CANADIAN PSYCHOLOGICAL ASSOCIATION

SOCIÉTÉ CANADIENNE DE PSYCHOLOGIE

THE DECRIMINALIZATION OF ILLEGAL SUBSTANCES IN CANADA

A Position Statement of the Canadian Psychological Association (CPA)

Approved by the CPA Board of Directors - June 2023

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ABOUT THE CPA

The Canadian Psychological Association is the national voice for the science, practice and education of psycholo-gy in the service of the health and welfare of Canadians. The CPA is Canada's largest association for psychology and represents psychologists in public and private practice, university educators and researchers, as well as students. Psychologists are the country's largest group of regulat-ed and specialized mental health providers, making our profession a key resource for the mental health treatment Canadians need.

VISION

A society where understanding of diverse human needs, behaviours and aspirations drive legislation, policies and programs for individuals, organizations and communities.

MISSION

Advancing research, knowledge and the application of psy-chology in the service of society through advocacy, support and collaboration.

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DEDICATION*

This position paper is dedicated to Dr. Peter N. S. Hoaken (co-chair) who was a fierce advocate for the decriminalization of illegal substances in Canada and an advocate for individuals who are experiencing harms as a result of their substance use.

EXECUTIVE SUMMARY

There is increasing public policy interest in changing the current criminal justice approach to substance use in Canada. On January 1st of 2023, British Columbia became the first province to decriminalize small amounts of illegal drugs (1). This means that adults over the age of 18 in British-Columbia would no longer be charged or arrested for possessing a cumulative amount of up to 2.5 grams of opioids (incl., fentanyl, heroin, morphine), cocaine (incl., crack and powder cocaine), methamphetamine, and/or MDMA (i.e., ecstasy) (2). Several metropolitan cities including Toronto and Edmonton have also made requests to the federal government to decriminalize small amounts of currently illegal substances for personal use (3,4).

The Working Group on the Decriminalization of Illegal Substances in Canada was formed to develop an official position of the Canadian Psychological Association (CPA) on the topic of decriminalization of (currently) illegal substances in Canada. The position was based on a recent systematic review (2018-2022) of the impacts of the current criminal justice approach(es) to substance use in Canada and the impacts of decriminalization in other jurisdictions.

Canada is currently in the midst of an overdose crisis, and the polysubstance nature of this crisis cannot be overlooked (5). Indeed, illicit substance toxicity deaths are on the rise, and opioids are not the sole contributors. For example, data collected between January and June 2022 revealed a high number of accidental apparent stimulant toxicity deaths, and 83% of those deaths involved an opioid (6).

In regard to the opioid crisis specifically, a total of 32,632 individuals lost their lives as a result of opioid toxicity (from January 2016 to June 2022), notwithstanding that nearly half (47%) of these deaths also involved a stimulant, and that this number is likely to be higher if accounting for overall opioid related deaths (6).

A criminal justice approach to substance use has contributed to the broader overdose crisis and has resulted in a myriad of other harms including social harms, victimization, financial costs to society, physical harms to people using substances, delays in seeking (mental) healthcare, delays in calling 9-1-1 in an overdose emergency due to fears of being arrested and increased stigma (7). These harms are exacerbated amongst people who experience structural inequities and racism (8).

Importantly, jurisdictions (e.g., Portugal) that have taken *De Jure* approaches to decriminalize illegal substances have reported economic savings and reduction in harms (9). For example, drug-related deaths in Portugal decreased significantly from the pre-decriminalization year of 1999 (~400) to 2006 (~290) (10). Further, the rate of new cases of HIV/AIDS has plummeted since 2001 (10). As a result, the strain on both the healthcare system and the criminal justice system lessened. Ultimately, the societal cost of illegal substances in Portugal fell by 12% in just the five years following decriminalization, and by 18% by 2012 (11).

POSITION STATEMENT

Based on the review of the existing evidence, the CPA has taken a 'De Jure' approach to decriminalize currently illegal substances for personal use. Specifically, the CPA recommends:

1. that criminal penalties associated with simple possession of illegal substances be removed from the *Controlled Drugs and Substances Act*.
2. Furthermore, we **strongly** recommend that the determination of the quantity of "personal use" should be made in consultation with all relevant stakeholders, including people with lived and living experience with substance use.

RECOMMENDATIONS

The CPA recognizes that decriminalization of illegal substances alone is not enough to reduce the myriad of harms associated with substance use. Consequently, we also provide the following recommendations in conjunction with the *Controlled Drugs and Substances Act*:

1. The federal government enact federal legislative changes to remove criminal penalties associated with simple possession of illegal substances in the *Controlled Drugs and Substances Act*.
2. The federal and provincial government—in conjunction with relevant stakeholders (i.e., researchers, clinicians, individuals with lived and living experience, public policy makers, healthcare professionals) — enhance availability and access to evidence-based prevention, treatment, and harm-reduction programs and services and supports.
3. The federal government accelerate the introduction of targeted exemptions under Section 56 of the *Controlled Drugs and Substances Act* to further support harm reduction initiatives.
4. The federal, provincial, and municipal governments equip police forces at all levels (national, provincial, territorial, municipal) to offer non-criminal justice alternatives to drug offences. This can only be done via adequate guidance, resources, and training programs.
5. The federal and provincial/territorial governments work closely with individuals with lived and living experience, public policy makers, healthcare professionals, and law enforcement when drafting new policies and initiatives.
6. Relevant stakeholders (i.e., governments, individuals with lived and living experience, public policy makers, healthcare professionals, and law enforcement) scale up knowledge mobilization efforts and public education campaigns aimed at eradicating stigma related to substance use health, and in particular, stigma faced by people who use substances/experience a substance use disorder.
7. Relevant stakeholders (i.e., governments, individuals with lived and living experience, public policy makers, healthcare professionals, and law enforcement) scale up knowledge mobilization efforts to educate people regarding common misconceptions surrounding decriminalization and its outcomes.

The current criminal justice approach to substance use is leading to a myriad of harms, especially amongst people experiencing structural inequities and racism. Treating substance use health as a public health issue rather than a criminal justice issue will have significant positive impacts for the millions of Canadians who are impacted by substance use.

