

## ADVICE TO MINISTER

### CONFIDENTIAL ISSUES NOTE

Ministry: Mental Health and Addictions

Date: February 1, 2019

Minister Responsible: Judy Darcy

### Decriminalization and Safe Supply

#### BACKGROUND REGARDING THE ISSUE:

- Canada criminalizes the simple possession of drugs under the *Controlled Drugs and Substances Act* (CDSA), section 4 (1)<sup>1</sup>.
- Of the nearly 2.1 million incidents report by Canadian police in 2013, 5% involved an offence against the CDSA as the most serious violation. For non-cannabis police-reported CDSA violations there were 18,779 violations for *possession* out of a total of 35,784 in 2013<sup>2</sup> (i.e. 52% of reported violations were for possession)<sup>3</sup>.
- Many police agencies in BC have adopted policies and/or practices to not refer simple possession offences to the Prosecution Service for charge consideration but choose other avenues available for disposition of the offence. Additionally, police may refer a matter to Crown for consideration of more serious charges but due to various reasons, the Prosecution Service may reduce the eventual charge to a lesser offence such as simple possession.
- The criminalization of people who use drugs undermines efforts to address the health needs of people with substance use disorders. It prevents people from seeking services; it slows the development of services because people with drug problems, when regarded as criminals, are not seen as deserving of services; and it supports stigmatization and discrimination against people who use drugs.
- Indigenous Peoples are affected disproportionately by criminalization and criminal justice approaches that flow from this policy such as mandatory minimum sentencing practices.<sup>4</sup> Indigenous people comprise 22.8% of the total incarcerated population, although they comprise just 4% of Canada's population.<sup>5</sup> Several studies have demonstrated that Indigenous populations in regions across Canada are acquiring HIV at a disproportionately higher and faster rate than the general Canadian population: almost 60 per cent of HIV infections among Indigenous people between 1998 and 2005 were attributable to injection drug use.<sup>6</sup>
- The overdose crisis has drawn attention to Canada's current regulatory framework on

<sup>1</sup> *Controlled Drugs and Substances Act*. <http://laws-lois.justice.gc.ca/eng/acts/C-38.8/page-2.html#h-4>

<sup>2</sup> Cotter, A., Greenland, J., Karam, M. *Drug-related offences in Canada, 2013* Canadian Centre for Justice Statistics June 25, 2015 <https://www150.statcan.gc.ca/n1/pub/85-002-x/2015001/article/14201-eng.htm#a1>

<sup>3</sup> For cannabis there were 58,965 police-reported CDSA possession violations, out of 109,057 total police-reported CDSA violations in 2013.

<sup>4</sup> Office of the Provincial Health Officer. *Health, Crime, and Doing Time: Potential Impacts of the Safe Streets and Communities Act on the Health and Well Being of Aboriginal People in BC*. Government of British Columbia. 2013.

<sup>5</sup> Annual Report of the Office of the Correctional Investigator, 2013–2014.

<sup>6</sup> Public Health Agency of Canada. HIV/AIDS Epi Updates, November 2007. For additional data demonstrating the disproportionate impact of injection drug use – and hence related drug policy and programmes – in the HIV epidemic among Indigenous peoples in Canada, see: Public Health Agency of Canada, Population-Specific HIV/AIDS Status Report: Aboriginal Peoples (Ottawa, 2010).

drugs other than cannabis, especially given a number of other countries – such as Czech Republic, Portugal, Uruguay, Costa Rica and Mexico – have made significant changes in this area.

- Generally, these reforms mean that producing, importing, exporting or selling drugs is still illegal, while people found possessing small amounts for personal use face either a “non-criminal” misdemeanor or are not subject to sanctions at all, and instead offered treatment or other supports (e.g. housing, mental health support etc.) when required.
- On Nov. 1, 2017, the [Global Commission on Drugs called for decriminalization of](#) the consumption and possession of small amounts of illegal drugs as a key to addressing the opioid epidemic in North America. The commission stated that “Only by decriminalizing the consumption of drugs and their possession for personal use can people in need of health and human services access these services easily, and without fear of legal coercion or social exclusion.”
- In an Aug. 21, 2017 [media release](#) on overdose deaths, Vancouver’s Mayor Robertson called on the federal and provincial governments to explore decriminalization (among several other recommended actions on harm reduction, treatment, prevention and enforcement).
- An Aug. 9, 2017 media report notes that then-Federal Health Minister Jane Philpott and Justice Minister Jody Wilson-Raybould travelled to Portugal in July 2017, along with Canada’s chief Public Health Officer Dr. Theresa Tam to learn more about the Portuguese approach to drugs.
- A statement followed that meeting, where Wilson-Raybould said that Portugal can teach Canada a “great deal” about how taking a public health approach to drug policy helps the justice system work better.
- Subsequently, on Aug. 28, 2017, Minister Philpott’s spokesperson said in a [statement](#) to the *Globe & Mail* that the government is currently focussed on marijuana legalization and regulation and that “we are not looking to decriminalize or legalize other illicit substances at this time.”
- Decriminalization and drug law reform is also advocated by the Canadian Drug Policy Coalition, a partner project of Simon Fraser University’s Centre for Applied Research in Mental Health and Addiction.

## **PORTUGAL**

- In response to a substantial increase in overdose-related harms, Portugal decriminalized the possession of all formerly-illegal drugs in 2001, and simultaneously implemented a coordinated public health-oriented approach based on five pillars: prevention, harm reduction, treatment, reintegration, and dissuasion.
- Individuals found in possession of small quantities of drugs as issued summons and required to appear before a Dissuasion Commission consisting of a social worker, a psychiatrist, and an attorney. The Commission can administer sanctions ranging from small fines to admitting the individual to a drug rehabilitation facility if deemed appropriate (i.e. the person is a good candidate for treatment and willing to go).
- Results of this experience show small increases in reported drug use among adults; reductions in problematic substance use and adolescent substance use; reduced burden on the criminal justice system; increased uptake of treatment; reduction in

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overdose-related deaths and infectious disease transmission; increases in the amount of drugs seized by police; and reductions in the retail price of drugs.<sup>7</sup>

- Decriminalization in Portugal was not intended to condone drug use but rather minimize drug-related problems, destigmatize people who use drugs, and bring more people into treatment.
- Pre-decriminalization, in 1999 the number of drug-related deaths in Portugal was close to 400. In 2006, there were 290 drug-related deaths.
- Also, the number of people in opioid agonist treatment increased 147% from 6,040 in 1999 to 14,877 in 2003.

## ADVICE AND RECOMMENDED RESPONSE:

### Top Messages:

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### Secondary Messages:

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<sup>7</sup> Hughes C, Stevens A. *What Can We Learn From The Portuguese Decriminalization of Illicit Drugs?* Br J Criminol 2010; 11;50(6):999-1022.

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