

Submissions to the House of Commons Standing Committee on Health, regarding the Opioid Epidemic and Toxic Drug Crisis in Canada

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Prepared by Safiyya Ahmad, Staff Counsel

Introduction

The BC Civil Liberties Association (“BCCLA”) frequently engages in work that intersects with drug policy and the drug poisoning crisis, due to the overlap between these issues and the criminal legal system, *Charter* rights, and human rights impacts on marginalized communities. We appreciate this opportunity to provide our perspective on the opioid epidemic and toxic drug crisis (the “Drug Poisoning Crisis”), to the House of Commons Standing Committee on Health (the “Committee”).

The BCCLA is concerned that there has been insufficient focus on the extent to which criminal law and civil liberties issues have heightened the Drug Poisoning Crisis. In the submissions below, we address three key concerns:

1. The criminalization of drug use significantly exacerbates this crisis, due to dangers of arrest, stigmatization, and social support barriers.
2. Police presence during wellness checks frequently results in violence, which deters people from calling emergency services for assistance.
3. Involuntary treatment is a violation of drug users’ civil liberties and increases the risk of death.

Beyond these submissions, we acknowledge that resolving the Drug Poisoning Crisis will require a holistic approach, centering evidence-based research as well as the knowledge and experience of people who use drugs.

Criminalization of Drug Use Has Exacerbated the Drug Poisoning Crisis

The Drug Poisoning Crisis cannot be effectively addressed while it is illegal for people to possess, use, or supply safe drugs. Although some drugs are legally available across Canada, such as alcohol, tobacco, and cannabis, the criminalization of many other substances has created several legal and logistical barriers to addressing the Drug Poisoning Crisis.

Primarily, the threat of criminal sanctions will deter people from seeking medical and social assistance, even at the risk of drug poisoning. Both drug users and those who care for them have reported being unwilling to call emergency services during a potential overdose, given the threat of arrest and criminal sanctions.¹ Even while the *Good Samaritan Drug Overdose Act* purports to protect people from arrest, police responding to drug overdose calls continue to arrest people.² The criminalization of drug use thus forces people who use drugs to choose between endangering their lives and incarceration.

¹ Maryse Zeidler, “B.C. police presence at overdose calls discourages requests for help, say legal advocates”, *CBC News*, (10 December 2017), online: <<https://www.cbc.ca/news/canada/british-columbia/b-c-police-presence-at-overdose-calls-discourages-requests-for-help-say-legal-advocates-1.4441716>>

² Elise von Scheel, “Despite ‘Good Samaritan’ law, many drug users too scared to report overdoses”, *CBC News*, (18 August 2018), online: <<https://www.cbc.ca/news/politics/good-samaritan-drug-overdose-fentanyl-politics-parliament-1.4786094>>.

Criminalization means that people who use drugs must seek illicit, potentially poisoned drugs due to the lack of legally accessible safe supply. People who attempt to provide safer supplies of drugs have been arrested on criminal charges.³ The criminalization of drug use also leads to the stigmatization and isolation of drug users, as it can carry heavy social and legal consequences beyond arrest and incarceration. For instance, people can lose guardianship of their children, or lose employment opportunities because of their criminal records or drug charges.⁴

The impacts of criminalization fall most harshly upon racial minorities and marginalized communities. In particular, Black and Indigenous people are more likely to face prison sentences for drug offence charges.⁵ Since incarceration correlates with a higher risk of future overdoses,⁶ this type of discrimination contributes both to the Drug Poisoning Crisis and to the mass incarceration crisis faced by Indigenous and Black people in Canada.⁷

The Health Canada Expert Task Force on Substance Use (the “Task Force”) determined in its 2021 report that the focus on criminal consequences for drug use ignores underlying social issues such as poverty, racism, trauma, and social stigma.⁸ The BCCLA would substantially support the eight recommendations from this report, and in particular, the Task Force’s recommendations to decriminalize drug use.

Decriminalization in British Columbia is Inconclusive

The BCCLA urges the Committee not to draw immediate conclusions from British Columbia’s current pilot project on decriminalization. While some members of this Committee have raised concerns with the pilot project, its surrounding context must be properly considered.

In 2016, British Columbia declared that the drug poisoning crisis was a public health emergency. However, the provincial government’s subsequent actions have been somewhat ambivalent. British Columbia launched its pilot decriminalization project in January 2023, but decriminalization was limited to a few select drugs, in minimal quantities, and under limited

³ Karin Larsen, “Vancouver police arrest 2 after raids on Drug User Liberation Front”, *CBC News*, (26 October 2023), online: <<https://www.cbc.ca/news/canada/british-columbia/drug-user-liberation-front-harm-reduction-vancouver-bc-police-arrests-1.7009019>>.

⁴ Canadian Drug Policy Coalition, *Decriminalization Done Right: A Rights-Based Path for Drug Policy*, (2021), online: <www.drugpolicy.ca/wp-content/uploads/2021/12/EN-PTL-Decrim.pdf> at p. 6.

