

Policy Shift: Decriminalization

Update: #1

Date: September 19, 2023

Issue

Decriminalization, in the sense referred to in this document, is the removal of the criminal offence for the possession of drugs for personal use. There are many different models of decriminalization in use throughout North America and other countries worldwide. A local or broader provincial model of decriminalization would need to be adapted to meet the needs of the people it is meant to help.

This briefing note provides background information and current facts related to the criminalization of substance use. The history of drug policy and evidence presented is intended to inform ongoing conversation at the SMDS-CAC regarding shifting policy from substance use criminalization to one of decriminalization.

Recommendations

That the Simcoe Muskoka Drug Strategy Community Partner Advisory Committee review and reflect on the information provided, in developing a position on an alternative solution to criminalization related to substance use.

Current Facts

Preliminary data shows that there were 136 confirmed and probable opioid-related deaths in Simcoe Muskoka in 2022, which was 20% lower than the 171 deaths in 2021. Despite this, 2022 deaths remain substantially higher than what was observed before the pandemic (2017-2019), both locally and across the province.

Opioid poisoning deaths in Simcoe Muskoka are highest among adult males between 25 and 44 years of age. In the two years since the start of the pandemic (2020-2021) there were 125 opioid poisoning deaths among adult males between the age of 25 and 44 years for a rate of 85.1 (70.8, 101.4) deaths per 100,000 and 85 deaths among males 45 to 64 years for a rate of 49.9 (39.9, 61.7) deaths per 100,000. These rates were more than double the comparable female age-specific opioid-related deaths rates.

In 2022 there were approximately 50 opioid poisoning emergency department visits per month among Simcoe Muskoka residents, which was more than 25% lower than what was reported in 2021. In 2021 there were 800 emergency department visits for opioid poisonings among Simcoe Muskoka residents, which was 25% higher than what was observed in 2020.

In 2021 in Simcoe Muskoka, emergency visits for opioid poisonings were highest among those living in areas with the highest amount of material deprivation.

There was a significant upward trend in the opioid poisoning hospitalization rates for both Simcoe Muskoka and Ontario from 2003 to 2021. The opioid poisoning hospitalization rate in Simcoe Muskoka has been significantly higher than the provincial rates over this entire period.¹

On July 15, 2021, Statistics Canada released an [article](#) and an accompanying [infographic](#) summarizing the results of a study which aimed to identify the characteristics of individuals living in North Simcoe and Muskoka who experienced a fatal or non-fatal opioid overdose from January 2018 to December 2019. Full details of this report can be found at [smdhu.org/healthstats/characteristics of individuals experiencing an opioid overdose](https://smdhu.org/healthstats/characteristics-of-individuals-experiencing-an-opioid-overdose).

Costs associated with the use of substances also continue to increase. From a national perspective, in 2020, healthcare costs attributable to all substance use (SU) were \$13.4 billion (27.3% of the total cost of SU) or \$386 per person in Canada. Alcohol (\$6.3 billion) and tobacco (\$5.4 billion) contributed about 87% of costs.

The use of opioids cost the healthcare system the third-highest amount at \$519 million (3.9%).

Nearly 74,000 SU-attributable deaths occurred in 2020 in Canada. This included 24,346 SU-attributable deaths among people younger than 65 years old, which amounts to 345,091 potential years of productive life lost (PYPLL).

The largest increase in per-person lost productivity costs was associated with opioid use. These costs doubled from \$69 per person in 2007 to \$139 per person in Canada in 2020. Per-person lost productivity costs associated with other CNS stimulants increased nearly as much (88.5%) from \$22 to \$41.

The number of deaths attributable to opioid and other CNS stimulant use in Canada more than doubled in this period (opioids: 2,770 to 6,491 deaths; other CNS stimulants: 729 to 1,518 deaths). This was due to large increases in unintentional injury deaths, which consist primarily of poisoning deaths.

Opioid use accounted for the third-highest criminal justice costs related to SU (\$1.1 billion or 11.3%).²

[The Controlled Drugs and Substances Act \(CDSA\)](#) is administered by Health Canada and establishes the legislative framework that regulates the possession, distribution, and sale of certain drugs in Canada. Section 4(1) of the CDSA prohibits possession of any substance included in Schedule I, II or III (which includes substances such as heroin, methamphetamine, cocaine, etc.) with punishment including fines and imprisonment for a duration of up to seven years depending on the substance and the number of offences.³

Alternatives to the criminalization of illicit substance use are now being considered by local, regional, provincial, and federal leaders to decrease harms associated with their use.

