

Brief to the Standing Committee on the Status of Women for its Study on Gender-based Violence and Femicides in Canada

HIV Legal Network | November 2024

Pressing Needs, Forgotten Rights

As stated by the Standing Committee on the Status of Women, violence against women (VAW) is among the “most pervasive health risks to women and gender-diverse people” in Canada.¹ Since 2019, the country has seen increasing femicides rates² – borne disproportionately by certain populations, including Indigenous women³ and women who use drugs.⁴ This is in the context of an unprecedented overdose crisis that has claimed nearly 45,000 lives since 2016,⁵ with Indigenous women particularly affected.⁶

Over the past several years, there has been an increasing recognition, among policy makers and service providers, of the need to provide shelter and support to women and gender-diverse people who use drugs.⁷ Yet, VAW shelters today remain out of reach for many who use drugs. Several provinces continue to mandate zero-tolerance among their shelters or link drug use to dangerous behaviour.⁸ As a result, women are often barred from admission if they are noticeably intoxicated or are forced to leave for having or using drugs.⁹ A 2021 national survey found that, among 500 women and gender diverse people, those who used drugs were barred from shelters at a rate that was three times higher than those who did not.¹⁰

Even when access is granted in principle, punitive shelter rules,¹¹ stigmatizing encounters with shelter staff,¹² encounters with police and child welfare authorities,¹³ and uneven harm reduction services bar meaningful access in practice.¹⁴ Most shelters in Canada do not meet the needs of women who use drugs.¹⁵ In a survey of 203 low-barrier women’s shelters, 79% of shelters reported that it was a “major challenge” to serve women who use drugs.¹⁶ As a consequence, women are dying in shelters.¹⁷

The status quo is incompatible with Canada’s human rights obligations. The denial of shelter because of drug use likely breaches the *Canadian Charter of Rights and Freedoms* right to life, liberty and security of the person, and the right to be free from discrimination.¹⁸ The denial is also contrary to Canada’s international human rights obligations. Under the *Convention on the Elimination of All Forms of Discrimination against Women*, differential treatment based on drug use is recognized as increasing vulnerability to VAW, which is in turn considered a form of prohibited discrimination.¹⁹ United Nations bodies have consistently urged states to ensure that VAW shelters are accessible to those who use drugs.²⁰

Towards Access for All

The current restrictions to VAW shelter access for women and gender-diverse people who use drugs is untenable – the restrictions exacerbate harms and do so in clear violation of Canada’s human rights obligations. The following recommendations are borne from a literature review and discussions with shelter representatives, including peers, staff, and managers.²¹

1. Increase funding to VAW shelters to allow them to improve capacity and accessibility to all women and gender-diverse individuals, including those who use drugs.

Even for shelters eager to adopt low-barrier models, inadequate government funding and support means they are unable to do so. Across the country, shelters simply do not have the resources necessary to meaningfully implement low-barrier models. Funding must thus allow shelters to provide harm reduction

services geared towards those who use drugs, such as needle and syringe programs, naloxone training and naloxone kits, drug checking, and supervised consumption services, as well as programs to address the needs of specific populations, including Indigenous women.

2. Increase funding and support for harm reduction services tailored to the needs of women and gender-diverse people who use drugs.

Harm reduction measures reduce the spread of blood-borne infections, such as HIV and hepatitis C, and prevent accidental overdoses and overdose (or toxic drug) deaths.²² Yet many shelters are unable to provide, or to refer participants to, harm reduction services due to their limited accessibility. Funding therefore must be geared towards supporting multifaceted, low-threshold interventions that address gender-based violence, transphobia, homophobia, racism, trauma, mental health, housing, sexual and reproductive healthcare, and safe supply and supervised consumption services. Services should be accessible to pregnant people and to people caring for children, and staff should be trained to provide a culturally sensitive and non-judgmental environment that encompasses services driven by lived expertise, mobile, or women-only services, including in rural, remote, and Indigenous communities.

3. Decriminalize and remove all sanctions for the possession of drugs for personal use and the sharing or selling of drugs for subsistence, to support personal drug use costs, or to provide a safe supply.