⁵ Health Canada Expert Task Force on Substance Use, *Report 1: Recommendations on alternatives to criminal penalties for simple possession of controlled substances*, (6 May 2021), online: <<https://www.canada.ca/content/dam/hc-sc/documents/corporate/about-health-canada/public-engagement/external-advisory-bodies/reports/report-1-2021/report-1-HC-expert-task-force-on-substance-use-final-en.pdf>> at p. 6. [Health Canada Report]

⁶ Heather Palis et al., “Association of Opioid and Stimulant Use Disorder Diagnoses With Fatal and Nonfatal Overdose Among People With a History of Incarceration”, 329 *JAMA* 761 (2022), online: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9685494/>>.

⁷ BC Civil Liberties Association, *Canada’s Mass Incarceration of Indigenous Peoples – Part 1*, (20 April 2023), online: <<https://bccla.org/2023/04/canadas-mass-incarceration-of-indigenous-people-part-1/>>.

⁸ Health Canada Report, *supra* note 5 at pp. 11-14.

circumstances.⁹ By October 2023, the provincial government introduced legislation to recriminalize drug use in most public spaces.¹⁰ At the same time, several British Columbia municipalities, including Port Coquitlam, Kamloops, and Prince George, have passed bylaws that also ban drug use in most public spaces.¹¹

Due to this combination of the provincial government's ambivalence and municipal governments' hostility, British Columbia's decriminalization pilot project has yet to take proper effect. As such, any conclusions on the British Columbia project's effectiveness would be premature.

Police Presence in Wellness Checks Will Deter Calls for Help

The BCCLA has repeatedly warned government bodies against using police to respond to drug use and mental health crises, as *de facto* social workers or medical professionals.¹² Police officers are trained to react with force in order to neutralize potential threats, which is likely to increase tension and emotional anxiety in an already-fraught situation.¹³ Instead, the inclusion of police officers in wellness checks creates a significant, unnecessary risk to people's rights to life and security of person under Section 7 of the *Charter*.

Police-involved deaths on wellness checks have been reported across Canada, from British Columbia, to Ontario, to New Brunswick.¹⁴ In British Columbia alone, police-involved shootings increased to an unprecedented level in 2022.¹⁵ A 2018 investigation by the CBC found that since the year 2000, about 70% of all police-involved fatalities in Canada have involved people in crisis due to mental health, substance use, or both.¹⁶

⁹ Government of British Columbia, *Decriminalizing people who use drugs in B.C.*, (14 September 2023), online: <<https://www2.gov.bc.ca/gov/content/overdose/decriminalization>>.

¹⁰ Emily Vance, "B.C. introduces bill to ban illicit drug use in many public spaces", *CBC News*, (4 October 2023), online: <<https://www.cbc.ca/news/canada/british-columbia/bc-drug-use-changes-1.6987330>>.

¹¹ Sarah Grochowski, "B.C. municipalities crack down on public drug use", *Vancouver Sun*, (28 June 2023), online: <<https://vancouversun.com/news/local-news/b-c-municipalities-crack-down-on-public-drug-use/>>.

¹² BC Civil Liberties Association & East Coast Prison Justice Society, *BCCLA and East Coast Prison Justice Society Joint Submission to Phase 3 of The Mass Casualty Commission*, (7 October 2022), online: <<https://bccla.org/wp-content/uploads/2023/08/20221007-Phase-3-Submissions-of-ECPJS-and-BCCLA.pdf>> at pp. 26-30.

¹³ "N.B. officer who fatally shot Chantel Moore during wellness check was following police training, expert tells inquest", *The Globe and Mail*, (19 May 2022), online: <<https://www.theglobeandmail.com/canada/article-nb-officer-who-fatally-shot-chantel-moore-during-wellness-check-was/>>.

¹⁴ Beatrice Britneff, "Police wellness checks: Why they're ending violently and what experts say needs to change", *Global News*, (24 June 2020), online: <<https://globalnews.ca/news/7092621/police-wellness-checks-experts-change/>>.

¹⁵ Josh Grant, "B.C. has seen more police shootings this year. A different response to crime is needed, say experts, advocates", *CBC News*, (10 August 2022), online: <<https://www.cbc.ca/news/canada/british-columbia/bc-police-shootings-and-violent-crime-1.6546283>>.

¹⁶ Katie Nicholson & Jacques Marcoux, "Most Canadians killed in police encounters since 2000 had mental health or substance abuse issues", *CBC News*, (4 April 2018), online: www.cbc.ca/news/investigates/most-canadians-killed-in-police-encounters-since-2000-had-mental-health-or-substance-abuse-issues-1.4602916>.

In addition to fatalities, police responses to wellness checks have brought about other physical and psychological harms.¹⁷ Due to the criminalization of drugs, the police have necessarily had a long history of negative interactions with drug users. Intersectional issues of race, class, sexual orientation, and gender identity carry their own weight of negative interactions with the police, creating further barriers for drug users whose identities fall into one of these categories. People who use drugs and those who care for them are thus understandably afraid of calling for wellness checks, despite the drug poisoning crisis.