In May of 2021, The Health Canada Expert Task Force on Substance Use released its first report, [Recommendations on Alternatives to Criminal Penalties for Simple Possession of Controlled Substances](#). The following recommendations were presented by the Task Force:

1. The Task Force unanimously recommends that Health Canada end criminal penalties related to simple possession and most also recommend that Health Canada end all coercive measures related to simple possession and consumption.
2. Most Task Force members recommend that the Government of Canada immediately begin a process of legislative change to bring the *Controlled Drugs and Substances Act* (CDSA), the *Tobacco and Vaping Products Act* (TVPA), the *Cannabis Act*, and any

other relevant federal legislation under a single public health legal framework with regulatory structures that are specific to different types of substances.

3. The Task Force recommends that thresholds for simple possession be based on presumption of innocence, and that they be set high enough to account for the purchasing and consumption habits of all people who use drugs.
4. As part of decriminalization, the Task Force recommends that criminal records from previous offenses related to simple possession be fully expunged. This should be complete deletion, automatic, and cost-free.

In addition, the Task Force makes the following related recommendations:

5. The Task Force recommends that Canada make significant investments in providing a full spectrum of supports for people who use drugs or substances or who are in recovery.
6. The Task Force recommends the implementation of a more comprehensive and responsive system to rapidly and effectively gather, use, and disseminate evidence about substance use, its effects, and the impacts of government policies on the health and wellbeing of Canadians.
7. The Task Force strongly urges Health Canada to respect the sovereign rights of the Indigenous Peoples of Canada and support their governments in providing appropriate prevention and treatment approaches.
8. The Task Force recommends that Health Canada convene a new committee that centers people with lived and living experience of substance use to provide advice on the implementation of its recommendations.⁴

Locally in October of 2021, The Canadian Drug Policy Coalition partnered with local community agencies, John Howard Society of Simcoe Muskoka, Indigenous Harm Reduction Network and The Gilbert Centre to host a discussion about the impacts that policies of criminalization have had on health and human rights, the toxic drug supply and the drug poisoning crisis. Many participants of the dialogue expressed the need to decriminalize simple possession of drugs, and to provide access to safe supply and supervised consumption sites. For many participants, decriminalization was a central way to address structural barriers that create stigma in the community and in healthcare and hinder access to health and social services, while supporting safer consumption of drugs. As one of the participants stated, “Decriminalization is central because substance use is a health issue not a criminal justice issue ... it is not a crime to be addicted to a controlled substance.”⁵

One of the recommendations resulting from the discussion was to “explore the possibility of applying for a CDSA exemption requesting decriminalization of simple possession and necessity trafficking in the City of Barrie.”⁵ Details of the full report can be found at [Gettingtomorrow.ca-Barrie](https://gettingtomorrow.ca/Barrie).

The province of British Columbia requested and has been granted an exemption to the CDSA, “Pursuant to subsection 56(1) of the CDSA, adults within the province of British Columbia are, subject to the conditions set out below, exempt from the application of subsection 4(1) of the CDSA if they are in possession of an illegal substance (see definition above), or any combination of such illegal substances, up to a maximum cumulative quantity of 2.5 grams”. There were also limits and conditions placed on where the exemption would and would not apply and which substances were included (opioids, cocaine, methamphetamine and MDMA). This exemption will be in place for three years from the effective date of January 31, 2023, and can be revoked/suspended without prior notice if the Minister determines that such suspension is necessary to protect public health/safety, or the exemption is no longer necessary.⁶

BRIEFING NOTE

The City of Toronto, Ontario is also pursuing “a Toronto model of decriminalization that includes voluntary referrals to services and creates an exemption to Section 4(1) of the Controlled Drugs and Substances Act (i.e., simple possession) for:

- All controlled drugs and substances in possession for personal use;
- The whole City of Toronto, with specific exclusions; and,
- All people in Toronto, including youth.”⁷

The City of Toronto’s [original request and submission](#) were made to Health Canada on January 4, 2022, with a [subsequent submission](#) being made in March of 2023, detailing ongoing community consultation on the topic.

