Canadian Drug Policy Coalition
Coalition canadienne des politiques sur les drogues

PIVOT
equality lifts everyone

September 20, 2023

Please accept this submission on behalf of the Canadian Drug Policy Coalition and Pivot Legal Society regarding the state of law and policy in Canada that criminalizes people who use drugs and are living in poverty and homelessness.

The Canadian Drug Policy Coalition is a national organization hosted out of the Simon Fraser University Faculty of Health Sciences that works in collaboration with over 50 organizations and 7,000 individuals across Canada. Our work focuses on drug policy, human rights, legal reform and related sectors to support effective policy and services that are based in human rights and public health principles.

This submission has been reviewed and endorsed by the Pivot Legal Society. Pivot is a non-profit legal and advocacy organization grounded in the Downtown Eastside of Vancouver, British Columbia. The Downtown Eastside has long been known as a community experiencing high levels of poverty, homelessness, drug use, and criminalized income generation and public space usage. Pivot has worked in solidarity with community members for over 15 years to advance the human and constitutional rights of people who use drugs, engage in sex work, experience homelessness and housing insecurity, and who are disproportionately policed and criminalized.

The following local organizations representing several of the communities identified in this submission have also officially endorsed this submission:

- From Barrie, Ontario: Gilbert Centre, Indigenous Harm Reduction Network, Barrie Housing and Homelessness Justice Network
- From Nelson, British Columbia: Nelson Fentanyl Task Force, AIDS Network Kootenay Outreach and Support Society (ANKORS), Rural Empowered Drug User Network
- From Grand Forks, British Columbia: ANKORS

Dignified, non-stigmatizing and rights-based drug policy is integral to securing the right to housing, income security, and an adequate standard of living, including access to healthcare by people living in poverty. In fact, the consumption of drugs in a safe manner and access to essential services is – for some people – a life sustaining activity. People use drugs to manage pain, illness and physical dependence, and to cope with critical life stressors including homelessness, poverty and social exclusion. People who use drugs face discrimination, bans and other barriers when accessing housing, shelter and health services due to the criminalization of drugs and concomitant policies that prohibit drug use and/or harm reduction. Further, these laws and policies create barriers to employment and, subsequently, the ability to retain housing and earn an adequate income through safe and non-criminalized means. Unhoused and housing-insecure people who use drugs are disproportionately subject to displacement and surveillance in

public space, making them especially vulnerable to prosecution for drug charges and regulatory offences directly related to sheltering and attending to the necessities of life in public spaces.

In Canada, most public space is regulated through municipal bylaws and other provincial, territorial or federal land use legislation such as highway, fisheries and railway acts. Municipal bylaws, in particular, frequently criminalize activities related to drug use that occur at the intersection of poverty and homelessness such as the possession and distribution of harm reduction equipment (e.g. sterile syringes), in addition to other activities such as sleeping outdoors, erecting a temporary shelter, panhandling, and other life sustaining activities. Yet due to the increasing drug toxicity of the unregulated market, public space may be the safest place to use drugs to ensure proximity to others and access to emergency health care, outreach services, and harm reduction support in the event of a drug poisoning. For example, the distribution of harm reduction equipment on public land is a necessary healthcare service that reduces transmission of blood-borne illness and life-threatening infections, as well as provides community connections and other social supports for people living in public space. For people without housing and living in poverty, public space may be their only option.

Efforts to implement the right to adequate housing and the decriminalization of offences associated with poverty and homelessness must incorporate public health and human rights-based drug policy such as the full decriminalization of drug possession and street-based selling and trading, equitable access to safe regulated supply programs, (for a definition of safe supply see the National Safer Supply Community of Practice) harm reduction equipment and services such as supervised consumption sites, and evidence-based and voluntary treatment that aligns with people's needs, aspirations and informed consent.

1) Laws or regulations that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places (please include the wording of these laws and regulations and specify whether they are effectively enforced).

The following four examples are just a sample of the numerous municipal public space bylaws that are ubiquitous in Canada that criminalize life-sustaining activities occurring in public space, including the possession and distribution of harm reduction equipment and the consumption of drugs, disproportionately penalizing unhoused and housing insecure people who use drugs as part of their daily survival. Currently, there is no central accountability mechanism for how municipal bylaws are (disproportionately) enforced, and there is a need for transparency in this area. The diffusion of laws and enforcement policy in this regard are further explained below in response to question 2 and, in many respects, tend to reflect a re-criminalization of public space use in the aftermath of changes to the federal *Criminal Code* provisions regarding "vagrancy".

