines, confiscation or seizures of substances or drug use equipment, conditions of release such as geographic restrictions, drug use conditions, temporal conditions, personal contact conditions, or formal diversion to Drug Treatment Courts as an alternative to criminal sanction.

This would reduce the persistent threat of police surveillance, arrest, and prosecution; decrease stigma related to drug use; and remove barriers to harm reduction, health, community, and social services,<sup>49</sup> particularly for the Black, Indigenous, and poor communities most affected. The costs of enforcing the prohibition of simple drug possession should also be re-invested in vital health services, housing, and other supports, to create better health outcomes.

All the evidence shows that policing and imprisoning people for drug possession is not only ineffective, but harmful and costly; a health-oriented approach is more fiscally sensible.

The following samples can be used by municipal or provincial governments for the purposes of requesting a federal exemption to decriminalize simple possession within their jurisdiction.

Note: A municipal motion is not necessary to make a local (municipal) request for a federal exemption. As described previously, an exemption request can be made by a local medical health officer, given their authority and responsibility to take measures to protect the health of those within their jurisdiction, which is clearly in the public interest. A motion adopted by a relevant municipal body (such as a board of health or regional health authority, or the local city council), could help by illustrating local support for the request.

**Sample text of municipal motion on decriminalizing simple possession:**

City Council / the Board of Health:

- a) calls on the federal government to decriminalize the possession of all drugs for personal use and support the scale-up of prevention, harm reduction, and treatment services; **and**
- b) requests that the federal Minister of Health grant, under section 56 of the *Controlled Drugs and Substances Act*, an exemption from section 4(1) of that Act decriminalizing the possession of controlled substances for personal use for all people in [municipality].

**Sample text of municipal or provincial request for section 56(1) exemption**

Dear Minister:

A growing body of evidence demonstrates that criminalizing simple drug possession does not protect public health or public safety and has been ineffective in reducing the use and availability of illegal drugs.<sup>50</sup> Prohibition fuels stigma against people who use drugs and puts them at increased risk of harm, including by impeding their access to much-needed services and emergency care in the event of an overdose or, now, by increasing their risk of exposure to COVID-19. *[Add local statistics related to overdose calls.]* A growing body of evidence supports decriminalization as an effective approach to mitigate harms sometimes associated with substance use, particularly those harms associated with criminal prosecution for simple possession.<sup>51</sup> There is widespread recognition, including by public health experts and bodies, in Canada and internationally, that decriminalizing simple possession is an important part of an effective public health approach to drugs.

Therefore, we are writing urgently with a request that you grant an exemption, under section 56 of the *Controlled Drugs and Substances Act*, to all people in [jurisdiction], exempting them from the criminal prohibition on simple possession of controlled substances found in section 4(1) of the Act.

Sincerely,

*[name of local or provincial authority requesting exemption]*

# THE CASE FOR DECRIMINALIZATION: THE NUMBERS AND THE EVIDENCE

“Fundamentally, repressive drug policies create far more harm than the drugs themselves.”

— Global Commission on Drug Policy<sup>52</sup>

“You cannot arrest your way out of an opioid crisis.”

— Dr. Theresa Tam, Chief Public Health Officer of Canada<sup>53</sup>

## i. Drug prohibition has been ineffective at reducing the consumption of criminalized drugs

For decades, the majority of drug arrests in Canada have been for simple drug possession.<sup>54</sup> More recently, from 2014 to 2019, police in Canada made more than 540,000 arrests for drug offences; 69% of those were for simple drug possession.<sup>55</sup> Penalties for simple drug possession range from a fine to a maximum of seven years’ imprisonment.



Yet more than a century of drug prohibition in Canada and globally have had no impact on levels of drug consumption or drug dependence.<sup>56</sup> As the Global Commission on Drug Policy noted in 2016, drug prohibition “has had little or no impact on rates of drug use, with the number of consumers increasing by almost 20 percent between 2006 and 2013.”<sup>57</sup> A 2014 study that analyzed the drug policies of 11 countries — a mixture of those with a predominantly prohibitionist approach and those that

had adopted decriminalization — “did not observe any obvious relationship between the toughness of a country’s enforcement against drug possession and levels of drug use.”<sup>58</sup> In 2017, 15% of people in Canada aged 15 years and older reported using illegal drugs during the previous year, an increase from 13% in 2015,<sup>59</sup> and from 11% in 2013.<sup>60</sup> Criminalizing drugs does not prevent their use.

