

October 6, 2023

Please accept this **addendum to our earlier** submission on behalf of the Canadian Drug Policy Coalition and Pivot Legal Society regarding a pressing and timely development to the state of law and policy in Canada that criminalizes people who use drugs and who live in poverty and homelessness. We hope this addendum will be read and considered alongside our original submission dated September 20, 2023 (the “September 20th Submission”), in particular, we have provided updated input and analysis to questions:

- #1 Laws or Regulations prohibiting public space necessities of life, see headings: British Columbia Bill 34; Context for Decriminalization and the Restricting Public Consumption of Illegal Substances Act; The Act is Premised on – and Perpetuates – Misinformation; The Act’s Punitive Approach to Substance Use is at Odds with Evidence; The Act Targets Poor and Unhoused People Who Use Drugs; The Act Reverses British Columbia’s Decriminalization Pilot
- #2 Law or Regulations allowing detention or imprisonment, see heading: Increased powers of arrest and detention
- #3 Attempts to decriminalize, see heading: The Law Puts Decriminalization at Risk of Failure Nationally and Internationally

Question 1

British Columbia Bill 34

On October 5, 2023 the government of the Province of British Columbia (BC) tabled legislation that, if passed into law, will target, re-criminalize, and endanger the lives and safety of people who use drugs and in particular, those who rely on public spaces for the necessities of life.

The [Restricting Public Consumption of Illegal Substances Act](#) (the “Act”), which the legislature will seek to pass in Fall 2023, suspends the application of BC’s decriminalization pilot in various new locations. The Act reduces public space usage to such a degree as to make it virtually impossible to find a public place where drug use is not prohibited, or to know whether one is committing an offence. Section 3 of the Act outlines vast public space restrictions, while section 4 empowers and arguably encourages police to surveil homeless people and demand they either cease using drugs or leave the area. Anyone refusing to follow such an order can be arrested without a warrant under sections 5 and 8 and punished under BC’s provincial *Offences Act* (Acts like this were detailed in the September 20th Submission).

This addendum sets out the ways in which the Act risks the life, health, safety, and rights of people who use drugs – and particularly those who experience homelessness and poverty. The Act is reproduced in full at the end of this addendum.

Context for Decriminalization, and the Restricting Public Consumption of Illegal Substances Act

As noted in the September 20th Submission, the use of drugs in public space may be considered a life sustaining activity given that many people use drugs to survive and navigate the difficulties associated with being unhoused, to prevent severe illness, and to manage pain. Experiencing poverty or homelessness can also predicate drug use for some people, as demonstrated by research [published in 2019](#) which demonstrates that residential evictions can drive the need to use drugs. While not all people who are unhoused use drugs, and not all people who use drugs are unhoused, it is clear that the criminalization of drugs disproportionately impacts unhoused people and people living in poverty due to the intersection between drug criminalization and public space regulations.

Further, in the context of a toxic drug crisis driven by criminalization, whereby drugs from the unregulated market are dangerously potent and far too often fatal, it is necessary (and encouraged by provincial and federal governments in Canada) for people to use drugs in the presence of others as a matter of harm reduction, namely to ensure the provision of emergency overdose response. While all sectors of the population are impacted by the toxic drug crisis, unhoused people and people living in poverty are severely impacted. For instance, [data from September 2023 in Toronto](#) shows that drug toxicity is the leading cause of death for unhoused people with nearly half of all deaths of unhoused people being a result of drug toxicity.

Given this context, drug decriminalization has been recognized as an essential step toward ending the toxic drug crisis and addressing health disparities among unhoused people and people living in poverty. Decriminalization can both reduce stigma and its impacts, and also reduce the extent to which drug use is driven underground (thereby leading to greater risk of overdose and death.

Beginning on January 31, 2023 the province of British Columbia embarked on a 3-year pilot program to decriminalize the possession of small amounts of certain drugs for personal use. The BC government's [stated purpose](#) for this pilot was:

“Substance use is a public health issue, not a criminal one,” said Sheila Malcolmson, B.C.’s Minister of Mental Health and Addictions. “By decriminalizing people who use drugs, we will break down the stigma that stops people from accessing life-saving support and services.”