1. POSITION PAPER FOR THE DECRIMINALIZATION OF ILLEGAL SUBSTANCES IN CANADA

The Working Group on the Decriminalization of Illegal Substances in Canada was approved by the Canadian Psychological Association's Board of Directors during the Winter 2022 Board Meeting. The Working Group consists of a diverse group of experts in substance use health, public policy, and law enforcement from across Canada. The members of the working group are currently employed at universities, hospitals, private practice, and law enforcement. The development of the position paper is therefore strengthened from the collective expertise and diverse views of the members of the working group.

The purpose of the working group was to develop a **position paper** to recommend an official position for the Canadian Psychological Association (CPA) on the topic of decriminalization of currently illegal substances in Canada. The recommended position was developed based on a systematic review of recent (2018-2022) evidence on the current harms of a criminal justice approach to illegal substances and impacts of decriminalization.

Additionally, the position paper I makes recommendations to decrease the negative impacts of substances among people living in Canada. It is important to note that the scope of the position paper is on the decriminalization of illegal substances in Canada. Consequently, the position paper does not provide recommendations on the issue of "safer supply" (i.e., providing prescribed medication as a safer alternative to illegal substances, which may be toxic) or the broader issue on the legalization of psychoactive substances (i.e., legalization of cannabis in Canada in 2018) (12,13).

1.1 PREAMBLE

There is a growing awareness that the current punitive and criminal justice (i.e., war on drugs) approach to illegal substances is not working. More concerningly, the current criminal justice approach to substance use health results in a myriad of negative consequences. Therefore, there is a growing desire from stakeholders, including individuals with lived experience, public policy makers, health care professionals, and law enforcement, to decriminalize currently illegal substances in Canada (for example, see recent changes to British Columbia: https://www.canada.ca/en/health-canada/news/2022/05/bc-receives-exemption-to-decriminalize-possession-of-some-illegal-drugs-for-personal-use.html).

This report contributes to the dialogue on the decriminalization by providing recommendations for the official position statement for the CPA on the decriminalization of illegal substances based on the existing evidence. It is our hope that the position paper will help to inform the ongoing dialogue on the decriminalization of substance use.

1.2 CURRENT CLIMATE ON DECRIMINALIZATION IN CANADA

The decriminalization of illegal substances in Canada has become an important public health and public policy issue. Metropolitan Cities such as Edmonton, Toronto, and Vancouver have all taken steps to decriminalize possession of small amounts of illegal substances for personal use (1,3,4). For example, Toronto Public Health has been in ongoing discussions with Health Canada regarding the potential for decriminalization of illegal substances, which was filed in January 2022 (14).

At the provincial level, in May 2022, the federal Minister of Mental Health and Addictions and Associate Minister of Health approved British Columbia's request for a five-year planned exemption under subsection 56(1) of the Controlled Drugs and Substances Act (CDSA) for adults over the age of 18 in the province to possess up to 2.5 grams of certain illegal substances for personal use (2). Consequently, British Columbia became the first province in Canada to decriminalize small amounts of drugs, which took effect on January 1st, 2023.

The maritime provinces, Alberta, Saskatchewan, Manitoba, and Quebec have yet to express plans to request an exemption from the Federal Government. Despite not requesting an exemption, Canadian provinces have begun tackling the drug crisis, while most police departments having adopted a 'De Facto' small-scale decriminalization approach, whereby the police force already does not typically charge individuals carrying a small quantity of illegal substances for personal use, except when there are other conditions, such as outstanding warrants (15). In fact, the Canadian Association of Chiefs of Police's (CACP) Special Purpose Committee on the Decriminalization of Illicit Drugs endorsed alternatives to criminal sanctions for simple possession (7).

In summary, there is currently an appetite for the decriminalization of illegal substances in Canada. This position paper adds to the ongoing dialogue on decriminalization and serves as the basis for the CPA's position on the decriminalization of illegal substances in Canada.

1.3 STRUCTURE OF THE POSITION PAPER

The position paper is meant to summarize key findings related to the ongoing criminalization of substance use in Canada. First, the paper provides definitions of key terms and a high-level overview of the current climate regarding substance use and drug policy in Canada. Next, the paper outlines several harms related to substance use, and how these harms are directly related to, or exacerbated by, criminalization. The position paper also provides evidence on the impact of decriminalization when available. Based on the findings reviewed, the position paper concludes with recommendations for the official position statement for the Canadian Psychological Association on the issue of decriminalization of substance use in Canada.

2.0 DEFINING KEY TERMS

2.1 APPROACHES TO DRUG REGULATION

***De Facto* ("In Fact")**. Approaches that are not officially sanctioned; implemented through informal or non-legislative guidelines. De facto alternatives to criminalization of illegal substances include police diversion approaches such as the Drugs Education Programme for individuals who are caught with possession of illegal substances (16).

***De Jure* ("In Law")**. Approaches that are officially sanctioned; implemented through formal policy and legislation. For example, Portugal made legislative changes in 2021 (Law 30/2000) that made the possession of limited amounts of illegal substances an administrative rather than criminal offence (16).

2.2 CATEGORIES OF DRUG REGULATION

Criminalization. Production (i.e., non-medical and non-scientific), sale, possession, and personal use of drugs are prohibited and prosecutable by law, with criminal (i.e., punitive) sanctions. Criminal sanctions vary in severity and enforcement (16). Heroin and cocaine are current examples of criminalized drugs in Canada (for a list of currently controlled and illegal substances, please see: https://www.canada.ca/en/health-canada/services/substance-use/controlled-illegal-drugs.html).

Decriminalization. Production (i.e., non-medical and non-scientific) and sale of drugs are prohibited and prosecutable by law; however, criminal sanctions are removed for possession and personal use. Designated activities, including possession and personal use, may still be subject to non-criminal responses, such as civil fines, warnings, drug treatment, or drug education (16).

Legalization. Production (i.e., non-medical and non-scientific), sale, possession, and personal use of drugs are permitted without criminal sanctions and are not prosecutable by law. Regulatory controls may or may not apply. Current examples of legalized drugs in Canada include alcohol, cannabis, tobacco, prescription drugs, and caffeine (17).