We have included brief commentary on each example. Of note, our submissions focus on drug policy aspects of the criminalization of people living in poverty and most of the excerpts below focus on provisions related to drug use. Prohibitions on sleeping, sheltering, panhandling, begging, and to a lesser extent serving food/eating are also pervasive across Canada (we have included one example for reference). Likewise, we have not focused on provisions regarding bathing, urinating and defecating. Prohibitions on these activities are pervasive across Canada – whether named explicitly or subsumed within general "nuisance" prohibitions. For reference, much has been written on these broader provisions criminalizing homelessness and poverty in Canada (see e.g. Pivot Legal Society 2016 submission to the Committee on Economic Social and Cultural Rights, Marie-Eve Sylvestre "Disorder and Public Spaces in Montreal", Nicholas Blomley's Legal Geography analyses of the regulation and criminalization of homelessness, panhandling and street vending, and various analyses of Safe Streets legislation).

a. Proposed bylaw in the City of Barrie, Ontario:

Bylaw Number 2023 Bill No. 068 – A Bylaw of the Corporation of the City of Barrie to amend Bylaw 2004-142 Use of Public Property (Nuisance) Bylaw to regulate the use of City Property.

…

6. No person shall sell, offer for sale, or provide due to or through the exchange of funds, any product, service or items from any City property, unless authorized by the City.

…

7. No person shall give away, exchange or otherwise provide at no charge, items, products, samples of items or products, or any other similar item including but not limited to food, clothing, tents, tarps, or other similar item used as a shelter, to assist with sleeping or protection from the elements to members of the public from any City property, unless authorized by the City.

This bylaw came for consideration by Barrie City Council in June 2023, but was not passed at that time amidst significant public concern about the harms it would cause to the community (See e.g. public outcry, Council response). Notably, the Executive Director of the Canadian Alliance to End Homelessness equated the proposed bylaw to "an assault on basic human decency", calling it a cruel and inhumane violation of human rights and Canada's Federal Housing Advocate denounced the proposed provisions noting that they would "severely restrict access to basic shelter and food for people living in local homeless encampments and, as such, are in direct contravention of international human rights standards." The bylaw was brought again for public comment on September 19, 2023. To date we are not aware of any substantive

changes to the proposed bylaw and do not know how soon it may come forward for a vote by City Council.

The sweeping nature of this proposed bylaw seeks to prohibit all aspects of health and social services outreach, trading, panhandling, sheltering, and sleeping in public spaces. The provisions in this proposed bylaw allowing for limited outreach services and sheltering in public spaces only with the authorization of the city place unreasonable limits on the provision of essential services and necessities of life for people directly impacted. In fact, in relation to a similar bylaw in Abbotsford, British Columbia, the Supreme Court of British Columbia found that the inclusion of a process to seek a city authorization or permit for such activities was inadequate and inaccessible when the prohibitions (in that case prohibitions on sleeping and erecting structures in public spaces) infringed the right to life, liberty and security of people experiencing homelessness (see *Abbotsford v Shantz*, 2015 BCSC 1909).

b. **City of Nelson, B.C. Bylaw No. 3577, 2023 Being a Bylaw to Amend "The Corporation of the City of Nelson Parks Bylaw No. 3330, 2016"**

…

1. That said Bylaw be amended by adding under Definitions:

"ILLICIT DRUGS" includes opioids, crack or powder cocaine, MDMA and methamphetamines."

…

3.11 A person must not smoke, inject or otherwise consume any illicit drugs in any of the following parks…

This bylaw is an example of the re-criminalization of people living at the intersection of the ongoing housing, income security and toxic drug crises across Canada. As of January 31, 2023, the province of British Columbia implemented a three-year pilot program to decriminalize the possession of small amounts of currently illegal drugs as part of its public health approach to a deadly toxic drug crisis. This bylaw is one example of how municipalities seek to re-criminalize drug use specifically targeting people who live in and rely on public spaces.

c. **City of Grand Forks, B.C. Controlled Substance Use Bylaw No. 2098 – A bylaw to regulate the use of controlled substances in public spaces and areas of public access**

3. A person shall not:
…

3.2. *Consume* a *Controlled Substance* in a *Prohibited Area*,
3.3. brandish, display, or make visible to another person a *Controlled Substance* while in a *Prohibited Area*,
3.4. brandish, display, or make visible to another person any paraphernalia for the purpose of storing, transporting, or *Consuming* a *Controlled Substance* while in a *Prohibited Area*,

…

4. A person, being the owner or occupier of private property, shall not cause, permit, or allow another person to *Consume* a *Controlled Substance* in a *Prohibited Area* upon that property.

