

Confronting Canada's overdose crisis: what's the deal with decriminalization?



Rebecca Seliga¹

¹ Faculty of Medicine, University of Ottawa, Ottawa, ON, Canada

Date Submitted: October 7, 2021

Date Accepted: October 16, 2021

Date Published: March 20, 2022

DOI: <https://doi.org/10.18192/UOJM.V11i2.6086>

Keywords: *Opioid crisis, substance use, harm reduction*

ABSTRACT

The current overdose epidemic in Canada has only been exacerbated by the COVID-19 pandemic. Deaths from opioid-related overdose are increasing, and urgent response and action are needed to save the lives of people who use drugs. The concept of 'decriminalizing drugs' is not new, but discourse around it has been increasing recently, with major urban centres calling on the Canadian government to take action. This commentary discusses the meaning of decriminalization, recent progress that has been made in Canada, and its possible implications on the lives of people who use drugs.

RÉSUMÉ

L'épidémie actuelle de surdoses au Canada n'a été exacerbée que par la pandémie de COVID-19. Les décès dus à une surdose liée aux opioïdes augmentent, et une réponse et une action urgentes sont nécessaires pour sauver la vie des personnes qui consomment des drogues. Le concept de « décriminalisation des drogues » n'est pas nouveau, mais le discours à son sujet s'est accru récemment, les grands centres urbains demandant au gouvernement canadien d'agir. Ce commentaire traite de la signification de la décriminalisation, des progrès récents qui ont été réalisés au Canada et de ses implications possibles sur la vie des personnes qui consomment des drogues.

Amidst the global COVID-19 pandemic, Canada's own overdose crisis has endured with no end in sight. Mortality from opioid-related overdose has increased by 88% since the onset of the pandemic, in part driven by the increase in social isolation and difficulty in accessing support services for people who use drugs.¹ This crisis is affecting people across Canada, and in response, major cities such as Vancouver, Montreal, Toronto, and Ottawa have called for the federal decriminalization of drugs.² The call to decriminalize drug use in Canada is not a new concept, but what does this actually mean, what steps have already been taken, and how will this impact the lives of people who use drugs?

WHAT DOES IT MEAN?

The decriminalization of drugs means that personal use and possession of these substances will no longer result in criminal penalties that appear on a permanent record.³ Production, trafficking, and sale of these substances remains a criminal offense.³ Currently, a charge for the possession of drugs is something that permanently appears on one's criminal record. The presence of such a charge on an individual's police check can then prevent them from engaging in future education, employment, or even stable housing opportunities.³

Decriminalization is not the same concept as legalization. In decriminalization, there are still administrative sanctions in place that could include warnings or even fines, but these sanctions do not appear on one's criminal record and certainly do not result in incarceration.⁴ Decriminalization is also different than the concept of regulation, for example, what is currently done with the production and sale of alcohol and cannabis in Canada. Regulation ensures that the substance is of good quality and is safe, whereas this is not the case in decriminalization.⁵

WHAT IS ALREADY BEING DONE?

In August 2020 amidst the drastically increasing mortality from opioid-related overdose deaths in Canada, a revision was made to Canada's Controlled Drugs and Substances Act. This revision acknowledged that criminal sanctions on simple possession have very limited effectiveness at reducing substance use, and the harms of incarceration and criminal charges are considerable.⁶ It urged prosecutors to only resort to criminal prosecution

in 'serious manifestations of the offence', defined as those resulting in unsafe or violent conduct, impaired driving, or those associated with substance production, trafficking, etc.

The Canadian Association of Chiefs of Police have also come out in support of decriminalization, and they have voiced concerns about the inconsistency of law enforcement surrounding possession charges in Canada.⁶ They have called for a decriminalization regime wherein the onus is taken off of the individual user, though investigation and prosecution of illegal drug manufacturers and traffickers would still persist. This means that police would still be involved in enforcing drug laws, but would shift their focus to those that aim to disrupt the illicit drug supply. They suggest that resources used to pursue criminal charges could be instead used to assist people with substance use disorder (SUD) in accessing care and linking with services.⁷

Several voices in the Senate of Canada are also advocating for change. Bill S-229, the Health-Centred Approach to Substance Use Bill, had its first reading in March 2021 and a second reading in May.⁸ This bill recognizes the complex interface between mental health, addictions, and homelessness, and mandates that the minister of health work to create a national decriminalization strategy that repeals federal provisions set forth in the Canada Drugs and Substances Act. In these readings, a heavy emphasis was also placed on the importance of investing more heavily into treatment options.⁸

IS IT ENOUGH?