## The financial costs of enforcing criminal drug laws

According to the Canadian Institute for Substance Use Research (CISUR) and the CCSA, more than \$6.4 billion of policing, courts, and correctional costs in 2017 could be attributed to the use of criminalized substances, including costs associated with the enforcement of drug laws as well as “the impact of violent and non-violent crimes that would not have occurred without some substance use.”<sup>61</sup>

While this research does not single out the specific costs of enforcing the criminal prohibition on simple drug possession, it does provide a snapshot of the colossal financial burden of drug offences on the criminal legal system. Indeed, there is significant evidence from various jurisdictions outside Canada that removing criminal sanctions for simple drug possession can result in direct savings<sup>62</sup> — funds that can be redirected toward more effective, evidence-based services and interventions that can promote healthier communities.

## ii. Disproportionate impact on Black and Indigenous people

Research also shows that, while Black and Indigenous people are not more likely to commit drug offences, they are more likely to be policed, arrested, and incarcerated for drug offences, given the legacy of racist law enforcement and criminal law practices:

- Data collected from 2003 to 2013 by the Toronto Police Service (TPS) indicate Black people with no history of criminal convictions were three times more likely to be arrested for possession of small amounts of cannabis than white people with similar backgrounds.<sup>63</sup>
- A 2018 report<sup>64</sup> and a 2020 study<sup>65</sup> found that Black and Indigenous people were overrepresented in cannabis possession arrests across Canada.
- A 2019 study of cases between 2007–2013 found that Black youth accused of cannabis possession in Ontario were more likely to be charged and less likely to be cautioned than white youth and youth from other racial backgrounds.<sup>66</sup>



- A 2020 report found that Black and Indigenous people are dramatically overrepresented in drug charges recommended by the Vancouver Police Department (VPD). Since 2014, Black people have accounted for 6.4% of drug trafficking and possession charges recommended by VPD, despite making up only 1% of the city’s population. Indigenous people have accounted for almost 18% of drug trafficking and possession charges but are just 2.2% of the city’s population.<sup>67</sup>
- Almost 20% of Black federal prisoners are incarcerated for a drug-related offence.<sup>68</sup> In particular, Black women are more likely than white women to be in prison for that reason.<sup>69</sup> As the Correctional Investigator of Canada noted in 2017, 54% of Black women in federal prisons were serving sentences for drug-related offences,<sup>70</sup> many of whom were carrying drugs across borders as a way to alleviate their situations of poverty.<sup>71</sup>

The impact of policing practices on Black and Indigenous communities has recently received long overdue global attention, and various governments and police departments throughout Canada have publicly committed to re-evaluating and addressing bias in policing. As the offence of simple drug possession is disproportionately enforced against poor and racialized communities (in turn causing serious health and safety harms to those same communities), decriminalizing simple drug possession is one way to minimize discriminatory police interactions and the corresponding harms experienced by Black and Indigenous communities.

**iii. Decriminalizing simple drug possession is better for public health and other outcomes**

There is extensive evidence, accumulated over more than a century, that prohibition has taken a terrible toll on human rights, on public health, and on the public purse.<sup>72</sup> Conversely, in a scan of more than 25 jurisdictions around the world that have decriminalized drug possession, some of whom also reoriented efforts and resources into dealing with drugs as a public health challenge, a number of positive health outcomes were identified, including reduced rates of HIV transmission and fewer drug-related deaths; improved education, housing, and employment opportunities for people who use drugs; and significant savings of public monies. Meanwhile, there has been a negligible effect on levels of drug use.<sup>73</sup>