…

Restriction of Access
6. *City staff* or a *Peace Officer* may direct a person to leave any *Park*, *Public Space*, or *Prohibited Area* if that person is believed to be, or have been, acting in contravention of this bylaw or any other enactment, including federal or provincial enactments respecting the use or possession of *Controlled Substances*

7. A person directed to leave a place by *City Staff* or a *Peace Officer* must proceed immediately to the nearest exit point.

8. *City Staff* or a *Peace Officer* may direct a person not to return to a *Park*, *Public Space*, or *Prohibited Area* for 48 hours if that person is believed to be, or has acted, in contravention of this bylaw or any other enactment, including federal or provincial enactments respecting the use or possession of *Controlled Substances*.

9. A person directed to leave and not return to a place for 48 hours by *City Staff* or a *Peace Officer*, and who returns sooner than 48 hours, shall be guilty of an offence under this bylaw.

…

17. This bylaw may be enforced by means of a municipal ticket information or bylaw notice in the forms prescribed for those purposes in the *Community Charter* or *Bylaw Notice Enforcement Act*. Designated offences, bylaw enforcement officers, fines, fine reductions, or surcharges shall be as specified within the *City's Municipal Ticket Information Bylaw* and *Bylaw Notice Enforcement Bylaw* as adopted and amended from time to time.

…

20. A person who commits an offence contrary to the provisions of this bylaw is liable on summary conviction to a penalty of not less than $500.00 and not more than $10,000.00 in addition to the costs of prosecution, or liable to a term of incarceration for a period of not more than 6 months, or both. Any penalty imposed pursuant to this bylaw shall be in addition to, and not in substitution of, any other penalty or remedy imposed pursuant to any other applicable statue, law, or legislation.

As with the City of Nelson bylaw noted above, this legislation recriminalizes activities that were intentionally decriminalized in British Columbia for public health reasons. It goes significantly further to also prohibit harm reduction equipment such as sterile syringes which are proven to protect and improve individual and public health. It targets people relying on public spaces by displacing and temporarily banishing them, and imposes hefty fines, surcharges and the possibility of imprisonment for simply re-entering a park from which a person has been banished. As outlined below under question 2, displacement of people relying on public spaces can be harmful per-se, displacement has been linked to an increased risk of fatal drug overdose, and mandatory surcharges levied against people living in poverty may constitute cruel and unusual punishment.

d. **City of Campbell River, B.C., Public Nuisance Bylaw 3543, 2014 Consolidated to Bylaw 3907, 2023**

4.0 No Person shall Panhandle within 10 metres of:
a. An entrance to a bank, credit union or Trust Company;
…
e. The entrance to any liquor store.
…
4.2 No Person shall Panhandle after sunset on any given day.
4.3 No Person shall sit or lie on a Street for the purpose of Panhandling.
4.4 No Person shall continue to Panhandle from a Person, or follow a Person, after that Person has made a negative response.
4.5 No Person shall:
a. urinate or defecate on a Highway or Other Public Place;
…
d. sleep, camp, or erect a Temporary Shelter, or place other sleeping or camping equipment or effects:
(i) on any Street;
(ii) at any of the City Facilities listed in Schedule “C” of this bylaw;
(iii) at any City Facility without washrooms; or
(iv) at any other City Facility between the hours of 7:00am and 7:00pm.
e. Erect a Temporary Shelter larger than 3 metres by 3 metres (10 ft. By 10 ft.)
f. Erect a Temporary Shelter within 6 metres (20 ft.) of another Temporary Shelter.

g. Erect a Temporary Shelter within 15 metres (50 ft.) of any: playground, community garden, sports field, tennis court, picnic shelter, gazebo, stage, water park, skate park, parking lot, public washroom, established trail, sidewalk or private property.
h. Affix or attach the Temporary Shelter to, or damage or alter municipal property, including fencing, trees, shrubs, plantings, benches or other municipal equipment or infrastructure.
...
n. Consume a Controlled Substance:
(i) within 15 metres of any playground, sports field, tennis court, picnic shelter, water park or Bus Shelter; or
(ii) on or within 15 metres of any parcel of land containing a City Facility listed as #2 to #9 or #11 to #13 in Schedule "C" of this bylaw.