Other jurisdictions in Ontario are considering similar proposals to Health Canada, but they remain in the phase of public consultation.

Public Health Ontario, in their [Evidence Scan and Jurisdictional Approaches to the Decriminalization of Drugs](#), published in September of 2022, define decriminalization as a policy strategy characterised by the removal of criminal penalties for designated activities related to substance use, possession and sometimes cultivation of drugs for personal use. Research identified in this report demonstrates significant health, social and economic harms resulting from laws that criminalize people who use certain drugs.

Furthermore, drug policy and approaches to drug use in Canada and elsewhere are rooted in and sustain racism and colonialism, and have disproportionately targeted and impacted Black, Indigenous, and racialized people through racial discrimination across the criminal justice system (e.g., policing, arrests, incarceration). Other people who use drugs also experience inequitable negative impacts from drug laws including people experiencing homelessness, people with mental health concerns, youth/children of individuals incarcerated for drug crimes and women.

PHO identifies evidence that suggests policies intended to prohibit or suppress drug use contribute directly and indirectly to risks for fatal drug overdose (also referred to as drug poisoning), adding that more equitable engagement with people who use drugs is needed in the design, development, and evaluation of decriminalization policies as well as parallel planning for health and social justice.⁸

An environmental scan of literature (including grey literature) was completed by Simcoe Muskoka District Health Unit, Substance Use and Injury Prevention (SUIP) staff to identify varying perspectives on current drug policy, and potential alternatives to the current *Controlled Drugs and Substances Act*.

The literature was reviewed to determine the following:

- Identified benefits/concerns with current policy as presented in the [Controlled Drugs and Substances Act \(S.C. 1996, c.19\)](#) related to:
 - Burden of cost;
 - Human toll;
 - Stigma and marginalization of certain cohorts of the population.
- Whether a model that included decriminalization was supported.
 - If yes:
 - What should be the key elements of a proposed decriminalization model?
 - What complementary measures should be included if any?
 - If No:

- What other alternatives are suggested.
- Any other noteworthy themes to include.

Although the burden of cost was reported in only a few of the papers reviewed, financial burdens on the health and justice system related to substance use were identified.

The human toll of the criminalization of substance use was referenced repeatedly in the papers reviewed, identifying that the criminalization of substance use:

- Perpetuates false and negative beliefs, stereotypes and structural discrimination from governments, elected officials, health and social service systems and providers, family members, and society at large.
- Reduces autonomy and perceived self-worth for people who use drugs.
- Puts people who use drugs at increased risk of harm, including from overdose, HIV and hepatitis C infection.
- Leads to the development of a toxic supply.
- Contributes to high-risk consumption patterns.
- Creates health, social and economic tolls on supportive agencies and people who use drugs; potentially impeding access to health and social services, including access to emergency care in the event of an opioid poisoning.
- Impacts marginalized groups in our communities more so, including Indigenous communities, Black, African, and Caribbean communities.

The literature was also reviewed related to the impact of Canadian drug policy on stigma and marginalization. Overwhelmingly, the over policing of Black and Indigenous communities was identified as having profound impacts on these populations. For all those impacted, criminal records and incarceration creates barriers to re-entry into general society (e.g., employment, housing) and produces social-economic harms. The John Howard Society identifies that although people who are gainfully employed following incarceration are much less likely to re-offend, employers can decline to hire individuals with criminal records.⁹ It is also important to note, that fear of stigma will often prevent individuals and families from reaching out for support and care.

Several position statements were reviewed through this process, and although not an exhaustive list, the following organizations were found to have a position in support of a decriminalization model:

- Canadian Public Health Association – [Decriminalization of Personal Use of Psychoactive Substances: Position Statement](#) (2017)
- The Centre for Addiction and Mental Health (CAMH) – [Statement on the decriminalization of substance use](#) (2021)
- Health Canada – [Recommendations on Alternatives to Criminal Penalties for Simple Possession of Controlled Substances \(Report # 1\)](#) (2021)
- Canadian Association of Chiefs of Police: [Findings and Recommendations Report: Decriminalization for Simple Possession of Illicit Drugs-Exploring Impacts on Public Safety and Policing](#) (2020)
- Canadian Society of Addiction Medicine (CSAM) Policy Brief: [CSAM in Support of the Decriminalization of Drug Use and Possession for Personal Use](#) (2021)

