

ADVICE TO MINISTER

CONFIDENTIAL ISSUES NOTE

Ministry: Mental Health and Addictions

Date: January 21, 2019

Minister Responsible: Judy Darcy

Decriminalization

BACKGROUND REGARDING THE ISSUE:

- Canada criminalizes the simple possession of drugs under the *Controlled Drugs and Substances Act* (CDSA), section 4 (1) ¹. For non-cannabis police-reported CDSA violations there were 18,779 violations for *possession* out of a total of 35,784 in 2013² i.e. 52% of reported violations were for possession.³
- 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.⁴ Indigenous people comprise 22.8% of the total incarcerated population, although they comprise just 4% of Canada's population.⁵ 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.⁶
- The overdose crisis has drawn attention to Canada's current regulatory framework on 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.

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

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

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

⁴ 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.

⁵ Annual Report of the Office of the Correctional Investigator, 2013–2014.

⁶ 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).

- 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

- Portugal decriminalized the possession of all formerly-illegal drugs in 2001, and at the same time implemented a coordinated public health-oriented approach complemented by investments in health and other services based on five pillars: prevention, harm reduction, treatment, reintegration and dissuasion. The latter is an administrative process where people who may have been dealt with by police are referred to Dissuasion Commissions, which are regional panels made up of legal, health and social work professionals, who decide on a course of action for the person who has been brought before them. Results of this experience show:
 - small increases in reported illegal drug use amongst adults;
 - reduced illegal drug use among problematic drug users and adolescents;
 - reduced burden of drug offenders on the criminal justice system;
 - increased uptake of drug treatment;
 - reduction in opiate-related deaths and infectious diseases e.g., HIV;
 - increases in the amounts of drugs seized by the authorities; and

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- reductions in the retail prices of drugs.⁷
- Decriminalization in Portugal was introduced to address widespread drug use and associated health and public safety problems, including a sharp increase in overdose deaths and usage in the country. In 1999 one per cent of the population reported an addiction to hard drugs ([CBC News](#)).
- Decriminalization in Portugal was not intended to condone drug use but instead was seen as the best way to minimize drug-related problems, de-stigmatize people who use drugs, and bring more people into treatment. Portuguese law continues to prohibit usage. It is considered an administrative violation and not a criminal offense.
- Pre-decriminalization, in 1999 the number of drug-related deaths in Portugal was close to 400. In 2006 there were 290 drug-related deaths.
- The report states: “In almost every category of drug, and for drug usage overall, the lifetime prevalence rates in the pre-decriminalization era of the 1990s were *higher* than the post-decriminalization rates.”
- Also, the number of people in substitution treatment leapt from 6,040 in 1999 to 14,877 in 2003, up 147%.
- Decriminalization freed up resources that were redirected to treatment and other harm reduction strategies.

ADVICE AND RECOMMENDED RESPONSE:

Top Messages:

- **Addiction is not a moral issue, it is not a criminal issue, it is a health issue.**
- **s.13** **People who face addiction are our family members, co-workers, neighbours – they are real people who need real care.**
- **That’s what we and everyone who is responding to this crisis is delivering – real compassionate care.**

Secondary Messages:

- **The Criminal Code is a federal matter, but we are looking at all avenues to help reduce the number of people dying.**
- **s.13**
- **Injectable opioid replacement therapy is available in VCH and Fraser Health.** **s.13**
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⁷ Hughes C, Stevens A. *What Can We Learn From The Portuguese Decriminalization of Illicit Drugs?* Br J Criminol 2010; 11;50(6):999-1022.

- Access to injectable OAT has expanded from just 1 site in Vancouver's Downtown Eastside to 5 sites in Vancouver and 1 in Surrey.
- Currently, iOAT has the capacity to serve 314 clients across these 6 sites. Two additional sites are expected to be in operation by April 2019 with capacity to serve 40 clients (20 in Victoria, 20 in the Interior).
- This therapy provides an important additional option to support people with opioid addiction – along with a wide range of measures including harm reduction, treatment and recovery services.