Regulated Market Legalization. Drugs are legal, but governmental regulatory controls may still apply to production and sale. Current examples of regulated drugs in Canada include alcohol, cannabis, tobacco, and prescription drugs (17).

Free Market Legalization. Drugs are legal and can be produced and sold without restriction, comparable to other consumer goods. A current example of a legalized drug without governmental regulatory control is caffeine (17).

2.3 OTHER KEY TERMS

Illicit. Forbidden by law, rules, customs, social norms, or values; may or may not be prohibited by law (18).

Illegal. Prohibited by law (19). Note that throughout the position paper, we will use the term illegal to refer to drugs that are currently criminalized, rather than terms such as illicit which may carry stigma or connotation of moral wrongdoing. Acknowledging that the term illegal does carry stigma as well, our use of this term refers only to the current legal status of the drugs being discussed.

Controlled Substances. Drugs that are deemed by the Canadian federal government to have an above-average potential for problematic use or addiction. Controlled substances range from prescription medications to illegal substances (20).

Safer Supply. Legal, and prescribed supply of drugs, including injectable drugs, that are otherwise only available through illegal drug markets (21).

3.0 CURRENT CONTEXT OF SUBSTANCE USE HEALTH IN CANADA

3.1 PREVALENCE OF SUBSTANCE USE IN CANADA

In Canada, the most commonly used substance is alcohol (22). According to the 2019 Canadian Alcohol and Drugs Survey (CADS), 76% of Canadians reported consuming an alcoholic beverage within the past year, and 21% of Canadians reported past-year cannabis use. Tobacco use is also common, with 9% of Canadians reporting daily cigarette smoking and 3% reporting occasional cigarette smoking (23).

The CADS also revealed that the overall prevalence of psychoactive drugs (i.e., opioids, stimulants, and sedatives) among Canadians aged 15 years and older was 23%, with overall use of opioid pain relievers being the most common (15%). Two percent of Canadians reported non-medical use of prescribed stimulants (e.g., Ritalin, Adderall) in the past year, whereas 11% reported past-year use of sedatives (22).

Lastly, past-year use of at least one illegal substance (i.e., cocaine or crack-cocaine, ecstasy, speed or methamphetamines, hallucinogens, inhalants, heroin, salvia, synthetic cannabinoids, and other drugs) was 3%. Cocaine/crack-cocaine was the most-consumed illegal substance (2%), accounting for approximately half (49%) of illegal substance use, followed closely by hallucinogens (2%; i.e., LSD, PCP, and psilocybin) (22). Furthermore, of those who ever reported using illegal substances, 1% reported ever injecting drugs. Taken together, substances, both legal and illegal, are commonly used by Canadians.

3.2 HARMS OF SUBSTANCE USE

Critically, Canada is in the midst of an overdose crisis (6). Although greater attention has been placed on opioids, the issue can not be attributed to a single substance. In fact, illicit substance toxicity deaths are on the rise, and polysubstance use is a common cause. For instance, data collected between January and June 2022 revealed a high number of apparent stimulant toxicity deaths, with nearly all of these deaths (98%) deemed accidental (6).

Between January 2016 and June 2022, there were at least 32,632 apparent opioid-related deaths (6). From January 2022 to June 2022 alone, there were approximately 20 deaths per day, which amounts to at least 3,556 lives lost. Most (90%) of accidental apparent opioid toxicity deaths were reported in Alberta, British Columbia, or Ontario, and the majority (76%) of these deaths were amongst males aged 20 to 59 years. The opioid crisis–and the overdose crisis more broadly–is caused by a complex interplay between many factors. However, the toxicity of the illegal drug supply continues to be a major driver, as fentanyl was found to be involved in 76% of all accidental apparent opioid toxicity deaths in 2022 (January to June) (6).

Although many people will use substances at some point in their lives without experiencing any harms, there is a continuum of substance use health. Specifically, Ottawa Public Health and the Community Addictions Peer Support Association defined the spectrum of substance use health as including: no use, beneficial use (i.e., social benefits), lower risk, problems occurring, and finally substance use disorder (24).

The Canadian Centre on Substance Use and Addiction (CCSA) estimates that the annual cost to Canadians for substance use problems in 2017 was $46 billion, including: $20.0 billion in lost productivity, $9.2 billion in criminal justice costs, and $13.1 billion in substance use related costs (25).

Rates of substance use and the drug crisis have been further exacerbated by the current COVID-19 pandemic. Studies have shown that the rates of substance use, both legal and illegal, have increased since the pandemic (26). Unfortunately, the increase in substance use health concerns is disproportionately greater among individuals who are already vulnerable and at high risk.

For example, the COVID-19 pandemic has increased substance use health concerns among individuals with pre-existing mental health concerns and low social determinants of health such as financial insecurities (26). The COVID-19 pandemic has further exacerbated the current drug crisis in Canada with findings that there were significant increases in hospitalization, emergency department visits, and deaths related to opioids and other substances from 2019 to 2020 (27).

The COVID-19 pandemic also resulted in reduced treatment and help seeking among individuals using substances, resulting in further harms among individuals experiencing substance use problems (28).

3.3 SUBSTANCE USE DISORDERS

Substance use disorders (SUD) are clinically defined through the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR) as a presentation of behavioural, cognitive, social, and psychological changes stemming from chronic and substantial use (29). Someone living with a SUD continues to use a substance despite its significant negative impact on their life. Symptoms of a SUD can include problems controlling use, use that interferes with social/occupational roles, use in risky situations, and developing tolerance and/or withdrawal symptoms (29).

SUDs are complex and no single theory can fully explain why some people are more likely than others to move from beneficial use to a diagnosis of SUD. Risk for addiction can best be understood using a biopsychosocial model (30-32), which highlights:

- Biological and genetic components: including neuroadaptive changes in the brain and genetic influences on addiction (33).
- Psychological theories: including models that emphasize associative learning and reinforcement, expectancies and motives, personality risk factors (e.g., impulsivity), and childhood experiences (including exposure to trauma and mental health concerns) (34).
- Social influences: including social and cultural norms, peer and parental substance use, and the social determinants of health (e.g., social inequities, lack of access to health care, poverty) (30).