- In perhaps the most well-known example, after Portugal removed criminal sanctions for consuming, acquiring, and possessing small amounts of drugs for personal use in 2001, and instead redirected resources to housing and other social supports, drug use did not increase. At the same time, there were demonstrable improvements to the health and wellbeing of people who use drugs, including declining incidence of HIV,

morbidity and mortality, and a more than 80% decrease in overdose deaths.<sup>74</sup>

- In the Czech Republic, decriminalization legislation and investments in health and harm reduction services resulted in HIV prevalence below 1% among people who inject drugs, one of the lowest rates in the region.<sup>75</sup>
- The Netherlands, which *de facto* decriminalized possession of certain quantities of drugs for personal use in the mid-1970s, has reported lower rates of “hard drug” use when compared to many of its Western European neighbours and also has one of the lowest rates of opioid-related deaths compared to other countries in the region.<sup>76</sup>

Moreover, in the context of the COVID-19 pandemic, the UN Special Rapporteur on the right to health — appointed by UN Member States as an independent expert — has also urged governments to decriminalize: “[P]eople who use drugs face unique needs and risks, due to criminalisation, stigma, discrimination, underlying health issues, social marginalisation and higher economic and social vulnerabilities,” and therefore, to “prevent unnecessary intake of prisoners and unsafe drug consumption practices, moratoria should be considered on enforcement of laws criminalising drug use and possession.”<sup>77</sup>

While decriminalizing simple drug possession is not a “silver bullet,” an environment where drug possession is no longer criminalized will reduce stigma and the fear of criminal prosecution. Correspondingly, this reduces significant barriers to health and support services, including “safer supply” initiatives and other vital harm reduction services.

**iv. Growing consensus on the pressing need for decriminalization**

In Canada, there is strong support for the decriminalization of drug possession for personal use. This position has been endorsed by organizations of people who use drugs — whose health and welfare has been most directly and negatively harmed — and other community organizations along with harm reduction and human rights advocates,<sup>78</sup> as well as public health associations and authorities, including:

- the Canadian Public Health Association<sup>79</sup>
- the Canadian Mental Health Association<sup>80</sup>
- the Canadian Nurses Association<sup>81</sup>
- the Harm Reduction Nurses Association and Nurses and Nurse Practitioners of British Columbia<sup>82</sup>
- the Toronto Board of Health<sup>83</sup>
- Toronto’s Medical Officer of Health<sup>84</sup>
- Montreal Public Health<sup>85</sup>

- Quebec’s Director of Public Health<sup>86</sup>
- the Winnipeg Regional Health Authority<sup>87</sup>
- Yukon’s Chief Medical Officer<sup>88</sup>
- Vancouver’s Chief Medical Health Officer<sup>89</sup> and
- the Provincial Health Officer of British Columbia.<sup>90</sup>

As Canada’s Chief Public Health Officer, Dr. Theresa Tam, stated succinctly in August 2020, **“You cannot arrest your way out of an opioid crisis.”**<sup>91</sup>

A growing number of elected municipal and provincial bodies have also supported the call to decriminalize simple drug possession, including the Mayor of Vancouver<sup>92</sup> and Vancouver City Council,<sup>93</sup> the Premier of British Columbia,<sup>94</sup> and St. Catharines City Council.<sup>95</sup>

Federally, the Liberal Party of Canada adopted, at its National Convention in April 2018, a policy resolution on “Addressing the Opioid Crisis Through a Public Health Approach (#2752)” calling on the Government of Canada to address problematic drug use as a health (and not criminal justice) issue by expanding harm reduction and treatment services and removing the criminal sanction for low-level drug possession.<sup>96</sup> Other federal parties, including the New Democratic Party of Canada and the Green Party of Canada, have also indicated their support for decriminalizing simple drug possession.<sup>97</sup>

In July 2020, the Canadian Association of Chiefs of Police (CACP) released a report in which police chiefs across the country “agree the evidence suggests, and numerous Canadian health leaders support, decriminalization for simple possession as an effective way to reduce the public health and public safety harms associated with substance use.”<sup>98</sup>