A major barrier to accessing shelter for those who use drugs is the criminalization of people who use drugs, which fuels stigma and prevents women from seeking or obtaining protection.²³ Fully decriminalizing all drug possession for personal use, as well as the sharing or selling of drugs for subsistence, to support personal drug use costs, or to provide a safe supply, requires the removal of criminal sanctions and all other penalties (administrative or otherwise) as follows:

- A full repeal of s. 4 of the *Controlled Drugs and Substances Act (CDSA)* and s. 8 of the *Cannabis Act*; and amendments to s. 5 of the *CDSA*, which criminalizes trafficking and possession for the purpose of trafficking, to permit the sharing and selling of drugs for subsistence, to support personal drug use costs, and to provide a safe supply (i.e. “necessity trafficking”);
- Removal of all sanctions and interventions associated with simple drug possession, or with necessity trafficking, including administrative penalties (e.g., fines, “health assessments,” dissuasion commissions, etc.); confiscation of substances, paraphernalia, or medical supplies; geographic, drug use, or personal contact restrictions or curfews; drug treatment; and other coerced or involuntary treatment or other health interventions;
- Automatic expungement of previous convictions for simple drug possession and an application-based expungement process for necessity trafficking, as well as expungement of previous convictions for breaches of police undertakings, bail, probation, or parole conditions associated with charges for these acts; and
- Clear rules and strict limitations relating to when police can stop, search, and investigate a person for drug possession; and removal of police and other law enforcement as “gatekeepers” or “liaisons” between people who use drugs and health and social services, to be replaced by organizations led by people who use(d) drugs or skilled and trained frontline workers.²⁴

¹ House of Commons Standing Committee on the Status of Women, *Towards a Violence-Free Canada: Addressing and Eliminating Intimate Partner and Family Violence*, Report of the Standing Committee, 44th Parl, 1st Sess, No (June 2022) (Chair: Karen Vecchio) at p. 20.

² *Towards a Violence-Free Canada*, supra note 1, at p. 21; Statistics Canada, *Number of victims of spousal homicide*, July 2024, available at <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510007401>; D. Sutton, *Gender-related homicide of women and girls in Canada*, Statistics Canada, 5 April 2023, at p. 3; Canadian Femicide Observatory for Justice and Accountability, *#CallitFemicide: Understanding sex/gender-related killings of women and girls in Canada, 2018-2022*, April 2023, available at <https://pathssk.org/callitfemicide-2018-2022>, at p. 35.

³ Government of Canada, *Key statistics on gender-based violence in Canada*, 10 June 2024, available at www.canada.ca/en/women-gender-equality/gender-based-violence/about-gender-based-violence.html#k; Government of Canada, *Gender-based violence (GBV) against Indigenous Peoples in Canada*, 29 February 2022, available at www.canada.ca/en/women-gender-equality/gender-based-violence/intergovernmental-collaboration/gbv-indigenous-peoples-snapshot.html.

⁴ See, e.g., E. Moir, “Hidden GBV: Women and substance use,” *Frontiers Psychiatry* 13 (2022); A. Hovey and S. Scott, “All Women Are Welcome: Reducing Barriers to Women’s Shelters With Harm Reduction,” *Partner Abuse* 10(4) (2019):409-428; and A. Hovey, “Understanding the Landscape of Substance Use Management Practices in Domestic Violence Shelters across Ontario,” *Journal of Family Violence*, 35(2) (2019): 191-201; R. Mason and S. O’Rinn, “Co-occurring intimate partner violence, mental health, and substance use problems: a scoping review,” *Global Health Action* 7(24815) (2014); Canadian Women’s Foundation, *Report on Violence Against Women, Mental Health and Substance Use*, February 2011.

⁵ Government of Canada, *Opioid- and Stimulant-related Harms in Canada*, 28 June 2024, available at <https://health-infobase.canada.ca/substance-related-harms/opioids-stimulants>.

⁶ First Nations Health Authority, *First Nations Illicit Drug Deaths Rise during COVID-19 Pandemic*, 6 July 2020, available at <https://www.fnha.ca/about/news-and-events/news/covid-19-pandemic-sparks-surge-in-overdose-deaths-this-year>; Émilie Vast, “Les Premières Nations particulièrement touchées par les surdoses aux opioïdes,” *CBC Radio Canada*, 3 December 2019.