4.6 Where the City Manager or their designate, or a Bylaw Enforcement Officer has reasonable grounds to believe that a person, while at a City Facility, is acting in a manner that:
a. May present a risk or hazard to City staff or City Facility users;
b. Is in contravention of a City Bylaw regulation;
c. Is in contravention of any Federal or Provincial criminal enactment; or
d. Is described as inappropriate behaviour in Schedule "D" of this bylaw;
the City Manager or their designate, or Bylaw Enforcement Officer may:
e. Direct that person to leave the City Facility; or
f. Issue a Banning Notice to that person.

4.7 A Person directed to leave a City Facility or to whom a Banning Notice has been issued shall leave the City Facility immediately.
4.8 A Banning Notice may be issued for a term of up to one year.
4.9 A Person who has been issued a Banning Notice shall comply with the provisions of the notice.
…
4.11 A Bylaw Enforcement Officer may seize a thing unlawfully occupying a portion of a Highway or Other Public Place, and without limiting the generality of the foregoing, may seize a thing unlawfully in a Highway or Other Public Place contrary to this bylaw.
…
9.2 Every person who:
a. Violates or who causes or allows any of the provisions of this bylaw to be violated;
b. Fails to comply with any of the provisions of this bylaw;
c. Neglects or refrains from doing anything required under this bylaw;
d. Who suffers or permits any act or thing to be done in contravention of any of the provisions of this bylaw;
is deemed to have committed an infraction of, or an offence against, this bylaw and is liable on summary conviction to a fine not less than $5,000 and a maximum of $50,000, or to imprisonment for not more than six months, or to both.

> For continuing offences, each day that such violation is caused, or allowed to continue, constitutes a separate offence.

Here we have included an example of prohibitions on necessities of life such as sheltering, panhandling, urinating and defecating in public. Prohibitions like this exist all over Canada. Here, however, the city has also re-criminalized drug use contrary to the provincial pilot, and included enforcement mechanisms that are wildly disproportionate to any legitimate purpose including banishment from city facilities for up to a year (notably, people access free food, health outreach, harm reduction services and warming/cooling centres in city facilities and therefore banishment may result in exclusion from all or many essential services), very significant minimum fines ($5,000 up to $50,000) and imprisonment. Finally, this bylaw also contains a provision that "compounds" any fine or other punishment for each day of a "violation" meaning, for example, someone found panhandling and using drugs in a prohibited location two days in a row could be charged $5,000 per infraction per day equalling a possible fine of $20,000 for two infractions over 2 days.

2) Laws or regulations that allow the detention or imprisonment of individuals who are unable to pay the fine imposed for petty offences.

Canada operates as a constitutional monarchy and a parliamentary democracy under which the federal government holds authority and jurisdiction over certain aspects of Canadian law and policy (including criminal law) and provinces hold constitutional authority over other matters such as health care, establishing municipal bodies, and matters that are "local" in nature including property and civil rights in the province (Canada also has three territories, which operate similarly to provinces under delegated authority from the federal government). Each province and territory, therefore, establishes the powers that municipalities hold to regulate public space and establish provincial/territorial offence legislation which outlines the enforcement of regulatory infractions that are not within the *Criminal Code*. Indigenous Nations also have – and have had since time immemorial – the right to self-governance. Indigenous land governance is not addressed herein as our focus is on colonial legal systems stemming from British common law traditions that give rise to the regulation and criminalization of poverty on these colonized Indigenous lands.

Based on British common law tradition, Canada's original *Criminal Code 1892* included the crime of "vagrancy" which targeted those deemed to be a "loose, idle or disorderly person or vagrant" and codified punishment of a fine of $50 (over $1,500 in today's currency) or imprisonment of up to 6 months with or without hard labour. While these provisions did not name specific acts such as sheltering or conducting personal hygiene in public spaces, they sought overarchingly to target anyone seen as having "no lawful profession" and thus were explicitly designed to target, stigmatize and criminalize people living in poverty and relying on public spaces.

Aspects of this law were found unconstitutionally overbroad in 1994 and the entirety of the provision was repealed in 2019. The stigma and targeting of people relying on public spaces, however, remains prevalent across provincial, territorial and municipal jurisdictions (as outlined in the above bylaw examples). The proliferation of laws prohibiting or strictly limiting loitering, panhandling, sheltering, sleeping, and performing personal hygienic activities are now found in provincial statutes (e.g. British Columbia and Ontario's *Safe Streets Act*) and municipal bylaws. Further, the enforcement for breach of local bylaws is generally governed by provincial "offence" acts – which include court processes, garnishment and, in some cases, the authority to issue warrants and sentence a person to a period of incarceration despite not being convicted of a crime outlined in the *Criminal Code*.

