



May 13, 2020

DELIVERED BY EMAIL

The Hon. Patty Hajdu
Minister of Health

The Hon. Bill Blair
Minister of Public Safety and Emergency Preparedness

The Hon. David Lametti
Minister of Justice and Attorney General of Canada

Dear Ministers:

We write with urgency in light of two unprecedented public health emergencies. As the COVID-19 pandemic and the overdose crisis sweep across Canada, there is a pressing need to adopt evidence-based measures that uphold the health and safety of people who use drugs, and we are asking that you use the tools at your disposal to decriminalize simple drug possession immediately.

As you know, more than 14,700 apparent opioid-related deaths were reported between January 2016 and September 2019;¹ the latest data related to the coronavirus outbreak indicate more than 70,000 confirmed cases of COVID-19 in Canada and more than 5,000 reported deaths.²

The COVID-19 pandemic has further exposed stark health inequities and the many structural factors that increase people's vulnerability to the virus. People who use drugs, and particularly those who are homeless or precariously housed, are more likely to have chronic health issues that will increase their risk of experiencing severe complications should they contract COVID-19. To minimize the risk of transmission and other drug-related health risks, public health officials have urged people who use drugs to continue using harm reduction services, including overdose prevention sites and supervised consumption sites.³

Unfortunately, COVID-19 has forced many harm reduction sites across the country to close or reduce the scope of their services, and people who use drugs are navigating new gaps not only in the drug supply chain but also in the resources and supports they rely on, increasing their risk of HIV and hepatitis C (HCV) infection, overdose, and other harms to their health.⁴ Moreover, it is well established that continued police enforcement of simple drug possession laws and the attendant fear of arrest pushes people who use drugs to do so in isolation and compromises their ability to take critical safety precautions. This includes by deterring access to harm reduction services, to which people who use drugs cannot legally travel while in possession of the substances they wish to use there.⁵ Heightened law enforcement surveillance in the context of the pandemic further hampers their access to vital health services and ability to use drugs safely,

while also increasing their risk of arrest and detention. Not surprisingly, some cities are already seeing reports of increasing overdose deaths since the onset of the COVID-19 pandemic.⁶

As a matter of public health and of human rights, this cannot be ignored. As the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health recently stated, “in the current COVID-19 context, people who use drugs face unique needs and risks, due to criminalisation, stigma, discrimination, underlying health issues, social marginalisation and higher economic and social vulnerabilities”; therefore, to “prevent unnecessary intake of prisoners and unsafe drug consumption practices, **moratoria should be considered on enforcement of laws criminalising drug use and possession.**”⁷ [emphasis added] There are decisive steps you can take now to protect the health of people who use drugs in Canada, including by decriminalizing simple drug possession via exemption powers contained under the *Controlled Drugs and Substances Act* (CDSA). There are currently several options for providing exemptions from CDSA application:

- **A proactive exemption issued by the Federal Minister of Health pursuant to section 56(1) of the CDSA**, on the basis that it is necessary for a *medical or scientific purpose* or is *otherwise in the public interest*;⁸ or
- **Regulations by Cabinet pursuant to sections 55(1)(z) or 55(2) of the CDSA.**⁹

Regardless of the option adopted, it is undoubtedly **in the public interest, particularly in light of the COVID-19 pandemic, in issuing a federal exemption to all people in Canada from section 4(1) of the CDSA, which prohibits personal possession of a controlled substance.** Penalties for contravening this section range from a fine to up to seven years imprisonment.

As you know, before the introduction of the *Respect for Communities Act* in 2015, the federal Minister of Health granted exemptions for supervised consumption services under section 56 of the CDSA. This provision was also used more recently to respond to the current overdose crisis by issuing class exemptions to provinces for temporary “overdose prevention sites” on the basis of it being “in the public interest.” In response to COVID-19, Health Canada also issued a section 56 exemption relaxing rules for pharmacists and prescribers in order to enable people who use drugs to adhere to public health guidance about physical distancing and self-isolation while accessing controlled substances.¹⁰

Correspondingly, section 55(1)(z) of the CDSA provides broad powers to the “Governor in Council” (i.e. the federal Cabinet) to “exemp[t], on any terms and conditions that are specified in the regulations, any person or class of persons [...] from the application of *all or any of the provisions of this Act* or the regulations” [emphasis added]. Under section 55(2) of the CDSA, the federal Cabinet also has the authority to adopt regulations pertaining to investigations and “other law enforcement activities,” giving Cabinet wide latitude to adopt regulations about law enforcement activities under the CDSA.