And

“This exemption is a vital step to keeping people alive and help connect them with the health and social support they need,” said Dr. Bonnie Henry, B.C.’s provincial health officer. “By removing the fear and shame of drug use, we will be able to remove barriers that prevent people from accessing harm reduction services and treatment programs.”

Less than a year into the decriminalization pilot, on October 5, 2023, that same government announced the Act with the Premier of BC stating:

“British Columbians overwhelmingly agree addiction is a health matter. At the same time, they’re also concerned about open drug use in public spaces, especially near where kids play. That’s why we’re taking this critical step similar to how we regulate smoking or alcohol use in public, to help people feel safer in their communities, and ensure people

who use drugs can be connected to safer and more appropriate spaces with the services they need.”

The Act is Premised on – and Perpetuates – Misinformation

The Premier’s claim that there are services (i.e., “more appropriate spaces”) in existence that people who use drugs can access is categorically false: As detailed in the September 20th Submission, there is an extremely limited number of supervised consumption sites and overdose prevention services available nationally, with some regions having an absolute dearth of services. In BC, the [2016 Ministerial Order requiring all regional health boards](#) to establish overdose prevention services “in any place there is a need for these services” [remains violated](#) by each and every health authority in the province.

BC government officials noted the proposed legislation is a response in part to concerns from people and municipal governments that the decriminalization pilot has caused an increase in public drug consumption. The narrative that the decriminalization pilot has caused more drug use in public space is not established in evidence (either in BC or in other regions that have implemented decriminalization). This rhetoric – and the move to enact laws premised on it – severely undermines any potential decrease in stigma that could be achieved through decriminalization and instead increases interactions with enforcement officers while reinforcing damaging narratives that the public has reason to fear people who live in and use public space for the necessities of life.

The Act’s Punitive Approach to Substance Use is at Odds with Evidence

The use of punitive legislation to “direct” people to services is also based in misinformed rhetoric and has not been established as an effective or appropriate practice in the context of homelessness or substance use services and treatment. Given that enforcement officers are engaging with people who use drugs on the basis that people who use drugs are partaking in a criminalized activity, referral to health services under these conditions becomes coercive and is contrary to recommendations by the UN General Assembly, which calls for all referrals to health services for people who use drugs to be voluntary and consensual. Not only is the practice of coercive health referrals contrary to international human rights standards, there simply are not sufficient services available to meet the need.

The criminal law approach to currently illegal drugs is a direct driver for the toxicity that is readily observable in unregulated drug markets in Canada, North America, and increasingly other parts of the world. In Canada, drug criminalization has generated an unregulated and increasingly volatile drug market that is killing 21 people a day, with unhoused people disproportionately experiencing the impacts, as noted above. The manner in which drugs like alcohol, cannabis and nicotine are regulated (whereby ingredients and potency are known to consumers) reduces the risks associated with using these drugs. It is critical that this approach be extended to drugs that are currently deemed illegal. It is also critical to note that public space regulations relating to the use of drugs currently deemed illegal must be considered completely distinct from public space regulations regarding cigarettes, alcohol and cannabis due to the fact that the latter drugs are decriminalized and regulated and therefore pose a drastically decreased risk of overdose compared to unregulated drugs. This is at the heart of the public health issue at hand. Public

space regulations that prohibit drug use and laws that criminalize drug use do not improve public health and safety.

The Act Targets Poor and Unhoused People Who Use Drugs

This law explicitly re-criminalizes people living in homelessness and poverty. The proposed legislation would be enforceable even in communities where limited or no overdose prevention services and supervised consumption sites exist, unhoused drug users are explicitly denied the protections afforded by decriminalization – health, Constitutional, and otherwise. There is strong evidence to support the need for decriminalization as an essential life-saving measure. The proposed legislation in BC would effectively re-criminalize drugs specifically for people living in homelessness and poverty. It serves to scapegoat people who use drugs for governments' failure to ensure housing and harm reduction for all. For a more detailed analysis of the Act's offence provisions and how they affect poor and unhoused drug users, see part (2): Laws or regulations that allow the detention or imprisonment of individuals who are unable to pay the fine imposed for petty offences.