Emergency response teams for drug use must be fully decoupled from the police, thereby avoiding the introduction of violence, weapons, or criminal charges into a tense situation. British Columbia is currently in the process of developing Peer Assisted Care Teams as an alternative to using the police for drug crisis calls.¹⁸ It is the BCCLA's hope that the provincial government continues with this project, and we would strongly encourage any national response to the Drug Poisoning Crisis to consider the importance of developing police-free response teams for emergency situations.

Involuntary Treatment Violates Civil Liberties and Increases Risk of Death

The BCCLA is deeply concerned about the use of involuntary treatment of drug users as a response to the Drug Poisoning Crisis. Involuntary treatment can infringe on the *Charter* rights of detainees, including Section 7 rights to life, liberty and security of person, Section 12 rights against cruel and unusual punishment or treatment, and Section 15 rights to freedom from discrimination.

Involuntary treatment, by its nature, involves the denial of liberty. The other *Charter* concerns can be seen in both the nature and the results of this treatment. People who have experienced involuntary treatment report treatment methods can be ineffective or abusive, reinforce systemic racism, and contribute to retraumatization through failure to use trauma-informed best practices.¹⁹ Likewise, academic research on involuntary treatment shows a high risk for human rights abuses and a history of significant harm for detainees.²⁰ Academic research also indicates

¹⁷ "RCMP officer captured on video dragging nursing student is charged with assault", *CBC News*, (23 August 2023), online: <<https://www.cbc.ca/news/canada/british-columbia/mona-wang-lacy-browning-kelowna-rcmp-wellness-check-assault-charge-1.6150736>>.

¹⁸ Government of British Columbia, Ministry of Mental Health and Addictions, *New team will help people in mental-health, substance-use crisis in the Comox Valley*, (7 July 2023), online: <<https://news.gov.bc.ca/releases/2023MMHA0050-001104>>; Canadian Mental Health Association, *Peer Assisted Care Teams*, (2023), online: <<https://bc.cmha.ca/peer-assisted-care-teams/>>.

¹⁹ B.C. Centre for Disease Control, *Detention-Based Services for People who use Drugs*, (22 March 2021), online: <<http://www.bccdc.ca/Health-Professionals-Site/Documents/Detention-based%20Services%202021.pdf>>. See also: Andreas Pilarinos et al., "Secure care: more harm than good", *C Med Association J* (2018) 190:41, online: <<https://doi.org/10.1503/cmaj.180700>>.

²⁰ Trevor Goodyear et al., "Involuntary stabilization care of youth who overdose: a call for evidence – and ethics – informed substance use policy", (2021) 112 *Can J of Public Health* 456-459, online: <<https://doi.org/10.17269/s41997-020-00459-3>>.

that involuntary treatment correlates with an increased risk of future overdose, including a higher risk of death.²¹

In Health Canada's 2021 report, the Task Force found that coercive drug treatment programs had mixed results, including low rates of abstinence after people were released.²² The Task Force also noted that involuntary treatment essentially reintroduces or reinforces the same problems as criminalization, such as punitive consequences and social stigma.²³ This, too, is echoed in the academic literature on the ineffectiveness of involuntary treatment.²⁴

Involuntary treatment is thus inconsistent with any principled approach to addressing the Drug Poisoning Crisis, particularly when it is linked to an increase in overdoses and deaths. Even if it is motivated by the best of intentions, the civil liberties violations and provably harmful effects of involuntary drug treatment cannot be justified.

Summary

The BCCLA requests the Health Committee to consider the following factors during its study of the drug poisoning crisis:

1. Criminalization of drug use continues to exacerbate the crisis, due to dangers of arrest, stigmatization, and social support barriers.
2. Police presence during wellness checks frequently results in violence that deters people from calling for assistance in a drug-related crisis.
3. Involuntary treatment is a significant violation of civil liberties and increases the risk of death.

The BCCLA also acknowledges that the drug poisoning crisis will require a holistic approach, applying evidence-based research and incorporating recommendations from people who use drugs.

We thank the Committee for considering our submissions.

²¹ Claudia Rafful et al., "Increased non-fatal overdose risk associated with involuntary drug treatment in a longitudinal study with people who inject drugs", (2018) 113:6 *Addiction* (1056-1063), online: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5938130/>>. See also: Anders Ledberg & Therese Reitan, "Increased risk of death immediately after discharge from compulsory care for substance abuse", (2022) 236 *Drug and Alcohol Dependence*, online: <<https://doi.org/10.1016/j.drugalcdep.2022.109492>>.

²² Health Canada Report, *supra* note 5 at p. 11.

²³ *Ibid.*

²⁴ D. Werb et al., "The Effectiveness of Compulsory Drug Treatment: A Systemic Review", (2016) 28 *Int J Drug Policy* (1-9), online: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4752879/>>.

About the BC Civil Liberties Association

The BCCLA is the oldest and most active civil liberties and human rights group in Canada. The BCCLA has been advancing human rights and civil liberties through litigation, law reform, community-based legal advocacy, and public legal education for the last 60 years.