Criminalization does not address the complex nature of substance use disorders. Substance use, in the context of decriminalization, is no longer simply a matter of will or choice, nor is it an indicator of morality that would require punitive criminal justice approaches.

3.4 TREATMENT AND CRIMINALIZATION

It is imperative that availability and access to treatment for problematic substance use and SUDs be increased in order to reduce substance use harms. While the ongoing criminalization of substance use can deter individuals from seeking or accessing treatment, which is an issue in and of itself (35), it is important to note that the current availability of treatment does not currently meet the needs of individuals experiencing substance use harms in Canada (36). In Portugal, the rate of accessing care and treatment at state-run facilities increased significantly following decriminalization (11). Consequently, the need to ensure that such treatments are available alongside the decriminalization of illegal substances would be imperative.

4.0 CRIMINAL JUSTICE ISSUES

4.1 HISTORICAL CONTEXT

Understanding the history of substance use in relation to the criminal justice system provides insight into how these laws are born, how they change, and what this may mean for current decriminalization efforts.

Alcohol, a commonly consumed substance in Canada (37), was once a prohibited substance. In the early 20th century, the prohibition placed on alcohol meant that a safe supply of alcohol was inaccessible. Yet, prohibition did not mean people living in Canada were not consuming alcohol. In fact, prohibition led to increases in some alcohol related harms, such as an increase in health consequences due to the consumption of contaminated alcohol that was often accessed in an unsafe manner (38).

Prohibition was eventually abolished two decades later, and alcohol soon became a regulated substance (38). The regulation of alcohol meant that individuals could access alcohol from regulated suppliers, which decreased certain alcohol related harms (e.g., negative health consequences as a result of unsafe supply of alcohol) (39).

More recently, Canada legalized the use of cannabis in 2018 making cannabis a legal and regulated substance (13). Consequently, it is important to bear in mind that the issue of criminalization of certain drugs is a societal issue that changes over time.

4.2 CONSEQUENCES OF CRIMINALIZATION

At the individual level, those who are involved with the criminal justice system face many consequences, including a criminal record due to simple possession of illegal substances. Individuals who are or have been incarcerated report experiencing stigma due to their criminal record (7). For example, youth who are in the criminal justice system due to possession of illegal substances face many challenges trying to overcome their criminal record and the associated negative impacts, which may facilitate maintaining relationships with criminal networks (7).

Furthermore, individuals may feel hesitant to seek healthcare due to fears of being reported to the criminal justice system and beliefs that providers may not be able to adequately support their needs (7). Additionally, the aggressive enforcement of drug laws has been associated with negative repercussions (e.g., risky behaviours) without a reduction in the frequency of use (40).

The sentiments of individuals with lived and living experience with substance use are echoed by law enforcement. In a qualitative study that interviewed police officers (15), researchers found that the police officers interviewed for the study also believed that the criminal justice system was ineffective in addressing substance use and supporting those who use substances. Further, police officers felt that the measures used to enforce criminalization of substance use perpetuated further harms for people who may already be facing psychosocial challenges.

Police officers also felt that correctional facilities failed to positively support individuals who use substances, despite all the programs that are supposed to be available (15). The negative outcomes faced by individuals who use substances in the correctional system, and the beliefs of the very people who are enforcing this system, reinforce the notion that change is needed. The ability to successfully apply and sustain the decriminalization of substances such as alcohol and cannabis provide evidence that decriminalization can be an effective strategy.

Health units in correctional facilities are often understaffed and have difficulties keeping up with the needs of people who are incarcerated (41). The effects can be devastating, so much so for folks with substance-related health issues and substance use disorders. For example, people with lived experiences with substances and criminal justice systems have shared stories of individuals who are taken off of their medications while incarcerated and subsequently experience significant, potentially life-threatening withdrawal symptoms as they do not have access to appropriate health care (42). Furthermore, a significant portion of incarcerated populations experience both a substance and mental health disorder, which increased from 15% in 2009 to 32% in 2017 in B.C. prisons (15). It is possible that substance use may be a way to cope with mental health concerns amongst incarcerated individuals. Decreasing people incarcerated for substances can also potentially, in effect, decrease substance diversion in correctional facilities, which is an ongoing issue. Reducing incarceration for possession may ultimately reduce the burden of health units in the correctional facilities and ultimately ensure people with substance use health issues and substance use disorders get the treatment they need.

The current criminal justice response to illegal substances is not working. Considering the challenges faced by those in the criminal justice system for substance use and/or possession, guidelines published by the Canadian Federation of Medical Students provide insight into how to support criminal justice reform related to substance use (40). Suggestions include a federal task force focused on examining the decriminalization of substances; developing harm reduction practices in consultation with stakeholders; and evidence-based treatments, and appropriate and competent healthcare services during incarceration. There is growing support for decriminalization of illegal substances, which may support the health of individuals most impacted by the current criminal justice approach to substance use health.

5.0 SOCIAL HARMS FROM ILLEGAL DRUG MARKET

The criminalization of substances has impacts beyond the criminal justice system. Links between criminalization of substances, illegal activity, and social harms are complex and far reaching. Often the concerns around decriminalization are linked to fears of increased social disorder. Yet, the criminalization of substances creates social harms through criminalizing behaviour related to mental health issues, creating barriers to receiving support, health care, housing, and access to employment, as well as increased risk of victimization. Many individuals who are criminalized for possession of illegal substances are not engaged in violent crime. Evidence regarding impacts of legalization of cannabis show a marked reduction in youth involvement in the criminal justice system (43). At the same time, the number of individuals obtaining cannabis through illegal markets significantly decreased (44). Below, the link between drug legality status and crime, as well as issues of victimization and social harms of the illegal drug market, are explored.

