

## Topic Selection Committee Research - Decriminalization of Opioids

### Background

#### ***Recent Statistics:***

Increasing rates of opioid-related deaths have been a longstanding and significant national public health issue in Canada, further worsened by the ongoing pandemic. Between January 2016 and September 2020, close to 20,000 opioid toxicity deaths were recorded nationally<sup>1</sup>, 96% of which were deemed accidental [1]. With opioid-related deaths reaching unprecedented levels, this crisis calls for innovative and bold policy solutions, the first of which is decriminalizing simple possession of opioids.

Rather than a harm reduction approach, Canada's criminal approach to substance use has put individuals with chronic, relapsing addictions disorders at greater risk of harm. The following statistics paint a picture of the current crisis across the country:

- In Ontario, 2020 saw a 25% increase in the number of overdose-related deaths from March to May over the same period in 2019 [2].
- In Alberta, the number of opioid-related calls to medical emergency services (EMS) went from 257 in March to 550 this May [3].
- From January to October 2020, BC recorded 1386 illicit drug overdose deaths, on par with deaths from COVID-19 [4].

Decriminalization is an evidence-based policy strategy that has been applied in jurisdictions around the world. The strategy aims to reduce the harms associated with the criminalization of drugs, such as criminal records, stigma, and overdose, by replacing criminal sanctions with non-criminal penalties such as fines or mandatory education and rehabilitation. Broadly, decriminalization includes a variety of principles, policies, and practices that are underpinned by a harm reduction approach.

#### ***Current Situation:***

Canada's current drug policy framework is rooted in an antiquated understanding of addiction disorders, categorizing it as a moral failure rather than a biopsychosocial one. The origins of our drug policy come from the Controlled Drugs and Substances Act (CDSA) of 1996 and is supplemented by the Criminal Code of Canada which outlines punitive consequences for drug use and possession. **Currently, simple possession of controlled substances carries penalties ranging from a fine to up to seven years in prison.** However, it should be noted that the delineation between legal and illegal substances does not correspond with their associated harms; for example, tobacco and alcohol are legalized drugs whose harms far outweigh those of certain drugs currently deemed illegal [5].

#### ***Shortcomings:***

##### **(1) Criminalization has failed to curtail drug availability, use, and harms.**

- (a) Despite increased law enforcement, drug users in Vancouver reported that most illegal drugs were available within 10 minutes [5].

(b) Prevalence of illegal drug use (excluding cannabis) increased from 2% (678,000) in 2015 up to 3% (987,000) in 2017 [6].

(c) In 2020, BC reported record overdose deaths in back-to-back months [7].

**(2) Criminalization costs taxpayers large sums, which can instead be funneled into harm reduction services.**

(a) In 2014, the cost of illegal substances on the criminal justice system was \$4 billion [8].

**(3) Criminalization takes away opportunities for rehabilitation and treatment, leading to a cycle of use and harm.**

(a) Only 26% of those with opioid use disorders reported having access to Opioid Agonist Therapy, of which only 9% were new initiations [9]. As such, those entering correctional facilities with substance use disorders are neither appropriately identified nor treated. Moreover, this does not align with the CDSA's own goals of "encouraging rehabilitation and treatment" [10].

**(4) Criminalization furthers harm to structurally vulnerable populations, such as Indigenous, Black, and female users.**

(a) Indigenous and Black populations are disproportionately represented in the criminal justice system, despite similar frequency of use across racial groups [11]. Criminalization ignores the effects of colonialism, socioeconomic disparities, and structural racism that contributes to drug use in these populations, thus making it a fundamentally inequitable policy approach.

(b) Women are both disproportionately affected by punitive drug laws and disproportionately represented within the incarcerated population [12].

**Why should we advocate for this topic?**

***Does this topic have relevance to COVID-19?***

The pandemic has laid bare the stark health inequities faced by people who use drugs (PWUD). Since March 2020, the COVID pandemic has disproportionately affected PWUD; in Ontario alone, rates of EMS for suspected opioid overdose increased by 57% [13]. During COVID-19, there have been more barriers to accessing harm reduction services; the implementation of social distancing has made it more likely people use drugs alone, and tightening border controls have led to a significant increase in the amount of fentanyl found in drug samples [14]. Moreover, the pandemic has compounded pandemic-related stress, social isolation, and mental illness which may have resulted in changes in drug use behaviours.

Furthermore, structural factors make this population more vulnerable to the virus itself. The effects of drug use, compounded by the effects of experiencing homelessness or precarious housing, leads to chronic health issues which makes this population more susceptible to the severe complications of COVID-19. Additionally, COVID-19 has forced the closure of many harm reduction sites and services, or, at the very least, reduced the scope and availability of such services. Moreover, heightened surveillance in communities to enforce public health measures as a result of COVID-19 also increases unsafe drug use, solitary drug use, as well as risks of arrest and detention [15,16].

### ***Does this topic have long-term relevance irrelevant of COVID-19?***

The opioid crisis has been a longstanding issue in Canada, well before the onset of the COVID-19 pandemic. While close to 20,000 opioid related deaths occurred between January 2016 and September 2020, close to 13,000 of those deaths were before March 2019 [4].

