



Policy Submission to British Columbia's Select Standing Committee on Health (August 2022)

Re: Urgent and Ongoing Illicit Drug Toxicity and Overdose Crisis

*Please tell the Committee a bit about yourself, whether you are submitting this form as an individual or on behalf of an organization, and any other relevant information.*

The British Columbia Civil Liberties Association is the oldest and most active civil liberties organization in Canada. Our mandate is to defend and extend civil liberties & human rights for all in BC and Canada, while paying particular attention to the needs of oppressed communities. We engage in litigation in courts, law and policy reform with government, and public legal education. We are a small but high-impact team that is passionate about police accountability, criminal legal reform, Indigenous land rights, prisoners' and immigration detainees' rights, privacy rights, ending illegal surveillance, patients' rights, freedom of expression, democratic rights, and equality rights.

*What actions should government take to address the ongoing overdose and drug toxicity crisis?*

## **Recommendations**

- The government should use all legal and intergovernmental powers to decriminalize 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.
- Redistribute resources from the enforcement of these harmful drug laws to non-coercive, voluntary policies, programs, and services that protect and promote people's health and human rights, including health, education, housing, and social services that support people who use drugs, have been released from prison or are incarcerated due to conviction for drug-related offences, and promote the safety and well-being of communities.

## **Explanation**

"A growing body of evidence indicates that criminalizing drug possession is ineffective in reducing the use and availability of drugs, is a waste of public funds, and is taking a terrible human toll on people who use drugs and their loved ones. It is also an unjustifiable infringement on personal liberty and security of the person.

Criminalizing drug possession puts people who use drugs at increased risk of harm, including the risk of overdose. Criminalizing drug use impedes people's access to health and social services and emergency care in the case of overdose, as well as contributing to new HIV and hepatitis C infections.

In Canada, criminalization has led to more potent and dangerous drugs, hampered efforts to scale up safe supply programs, and contributed to a drug poisoning crisis that has resulted in almost 23,000 overdose deaths nationwide between January 2016 and March 2021.

Drug prohibition harms Indigenous, Black, and other racialized, marginalized, and low-income communities, who are profiled and disproportionately arrested and incarcerated for drug offences, and who are disproportionately subjected to child apprehension orders.

More broadly, criminalization perpetuates stigma, discrimination, and the over-incarceration of people who use drugs, and has been used to enact human rights violations towards entire communities.

In carceral settings, access to harm reduction and other health services is also drastically curtailed, and there is ample evidence showing a heightened risk of overdose following release from prison or after any compulsory abstinence, including involuntary detoxification and treatment.

While rates of drug use remain consistent among different racial groups, research shows that Indigenous, Black, and racialized populations are incarcerated for drug offences at far higher rates than white populations.

The illegal status of drugs is used as justification to take children into state custody and separate children from their families, contributing to an overrepresentation of Indigenous, Black, and racialized children in state care.

The harms of drug policy affect not only those individuals who are incarcerated or apprehended by the state, but extend intergenerationally through whole families and communities, compounding the marginalization these groups face.

In a human rights-based approach to decriminalizing simple drug possession, it is important that any services offered to individuals be completely voluntary and with their informed consent and be culturally appropriate. This includes participation in a health assessment, addiction treatment services, psychosocial and mental health services, and harm reduction or support services. Because services offered as a condition of diversion from criminal punishment are not voluntary, they should not be used as such.

Criminal prosecution and penalties do long-lasting harm; this must also be addressed. Decriminalization must include automatic expungement of previous convictions for simple drug possession, including for cannabis, and an applications-based expungement process for necessity trafficking, as well as for all breaches of conditions flowing therefrom to mitigate the numerous harmful consequences of a criminal conviction."

[The above is excerpted from *Decriminalization Done Right: A Rights-Based Path for Drug Policy* - Canada's first civil society platform for the decriminalization of drugs developed by 21 national organizations and people at the centre of the drug poisoning/overdose crisis, available at <https://www.drugpolicy.ca/decrim-done-right/> and co-developed by the BCCLA]

***How should government and institutions improve services, support, and resources in response to the ongoing overdose and drug toxicity crisis (this includes, but is not limited to, prevention, harm reduction, treatment, and recovery)?***

## **Recommendations**

Implement the health Calls to Action issued from the Truth and Reconciliation Commission in 2015, and otherwise support the decolonization of the health care system.

Refrain from exploring/implementing coercive care models such as those underpinning various bills that have been introduced in the BC legislature in recent years that proposed to detain and force treatment on youth.

Use provincial legal authorities as needed to stop local government from interfering with harm reduction. The province must monitor municipalities' use of bylaws, zoning decisions and business licensing to and intervene when they are used as barriers to create safe spaces and services for drug user groups.

## **Explanation**

As Indigenous people are disproportionately impacted by the drug toxicity crisis, the government must "decolonize" the healthcare system without delay, with specific attention to addressing systemic racism and implementing the calls to action in health from 2015's Truth and Reconciliation Final Report.

Resist any calls for coercive models of care. In 2020 the government introduced Bill 22 that would amend the Mental Health Act and enabled gross violations of the rights of youth. The draft law aimed to introduce a regime of involuntary treatment that was not evidence-based and would have unnecessarily eroded privacy protections for detained youth. After its introduction, the BCCLA joined other civil society advocates to lobby against the implementation of the bill. We were relieved this Spring when the Minister of Mental Health and Addictions confirmed that "Those conversations [with First Nations, families, health-care experts and drug users] have reaffirmed the trauma associated with holding youth against their will, Indigenous youth especially, and that led to our decision to not bring back the youth stabilization legislation known as Bill 22."