5.1 LINK BETWEEN DRUG LEGALITY STATUS AND CRIME

The use of illegal substances under the Controlled Drugs and Substances Act, which currently prohibits their possession, production, and trafficking, has indeed been linked to criminal activity (45). Three theoretical models have been proposed to explain this association, including: a) psychopharmacological model, b) the economic-compulsive model, and c) the systemic model (46). The validity of these models are discussed below:

1. *Psychopharmacological model*: This model suggests intoxication by certain drugs (e.g., cocaine, amphetamines) may increase impulsivity and emotional reactivity in a manner that generates paranoia and distorts inhibitions, resulting in the commission of a crime (46). There is limited direct pharmacological evidence to support this model. In fact, most individuals who use currently illegal substances do not commit violent crimes (47). Further, the value of this model in upholding the legal status of drugs is questionable, given fairly consistent evidence of the link between currently legal substances (i.e., alcohol), intoxication, and aggression even beyond that of illegal substances (48). For example, studies have found homicides to be more directly related to alcohol use on the day of the crime whereas acquisitive crimes (e.g., thefts, break and enter) were more related to substance use (46).
2. *Economic-compulsive model*: This model suggests that individuals commit crimes to obtain money to purchase substances (49). While there is some empirical evidence suggesting an association between acquisitive crimes and illegal drug use, the validity of this model to support criminalization of drugs is limited, as not all individuals who use illegal substances will commit acquisitive crimes to finance drug use (46,49). Research that has empirically investigated acquisitive crimes may also not control for socioeconomic status nor consider crimes committed to purchase necessities (e.g., food, water, clothing). Finally, the perception that this only occurs with illegal substances is questionable, as there is evidence to support a link between acquisitive crimes and alcohol dependency (48). In sum, legality status of drugs likely does not affect the commission of acquisitive crimes.
3. *Systemic model*: Violence is integral to the illegal drug distribution market. According to the systemic model, individuals in the illegal market (distributors, high-level traffickers, and occasionally low-level dealers) may have to resort to force in settling disputes and setting standards for fair competition (as there is in regulated markets for alcohol and pharmaceuticals) as there is no legal method of obtaining justice (50). Furthermore, large, organized crime networks that profit off the illegal status of drugs are often also engaging in other criminal activity, including human trafficking, financial crime totalling millions of dollars, and violence (43). Most notably, simply purchasing the drug introduces crime-naive individuals to a large criminal network, significantly increasing the likelihood of developing antisocial peer relations and involvement in crime. According to this model, the illegality status of the drug itself explains a significant portion of crimes committed. One pertinent piece of evidence supporting this model showed a 64.6% decrease in female youth and a 57.7% decrease in male youth for cannabis-related criminal offences after legalization of cannabis (43).

In sum, evidence supporting inherent properties of currently illegal substances as increasing the risk of crime is limited, and comparisons to currently legal substances do not support a distinction between them. Furthermore, evidence supports that the legality status of drugs may facilitate interactions with criminal networks and potentially result in crime involvement that would not have otherwise occurred (51).

5.2 LINK BETWEEN DRUG LEGALITY STATUS AND VICTIMIZATION

The association between the use of illegal substances and experiencing violence and victimization has been well documented in several regions, including North America and Europe (52). In Canada, in 2019, violent victimization was significantly higher in those people who used non-prescribed drugs compared with those who did not (53). Furthermore, data from as early as the 1970s indicates that drug decriminalization is associated with decreased violence (54).

There is a significant relationship between using illegal substances and being a victim of a violent crime (55). Developing peer relationships with criminal networks may also increase risk of victimization, including violent victimization (e.g., robbery, sexual assault). There is also an empirically supported relationship between alcohol use disorder and victimization, calling into question the validity of distinguishing these substances regarding their criminality (56).

Another relevant factor is the role of the police in investigating crimes when the victim is someone who uses illegal substances. For example, victims of crimes may avoid reporting crimes to the police if illegal drug use was involved out of fear of being arrested or not being believed (9, 57). Indeed, perceptions of the criminal justice system as potentially retraumatizing may dissuade reporting and thus restrict victims' justice or access to care (e.g., therapeutic resources offered to victims of crimes) (58).

Thus, while the legality status of certain drugs appears to do little to deter commission of other crimes, evidence supports measurable harm in legality status with respect to the illegal drug market, victimization, and the criminal justice system.

Criminalization in and of itself can exacerbate the victimization of people who use drugs. In Portugal, fear of arrest was a significant impediment to people who used drugs from seeking help and accessing treatment (10). Following decriminalization, the rate of accessing care and treatment at state-run facilities increased significantly, indicating that more people were receiving help that they felt they needed (11). Beyond eliminating a source of victimization caused by criminalization, decriminalization can indirectly decrease the harm experienced by people who use drugs.

In Denmark, decriminalization led to a positive shift in the attitudes of police officers towards people who use drugs (59). In turn, following decriminalization, police were more likely to target and intervene in the disproportionate violence and victimization experienced by people who use drugs rather than targeting drug use itself (59). Together, these observations indicate that decriminalization of drug use can reduce the harms experienced by people who use drugs by making law enforcement more likely to protect them from violence and victimization while also removing criminalization as a perpetuating force of victimization.

5.3 HOW DECRIMINALIZATION MAY AFFECT SOCIAL HARMS FROM ILLEGAL DRUG MARKET

Research consistently shows that the criminalization of illegal substances results in poor outcomes. The social harms associated with the illegal drug market are numerous. Mortality resulting from overdose, illnesses associated with problematic use, and addiction all contribute to enormous healthcare costs (60).

As discussed at length above, there is little evidence to suggest that illegal substances are inherently linked to an increased risk in criminal activity. However, criminalization of illegal substances discourages individuals from seeking help and increases the likelihood of engaging in unsafe practices leaving them more vulnerable to negative consequences (43).

Criminalization of substances is also connected to issues of decent work and employment. Evidence suggests that criminalization of substances and informal economies around the sale of illegal substances can lead to potential criminal involvement that would not have otherwise occurred (61). Individuals with a criminal record due to simple possession may have a more difficult time obtaining employment due to the need for a criminal background check as a condition of employment (62).

Even if prior convictions or charges would not preclude hiring, limited educational and work experiences as well as stigma towards individuals with a criminal history reduces opportunities for legal employment and increases the risk of return to illegal activities (63). Obtaining satisfying employment is correlated with reduced recidivism post-incarceration (64), as well as overall enhanced mental and physical well-being (11). Decriminalization of substances could reduce barriers to formal employment and support access to decent work.