It is not possible to fully review the myriad laws and bylaws in the context of this submission and it is likewise nearly impossible to assess the extent to which such laws result in surveillance, enforcement practices and carceral sentences related to survival activities across Canada. We can, however, point to some limited examples:

- The New Brunswick *Provincial Offences Procedure Act* outlines the process for hearings and sentencing for provincial offences – including the possibility of imprisonment for certain offences, the issuance of warrants for failure to appear by people subject to fines for petty infractions, and the issuance of a "warrant of committal" as a means to enforce the payment of certain fines including "imprisonment that may follow if the defendant is in default of payment of a fine". Whether these provisions are used to enforce fines for petty survival infractions of provincial or municipal legislation is challenging to track. These procedures, for example, may be used in relation to local laws such as the Moncton: "By-Law Relating to Recreation Areas" which prohibits erecting any tent or structure or being in a recreation area overnight; "By-Law Relating to Shopping Carts" which targets the use of shopping carts to convey and store the possessions of people living in and relying on public spaces and provides for minimum fines of $140 up to $2,100 per day of the offence; and the "By-Law Relating to the Use of Streets" which prohibits one to "stand, sit or lie in a public place in the course of begging or soliciting in a manner which obstructs or impedes the convenient passage of pedestrians" including fines of between $45 and $125 per infraction. (Moncton bylaws are available here)
- The Alberta *Provincial Offences Procedure Act*, which similarly governs the process of enforcement of fines for provincial and municipal offences such as those outlined above, states "Subject to any express provision in another enactment, if the imposition of a fine or the making of an order for the payment of money is authorized by an enactment but the enactment does not provide that imprisonment may be imposed in default of payment of the fine or compliance with the order, the Court may order that in default of payment of the fine or compliance with the order, as the case may be, the defendant shall be imprisoned for a period of not more than 6 months". This legislation applies to, for example, the Calgary bylaw "To Regulate Parks and Pathways" which prohibits being in parks overnight (fines between $150-$200), unsanctioned erection of

tents or shelters (fines between $150-$250), or any activity deemed to be "inconsistent with the purpose of a park" (including the use of a park for sheltering and hygiene). (Calgary bylaws are available here)

In 2018 the Supreme Court of Canada considered whether fines of this nature, when levied against people living in poverty, constituted "cruel and unusual punishment." The court was asked to assess the constitutionality of a mandatory victim fine surcharge (a fine levied against every person found guilty of a criminal offence regardless of the circumstances of the offence or the accused) and found that the "[the law's] impact and effects create circumstances that are grossly disproportionate to what would otherwise be a fit sentence, outrage the standards of decency, and are both abhorrent and intolerable". The Supreme Court found that a mandatory victim fine surcharge could cause impoverished defendants disproportionate financial consequences regardless of moral culpability and caused people to live under threat of incarceration. Further, the Supreme Court found that this fine allowed for people to be targeted by provincial collection efforts (which may themselves come with a risk of incarceration) and created a de facto indefinite sentence for offenders where there is no foreseeable chance they will be able to pay the fine. Lastly, the mandatory nature of the fine did not allow for a consideration of the accused's circumstances and mitigating context. The fines were found to disproportionately impact "offenders who are impoverished, addicted and homeless."

Despite the clear findings of the Supreme Court of Canada, there has been no change of significance to provincial, territorial and municipal public space laws such as those outlined in the examples above. Despite the obvious possibility that laws such as those outlined here may have the same unconstitutional effects on people living in poverty and homelessness, provinces, territories and municipalities have not taken action to amend or repeal these laws.

For people who use drugs, laws of this nature present a clear danger to life, health and safety. In the context of Canada's growing and devastating toxic drug crisis, evidence and academic analysis has demonstrated that people who use drugs are at increased risk of opioid-related overdose and mortality within the days after release from custody. Furthermore, beyond the risk of incarceration for failure to pay fines, legislation such as that outlined here, authorizes the repeated displacement of people living in and relying on public spaces for the necessities of life. These displacements have been found to correlate to an increase in toxic drug mortality.

3) Information about attempts made or planned to decriminalise street vending, informal business activities, sex work, begging, eating, sleeping or performing personal hygienic activities in public places.