Observational studies from Portugal and other countries where drugs have been decriminalized do show substantial improvements in drug-related outcomes.⁹ Portugal's model is that of decriminalization, not legalization. Drug use is not legal, but it is not a criminal offense either. People caught with possession are not sent to jail, but instead to the Ministry of Health where they are connected with a panel of psychologists, physicians, social workers, and other support staff. When Portugal first implemented this model in 2001, deaths from drug overdose fell substantially.¹⁰ Since decriminalization, overdose death rates in Portugal have remained significantly lower than the European Union (EU) average. In 2019, there were 6 deaths per million in Portugal, compared to 23.7 deaths per million in the rest of the EU.¹⁰ Furthermore, there was an increase in

the number of people seeking treatment for substance use disorders, and rates of HIV/AIDS have decreased.⁹

In order to be most effective, decriminalization in Canada should be paired with increased investment into treatment options and social supports. Instead of criminal penalties, administrative penalties similar to those in Portugal could be imposed that redirect people to health services. Despite this however, decriminalization alone may not go far enough in Canada, where such a toxic drug supply is rampant and our system of social supports and treatment options is not as robust.⁵ It is important to note that Canada's drug supply has become increasingly toxic since the onset of the COVID pandemic, perhaps due to disruption of the usual supply, and that fentanyl and other more potent opioids are now implicated in a higher proportion of drug overdose deaths.^{1,11} Fentanyl has directly contributed to 87.2% of opioid-related deaths during the pandemic, compared to 79.2% of deaths in the year prior to the pandemic.¹¹

Many experts are instead calling for legalization and regulation of a safe supply.^{12,13} There is ample evidence that providing people with safe access to substances improves their social functioning and retention rates in various treatment and support programs, and also reduces the use of non-prescribed substances.^{14,15} This evidence suggests that safe supply programs may effectively reduce opioid-related overdose deaths by reducing exposure to a toxic and unregulated drug supply. Treatment of opioid use disorder with injectable hydromorphone used under the supervision of health professionals is evidence-based and already approved in Canada,¹⁶ and safe supply pilot programs exist throughout the country, though access remains a major barrier.^{17,18}

WHAT WILL IT ACHIEVE?

While some may argue that decriminalization is just a buzzword alone, we already know that its counterpart: criminalization, does not work.¹³ Decriminalization is not the final solution to Canada's drug-related harms, but it is an important step forward and will no doubt have many positive impacts. It sends an important message to the public and has the potential to shift how drug use is viewed in society, from a legal issue to an issue

of public health. It can be a push towards development and expansion of treatment methods and programs. It can allow for more open conversation between people who use drugs and their friends, families, and healthcare providers. It can make it easier for people who use drugs to achieve important milestones, including applying for stable housing and securing jobs. Ultimately, it has the potential to have a major impact on reducing stigma towards people who use drugs.

In a time where feelings of social isolation are so high, decriminalizing drugs is one way that our government can help support people living with SUDs.

ACKNOWLEDGEMENTS

I would like to thank Dr. Jeffrey Turnbull for his feedback and guidance in preparing this manuscript, and for his invaluable support and mentorship in both my personal and academic development.