There are several benefits associated with decriminalizing illegal substances that can be seen when examining countries that have already implemented decriminalization. Portugal, for example, was the first country to decriminalize the possession of small amounts of illegal substances in 2001, which occurred in response to a marked uptick in overdose deaths (11).

Rather than imposing harsh penalties, Portugal's model emphasizes education and harm reduction. Since decriminalization was implemented in Portugal, the drug market has not expanded despite previous concerns. Rather, decriminalization has been linked to a decrease in several social harms (9).

For example, overdose deaths and problematic substance use in Portugal have decreased significantly (10). Further, the rate of new cases of HIV/AIDS has plummeted since 2001 (11). As a result, the strain on both the healthcare system and the criminal justice system lessened. Ultimately, the societal cost of illegal substances in Portugal fell by 12% in just the five years following decriminalization, and by 18% by 2012 (7). Portugal's harm-reduction approach to drug use serves to demonstrate the positive impact decriminalization can have at a societal level.

6.0 FINANCIAL COSTS

Criminalization of substances is associated with significant costs, including in the health and criminal justice system. As of 2017, the estimated healthcare costs related to the use of illicit substances such as opioids and cocaine was $1 billion (25). Healthcare costs have only continued to increase (6). The potential contamination of illegal substances may also contribute to high hospitalization costs.

For example, between January 2016 and September 2020, there were 23,240 opioid-related poisoning and 10,518 stimulant-related poisoning hospitalizations in Canada, not including Quebec (7). Healthcare costs are also incurred due to delay in seeking treatment among individuals who use substances, particularly illegal substances. Individuals may feel averse to seeking intervention and prevention treatments due to fear of being arrested or stigmatized if they are seeking help for consequences related to illegal substances (35). This fear due to criminalization only compounds harm to health for these individuals.

Harm reduction practices and equitable and stigma-free access to evidence-based treatments are an important method to address harms and healthcare costs related to substance use. Opioid agonist treatments, which is the first-line therapy for opioid use disorders have been associated with a decrease in infectious diseases which can occur due to injection drug use (35). This, in turn, has promise for reducing healthcare costs related to hospitalization for communicable diseases. This is especially important due to the reality that opioid-related visits to the emergency department and related hospitalizations, as well as increasing opioid-related deaths from toxicity, are growing in Canada (25). This reinforces the importance of understanding how to best support those who use substances through the healthcare system, with decriminalization being an important strategy to reduce the healthcare harms that criminalization can create.

As well, individuals who are arrested for possession or using illegal substances must face the criminal justice system in Canada. There are significant costs associated with the criminal justice system and substance use. Policing costs related to crimes that have occurred due to substance use have been found to incur the highest costs on the criminal justice system, followed by costs for corrections and courts (65).

In 2017, more than $6.4 billion was spent on criminal justice related costs for currently illegal substances (66). Breaking this down further, it costs the criminal justice system $100,000 for every man that is incarcerated (cost per year), and for women this number is $200,000 (25). Just like the healthcare system, costs only continue to increase (15).

As previous work has shown, the criminal justice system has not been an effective route to ensure individuals are receiving the support they need while incarcerated (67). Indeed, individuals who have been arrested for substance related offences often are re-arrested (67), which may be due to inadequate support during and after incarceration.

The evidence to date suggests that policy change is necessary to ensure funding is provided to programs and services that can adequately support individuals who use substances, such as evidence-based treatments and community-based harm reduction efforts for the individuals who need them. This would further be made possible with decriminalization efforts to reduce stigma and fears that may prevent individuals from seeking treatment when they need it most.

7.0 PHYSICAL HARMS FROM CRIMINALIZING SUBSTANCE USE

Criminalizing substance use leads to multiple health harms. These harms include overdose and death, transmittable diseases, violence, and victimization. Where there are data, this section also reviews the benefits of decriminalization.

7.1 OVERDOSE AND DEATH

The unsafe supply of drugs deemed illegal leads to an increased risk of overdose and deaths (68). In other industrialized countries, such as in Europe, the countries with the most criminalizing policies (e.g., the most legally punitive) are also the countries with the most overdose deaths (69).

Canada is in the midst of an overdose crisis (6). Illicit substance toxicity deaths are on the rise, and although the focus has been disproportionately placed on opiates, these are not the sole contributors.

Importantly, the impact of polysubstance use can not be overlooked. For instance, data collected between January and June 2022 revealed a high number of apparent stimulant toxicity deaths, with nearly all of these deaths (98%) deemed accidental (6). What's more is 83% of these deaths also involved an opioid, which further highlights the polysubstance nature of this crisis. Between January 2016 and June 2022, 32 632 people in Canada died of accidental apparent opioid toxicity. In 2021 alone, 7,560 of those deaths occurred (equivalent to approximately 21 deaths per day), and in 2022 (January - June), another 3 556 apparent opioid toxicity deaths occurred (approximately 20 deaths per day) (6).

This is a marked increase from the years prior to the COVID-19 pandemic, where the daily overdose-related death rate was between 8 and 12 in 2016 and 2018, respectively (6). Of those deaths in 2021, 86% involved an opioid (i.e., fentanyl), 81% involved non-pharmaceutical opioids, and more than half (59%) also involved stimulants, such as cocaine (62%) and/or methamphetamines (55%). Most deaths occurred amongst individuals between the ages of 20 to 59, and males accounted for most accidental apparent opioid toxicity deaths (74%) (6). In British-Columbia alone, where illegal drug toxicity (including, but not limited to, opiates) is the leading cause of unnatural death, a total of 6,007 lives were lost between August 1, 2017, and July 31, 2021 (70). Since January 2022 (to June 2022), 1,095 additional British Colombians are believed to have been lost to this epidemic (71).

Several factors may have contributed to a worsening of the overdose crisis during the pandemic, including an increasingly toxic drug supply, increased stress and anxiety, increased isolation/using alone, and changes in the accessibility and availability of services (including treatment and harm reduction services) for people who use substances (7). However, these harms were not created by the pandemic. Rather, the pandemic exacerbated the existing substance-related harms fostered by the ongoing criminalization of substances. These harms include, but are not limited to, stigma, disproportionate harms to populations experiencing structural inequity, violence and victimization related to the illegal drug market, a growing financial burden on the criminal justice and healthcare systems, transmission of infectious diseases (e.g., HIV, hepatitis C virus), unaddressed comorbidities, and lastly, overdose and death (72).

