

BACKGROUNDER: Bringing a public health perspective to overdose response at the Supreme Court of Canada

The Canadian Drug Policy Coalition, l'Association des Intervenants en Dépendance du Québec, and the Harm Reduction Nurses Association (together, the "Intervenor Coalition") are intervening before the Supreme Court of Canada to advocate for a new path forward – one that protects the health and safety of everyone. Beyond recognizing that police should not have arrested Mr. Wilson as a result of his life-saving decision to call 911, the Supreme Court has the opportunity to establish a new paradigm for interpreting harm reduction legislation; and it should seize that opportunity.

The Intervenor Coalition will ask the Supreme Court to interpret s. 4.1 of the *Controlled Drugs and Substances Act* (the "Good Samaritan" provision) from a public health perspective – prioritizing harm reduction, promoting clarity in the law's application, and ensuring that any examination of the Good Samaritan provision's purpose is devoid of latent biases and misconceptions about drug use.ⁱ This interpretive approach is necessary to properly fulfill Parliament's goal in enacting this law – preventing the devastating and avoidable consequences of drug-related medical emergencies.

These devastating consequences extend beyond the many deaths that occur every year as a result of the unregulated drug crisis. Often forgotten are people who survive, but are left with debilitating long-term repercussions. The Good Samaritan provision aims to prevent all of these harms, including anoxic brain injuries and the corresponding potentially disabling cognitive and physical impacts, and psychological harm including life-altering trauma, griefⁱⁱ and even PTSD. While direct harms such as these are the focus of this appeal, the analysis offered by the Intervenor Coalition provides a principled basis that could decrease numerous other harms correlated with being arrested at the scene of a drug-related medical emergency including academicⁱⁱⁱ or employment^{iv} discipline, eviction and child apprehension^v —to name but a few.

Preventing these devastating consequences benefits everyone—from long-time drug users, to teenagers experimenting with drugs for the first time. Moreover, anyone at any time may be called upon to be the "Good Samaritan" by calling 911 to save another person's life. In this context, it is critical that the effects of the Good Samaritan provision be clearly understood by people from all walks of life, allowing them to make the split-second decision to call 911 in high-pressure situations, often while simultaneously administering first aid themselves until help arrives. In the absence of such clarity, doubts and confusion will lead to hesitation, leading in turn to a higher likelihood of death and other devastating consequences.

Accordingly, the Intervenor Coalition argues that any interpretation of the Good Samaritan provision that relies on after-the-fact arguments and analysis to ascertain the legality of an arrest at the scene of an overdose will leave members of the public confused and less likely to call 911. A clear answer is necessary: if 911 is called, no one can be arrested for simple drug possession.

Ultimately, the Intervenor Coalition submits that by recognizing the many consequences of drug-related medical emergencies, the value of clarity, and the pervasive nature of latent biases and misconceptions about drug use, the Supreme Court will be in an ideal position to interpret the Good Samaritan provision in a manner that protects the health and safety of everyone. Our hope is that this novel approach to interpreting this law will encourage a broader paradigm shift in how courts, lawyers, law enforcement

and policy-makers approach drug-related medical emergencies, as well as how courts interpret laws relating to the criminalization of drug use.

This paradigm shift is essential to charting a new path forward out of a years-long national public health crisis that has claimed the lives and impacted the wellness of hundreds of thousands of people across the country. It calls for a recognition by courts of the benefits of public-health-first measures—like those contained in the Good Samaritan provision—in addressing the toxic drug crisis. Such recognition is especially important given the recent push by some politicians for a return to a criminal-law-centric approach to drug use, even absent any discernable benefits to this approach from either a public health or public safety perspective.^{vi}

ⁱSee Kiepek, N. [Discursively Embedded Institutionalized Stigma in Canadian Judicial Decisions](https://doi.org/10.1177/00914509241269439). Contemporary Drug Problems, 2024 Aug 30. <https://doi.org/10.1177/00914509241269439>. Analyzing 129 criminal law decisions, Dr. Kiepek asks “How is the concept of harm constituted in case law pertaining to the importation, production, possession, and trafficking of drugs in Canada?”, finding that moralizing language, including words and tropes that “cannot be interpreted as purely impartial” are entrenched and normalized in judicial decisions. Dr. Kiepek also identifies a number of decisions of the Supreme Court of Canada that eschew this pattern by avoiding moralization language and instead effectively draw on evidence-informed knowledge.

ⁱⁱ Gillian Kolla, Triti Khorasheh, Zoe Dodd, Sarah Greig, Jason Altenberg, Yvette Perreault, Ahmed M. Bayoumi, Kathleen S. Kenny, [“Everybody is impacted. Everybody's hurting”: Grief, loss and the emotional impacts of overdose on harm reduction workers](https://doi.org/10.1016/j.drugpo.2024.104419), International Journal of Drug Policy, Volume 127, 2024, 104419, ISSN 0955-3959, <https://doi.org/10.1016/j.drugpo.2024.104419>.

ⁱⁱⁱ See e.g. University of Victoria “[Non-Academic Misconduct](#)” policy which prohibits use or possession of illicit drugs and which authorizes sanctions varying from informal dispute resolution to permanent suspension.

^{iv} See e.g. TC Energy “[Alcohol and Drug Guideline for Contractors](#)” which prohibits use, consume, possess, or store of any alcohol or drugs or related drug paraphernalia on TC Energy premises (including company housing off work hours) or worksites and which provides for the mandatory removal of a worker, investigation and possible workplace discipline.

^v Kievit B, Xavier JC, Ferguson M, Palis H, Moallef S, Slaunwhite A, Gillis T, Virk R, Buxton JA. [Intention to seek emergency medical services during community overdose events in British Columbia, Canada: a cross-sectional survey](https://doi.org/10.1186/s13011-022-00484-0). Subst Abuse Treat Prev Policy. 2022 Jul 26;17(1):56. doi: 10.1186/s13011-022-00484-0. PMID: 35883186; PMCID: PMC9315848.

^{vi} See e.g. Health Canada's Expert Task Force on Substance Use. [Report 1: Recommendations on alternatives to criminal penalties for simple possession of controlled substances](#), Health Canada. 2021 May 6 and [Report 2: Recommendations on the federal government's drug policy as articulated in a draft Canadian Drugs and Substances Strategy \(CDSS\)](#). Health Canada. 2021 Jun 6; Cano M, Timmons P, Hooten M, Sweeney K, Oh S. [A scoping review of law enforcement drug seizures and overdose mortality in the United States](https://doi.org/10.1016/j.drugpo.2024.104321). Int J Drug Policy. 2024 Feb;124:104321. doi: 10.1016/j.drugpo.2024.104321. Epub 2024 Jan 11. PMID: 38211403; PMCID: PMC10942655; Bradley Ray, Steven J. Korzeniewski, George Mohler, Jennifer J. Carroll, Brandon del Pozo, Grant Victor, Philip Huynh, and Bethany J. Hedden. [Spatiotemporal Analysis Exploring the Effect of Law Enforcement Drug Market Disruptions on Overdose, Indianapolis, Indiana, 2020–2021](https://doi.org/10.2105/AJPH.2023.307291). American Journal of Public Health 113, 750–758, <https://doi.org/10.2105/AJPH.2023.307291>; Butler, A., Zakimi, N. & Greer, A. [Total systems failure: police officers’ perspectives on the impacts of the justice, health, and social service systems on people who use drugs](https://doi.org/10.1186/s12954-022-00629-1). Harm Reduct J 19, 48 (2022). <https://doi.org/10.1186/s12954-022-00629-1>.