All but one of the articles reviewed supported decriminalization as part of the solution in addressing the current toxic drug crisis. The one article that did not support decriminalization, went further to reject prohibition and decriminalization of simple possession and support

legalization with strict regulation as the legislative approach that offers the greatest opportunity for significantly improving both individual and community health, safety, and well-being for all residents of Canada, substantially reducing accidental drug poisoning deaths and injuries and providing the lowest financial burden to taxpayers.¹⁰

Although the articles reviewed support decriminalization (or legalization), authors do recognize the limitations to a standalone decriminalization approach recognizing that decriminalization will not address the toxic drug crisis currently being experienced and is but one part of a much more complex solution. In conjunction with decriminalization, other strategies spanning the continuum of use of substances need to be enacted including: harm reduction services (Consumption and Treatment Services sites/Supervised Consumption sites; safer supply programs; Needle Exchange and Naloxone programs); accessible treatment approaches (scale up of Opioid Agonist Therapies, including injectable options; counselling to address substance use and its root causes; affordable/accessible residential treatment and detox) and prevention efforts to proactively address root causes of substance use.

Full details of the literature reviewed can be found in Appendix A.

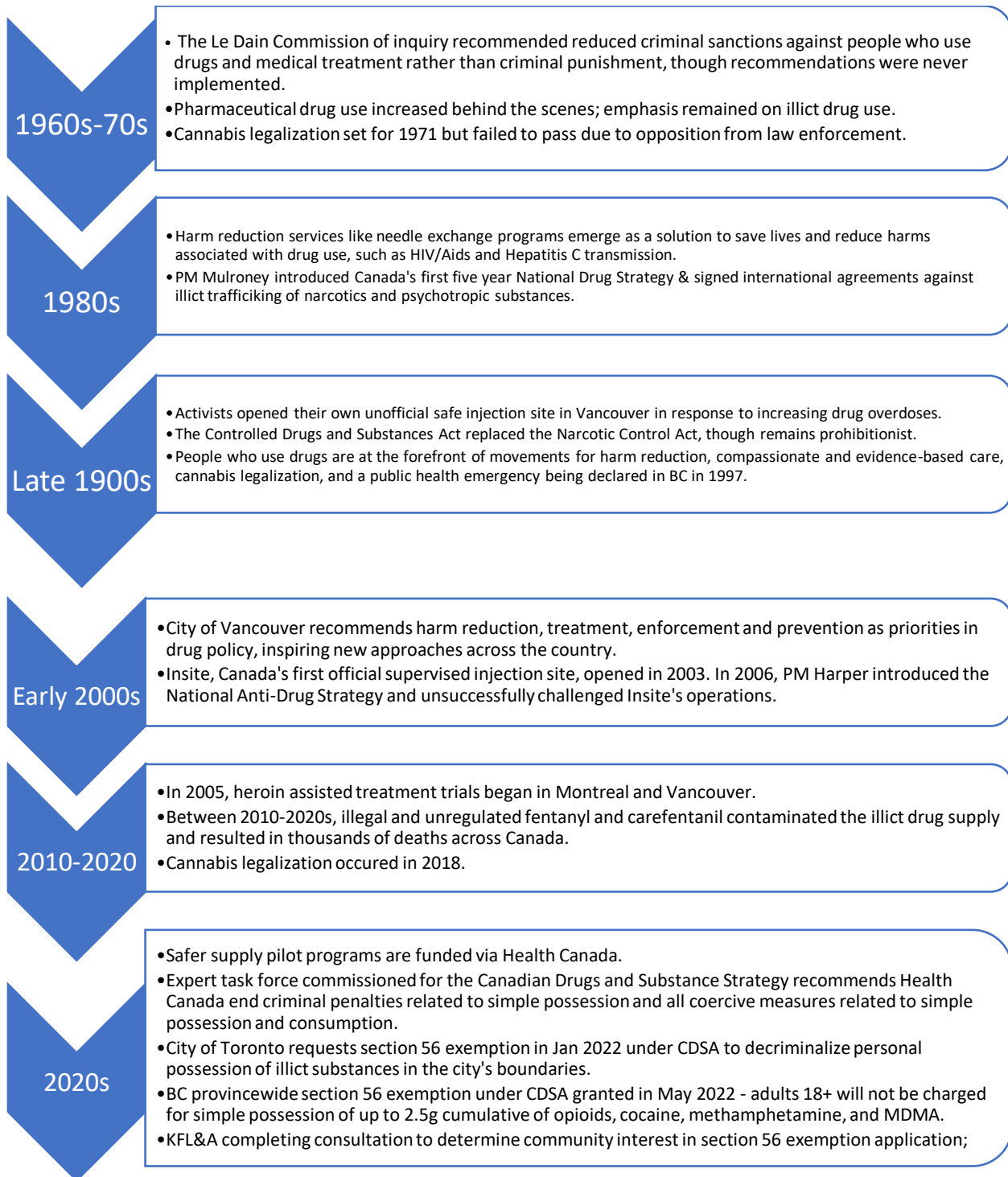
A Health Equity Impact Assessment (HEIA) completed by the Shifting Policy – Decriminalization Working Group of the SMDS, included a focused review of scholarly and grey literature, as well as input and expertise from various members of the working group. The HEIA demonstrates that while current Canadian drug policy impacts all people and all communities in the country, certain sub-populations are disproportionately affected by the harms of substance use criminalization. Full details can be found in Appendix B.