7.2 INFECTIOUS DISEASES

Criminalizing substance use leads to multiple health harms. The sharing of drugs and needles in countries where substance use is criminalized is associated with sexually transmitted and blood-borne infections (STBBI), including greater incidence of HIV and hepatitis C virus (HCV) (73). Incarceration itself is associated with STBBI. In one meta-analysis, recent incarceration was associated with an 81% increase in HIV acquisition risk and a 62% increase in HCV acquisition risk (74). The stigma of illegal substance use can also lead to barriers to accessing treatments for HCV and HIV (75).

In conclusion, criminalization has failed to protect public health and safety and to reduce the use and availability of illegal substances, in addition to fueling stigma against people who use drugs and increasing their risk of harm. On the other hand, the extant evidence on decriminalization suggests that decriminalization may reduce many of these physical harms.

8.0 DISPROPORTIONATE HARMS TO POPULATIONS EXPERIENCING STRUCTURAL INEQUITIES AND RACISM

The earliest example of racism surrounding Canada's history of substance criminalization happened with the Opium Act of 1908, Canada's first law imposing substance prohibition (76). Slated to criminalize opioid manufacturing and distribution, which was largely engineered by the British empire, it instead targeted Chinese people who used opioids and labeled them as threatening, immoral, and responsible for bringing opium into the country (77).

Further, this law came into effect despite alcohol and tobacco causing more harm than opioid use at the time (78). Since then, due to systemic racism, additional drugs often used among racialized groups, in particular Black communities were criminalized (e.g., crack cocaine), and met with harsher penalties than their equivalents (e.g., powder cocaine) that were predominantly used by wealthier white communities (i.e., "the war on drugs") (78).

The crack cocaine crisis in the 1980s predominantly involved Black communities and persons and was 'dealt with' through excessive incarceration, mandatory minimum sentencing, and outright racism (78). This is in stark contrast to the response to the current opioid epidemic, which reflects efforts to decriminalize substance use

and protect people who use drugs from harms without the cost of incarceration. Given that the opioid crisis is the first significant drug crisis to primarily influence White communities, the disparity in responses to this crisis versus the crises affecting racialized communities for decades further reflects the structural inequity and racism at the heart of the current drug policy (i.e., criminal justice).
Relatedly, before legalization of cannabis in Canada, Indigenous and Black people were significantly more likely than White people to be arrested for its use (79). This disparity existed despite the absence of significant differences across racial groups in levels of cannabis use. Similar trends exist with Black and Latinx people in the U.S., where nationwide legalization has not yet taken effect and varies significantly state by state (80). Further, among individual provinces and states in Canada and the U.S. where cannabis is legalized, differences in how laws are implemented can still lead to disproportionate harms due to criminalization. For example, the District of Columbia has legalized cannabis use since 2015 but prohibits anyone from smoking the substance outdoors (81).

In Canada, the province of Manitoba and the municipality of Calgary are a few examples of regions that prohibit the use of cannabis outside of private properties. These laws could continue to criminalize individuals who live in rental properties, public housing, and apartment buildings where smoking indoors is prohibited, as well as individuals who are unhoused (8). One relevant example is the significantly higher number of arrests for public cannabis use in the District of Columbia since cannabis was legalized, with Black people being disproportionately represented in the arrests (81). This case highlights the risk of unexpected inverse effects of decriminalization and calls for caution when formulating laws to not continue criminalizing marginalized communities.

Other underrepresented groups also experience disproportionate harms, especially if they experience several intersecting marginalized identities (82). Black, Indigenous, and other people of colour can be victims of increased targeting and harassment by police, leading to an increase in the overall frequency of interactions with police that makes incarceration more likely (82). Moreover, results from a study in Canada and British Columbia indicate that, while women make up only 5% of prisoners serving time due to drug-related sentences, Indigenous and Black women are significantly more likely than men to be imprisoned for possession of illegal drugs (83). The effects of these harms can further translate to the children of imprisoned mothers, who become at increased risk of being incarcerated themselves, perpetuating intergenerational trauma (84). Additionally, people with lower socioeconomic status and those experiencing homelessness are more likely to use illegal drugs in public spaces, which increases their chances of being seen and incarcerated (82).

9.0 STIGMA

Stigma according to the Canadian Centre on Substance Use and Addiction and the Community Addictions Peer Support Association is defined as any attitude, belief, or behaviour that discriminates against people (90). Substance use and substance use disorders are highly stigmatized (91). Several studies have concluded that individuals with SUDs faced a greater degree of stigma compared to individuals with other psychiatric conditions (92-94). There is also evidence to suggest that some groups of people may be at increased risk of experiencing stigma related to substance use.

For instance, women endorse a greater degree of stigma compared to men (95,96), and this may be particularly true for pregnant women (97,98). Further, stigma may be even greater amongst individuals who use currently illegal substances such as opioids or stimulants compared to currently legal substances (e.g., alcohol and cannabis) (99).

9.1 HOW STIGMA HARMS INDIVIDUALS WHO USE SUBSTANCES/WITH SUDS

Stigma is associated with several harms on both an individual and societal level. Several studies suggest a link between stigma and mental distress amongst individuals who use substances (100). Psychological symptoms associated with stigma can include both anxiety and depressive symptoms (101,102).

A prominent finding in substance use health stigma research is the general perception that individuals with SUD hold a greater degree of responsibility for their diagnosis compared to other conditions (93,94,99). These projections of blame may result in an even greater degree of distress.

Stigma associated with substance use is also a well-known barrier to accessing health care, harm reduction and any treatment services including physical and mental health care. Not surprisingly, stigma is also a barrier to accessing substance use treatment and recovery amongst individuals with SUDs (103,104). Specifically, stigma is often associated with decreased treatment-seeking behaviour (e.g., not telling friends and family, or not seeking out or engaging with services) (101).

Part of this may be due to widespread negative assumptions, including from health care professionals about individuals who use substances. For example, several studies have found that individuals with SUDs also tend to be inaccurately perceived as more violent and dangerous by the general public (93,94). Further, researchers found that individuals with SUDs were often viewed as unpredictable and financially irresponsible (91). These assumptions may ultimately limit the desire or ability to access resources, employment, and housing (105).