Criminalizing simple drug possession does not protect public health or public safety and has been ineffective in reducing the use and availability of illicit drugs.¹¹ Prohibition drives rampant stigma against people who use drugs and puts them at increased risk of harm, including by impeding their access to much-needed services and emergency care in the event of an overdose or, now, by increasing their risk of exposure to SARS-CoV-2, the virus that causes COVID-19. As the Canadian Centre on Substance Use and Addiction concluded in a 2018 report, a growing body of evidence supports decriminalization as an effective approach to mitigate harms associated with substance use, particularly those associated with criminal prosecution for simple possession.¹²

In Canada, there is strong support for the decriminalization of drug possession for personal use from organizations of people who use drugs and other community organizations, harm reduction and human

rights advocates¹³ as well as public health associations and authorities including the Canadian Public Health Association,¹⁴ Canadian Mental Health Association,¹⁵ Canadian Nurses Association,¹⁶ Toronto Board of Health,¹⁷ Toronto's Medical Officer of Health,¹⁸ Montreal Public Health,¹⁹ Winnipeg Regional Health Authority,²⁰ and Provincial Health Officer of British Columbia.²¹ In April 2018, the Liberal Party of Canada also adopted at its National Convention a policy resolution on "Addressing the Opioid Crisis Through a Public Health Approach (#2752)" calling on the Government of Canada to address problematic drug use as a health (and not criminal justice) issue by expanding harm reduction and treatment services and removing the criminal sanction for low-level drug possession.²² Other federal parties, including the New Democratic Party of Canada and the Green Party of Canada, have also indicated their support for decriminalizing simple drug possession.²³

Globally, decriminalizing simple drug possession has been recommended by numerous health and human rights bodies as a measure that both protects health and upholds human rights, including the World Health Organization (WHO), UNAIDS, UN Special Rapporteurs on the right to health,²⁴ the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment,²⁵ and most recently, the UN Chief Executives Board for Coordination — which has adopted a call for decriminalization of simple possession as the common position of the UN system (including the UN Office on Drugs and Crime, the lead technical agency on drug policy issues).²⁶ The *International Guidelines on Human Rights and Drug Policy*, endorsed already by the UN Development Program (UNDP), UNAIDS and WHO, also call on States to "decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption."²⁷ And the Global Commission on Drug Policy, comprising former heads of state or government and other eminent political, economic, and cultural leaders, has highlighted the tremendous damage caused by the criminalization of people who use drugs and called for the removal of all punitive responses to drug possession and use.²⁸

Moreover, in a scan of more than 25 jurisdictions around the world that have decriminalized drugs, a number of positive health outcomes were identified, including reduced rates of HIV transmission and fewer drug-related deaths, improved education, housing, and employment opportunities for people who use drugs, and significant savings, with a negligible effect on levels of drug use.²⁹

Not only would a federal exemption from section 4(1) of the CDSA protect the health of people who use drugs, preserve police resources, and reduce unnecessary contact and police interactions, it would also mean fewer people in detention. This would decrease the risk of transmission of the COVID-19 virus in prisons, where a growing number of cases among prisoners and prison staff have already been reported.³⁰ Already, the Public Prosecution Service of Canada, which is responsible for prosecuting drug offences under the CDSA, has issued guidance to prosecutors to reduce "to the extent possible, in a principled manner," the "detention population during the pandemic period."³¹ As the UN High Commissioner for Human Rights recently affirmed, "[i]mprisonment should be a measure of last resort, particularly during the crisis."³² Some courts have already followed suit, recognizing that incarceration is inherently at odds with current public health directions to self-isolate during the COVID-19 pandemic, and favouring release on the balance.³³

Decriminalization of simple possession is long overdue. Now more than ever, there is urgent need for bold policy action that meaningfully upholds the health and safety of people who use drugs. In 2016, Canada rightfully declared that drug use is a matter of public health rather than criminal justice, but that declaration is ineffective if drug possession continues to be criminalized. **Whether it takes the form of a ministerial exemption or a Cabinet regulation, all people in Canada should be exempted from the criminal prohibition on simple possession in section 4(1) of the CDSA.** We urge you to take the necessary steps, including via your ministerial powers outlined above, at this critical time. This should be accompanied by guidance to all police forces in Canada and a broader communications campaign so that law enforcement and others are aware of and respect the new law.

Sincerely,

Canadian HIV/AIDS Legal Network
Canadian Drug Policy Coalition
Pivot Legal Society