Background

In 2017, The Canadian Public Health Association (CPHA) called for a public health approach to the use of substances that supported decriminalization as an alternate policy choice in addressing possession of illicit substances for personal use. Subsequently, in June of 2018, the SMDHU Board of Health was presented with a Briefing Note outlining A Public Health Approach to Drug Policy Reform that resulted in a letter of support being forward to the standing Federal Minister of Health and the Minister of Justice and Attorney General of Canada. Details of the Briefing Note can be found in Appendix C.

To fully understand the impact of current drug policy, a historical review of its development is needed and has been created by SUIP staff following detailed review of credible sources. Full narrative details of this timeline can be found in Appendix D – History of Canadian Drug Policy.





Multiple pieces of legislation have been brought forward over the past decade to address the impacts of current drug policy. [Bill S-232-An Act respecting the development of a national strategy for the decriminalization of illegal substances, to amend the Controlled Drugs and Substances Act and to make consequential amendments to other Acts](#), remains under debate at the Senate

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2. Canadian Substance Use Costs and Harms Scientific Working Group. (2023). Canadian substance use costs and harms 2007–2020. (Prepared by the Canadian Institute for Substance Use Research and the Canadian Centre on Substance Use and Addiction.) Ottawa, Ont.: Canadian Centre on Substance Use and Addiction. Available online: <https://csuch.ca/documents/reports/english/Canadian-Substance-Use-Costs-and-Harms-Report-2023-en.pdf>
3. Controlled Drugs and Substances Act: <https://laws-lois.justice.gc.ca/eng/acts/c-38.8/>
4. Health Canada Expert Task Force on Substance Use: [Report #1 – Recommendations on Alternatives to Criminal Penalties for Simple Possession of Controlled Substances.](#)
5. [Getting to Tomorrow, Ending the Overdose Crisis – Decriminalization: Humanizing our communities; \(Barrie\) Canadian Drug Policy Coalition](#)
6. [Subsection 56\(1\) class exemption for adults in the province of British Columbia to possess small amounts of opioids, cocaine, methamphetamine and MDMA.](#)
7. [Toronto’s Model of Decriminalizing Drugs for Personal Use.](#)
8. [PHO – Environmental Scan-evidence Scan and Jurisdictional Approaches to the Decriminalization of Drugs.](#)
9. [Criminal Records and Decriminalization – John Howard Society \(2017\)](#)
10. The Waterloo Region Crime Prevention Council (2022): [Issue of Substance: Prohibition, Decriminalization, and Legalization with Strict Regulation.](#)

Appendices

Appendix A: Environmental Scan of Literature capturing varying perspectives on current drug policy in Canada.

Appendix B: Health Equity Impact Assessment – Summary.

Appendix C: SMDHU Briefing Note (2018) A Public Health Approach to Drug Policy Reform.

Appendix D: Detailed narrative on the History of Drug Policy in Canada.