9.2 HOW CRIMINALIZATION OF SUBSTANCES CONTRIBUTES TO STIGMA AND ITS EFFECTS

1) Criminalization positions substance use as a moral issue rather than a health issue.

Criminalizing the personal use and possession of substances has significant effects beyond one's criminal record, it also affects the perception of how addiction is conceptualized and the resulting assumptions about morality. In the most general sense, there are two diametrically opposed ways of conceptualizing addiction. The brain disease model purports that substance use disorders are a valid medical condition, whereas the choice model purports that substance use is governed by choice and motivation (i.e., the moral model of use), which is not supported by evidence (106).

In the current political climate, there tends to be a focus on criminalizing substance use instead of preventing, identifying, and treating substance use (107). Criminalizing substance use also significantly impacts funding for

drug policies, where money is routed towards supply reduction policies (i.e., restrictions and regulations, funding law enforcement) instead of demand reduction policies (i.e., substance use health prevention, treatment, and harm reduction interventions) (107).

2) Criminalization affects quality of care and access to care.

Individuals who use substances also tend to report experiencing increased difficulty in accessing healthcare services and stigma and discrimination from healthcare professionals. For example, one systematic review assessed stigma amongst healthcare professionals towards patients with SUDs and found that they often perceived patients as being manipulative and lacking motivation for treatment (92). The same review also cites the overall lack of education and training amongst healthcare professionals to adequately address substance use.

Therefore, the stigma associated with substance use from various institutions can impact motivation to seek treatment. Furthermore, stigma in healthcare settings towards individuals receiving opioid agonist treatment discouraged help-seeking behaviours of patients and led to mistrust (99). Mistrust of healthcare professionals could result in patients opting to not disclose their substance use out of fear of not being offered equal quality of care.

3) Criminalization interplays with intersectionality.

Stigma and discrimination related to substance use often interact with other forms of discrimination, most notably racism and sexism (108-110), which adds additional barriers to treatment (111-113). These consequences materialize as avoidance of necessary health services that may affect other family members, overrepresentation of marginalized communities in the criminal justice system, and subsequent restriction from occupational and vocational opportunities.

9.3 DECRIMINALIZATION AND EFFECTS ON STIGMA

Criminal policies regarding substance use have a significant impact on public perception and stigma of individuals who use substances and access to healthcare and services. For example, studies comparing public attitudes towards cannabis found higher rates of stigmatizing attitudes in countries with penalizing policies whereas non-penalizing cannabis policies were associated with de-stigmatizing attitudes (114).

In Canada, following legalization of cannabis, public attitudes towards cannabis have similarly changed (115). Thus, enacting decriminalization policies would symbolize a public shift away from attitudes that seek to punish those who use substances or are experiencing SUDs and towards an attitude that recognizes treatment needs in this population. Shifts in public perception may further support funding towards treatment research, greater access to services, thus encouraging treatment seeking behaviours in people with SUDs.

10. CONCLUSION AND RECOMMENDATIONS

Rates of substance use and its associated harms are increasing over time. The ongoing punitive and legal approach to substance use health has not protected Canadians from harm. The current criminal justice approach to substance use health is not working. Treating substance use health as a criminal justice issue leads to significant societal, physical, and financial harms that are exacerbated amongst people who experience structural inequity and racism. Criminalizing substance use also leads to increased stigmatization of individuals who use substances, which impacts health care utilization.

Recognizing that substance use health is a matter of public health rather than a criminal justice issue is a fundamental starting point for reforming drug policy. Mounting evidence supports decriminalization as an effective means of mitigating the harms related to substance use and associated policies and practices, specifically those harms linked to criminal justice prosecution for simple possession. Indeed, evidence from jurisdictions that have decriminalized small amounts of illegal substances for personal use have found that decriminalization resulted in economic savings as well as social and physical harms (e.g., transmittable diseases).

10.1 POSITION STATEMENT RECOMMENDATIONS

Based on the review of the existing evidence, the CPA has taken a 'De Jure' approach to decriminalize currently illegal substances for personal use. Specifically, the CPA recommends:

1. that criminal penalties associated with simple possession of illegal substances be removed from the *Controlled Drugs and Substances Act*.
2. Furthermore, we **strongly** recommend that the determination of the quantity of "personal use" should be made in consultation with all relevant stakeholders, including people with lived and living experience with substance use.

RECOMMENDATIONS

The CPA recognizes that decriminalization of illegal substances alone is not enough to reduce the myriad of harms associated with substance use. Consequently, we also provide the following recommendations in conjunction with the *Controlled Drugs and Substances Act*:

1. The federal government enact federal legislative changes to remove criminal penalties associated with simple possession of illegal substances in the Controlled Drugs and Substances Act.
2. The federal and provincial government—in conjunction with relevant stakeholders (i.e., researchers, clinicians, individuals with lived and living experience, public policy makers, healthcare professionals) — enhance availability and access to evidence-based prevention, treatment, and harm-reduction programs and services and supports.
3. The federal government accelerate the introduction of targeted exemptions under Section 56 of the Controlled Drugs and Substances Act to further support harm reduction initiatives.

4. The federal, provincial, and municipal governments equip police forces at all levels (national, provincial, territorial, municipal) to offer non-criminal justice alternatives to drug offences. This can only be done via adequate guidance, resources, and training programs.
5. The federal and provincial/territorial governments work closely with individuals with lived and living experience, public policy makers, healthcare professionals, and law enforcement when drafting new policies and initiatives.
6. Relevant stakeholders (i.e., governments, individuals with lived and living experience, public policy makers, healthcare professionals, and law enforcement) scale up knowledge mobilization efforts and public education campaigns aimed at eradicating stigma related to substance use health, and in particular, stigma faced by people who use substances/experience a substance use disorder.
7. Relevant stakeholders (i.e., governments, individuals with lived and living experience, public policy makers, healthcare professionals, and law enforcement) scale up knowledge mobilization efforts to educate people regarding common misconceptions surrounding decriminalization and its outcomes.

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