### ***Is this something the federal government cares about? Does it fit into the current political climate?***

While the Liberal federal government has never committed to decriminalization, in 2021, Health Canada, under the purview of the federal government, established a Task Force on exploring alternative options to criminal sanction for simple possession. At the very least, this signals an interest from the federal government in exploring policy solutions on decriminalization.

### ***Stance of Major Political Parties:***

- Liberal Party: Justin Trudeau in September 2021, "We've seen a number of provinces particularly British Columbia, very interested in moving forward on some forms of decriminalization and we are absolutely open to working with them." [17]
- Conservative Party: Erin O'Toole in 2021, "'People with addiction should not be the focus of the criminal justice system. We would like to see more judicial discretion to get more treatment options for people with addictions.'" [18]
- NDP and Green Party included both decriminalization and safe supply in their 2021 election platforms. [17]

### ***Current Canadian Political Climate:***

- **June 2021:** Green party calls on federal government to decriminalize possession of opioids and other illicit drugs and for creation of a national safe supply program [19]
- **May, 2021:** Health Canada's Expert Task Force on Substance Use releases its report on alternatives to criminal penalties for simple possession of controlled substances. *The Task Force recommends that Health Canada end criminal penalties related to simple possession and expunge previous criminal records related to simple possession.* [20]
- **April 2021:** NDP Don Davies tables private members bill to "scrap Criminal Code provisions on drug possession, expunge criminal records for the same offence and mandate low-barrier access to a safe supply of medically regulated substances." [21] The bill did not reach the debate stage.
- **April 2021:** BC announces it will officially request exemption from the federal government to decriminalize personal possession [22].

### ***Current Global Political Climate:***

- 45 countries and jurisdictions have removed criminal sanctions against people who use drugs including Portugal, Uruguay, Colombia, the Czech Republic, as well as numerous U.S. states [23].
- The UN Special Rapporteur stated "At the root of many health-related problems faced by people who use drugs is criminalisation itself" [24].

- UNAIDS, WHO, United Nations Development Programme (UNDP), among many other UN agencies and entities have called for the decriminalization of the possession and use of drugs [12].

### ***Is this something medical students care about?***

Medical students have taken a consistently strong interest in exploring policy solutions and advocacy work in combating the ongoing opioid crisis. The Canadian Federation of Medical Students has previously advocated for the opioid crisis, including:

- **Lobby Day, 2017:** Raising awareness about and curtailing the prescription of opioids [25]
- **CFMS Opioids Task Force, 2018:** The Task Force brought forward a position paper on the opioid crisis with new recommendations to the federal government. These included prioritizing access to multidisciplinary chronic pain centres, as well as continuing investment into mental health programs and research to further our understanding of the interactions between mental health and opioid misuse [26].
- **CFMS Position Papers, ongoing:** The CFMS has also put out a number of position papers on the opioid crisis. Specifically, in examining criminal justice reform and substance abuse, the CFMS recommended creating a task force to “[examine] the decriminalization of all substances for personal use” [27].

### **Potential Asks**

- (1) **Decriminalize simple possession through a Ministerial exemption under the CDSA**
- (2) **Expunge previous criminal records for simple possession**
- (3) **Redirect funding from the criminal system to rehabilitation services**
- (4) **Establish a task force/committee to explore specific diversion strategies and alternatives to criminal sanctions**
- (5) **Establish a task force/committee to explore options for a national safe supply program**
- (6) **Increase funding for pilot safe supply projects**

### **Potential Organizations to Consult**

*All of these organizations / stakeholders have already expressed support for decriminalization.*

Canadian Association of People Who Use Drugs (CAPUD)

Canadian Drug Policy Coalition

Canadian Civil Society Working Group on UN Drug Policy

Canadian Public Health Association

Canadian Students for Sensible Drug Policy

Canadian HIV/AIDS Legal Network

Western Aboriginal Harm Reduction Society (WAHRS)

Families for Addiction Recovery

Moms Stop the Harm

BC Centre on Substance Use

Alberta Addicts Who Educate and Advocate Responsibly (AAWEAR)

Manitoba Harm Reduction Network

Toronto Drug Users' Union

Association québécoise pour la promotion de la santé des personnes Utilisatrices de Drogues (AQPSUD)

### **Potential Cons in Advocating for this Topic**

- Changes to the CDSA or Criminal Code itself may be an unfeasible ask; however, Ministerial exemptions are a good alternative that have strong precedence as these exemptions currently govern harm reduction sites.
- The Liberal government has never officially endorsed decriminalization, thus making a lack of political will a barrier in implementing our asks. However, the NDP and Green Party have expressed strong support for decriminalisation and safe supply.

### **Potential Considerations:**

- Topic should focus on opioids specifically, rather than all prohibited drugs as this is a more feasible and priority area. Even within this, it would be important to narrow the topic and asks as there is limited time and resources to not only research, but also educate student delegates in the subject matter
- There needs to be special consideration and consultation with Indigenous groups as this is a uniquely marginalized community that is disproportionately impacted by the current drug policies. Additionally, proposed asks / solutions need to be equitable for this population.

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