The Act Reverses British Columbia's Decriminalization Pilot

In addition to conclusions in academic study and analysis, the BC government itself recognizes the need to decriminalize drug policy at the intersection of homelessness. Experts in drug policy and homelessness as well as other public health bodies have called for decriminalization, particularly as a means to improve the health and wellbeing of unhoused people and people living in poverty. For example:

- In launching the decriminalization pilot, the BC government [called on preeminent doctors who have been at the forefront of effective care to articulate the importance and impact of decriminalization](#). This included Dr. Scott McDonald who stated at the launch of the pilot, "As a clinician, I see on a daily basis the devastating harms caused by the criminalization of people who use illicit drugs. The evidence is clear. These punitive policies lead to high-risk use patterns, increased rates of incurable infections and, perhaps most damaging to our patient's overall well-being, stigma...With this shift to decriminalization, I am feeling more hopeful than ever that we can reduce these harms, particularly stigma, and engage more British Columbians in life-saving support on their path to recovery." Dr. McDonald is lead physician at Providence Crosstown Clinic, the first full medical clinic in North America to provide medical-grade heroin (diacetylmorphine) to clients experiencing severe opioid-use disorder.
- [Dr Eugenia Oviedo-Joekes](#), University of British Columbia School of Population and Public Health, "If we treat addiction as a health issue rather than a criminal issue, we have a better chance of helping people who use drugs to seek treatment and improve their overall health."
- Other health bodies in Canada likewise recognize the harms of criminalization and need for decriminalization, especially at the intersections of race, gender, poverty and homelessness. [Toronto \(Ontario\) Public Health](#), citing multiple studies, stated in 2018 that, "Research has shown there are significant health, social and economic harms from laws that criminalize people who consume certain drugs. In addition, some groups of people who use drugs experience more negative impacts from our drug laws than

- others. These include people who are poor and/or homeless, people with mental health and/or substance use issues, youth, children of parents imprisoned for drug crimes, Indigenous people, racialized groups, and women.”
- Even police have noted that criminalization and punishment is not the required approach, with a [2022 peer reviewed analysis finding that](#) “Officers explained that the criminal justice system is one component of a wider network of systems that collectively fail to meet the needs of PWUD [people who use drugs]. They recognized that PWUD who interact with police often experienced intersecting structural vulnerabilities such as poverty, homelessness, and intergenerational trauma. Harmful drug laws in conjunction with inadequate treatment and housing resources contributed to a funnelling of PWUD into interactions with police.”
 - British Columbia’s [Centre for Excellence in HIV/AIDS \(now the BC Centre on Substance Use\)](#) found as far back as 2010, based on decades of data, that “Based on the available English language scientific evidence, the results of this systematic review suggest that an increase in drug law enforcement interventions to disrupt drug markets is unlikely to reduce violence attributable to drug gangs. Instead, from an evidence-based public policy perspective and based on several decades of available data, the existing evidence strongly suggests that drug law enforcement contributes to gun violence and high homicide rates and that increasingly sophisticated methods of disrupting Canadian gangs involved in drug distribution could unintentionally increase violence. In this context, and since drug prohibition has not achieved its stated goal of reducing drug supply, alternative models for drug control may need to be considered if drug-related violence is to be meaningfully reduced.”

The proposed Act undoes most of those potential benefits, **specifically targets** unhoused people living in poverty and puts decriminalization programs in other jurisdictions at risk. It is of note that this Act was tabled on the same day that preliminary data was released for the Metro-Vancouver point-in-time homeless count: A three-year update on the state of homelessness in the largest metropolitan area in British Columbia that showed a 32% increase in homelessness compared to 2020. The ways in which laws like this Act put lives, safety and rights at risk are more fully detailed in the September 20th Submission.

Question 2

Increased powers of arrest and detention

We must reiterate the September 20th Submission to emphasize:

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](#).

BC's Bill enables and encourages policing of homeless people, directly re-criminalizes homeless people with risk of arrest without a warrant and – goes a step further than the criminal law did *prior to the decriminalization pilot* – additionally imposes sanctions under BC's provincial *Offences Act*. In BC (unlike some other jurisdictions noted in the September 20th Submission) the *Offences Act* contains a clause noting that “a person [must not] be imprisoned merely because he or she defaults in paying a fine” *however* s4 of the *Offence Act* allows instead for the direct imposition of a period of incarceration: “Unless otherwise specifically provided in an enactment, a person who is convicted of an offence is liable to a fine of not more than \$2 000 or to imprisonment for not more than 6 months, or to both.” Furthermore, the exception from imprisonment for failure to pay relates only to sentencing upon conviction and does not apply to the provisions allowing for the issuance of warrants of arrest for people in default to come before the court or the potential to be subject to some form or indeterminate sentence for failure to be able to pay a fine – which was found unconstitutional by the Supreme Court of Canada (See September 20th Submission).