In addition, in August 2020, the Director of the Public Prosecution Service of Canada (PPSC) issued a guideline that directs prosecutors to “focus upon 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,” acknowledging that “criminal sanctions, as a primary response, have a limited effectiveness as (i) specific or general deterrents and (ii) as a means of addressing the public safety concerns when considering the harmful effects of criminal records and short periods of incarceration.”<sup>99</sup>

Globally, decriminalizing simple drug possession has been recommended by numerous health and human rights bodies as a measure that both protects health and upholds human rights, including the World Health Organization (WHO), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the UN Development Program, multiple UN Special Rapporteurs on the right to health,<sup>100</sup> and the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or

punishment.<sup>101</sup> The *International Guidelines on Human Rights and Drug Policy*, co-published by the International Centre on Human Rights and Drug Policy, UNDP, UNAIDS, and WHO, also call on States to “decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption.<sup>102</sup> And the Global Commission on Drug Policy, comprising former heads of state or government and other eminent political, economic, and cultural leaders, has highlighted the tremendous damage caused by the criminalization of people who use drugs and called for the removal of all punitive responses to drug possession and use.<sup>103</sup> In fact, *all* agencies of the UN system (including the UN Office on Drugs and Crime, the lead technical agency on drug policy issues) have adopted, in 2018, a common position recommending to all governments that they decriminalize simple drug possession.<sup>104</sup>

## CONCLUSION

Decriminalization of simple drug possession is long overdue. Support for decriminalization continues to grow, amidst calls to also reconsider the role of police in various contexts, and a growing body of evidence about the disproportionate impact of punitive drug policy on Black and Indigenous communities. Every level of government, including municipal and provincial governments, can and should heed these calls for change using the flexibility already found in the CDSA. Section 56 exemptions offer an immediate, straightforward mechanism that can be used without delay to start undoing the damage of criminalizing people for personal drug use and instead shift our energies and resources to more effective ways of protecting and promoting the health of people in our families and communities.

## METHODS

This primer was developed by Sandra Ka Hon Chu and Richard Elliott of the HIV Legal Network in collaboration with Dr. Adrian Guta, Dr. Marilou Gagnon, and Dr. Carol Strike.

The authors conducted a literature and media scan, and a review of international human rights policy guidance and domestic federal drug policy and legislation. Data from Government of Canada sources were consulted where available, and supplemented with research from peer-reviewed studies, grey literature, and media reports. The text was reviewed by external public health, drug policy and legal experts: Caitlin Shane of Pivot Legal Society and Kira London-Nadeau, Alex Betsos, Erika Dupuis, and Matthew McLaughlin of Canadian Students for Sensible Drug Policy.

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## ENDNOTES

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- <sup>2</sup> See, for example, C. Bains, “B.C. overdose crisis: New public health order issued after record number of monthly deaths,” CTV News, September 16, 2020, available at <https://bc.ctvnews.ca/b-c-overdose-crisis-new-public-health-order-issued-after-record-number-of-monthly-deaths-1.5107303>; M. Draaisma, “Toronto had record 27 suspected overdose-related deaths in July,” CBC News, August 10, 2020, available at [www.cbc.ca/news/canada/toronto/toronto-27-suspected-overdose-related-deaths-july-1.5681459](http://www.cbc.ca/news/canada/toronto/toronto-27-suspected-overdose-related-deaths-july-1.5681459); A. Bridges, “Drug users, advocates weigh in on why Sask. overdose deaths are at record high,” CBC News, September 14, 2020, available at [www.cbc.ca/news/canada/saskatoon/overdose-deaths-record-interviews-addicts-saskatchewan-1.5723019](http://www.cbc.ca/news/canada/saskatoon/overdose-deaths-record-interviews-addicts-saskatchewan-1.5723019).
- <sup>3</sup> British Columbia Coroners Service, *Illicit Drug Toxicity Deaths in BC January 1, 2010–September 30, 2020*, October 2020. Available at [www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/statistical/illicit-drug.pdf](http://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/statistical/illicit-drug.pdf).
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