REFERENCES

1. Ottawa: Public Health Agency of Canada. Special Advisory Committee on the Epidemic of Opioid Overdoses. Opioid and Stimulant-related Harms in Canada. [Internet]. 2021 [cited 2021 Sep 28]. Available from: <https://health-infobase.canada.ca/substance-related-harms/opioids-stimulants#fn1-0-rt>
2. Toronto seeks federal exemption to decriminalize drug use as opioid overdoses rise | CBC News [Internet]. [cited 2021 Sep 28]. Available from: <https://www.cbc.ca/news/canada/toronto/overdose-deaths-toronto-health-canada-exemption-1.6190193>
3. Discussion Paper: A Public Health Approach to Drugs [Internet]. Toronto Public Health; 2018. Available from: <https://www.toronto.ca/wp-content/uploads/2018/05/9105-A-Public-Health-Approach-to-Drugs-Discussion-Paper.pdf>
4. Jesseman R, Payer D. Decriminalization: Options and Evidence [Internet]. Canadian Centre on Substance Use and Addiction; 2018. Available from: <https://www.ccsa.ca/sites/default/files/2019-04/CCSA-Decriminalization-Controlled-Substances-Policy-Brief-2018-en.pdf>
5. Ibrahim N. Fact or Fiction: Will decriminalizing and regulating illegal drugs save lives in Ontario? | Globalnews.ca [Internet]. Global News. [cited 2021 Sep 28]. Available from: <https://globalnews.ca/news/7574347/fact-or-fiction-decriminalizing-regulating-illegal-drugs-ontario/>
6. Government of Canada D of J. 5.13 Prosecution of Possession of Controlled Substances Contrary to s. 4(1) of the Controlled Drugs and Substances Act - PPSC [Internet]. Aug 18, 2020. Available from: <https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p5/ch13.html>
7. Special Purpose Committee on the Decriminalization of Illicit Drugs. Findings and recommendations report. Decriminalization for Simple Possession of Illicit Drugs: Exploring Impacts on Public Safety & Policing [Internet]. Canadian Association of Chiefs of Police (CACP); 2020. Available from: https://www.cacp.ca/index.html?asst_

- id=2189
8. Boniface G. Health-Centred Approach to Substance Use Act [Internet]. Bill S-229 May 25, 2021. Available from: <https://sencanada.ca/en/in-the-chamber/debates/>
 9. It's Time for the U.S. to Decriminalize Drug Use and Possession [Internet]. Drug Policy Alliance. 2017 [cited 2021 Sep 28]. Available from: <https://drugpolicy.org/resource/its-time-us-decriminalize-drug-use-and-possession>
 10. Slade H. Drug decriminalisation in Portugal: setting the record straight. [Internet]. Transform Drug Policy Foundation; 2021 [cited 2021 Sep 28]. Available from: <https://transformdrugs.org/blog/drug-decriminalisation-in-portugal-setting-the-record-straight>
 11. Gomes T, Kitchen S, Martins D, Tadrous M, Murray R, Bansal S, et al. Preliminary Patterns in Circumstances Surrounding Opioid-Related Deaths in Ontario during the COVID-19 Pandemic. Ontario Drug Policy Research Network; 2020 Nov p. 24.
 12. Tyndall M. An emergency response to the opioid overdose crisis in Canada: a regulated opioid distribution program. CMAJ. 2018 Jan 15;190(2):E35–6.
 13. Greer A. Decriminalizing drug use is a necessary step, but it won't end the opioid overdose crisis [Internet]. The Conversation. [cited 2021 Sep 28]. Available from: <http://theconversation.com/decriminalizing-drug-use-is-a-necessary-step-but-it-wont-end-the-opioid-overdose-crisis-162497>
 14. Oviedo-Joekes E, Guh D, Brissette S, Marchand K, MacDonald S, Lock K, et al. Hydromorphone Compared With Diacetylmorphine for Long-term Opioid Dependence: A Randomized Clinical Trial. JAMA Psychiatry. 2016 May 1;73(5):447–55.
 15. Oviedo-Joekes E, Brissette S, Marsh DC, Lauzon P, Guh D, Anis A, et al. Diacetylmorphine versus Methadone for the Treatment of Opioid Addiction. N Engl J Med. 2009 Aug 20;361(8):777–86.
 16. Fairbairn N, Ross J, Trew M, Meador K, Turnbull J, MacDonald S, et al. Injectable opioid agonist treatment for opioid use disorder: a national clinical guideline. CMAJ. 2019 Sep 23;191(38):E1049–56.
 17. Browne R. More doctors are prescribing opioids to prevent their patients from dying of overdoses - National | Globalnews.ca [Internet]. Global News. 2019 [cited 2021 Sep 28]. Available from: <https://globalnews.ca/news/5412946/safe-supply-opioid-overdose/>
 18. Rapid Response Service. Possible benefits of providing safe supply of substances to people who use drugs during public health emergencies such as the COVID-19 pandemic. Ontario HIV Treatment Network; 2020.