Further to the September 20th Submission, which describes how people who use drugs often engage in informal business activities such as street-based selling and trading of drugs and other grey market or criminalized revenue generating activities like sex work and panhandling in order to support themselves, this Bill specifically re-empowers police to seize drugs if people who use drugs don't comply with an order to stop using drugs in a particular public place or to move from that place.

This provision is likely to result in an increased cycle of criminalization whereby people who use drugs have their drugs confiscated and are forced to recover the costs of the seizure through criminalized methods of revenue generation. Further, the seizure of drugs is also likely to target both unhoused people and people who administer emergency overdose response services in particular, according to [research published in August 2023](#). Drug seizure also results in increased overdoses, as demonstrated by data published [in July 2023](#).

The provisions in the proposed legislation which empower police to force people to vacate public space will impact the ability of people who use drugs to use sterile harm reduction equipment which is personal hygienic activity. As noted by the [Supreme Court of Canada over a decade ago](#), fear of police and fear of the confiscation of drugs specifically, can cause people who use drugs to “override” known safety and hygiene practices noting, “Missing a vein in the rush to inject can mean the development of abscesses. Not taking adequate time to prepare can result in mistakes in measuring proper amounts of the substance being injected. It is not uncommon for injection drug users to develop dangerous infections or endocarditis. These dangers are exacerbated by the fact that injection drug users are a historically marginalized population that has been difficult to bring within the reach of health care providers.”

Moreover, the legislation's proposed enforcement provisions that allow for monetary fines of up to \$2,000 and/or an imprisonment term of up to 6 months are constitutionally suspect. In Canada, the application of fines to people who cannot pay has been declared unconstitutional by the highest court. Incarceration of people who use drugs has moreover been called into question by courts and drug policy experts.

Question 3

The Law Puts Decriminalization at Risk of Failure Nationally and Internationally

Here we have reproduced the September 20th Submission regarding decriminalization. The Bill proposed risks sabotaging any good that could have come from the decriminalization pilot, is contrary to the purpose of the pilot and evidence supporting decriminalization – and worse – it directly targets and recriminalizes people living in homelessness and poverty.

Canada and, to an extent, the world are watching. The Act risks sabotaging the BC decriminalization project to such an extent as to risk derailing decades of effort in jurisdictions across the world to end harmful and ineffective criminalization of people who use drugs.

September 20th Submission: 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;



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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.

This Bill threatens to undo all of these potential benefits – specifically for people living in homelessness and poverty.

APPENDIX A: Restricting Public Consumption of Illegal Substances Act

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Definitions

1 In this Act:

"exemption order" means the exemption

- (a) granted under section 56 (1) of the *Controlled Drugs and Substances Act* (Canada),
- (b) titled "Subsection 56 (1) class exemption for adults in the province of British Columbia to possess small amounts of opioids, cocaine, methamphetamine and MDMA", and
- (c) effective January 31, 2023;

"illegal substance" has the same meaning as in the exemption order;

"local government" means

- (a) the council of a municipality,
- (b) the board of a regional district,
- (c) the Cultus Lake Park Board, or
- (d) the Park Board established under section 485 of the *Vancouver Charter*;

"medical health officer" means a medical health officer designated under the *Public Health Act*;

"place" includes a building or structure;

"playground" has the same meaning as in the exemption order;

"police officer" means a person who, under the *Police Act*, is

- (a) a provincial constable,
- (b) a municipal constable, or
- (c) a designated constable;

"regional health board" means a board as defined in the *Health Authorities Act*;

"skate park" has the same meaning as in the exemption order;

"spray pool" has the same meaning as in the exemption order;

"wading pool" has the same meaning as in the exemption order;

"workplace" means any place

- (a) in which a person performs services in return for compensation, or
- (b) used in conjunction with the performance of services in return for compensation, including restrooms, meeting rooms and structures used for breaks.