Action Canada for Sexual Health and Rights
AIDS Coalition of Nova Scotia
AIDS Committee of Newfoundland and Labrador
AIDS Saskatoon
AIDS Vancouver Island
Alberta Addicts Who Educate and Advocate Responsibly (AAWEAR)
Alberta Community Council on HIV (ACCH)
Alliance for Healthier Communities
Amnesty International
Association des intervenants en dépendance du Québec (AIDQ)
Association québécoise pour la promotion de la santé des personnes Utilisatrices de Drogues (AQPSUD)
Association québécoise des centres d'intervention en dépendance (AQCID)
Avenue B Harm Reduction
BC Association of People on Methadone (BCAPOM)
BC Centre for Excellence in HIV/AIDS
BC Centre on Substance Use
BC Civil Liberties Association
Breakaway Addiction Services
CACTUS Montréal
Canadian AIDS Society
Canadian Nurses Association
Canadian Public Health Association
Canadian Students for Sensible Drug Policy
Canadian Association of People Who Use Drugs (CAPUD)
CATIE
Centre on Drug Policy Evaluation
Coalition des organismes communautaires québécois de lutte contre le sida (COCQ-SIDA)
CRACKDOWN Podcast
Criminal Lawyers' Association
Direction 180
Drug Users' Advocacy League
Families for Addiction Recovery
Harm Reduction Nurses Association
HIV & AIDS Legal Clinic Ontario (HALCO)
Manitoba Harm Reduction Network
Moms Stop the Harm
mumsDU - moms united and mandated to saving the lives of drug users
Ontario AIDS Network
Pacific AIDS Network
PEERS Alliance
Prisoners with HIV/AIDS Support Action Network (PASAN)
SOLID
South Island Community Overdose Response Network
South Riverdale Community Health Centre

Thunderbird Partnership Foundation
Toronto Drug Users' Union
Toronto Overdose Prevention Society
Vancouver Area Network of Drug Users (VANDU)
Western Aboriginal Harm Reduction Society (WAHRS)
Women and HIV/AIDS Initiative

¹ Government of Canada, *Opioid-related harms in Canada*, March 2020, Available at <https://health-infobase.canada.ca/substance-related-harms/opioids/>.

² Government of Canada, *Coronavirus disease (COVID-19): Outbreak update*, last modified April 27, 2020. Available at www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html?topic=tilelink.

³ BC Centre for Disease Control, *COVID-19: Harm Reduction and Overdose Response* (information sheet), March 18, 2020. Available at www.bccdc.ca/Health-Info-Site/Documents/COVID19-harm-reduction.pdf

⁴ A. Nguyen, "Supervised Consumption Sites scrambling to handle two public health crises at once," *Ricochet Media*, March 25, 2020. Available at <https://ricochet.media/en/3005/supervised-consumption-sites-scrambling-to-handle-two-public-health-crises-at-once>.

⁵ *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 10; A. B. Collins et al., "Policing space in the overdose crisis: A rapid ethnographic study of the impact of law enforcement practices on the effectiveness of overdose prevention sites," *International Journal on Drug Policy* 73 (2019): pp. 199-207.

⁶ J. Azpiri, "Vancouver sees spike in overdose deaths amid COVID-19 crisis," *Global News*, April 1, 2020.

⁷ UN Office of the High Commissioner, Statement by the UN expert on the right to health* on the protection of people who use drugs during the COVID-19 pandemic, April 16, 2020. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25797&LangID=E.

⁸ The full text of section 56(1) currently reads as follows:

56(1) The Minister may, on any terms and conditions that the Minister considers necessary, exempt from the application of all or any of the provisions of this Act or the regulations any person or class of persons or any controlled substance or precursor or any class of either of them if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest. See *Controlled Drugs and Substances Act*, SC 1996, c 19, s 56(1).

⁹ The full text of section 55(1)(z) currently reads as follows:

The Governor in Council may make regulations for carrying out the purposes and provisions of this Act, including the regulation of the medical, scientific and industrial applications and distribution of controlled substances and precursors and the enforcement of this Act, as well as the regulation of designated devices and, without restricting the generality of the foregoing, may make regulations ... exempting, on any terms and conditions that are specified in the regulations, any person or class of persons or any controlled substance, precursor, designated device or any class of controlled substances, precursors or designated devices from the application of all or any of the provisions of this Act or the regulations.

The relevant section of Section 55(2) currently reads: "The Governor in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, may make regulations that pertain to investigations and other law enforcement activities conducted under this Act by a member of a police force or of the military police and other persons acting under the direction and control of the member..."

¹⁰ Government of Canada, *Subsection 56(1) class exemption for patients, practitioners and pharmacists prescribing and providing controlled substances in Canada during the coronavirus pandemic*, (last modified April 9, 2020). Available at www.canada.ca/en/health-canada/services/health-concerns/controlled-substances-precursor-chemicals/policy-regulations/policy-documents/section-56-1-class-exemption-patients-pharmacists-practitioners-controlled-substances-covid-19-pandemic.html.

¹¹ E. Wood et al., "The war on drugs: a devastating public-policy disaster," *The Lancet* 373:9668 (2009) pp. 989-990.

¹² Canadian Centre on Substance Use and Addiction, *Decriminalization: Options and Evidence*, 2018. Available at <https://www.ccsa.ca/sites/default/files/2019-04/CCSA-Decriminalization-Controlled-Substances-Policy-Brief-2018-en.pdf>.