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Minister's Office	Program Area	Deputy	HLTH Communications
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Organization/Notable Person	Source
AIDS Vancouver Island	http://avi.org/sites/avi.org/files/publications/AVI_OverdoseSymposium.pdf
BC Liberal MLA Sam Sullivan	https://www.straight.com/news/1078421/majority-vancouver-residents-say-its-time-drop-criminal-penalties-drug-possession-poll
Canadian Association of People Who Use Drugs	https://www.cbc.ca/news/canada/british-columbia/multimedia/the-answer-to-canada-s-opioid-overdose-crisis-is-decriminalization-say-vancouver-drug-users-and-advocates-1.4544182
Canadian Association of People Who Use Drugs	http://www.pivotallegal.org/national_day_of_action_2018
Canadian Drug Policy Coalition	http://drugpolicy.ca/issues/reforme-des-politiques-sur-les-drogues/
Canadian Mental Health Association	https://cmha.ca/wp-content/uploads/2018/04/CMHA-Opioid-Policy-Full-Report_Final_EN.pdf
Canadian Public Health Association	https://www.cpha.ca/cpha-supports-city-vancouvers-call-decriminalization-personal-possession-all-drugs
City of Vancouver	https://www.cbc.ca/news/canada/british-columbia/city-of-vancouver-drug-possession-1.4570720
Dr. Mark Tyndall (Deputy PHO)	http://www.chathamdailynews.ca/2018/03/30/decriminalize-drug-use-to-address-opioid-crisis-tyndall
Dr. Patty Daly (Executive Lead OERC)	https://www.theglobeandmail.com/news/british-columbia/british-columbia-health-officials-call-for-drug-decriminalization/article29716257/
Dr. Perry Kendall (former PHO)	https://www.theglobeandmail.com/news/british-columbia/british-columbia-health-officials-call-for-drug-decriminalization/article29716257/
Dr. Thomas Kerr (BCCSU)	https://www.theglobeandmail.com/news/british-columbia/british-columbia-health-officials-call-for-drug-decriminalization/article29716257/
Federal New Democratic Party	https://www.cbc.ca/news/canada/british-columbia/city-of-vancouver-drug-possession-1.4570720
Global Commission on Drug Policy	http://www.globalcommissionondrugs.org/wp-content/uploads/2017/09/2017-GCDP-Position-Paper-Opioid-Crisis-ENG.pdf
Green Party of Canada	https://www.greenparty.ca/en/policy/vision-green/people/drugs
Liberal Party of Canada membership; MP Nathaniel Erskine-Smith; MP Hedy Fry	https://www.straight.com/news/1062146/liberal-party-members-overwhelmingly-vote-decriminalizing-drugs-while-trudeau-repeats
Majority of Vancouver Residents (62%)	https://www.straight.com/news/1078421/majority-vancouver-residents-say-its-time-drop-criminal-penalties-drug-possession-poll
Moms Stop the Harm	https://www.columbiavalley.pioneer.com/news/moms-of-those-killed-by-illicit-opioids-take-to-b-c-legislature-in-call-for-action/
Pacific AIDS Network	https://pacificaidnetwork.org/files/2016/12/Final-PAN-Drug-Policy-Report_Dec-22-2016.pdf
Pivot Legal Society	http://www.pivotallegal.org/national_day_of_action_2018
Public Health Association of British Columbia	https://phabc.org/wp-content/uploads/2017/11/Opioid-Open-Letter.pdf
Vancouver Area Network of Drug Users	https://www.straight.com/news/868946/vancouver-drug-users-plan-national-day-action-and-demand-legalization-prevent-overdose
Health Officers Council of BC	https://healthofficerscouncil.files.wordpress.com/2012/12/regulated-models-v8-final.pdf
City of Toronto - Public Health	https://www.toronto.ca/community-people/health-wellness-care/health-programs-advice/alcohol-and-other-drugs/toronto-drug-strategy-2/community-dialogue-a-public-health-approach-to-drugs/discussion-paper-public-health-approach-to-drugs/
Canadian HIV-AIDS Legal Network	http://www.aidslaw.ca/site/our-work/drug-policy/?lang=en
United Church of Canada - BC	http://bc.united-church.ca/wordpress2017/wp-content/uploads/2018/03/Conf-01-Decriminalization-of-Personal-Drug.pdf
Canadian Association of Chiefs of Police - initiated a 1-yr study to examine decriminalization	https://www.cbc.ca/news/politics/police-chiefs-studying-decriminalizing-drugs-as-possible-solution-to-opioid-crisis-1.4635294
Canadian Medical Association - debate on decriminalization of opioids	https://www.cbc.ca/news/politics/cma-president-decriminalizing-opioid-1.4832141?cldee=Y2Fyb2x5bi5kYXZpc29uQGdvdj5iYy5jYQ%3d%3d&recipientid=contact-91f9ece4f1d1e6118105480cfca931-ba8e15907462463f90883ea67a1d618c&esid=32b79a1c-a9bd-e811-816f-480f97e21
BC Nurses Union	https://www.bcnu.org/news-and-events/news/nurses-call-for-federal-action-on-opioid-overdose-crisis
Montreal Public Health	https://www.ctvnews.ca/politics/feds-won-t-decriminalize-any-drugs-besides-cannabis-despite-calls-from-cities-1.4033654
Toronto Chief Medical Officer	https://globalnews.ca/news/4320279/torontos-medical-officer-decriminalization-drugs/