Restriction on bylaws relating to consumption of illegal substances

2 Before considering a proposed bylaw to regulate, prohibit or impose requirements in relation to the consumption of an illegal substance in public, a local government must consult with the regional health board and the medical health officer responsible for public health matters within the area of the local government.

Consumption of illegal substances

3 (1) A person must not consume an illegal substance in any of the following areas or places:

- (a) the area within 15 m of any of the following places:
 - (i) any part of a play structure in a playground;
 - (ii) a spray pool or wading pool;
 - (iii) a skate park;
- (b) any of the following places if the public has a right of access to the place:
 - (i) a sports field;
 - (ii) a beach;
 - (iii) a park within the meaning of the *Park Act*;
 - (iv) a regional park within the meaning of the *Local Government Act*;
 - (v) an outdoor area established by a local government for purposes of community recreation;
 - (vi) a permanent public park over which the Park Board has jurisdiction under section 488 of the *Vancouver Charter*;
 - (vii) a park held in trust by a local government;
- (c) the area within 6 m of the outside of the entrance to any of the following places:
 - (i) a place to which the public has access as of right or by invitation, express or implied, whether or not a fee is charged for entry;
 - (ii) a workplace;
 - (iii) a prescribed place;
- (d) the area within 6 m of the outside of the entrance to a place occupied as a residence, if the public has a right of access to the area;
- (e) the area within 6 m of a public transit bus stop;
- (f) a prescribed place;
- (g) the area within a prescribed distance from a prescribed place.

(2) Subsection (1) (a), (b) and (e) does not apply to an area to which the public does not have a right of access.

Direction given by police officer

4 If a police officer has reasonable grounds to believe that a person is consuming an illegal substance in an area or place described in section 3, the police officer may direct the person to do one or both of the following:

- (a) cease consuming an illegal substance in the area or place;

(b) leave the area or place.

Arrest without warrant

5 A police officer may arrest, without a warrant, a person who the police officer believes on reasonable grounds is committing an offence under section 8.

Seizure of illegal substance

6 (1) If a police officer believes on reasonable grounds that a person is committing an offence under section 8, the police officer may do one or both of the following:

- (a) immediately seize and remove any illegal substances found and any packages containing those substances, regardless of the amount of illegal substances found;
- (b) destroy any seized illegal substances.

(2) Subsection (1) does not authorize the seizure, removal or destruction of a drug dispensed to the person in accordance with a prescription under the *Pharmacy Operations and Drug Scheduling Act*, except to the extent required to identify the seized substance as a drug dispensed to that person further to a prescription.

Analysis of substance

7 (1) For the purposes of the administration and enforcement of this Act, the minister may designate individuals or classes of individuals as analysts.

(2) A police officer may submit to an analyst for analysis or examination any substance or sample of the substance seized by the police officer under section 6.

(3) An analyst may issue a certificate of analysis stating that the analyst has analyzed or examined a substance and stating the results of the analysis or examination, and the certificate is proof of the facts set out in it.

Offence

8 (1) A person who fails to comply with a direction given under section 4 commits an offence.

(2) Section 5 [*general offence*] of the *Offence Act* does not apply to this Act.

Power to make regulations

9 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing places for the purposes of section 3 (1) (c) (iii), (f) or (g), which may be different for each paragraph in that section;
- (b) prescribing a distance for the purposes of section 3 (1) (g), which may be different for different places or classes of places;
- (c) exempting the following, or a class of the following, from all or part of section 3:



- (i) a person;
- (ii) an illegal substance;
- (iii) a form of consumption of an illegal substance;
- (iv) a thing;
- (v) a place;
- (vi) an area within a specified distance of a thing or place.

- (3) A regulation under subsection (2) (c) may provide
- (a) limits or conditions on the exemption, and
 - (b) circumstances in which the exemption applies.

Repeal by regulation

10 The Lieutenant Governor in Council may repeal this Act by regulation.

Transition – section 2

11 If, as of the day before the date this section comes into force, a proposed bylaw to regulate, prohibit or impose requirements in relation to the consumption of an illegal substance in public has been considered but not adopted by a local government, section 2 applies in relation to any further consideration of the proposed bylaw by the local government.

Commencement

12 This Act comes into force by regulation of the Lieutenant Governor in Council.