We endorse these recommendations from Pivot Legal Society to ensure municipalities don't interfere with harm reduction and safe supply services for drug users:

- Actively monitor and intervene when municipalities make decisions that impact public health, including zoning bylaw amendments and business license denials.
- Amend the Community Charter to affirm that provincial approval is required for ALL municipal decisions impacting public health and harm reduction, including zoning enactments and determinations regarding re-zoning applications and business licences.
- Fulfill 2016 Ministerial Order M-488: -Work with (and fund) health authorities and drug user groups to establish and maintain overdose prevention services in all communities. -Invest in property for the use of drug user groups and their harm reduction initiatives. -Provide realistic funding for the establishment and continuation of drug user groups.

***What should be done to address the harm done by the increasingly toxic and unpredictable illicit supply of drugs?***

**Recommendations**

Increase access to a safe supply of pharmaceutical grade opioids through continued support of “prescriber based models” and the removal of barriers imposed by regulated health professional colleges.

Support the development of “non-prescriber” models of safe supply such as “compassion clubs” which are community-led safe supply models. For instance, the government of BC should be publicly supporting VANDU and DULF’s application to Health Canada for an exemption from s. 56 of the CDSA to set up such models.

**Explanation**

The BC Coroners Service Death Review Panel’s 2022 Report that reviewed illicit drug toxicity deaths found that “Safer supply is a broad concept that exists on a spectrum from a medicalized model treating people with a substance use disorder to a non-prescriber public health model that provides a safer supply of regulated drugs to people. As people use drugs for a variety of reasons, a variety of approaches will be required to provide a safer drug supply to those who need it in the communities where they live. A medicalized model on its own is not sufficient to deliver safer supply to all who need it.”

To increase access to a safe supply of drugs under the prescribed drugs model, we urge you to follow the recommendations made by VANDU and BCAPOM about supporting the prescribing of opioid antagonist treatments and fentanyl, heroin, etc. This includes removing barriers to prescription-based drugs imposed by regulated professional health colleges.

***Do you have any other recommendations for the committee?***

**Recommendations**

- Ensure that drug laws and policies are informed by drug users (nothing about them without them)
- Eliminate the disproportionate influence that law enforcement agencies wrongly have on drug policy and “decriminalization”
- Provide stable fundings to drug user groups. We support the specific recommendations already made to your committee by Pivot Legal Society to use legal tools to mitigate the harm and stigma currently posed by policing (explained below). These recommendations are to legislate bubble zones, treat harm reduction supplies as health supplies rather than drug paraphernalia, and to amend the Police Act to divert police resources away from criminal enforcement.

**Explanation**

Government decisions must be informed by the interests and needs of drug users themselves. It is unconscionable and dangerous when the government shuts drug users out of drug policy decisions. For example, the 2014 decision to modify regulations governing methadone maintenance treatment completely ignored drug users, despite their health interests being at the centre of the decision. This switch from methadone to methadose had devastating consequences for drug users. Many people were killed due to such neglectful public decision-making.

Eliminate the influence that policing agencies continue to have on drug policy and “decriminalization”. The continued deference to police is an illegitimate relic from the failed “war on drugs.” Police have no expertise in matters of health policy. As with any provincial law/policy aiming to protect people’s health, enforcement officers’ interests are peripheral.

To illustrate, we note that the BCACP made a submission to your committee, recommending “incremental” reform, and making recommendations centred around police involvement in “timely referrals into a variety of pathways of care for people who use drugs.” There is no evidence to support this recommendation by the police chiefs that police involvement in care referrals are beneficial to drug users. To the contrary, drug policy experts in Canada, including drug users and their health providers, recommend that police and other law enforcement officers be removed 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 (for further information see *Decriminalization Done Right: A Rights-Based Path for Drug Policy - Canada’s first civil society platform for the decriminalization of drugs developed by 21 national organizations and people at the centre of the drug poisoning/overdose crisis*, available at <https://www.drugpolicy.ca/decrim-done-right/>)

Drug user groups require sustained funding from government to ensure that government responses are properly informed and up to date and that community supports for drug users are peer-led in order to be best informed and effective. Project-based, time-limited funding opportunities with extensive reporting requirements are not alive to the realities facing grassroots, drug-user led groups whose resources are already stretched thin as a result of poor governmental policy making.

We strongly agree with these recommendations and reasons provided by Pivot Legal to protect the health and wellbeing of drug users in BC:

- “Legislating “bubble zones” around harm reduction services and drug user-run spaces to prevent police loitering, interference, and intimidation within these zones. The presence of police is a deterrent to accessing life-saving services. A “bubble zone” law could mirror BC’s Access to Abortion Services Act, which protects access to abortion services by preventing activities such as protesting, physical interference, and intimidation from occurring outside of abortion facilities.
- Issuing a directive under the Public Health Act to police and the BC Provincial Court to treat harm reduction supplies as health supplies rather than drug paraphernalia—and therefore not a basis for search, detention, arrest, or breach of a bail/probation order.
- Amending the Police Act (pursuant to the 2019 recommendation of BC’s Provincial Health Officer) to divert police resources away from the enforcement of simple possession and street-based drug trafficking. This would complement the Province’s s.56 decriminalization exemption by ensuring the allocation of police resources reflects a deprioritization of low- level drug offences.