



August 7, 2020

Honourable John Horgan
Premier and President of the Executive Council

Honourable Mike Farnworth
Minister of Public Safety and Solicitor General

Honourable Judy Darcy
Minister of Mental Health and Addictions

VIA EMAIL

Re: Decriminalizing simple drug possession in BC

Dear Premier and Ministers,

I am writing on behalf of the BC Civil Liberties Association to urge the BC government to immediately decriminalize simple drug possession in our province. In April 2016, the previous Provincial Health Officer declared a public health emergency in response to the sharp rise in deaths resulting from overdose.¹

BC must enact evidence-based policies that centre harm reduction, human rights, and public health in response to this ongoing emergency. As we have articulated in a separate letter,² your government's recently proposed amendments to the *Mental Health Act* - to use state coercion to address drug use and addiction - is extremely misguided as it is not grounded in robust evidence, and threatens to continue the stigmatization of those who use drugs.

As the current Provincial Health Officer—Dr. Bonnie Henry—has observed, the criminalization of simple drug possession has impeded public health initiatives, increased the stigma of substance use, incarcerated otherwise law-abiding citizens, imposed direct economic costs, and

¹ BC Government News, "Provincial health officer declares public health emergency," (April 14, 2016), online: <<https://news.gov.bc.ca/releases/2016HLTH0026-000568>>.

² BCCLA letter to Judy Darcy and Adrian Dix re: Bill 22 – Mental Health Amendment Act, 2020, August 7, 2020.

disproportionately affected already marginalized groups.³ It has also inhibited safer consumption practices, resulting in people consuming drugs alone, rushing their consumption, and avoiding health services.⁴

As we conveyed in our joint letter to the federal government in May, the COVID-19 pandemic has only heightened the danger created by the criminalization of drug use.⁵ As you are well aware, a record 175 people died from overdose in June, breaking the province's previous record set only the month before.⁶

Decriminalization has produced measurable success in reducing health and societal harms, and there has been a growing movement towards its adoption both internationally and within Canada.⁷ Earlier this month, the Canadian Associations of Chiefs of Police called for reforms to the federal *Controlled Drugs and Substances Act*, and the development of health-based diversions and alternatives to criminal sanctions.⁸

We were thankful to see the Premier's letter⁹ urging the federal government to amend the *Controlled Drugs and Substance Act* to decriminalize simple possession. We hope that the province continues to engage with its federal counterparts on this issue.

However, there are immediate steps that the province can take to decriminalize simple drug possession in BC. In April of 2019, Dr. Henry recommended "immediate provincial action," explicitly noting that "the province cannot wait for action at the federal level."¹⁰

Although the Solicitor General has disputed BC's ability to decriminalize drug possession, the Provincial Health Officer and others have suggested two broad strategies to achieve this result in the absence of federal reforms. First, BC could establish provincial policing priorities under s. 2.1 of the *Police Act* that explicitly adopt a harm reduction approach to drug possession.¹¹

³ Office of the Provincial Health Officer, "Stopping the Harm: Decriminalization of People Who Use Drugs in BC," (April 2019), at 18-22, online: <<https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/reports-publications/special-reports/stopping-the-harm-report.pdf>> [Stopping the Harm].

⁴ *Ibid* at 19.

⁵ <https://bccla.org/wp-content/uploads/2020/05/Drug-Decriminalization-Open-Letter-to-Government--May-13.pdf>

⁶ BC Coroners Service, "Illicit Drug Toxicity Deaths in BC, January 1, 2010 – June 30, 2020," (July 16, 2020), online <<https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/statistical/illicit-drug.pdf>>.

⁷ Stopping the Harm, *supra* note 2, at 31-33.

⁸ Canadian Association of Chiefs of Police, "Decriminalization for Simple Possession of Illicit Drugs: Exploring Impacts on Public Safety & Policing," (July 2020), online: <https://www.cacp.ca/index.html?asst_id=2189>.

⁹ <https://twitter.com/richardzussman/status/1285359822720782338>

¹⁰ Stopping the Harm, *supra* note 2, at 5.

¹¹ Stopping the Harm, *supra* note 2, at 37. See also, Pivot Legal Society, "Practical Drug Decriminalization in British Columbia," (August 2019), online: <<https://www.pivotlegal.org/practical-drug-decriminalization-in-british-columbia>>.

Second, BC could prevent police officers from expending resources on enforcing simple drug possession, either by regulation¹² or amendments to the *Police Act*¹³.

By decriminalizing simple drug possession, BC would be taking steps towards approaching substance use as a health rather than a criminal justice issue. It would also address the current inconsistencies in enforcement, which vary across police departments.¹⁴

Of course, decriminalization of simple drug possession can only be one piece of a much broader harm reduction and health-based approach to substance use. However, it is an immediate step that BC can take as part of a longer-term adoption of evidence-based policies. We urge the BC government to immediately decriminalize simple drug possession in BC using available tools in the *Police Act*.

Thank you for your attention to this extremely important matter. We look forward to your response.

Sincerely,



Meghan McDermott

Senior Staff Counsel (Policy)

CC: Adrian Dix, Minister of Health

¹² This option was endorsed by the Provincial Health Officer, although the Officer did not specify under what section of the *Police Act* such regulations could be introduced. While the *Police Act* confers broad regulation-making power, an amendment to the Act may nonetheless be required. Such an amendment would still be within the capacity of provincial legislature. In addition, despite our reservations regarding the new section 10.1 of the *Emergency Program Act*, it could be used to temporarily amend the *Police Act* during the current COVID-19 state of emergency until a permanent amendment is made.

¹³ Pivot Legal Society, "Practical Drug Decriminalization," *supra* note 10.

¹⁴ Canadian Association of Chiefs of Police, "Decriminalization," *supra* note 7, at 5.