For people who frequently use drugs, having regular access to drugs is necessary to avoid illness and to stabilize one's life. Engaging in informal business activities such as street-based selling and trading of drugs, or other grey market or criminalized revenue-generating activities like sex work and panhandling are primary ways by which people

who use drugs support themselves. It is common for people to sell or share drugs to support one's livelihood and personal drug use costs, and criminalizing this activity is a poor use of public resources and places unnecessary burden on the judicial system.

Sharing or selling drugs remains illegal under section 5 of the federal *Controlled Drugs and Substances Act* (CDSA) in all jurisdictions. While it is possible for the federal government to issue exemptions for this type of selling and trading under section 56 of the CDSA, it has not done so as it relates to people living in poverty and selling/trading drugs to meet their basic needs.

The federal government has, however, supported certain exemptions from the CDSA to allow for the delivery of government-sanctioned safe supply wherein people at significant risk of fatal drug overdose may be prescribed regulated drugs by medical practitioners. To date, 28 safe supply programs are funded through the federal substance use and addictions program, and there are also a small number of locally-funded programs that exist. Crucially, it must be noted that sanctioned safe supply programs are very limited compared to the need – for example, approximately 4,600 people in B.C. receive prescribed safe supply while over 92,000 people in the province have been diagnosed with severe substance use disorder and would benefit from receiving safe supply, and this figure underrepresents the need given that it excludes those without a formal diagnosis of severe substance use disorder and these programs are largely unavailable in other provinces and territories. These government sanctioned safe supply programs allow people who use drugs who are at risk of fatal overdose from the toxic, unregulated market to access quality-controlled drugs without risk of criminalization under medical prescription only. The small number of people who have access to safe supply programming can access the substances they need without necessarily engaging in the selling and trading drugs and other necessity income generation such as sex work or panhandling.

In Canada, grassroots civil society organizations of people who use drugs have made efforts to decriminalize compassion clubs, which would provide a non-prescription safer supply of quality-controlled drugs to its membership under a cooperative model. The decriminalization of compassion clubs would likewise decrease criminal sanctions for street-level selling/trading, serve as a stabilizing factor in the lives of people who use drugs and decrease the need to generate income through other criminalized and policed activities such as sex work and panhandling by enabling members to acquire safer supply at a lower price point. Unfortunately, these efforts to obtain legal protections have not succeeded to date. For example, in B.C., the Drug User Liberation Front (DULF), a volunteer-operated coalition, submitted an application for a formal exemption under CDSA to decriminalize the distribution and possession of drugs for the purposes of delivering quality-controlled safe supply to its membership. Despite the federal government's denial of this request, the group continues to deliver a lifesaving supply of drugs purchased on the black market and tested for safety under a

compassion club membership model without amnesty from the federal government. People accessing the DULF compassion club are safer from the possibility of fatal overdose, have the stability of regularly accessing safe supply from a reliable and safe source and have a decreased need to engage in survival income generation that is often criminalized and policed due to the cooperative model of compassion clubs and the subsequent lower price point for safer supply– not because DULF's activities have been officially decriminalized, but rather because police have not enforced the law against them to date.

4) Information concerning initiatives to change the response of law enforcement officials and of the criminal justice system from penalization, punishment or detention, towards facilitating social inclusion of persons living in poverty or experiencing homelessness.

As noted previously, we have focused largely on unique drug policy approaches to these questions. We are not able to speak to broader initiatives related to the policing of activities such as sheltering in public with the exception of the examples noted previously. Overall, we have recently observed an increase in the policing of public spaces and in discrimination against people living in public space but it is not within our mandate to further quantify those shifts (see e.g. three recent high-profile enforcements against encampments: Stop the Sweeps, Prince George encampment removal, Toronto encampments).

The following three examples outline current programs that seek to move away from criminalization towards social inclusion of people living at the intersection of poverty, homelessness/housing insecurity, and criminalized drug use.

Decriminalization

In January 2023, the province of B.C. introduced a province-wide drug decriminalization pilot through the successful application for a Section 56 exemption under the federal *Controlled Drugs and Substances Act* for the decriminalization of personal possession for certain drugs under a threshold of 2.5 g, the only jurisdiction in Canada to date to enact de jure decriminalization (note: the city of Toronto in Ontario has also made an application for a Section 56 exemption to enact municipal decriminalization which is currently under consideration by the federal government).