¹³ Canadian HIV/AIDS Legal Network, “Canada must adopt a human-rights based approach to drug policy,” November 22, 2018. Available at www.aidslaw.ca/site/statement-canada-must-adopt-a-human-rights-based-approach-to-drug-policy/?lang=en. The statement was endorsed by Amnesty International Canada, Canadian Aboriginal AIDS Network, Canadian Association of People Who Use Drugs, Canadian Drug Policy Coalition, Canadian Nurses Association, Canadian Public Health Association, Criminal Lawyers’ Association, HIV & AIDS Legal Clinic Ontario (HALCO), Moms Stop The Harm, moms united and mandated to saving the lives of Drug Users (mumsDU) and Pivot Legal Society.

¹⁴ Canadian Public Health Association, *Decriminalization of personal use of psychoactive substances*, position statement, October 2017. Available at www.cpha.ca/sites/default/files/uploads/policy/positionstatements/decriminalization-positionstatement-e.pdf

¹⁵ Canadian Mental Health Association, *Care not Corrections: Relieving the Opioid Crisis in Canada*, April 2018. Available at https://cmha.ca/wp-content/uploads/2018/04/CMHA-Opioid-Policy-Full-Report_Final_EN.pdf

¹⁶ Canadian HIV/AIDS Legal Network, *supra* note 12.

¹⁷ N. Thompson, “Toronto board of health to urge federal government to decriminalize drug use,” *The Globe and Mail*, July 16, 2018.

¹⁸ E. Mathieu, “Chief medical officer calls for decriminalization of all drugs for personal use,” *The Toronto Star*, July 9, 2018.

¹⁹ Santé Montréal, “La directrice régionale de santé publique de Montréal salue les recommandations de Toronto” news release, July 27, 2018. Available at <https://santemontreal.qc.ca/population/actualites/nouvelle/decriminalisation-des-drogues-pour-usage-personnel/>.

²⁰ Winnipeg Regional Health Authority, *Position statement on harm reduction*, December 2016. Available at <https://serc.mb.ca/wp-content/uploads/2018/06/HarmReduction-wrha.pdf>

²¹ British Columbia Office of the Provincial Health Officer, *Stopping the Harm: Decriminalization of People who use Drugs in BC*, April 2019. Available at www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/reports-publications/special-reports/stopping-the-harm-report.pdf

²² T. Lupick, “Liberal party members overwhelmingly vote for decriminalizing drugs while Trudeau repeats opposition,” *Georgia Straight*, April 23, 2018.

²³ “Green Party would decriminalize all drug possession if elected,” *CBC News*, September 21, 2019.

²⁴ See, for example, Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN General Assembly, 65th Session, UN Doc A/65/255, August 6, 2010; Anand Grover, *Submission to the Committee against Torture regarding drug control laws*, October 19, 2012; Anand Grover, *Open letter by the Special Rapporteur on the right of everyone to the highest attainable standard of mental and physical health, Dainius Pūras, in the context of the preparations for the UN General Assembly Special Session on the Drug Problem (UNGASS)*, to UNODC Executive Director Yury Fedotov, December, 7 2015.

²⁵ Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly, 22nd Session, UN Doc A/HRC/22/53, February 1, 2013.

²⁶ United Nations Chief Executives Board, *Summary of Deliberations: Segment 2: common United Nations system position on drug policy*, UN System, 2nd regular session of 2018, UN Doc CEB/2018/2, January 18, 2019; United Nations Chief Executives Board, *United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration*, UNCEB, 2nd Session, Annex 1, UN Doc CEB/2018/2, January 18, 2019.

²⁷ International Centre on Human Rights and Drug Policy, UNAIDS, UNDP, WHO, *International Guidelines on Human Rights and Drug Policy*, March 2019.

²⁸ Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalization*, November 2016.

²⁹ Release, *A Quiet Revolution: Drug Decriminalisation Across the Globe*, March 2016.

³⁰ See, for example, Office of the Correctional Investigator, *COVID-19 Status Update*, April 23, 2020; Tina Lovgreen, “All inmates and staff at Mission Institution being tested for COVID-19,” *CBC News*, April 22, 2020, and Liam Casey, “COVID-19 outbreak leads to Ontario jail being closed after 60 inmates, eight staff test positive,” *National Post*, April 20, 2020.

³¹ Public Prosecution Service of Canada, *Memorandum - COVID 19: Bail and Resolution Principles*, April 8, 2020.

³² UNHR, Office of the High Commissioner, “Urgent action needed to prevent COVID-19 ‘rampaging through places of detention’ – Bachelet,” news release, (news article) (25 March 25, 2020), online: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>.

³³ *R v Kandhai*, 2020 ONSC 1611 at para 7; *R v JS*, 2020 ONSC 1710 at paras 19-20.