⁷ K. Maki, *More Than a Bed: A National Profile of VAW Shelters and Transition Houses*, Women’s Shelters Canada, May 2019, at pp. 34-37; *Violence Against Women Emergency Shelter Standards*, Government of Ontario, 2015, at s. 2.9; Family Violence Shelter Standards, *Government of Northwest Territories*, 2019, at p. 5; Manitoba Standards Manual for Gender-Based Violence Programs, *Government of Manitoba*, November 2023.

⁸ K. Maki, *ibid.*, at p. 34; A. Boulanger et al., *Towards Access for All: Best and Promising Practices from Low-Barrier Harm Reduction Shelters in Canada*, HIV Legal Network, 20 February 2024, at pp. 28-29.

⁹ K. Maki, *supra* note 7, at p. 34.

¹⁰ K. Schwan et al., *The Pan-Canadian Women’s Housing & Homelessness Survey*, Canadian Observatory of Homelessness, 2021, available at www.homelessness.ca/sites/default/files/attachments/EN-Pan-Canadian-Womens-Housing-Homelessness-SurveyFINAL-28-Sept-2021.pdf.

¹¹ A. Boulanger et al., *supra* note 8, p. 12; Ontario Association of Interval & Transition Houses, *Safe for All – Discussion Guide*, available at <https://www.oaith.ca/assets/library/SafeForAllmanualManual.pdf>, at pp. 11-14.

¹² Ontario Association of Interval & Transition Houses, *ibid.*, at p. 11; Toronto Drug Strategy Implementation Panel, *Stigma, Discrimination & Substance Use: Experiences of people who use alcohol and other drugs in Toronto*, September 2010, available at https://www.toronto.ca/wp-content/uploads/2018/01/93e2-stigmadiscrim_rep_2010_aoda.pdf, at p. 14.

¹³ A. Hovey et al., “Is Harm Reduction Safe? Exploring the Tensions between Shelter Staff, Mothers, and Children Working or Living in Shelters,” 2022, in B. Richardson (ed), *Mothering on the edge: A critical examination of mothering within the child protection system* (Demeter Press, 2002), 107-127, at pp. 111, 120.

¹⁴ A. Boulanger et al., *supra* note 8, pp. 13-14.

¹⁵ A. Hovey and S. Scott, *supra* note 4, at p. 409.

¹⁶ K. Maki, *supra* note 7, at p. 34.

¹⁷ Government of Yukon, *Government of Yukon implementing coroner’s inquest recommendations*, 12 July 2024, available at <https://yukon.ca/en/news/government-yukon-implementing-coroners-inquest-recommendations>; M. Bossons, “Jury in coroner’s inquest rules 4 deaths at Whitehorse Emergency Shelter ‘accidental’,” *Yukon News*, 26 April 2024; Ontario Drug Policy Research Network, *Opioid-Related Toxicity Deaths Within Ontario Shelters: Circumstances of Death and Prior Medication & Healthcare Use*, June 2024, available at [https://odprn.ca/research/publications/opioid-related-toxicity-deaths-within-ontario-shelters/#:~:text=Between%202018%20and%202022%2C%20the,\(37.5%25%20vs%2033.3%25](https://odprn.ca/research/publications/opioid-related-toxicity-deaths-within-ontario-shelters/#:~:text=Between%202018%20and%202022%2C%20the,(37.5%25%20vs%2033.3%25).

¹⁸ A. Boulanger et al., *supra* note 8, p. 9.

¹⁹ *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, 18 December 1979, United Nations Treaty Series, vol. 1249, p. 13, at art. 1 and 2; *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 16 December 2010, CEDAW/C/GC/28, at para. 19.

²⁰ See, e.g., *Addendum to the Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Mission to Sweden*, 6 February 2007, A/HRC/4/34/Add.3, at paras. 44, 66; *Concluding observations of the Committee on Economic, Social, and Cultural Rights*, 8 June 2010, E/C.12/MUS/CO/4, at para. 27(d); *Concluding observations of the Committee on the Elimination of Discrimination against Women*, 31 October 2022, CEDAW/C/ UKR/ CO/9, para. 30(e).

²¹ A. Boulanger et al., *supra* note 8.

²² HIV Legal Network, *Scaling Up Supervised Consumption Services: What Has Changed in Canada?*, February 2024.

²³ A. Boulanger, et al., *supra* note 8, pp. 11-13.

²⁴ HIV Legal Network, *Decriminalization Done Right: A Rights-Based Path for Drug Policy*, 9 December 2021.