The stated objectives of the provincial policy change in B.C. were to remove stigma and other barriers to accessing necessary supports and services and reduce the likelihood of overdose and higher risk drug consumption practices such as using unregulated and increasingly toxic drugs alone. Despite its seeming forward progress, this provincial drug decriminalization pilot is inadequate in supporting the rights of people who use drugs and those who are living in poverty or in public space, due to its too-low

thresholds – a factor that is particularly relevant for unhoused people who carry all their belongings on their person, the limitation in drug types, the exclusion of amnesty for youth, and the inclusion of a referral process as a lever that enables enforcement officers to engage with people who use drugs which can lead to greater surveillance and coercion of a population who is already disproportionately targeted for surveillance and prosecution. Further, the effectiveness of this policy tool is drastically curtailed by the existence of 'anti-sheltering' bylaws and the introduction of municipal bylaws that maintain criminalization of drug use in public space, as discussed above, which disproportionately impact unhoused and housing insecure people who use drugs who may not have access to a private space in which to consume.

If implemented correctly, decriminalization is a policy tool that can facilitate greater social inclusion of people living in poverty or experiencing homelessness by: reducing displacement from public space via enforcement of anti-drug laws; reducing bans and other exclusionary policies in shelters, housing programs and other social services and initiatives that prohibit drug use and the possession of harm reduction equipment; reducing barriers to accessing healthcare, social supports, emergency care and emergency overdose response due to stigma and fear of prosecution; reducing barriers to employment; supporting the fundamental rights to bodily autonomy, protection against unreasonable search and seizure, and freedom of movement; and eventually changing social norms and cultural values that are in part a result of government regulations that prohibit drug use and subsequently legitimize the social conceptualization of people who use drugs as inherently immoral and deviant, leading to persecution and social exclusion.

Supervised Consumption Sites and Overdose Prevention Sites

Supervised consumption sites (sanctioned under section 56 of the CDSA) and overdose prevention sites (community sites operating without official sanction under the CDSA but which may be authorized through provincial policy) are vital harm reduction interventions that provide de jure or de facto (depending on the type of site) decriminalization of drug possession charges within the physical boundaries of the sites thus providing spaces of refuge from the prohibitions and potential punishments outlined in various public space laws. They are designed to provide safe and decriminalized space where people can use drugs and access care (See e.g. description of Insite, Canada's longest running supervised consumption site).

Furthermore, the central services of supervised consumption sites and overdose prevention sites are the witnessing of drug consumption to prevent accidental overdose due to the toxicity of the unregulated market, the provision of emergency overdose response and the distribution of harm reduction equipment. The direct removal of criminal sanctions and penalties for consuming drugs when accessing the sites, as well as the relationship-building, community care and additional social services and supports

that are made available to people accessing the sites all facilitate greater social inclusion for people who use drugs who are unhoused, housing insecure and living in poverty. In addition to overdose emergency response, many supervised consumption sites and overdose prevention sites offer voluntary services and social supports for people to access housing, income supports, healthcare, employment assistance, food supports, family supports and more. Overdose prevention sites and supervised consumption sites that are grounded in grassroots harm reduction philosophy and practice also center lateral relationship-building by providing spaces for people who use drugs to congregate and socialize within the sites, facilitating the development of vital social connections and opportunities for community building.

Safe supply programming

In Canada, safe supply is the provision of government-regulated and quality-controlled drugs as an alternative to the increasingly toxic and unregulated market and the criminalized survival income generating activities required to purchase black market drugs. To date, government sanctioned safe supply programs in Canada exist under a prescriber-based medical model available to a small percentage of the total population of people who use drugs and are at risk of fatal overdose due to the toxic unregulated drug market (see above for further detail). For people who require consistent access to safe supply in order to prevent severe illness, safe supply programs that provide substances at low or no cost also offer an important alternative to criminalized/prohibited forms of income generation.

Longitudinal studies of safe supply programs, such as heroin-assisted treatment, indicate that having access to a safe, regulated source of substances significantly reduced the need to engage in street vending, informal business activities, sex work, begging or petty crime to support their needs. In fact, a study released September 18, 2023 found, based on interviews with 52 participants in a safe supply program in Ontario, that access to the program resulted in “changes to drug use practices, fewer overdoses, reduced criminalised activity, improved trust and engagement in health care, and increased social stability (e.g., housing)”. These programs help people avoid entanglement with the criminal justice system, focus on housing and income security and develop relationships with health care providers.

5) Measures and services available at national, regional or municipal level to support people living in poverty and in situations of vulnerability from having to resort to begging, sleeping, washing, defecating or performing other hygienic activities in public places, because they lack access to employment, social assistance, adequate housing, public showers and toilets.

As indicated in the response to question 4, supervised consumption sites and overdose prevention sites function as spaces for people who use drugs to not only receive harm

reduction equipment and emergency overdose response in the event of a drug poisoning, but also have access to washrooms and social programs that facilitate access to housing, employment, social assistance and other social supports. These services are location-based and subject to the relevant approvals at the municipal, provincial or territorial, and occasionally the federal level in the case of federally sanctioned supervised consumption sites.

Implementation of these programs requires support from all levels of government. The federal government is responsible for the approvals of Section 56 exemptions for supervised consumption sites that implement formal amnesty from drug possession charges under the federal *Controlled Drugs and Substances Act*, and 44 of these approvals have been granted in Canada to date. Provincial and territorial governments are responsible for approving and funding applications for supervised consumption sites. Municipal governments must also provide formal support for supervised consumption sites for their implementation, and while municipal government approval is not needed for informal overdose prevention sites, it is important for municipal governments to also offer endorsement and public support for overdose prevention sites to ensure their success.

Significant barriers emerge when provincial or territorial and municipal governments oppose the delivery of these vital healthcare and social services. Provincial and territorial governments may not facilitate the necessary number of approvals to meet the surging demand for supervised consumption services due to ideological and political opposition to these evidence-based healthcare services. For example, in 2018 the provincial government in Ontario indicated it would implement a cap to the number of approvals for supervised consumption sites to 21 for a province with a population of over 14 million, and since 2020 the provincial government in Alberta has moved to close a number of high-volume sites previously in operation.

Furthermore, municipal governments are responsible for approving the specific location of supervised consumption sites, and considerable delays result when municipal governments do not grant these site approvals in a timely manner – or in some cases refuse to grant approvals at all. Rather than supporting services of this nature and upscaling them to ensure they can provide both health/life sustaining care and offer alternatives to people who would otherwise resort to using public spaces to perform things like sleeping, washing, defecating or performing other hygienic activities, some municipalities have used visible poverty as a basis upon which to shut down these essential services. The following are two examples, though these issues are common across the country. Recently, Vancouver Council decided not to renew the license for an overdose prevention site due in large part to complaints from neighbours about people loitering, sleeping, defecating in public. Rather than expand the service, the city has decided it will shut down by March 31, 2024. Further, in Montreal a long-established harm reduction service has been scrutinized by neighbours and the media noting that

due to a lack of adequate safe consumption sites, in combination with housing becoming more expensive and shelters/services closing due to gentrification, people who use drugs and access harm reduction services are having to rely on public space for all necessities including urination and defecation, causing backlash from the community).

It is essential that supervised consumption sites and overdose prevention sites are established in a manner proportional to the need for these services in the face of proliferating fatal drug poisonings in all jurisdictions and regions in Canada. In a context in which people who use drugs who are visibly unhoused, housing insecure or living in poverty regularly face persecution, harassment, violence and vigilantism due to a fundamental misunderstanding of drug use and poverty, it remains difficult to receive municipal government approval or endorsement for the physical location of supervised consumption and overdose prevention sites. It is common for a small group of citizens to vocally oppose these services. Where municipal governments lack strong leadership for a public health, human rights and harm reduction-based approach to managing the drug toxicity crisis, it is possible that barriers to the implementation of vitally necessary supervised consumption sites and overdose prevention sites become insurmountable which results in a lack of urgently needed services and an increased reliance on public spaces to perform basic survival activities.

Finally, existing resources such as emergency shelters that are specifically intended to alleviate the need to sleep, wash, defecate or perform other hygienic activities in public places are often inaccessible to people who use drugs – meaning that people who use drugs are more likely to resort to using public spaces out of necessity. For example, shelter policies such as mandatory abstinence, prohibitions on carrying harm reduction equipment or drugs, curfews that don't allow people to exit/re-enter the shelter for people who need to use drugs regularly to stave off painful and potentially dangerous withdrawal, and banishment policies that limit access to these essential services for any infraction of shelter policy all create access barriers for people who use drugs. In B.C., the Supreme Court of British Columbia has found that these barriers stop people from reasonably accessing shelters and increases the presence of people who use drugs in public spaces. This finding is consistent with data collected by the Canadian Drug Policy Coalition over the last 2 years which demonstrates that across diverse communities and geographies throughout Canada, people who use drugs persistently experience barriers to accessing shelter services and are more likely to resort to living on public lands.