



DELIVERED BY EMAIL

February 10, 2021

The Hon. Patty Hajdu  
Minister of Health

Dear Minister:

**Re: Vancouver and British Columbia exemptions to decriminalize simple drug possession**

Thank you for your ongoing willingness to discuss the matter of exemptions under the *Controlled Drugs and Substances Act* (CDSA) to decriminalize simple possession. We were pleased to learn recently that you will be consulting with the City of Vancouver and now the Province of British Columbia regarding their recent requests for exemptions.

As you well know, the criminalization of drugs and of people who use them protects neither public health nor public safety, and in fact ultimately harms both, while wasting public funds that could be better spent on effective, evidence-based, health-oriented responses to the harms sometimes associated with substance use. Each day that goes by under a regime of criminal prohibition is a day in which government policy contributes to those harms and to the often-deadly stigma surrounding drug use. Time is even more of the essence as the COVID-19 pandemic compounds the ongoing public health crises of drug toxicity injuries and deaths, on top of the longer-running HIV and HCV pandemics, among other harms. We have seen additional barriers to accessing harm reduction services, increased rates of people using alone, and increased drug toxicity in the unregulated market.

We do not suggest that decriminalizing drug possession is a panacea or “silver bullet.” But all of these harms could be mitigated by removing the criminal penalties for possession of drugs for personal use, as we and more than 170 organizations across the country urged last year. There will of course be other, complementary steps needed to protect and promote health, including as we continue to respond to the twin crises of COVID-19 and drug toxicity deaths.

***A consistent, nation-wide approach***

The effects of drug prohibition are urgent and demand action. As we have outlined in previous correspondence, the best, simplest solution immediately available is for you to issue, under section 56 of the CDSA, a blanket exemption from section 4 of the CDSA, which criminalizes the simple possession of scheduled substances. A consistent, nation-wide policy of

decriminalization is far preferable, for reasons of health and equity, to a piecemeal, *ad hoc* approach of responding to one-off requests from individual jurisdictions. Decriminalizing simple possession through such a measure is consistent with this government's stated commitment to a public health-focused, harm reduction approach — which requires not only promoting access to specific harm reduction services, but also steps to reduce the harms caused by punitive drug laws and policies. It is also consistent with the unanimous recommendation of all UN agencies, which two years ago adopted a common position supporting decriminalization of simple possession — important recognition that such an approach does not contravene member states' obligations under international drug control conventions. Furthermore, it responds to the call of the Canadian Association of Chiefs of Police to end the criminalization of simple possession.

We again urge you to proactively issue a nation-wide, blanket exemption from section 4 of the CDSA that applies to all persons in the country and in relation to all substances currently criminalized under the Act and its schedules. (We also urge you to introduce legislative amendments to the CDSA to repeal section 4 as a longer-term solution.) This would obviate the need for individual, case-by-case exemption applications. We would publicly support such a step, as would many other civil society organizations.

### *Consideration of individual exemption requests*

We understand that, rather than simply granting Vancouver's request for an exemption, Health Canada has replied with a request for additional information and discussion. While we appreciate the need to understand the implications of granting such an exemption, we are concerned that this could become an exercise in creating bureaucratic hurdles and delay — a history we have already seen with respect to exemptions for supervised consumption services, with the resulting cost in lives and avoidable harms.

We urge you to ensure that Health Canada does not impose unnecessary and unreasonable conditions in granting an exemption for the purposes of decriminalizing simple possession. In particular, we note the following:

- **Consultation requirements:** There should be no undue requests for (yet more) consultation or information about whether certain actors (e.g., law enforcement, health authorities, other orders of government, community members, etc.) support or oppose an exemption being issued. If a municipal or provincial government has determined to request an exemption to implement decriminalization locally, it is safe to assume they have not done so lightly. There is no good reason to burden applicants and consulted communities with yet further detailed consultations, and the outcomes thereof, before acceding to that request and granting the exemption. Should a municipality or health authority have determined that it wishes an exemption within its jurisdiction, its residents should not be deprived of this benefit because, for example, a provincial government may be ideologically opposed. Deference must be given to public health, not those who oppose it. This is particularly true in light of Health Canada's mandate to improve the health of all people in Canada. In the context of supervised consumption services, Health Canada's unnecessary demands for local consultation — which are not mandated by law — have proven to be a significant barrier and source of delay that

can work at cross-purposes with the single most important consideration in your decision-making process: public health. The lesson from that experience should not be ignored.

- **Threshold quantities:** We appreciate that an exemption that decriminalizes *simple possession* (i.e., for personal use) leaves in place the criminal prohibition on *possession for the purpose of trafficking*. Therefore, this may raise the question of defining specific threshold amounts to guide the decriminalization of simple possession in practice. We suggest it may not be strictly necessary to define such quantities as part of the terms of an exemption. However, we also recognize that, if done properly, doing so may be useful to avoid or reduce misuse of police discretion such as “up-charging” by laying more serious charges of possession for the purpose of trafficking for small quantities that would ordinarily only attract a simple possession charge. It is essential that it be clear that *any threshold quantities specified in an exemption should serve as a floor, not a ceiling* — i.e. possession or transfer of a quantity *below* the set threshold is always considered in law to be simple possession for personal consumption and covered by the exemption from section 4 of the CDSA, but possession of a quantity *above* the threshold is never automatically or presumptively possession for the purpose of trafficking, which remains an offence. Rather, as is currently the case, and as is constitutionally required, the burden always remains on the prosecution to prove an offence, including possession for the purpose of trafficking. Furthermore, if threshold quantities are specified in an exemption, they must reflect quantities of substances that people are likely to possess for personal consumption, and must consider factors such as patterns of personal use, geography, individual experience, physical tolerance of certain substances, etc. If threshold quantities are set artificially low, disregarding real-world practices, then decriminalization on paper becomes illusory in practice.
- **Age restrictions:** The prohibition on simple possession does harm to those criminalized, regardless of their age. Decriminalization must apply to all, regardless of age, including youth whose prosecutions for possession would be also guided by the provisions of the *Youth Criminal Justice Act*. We urge you to avoid limiting the scope of an exemption in a manner that discriminates based on the age of those who possess controlled substances for personal use.
- **Time restrictions:** Any exemption granted for local decriminalization should remain in effect until such time as either (a) the requester notifies the Minister that it wishes to terminate an exemption or (b) the full legislative repeal of the prohibition on simple possession in the CDSA comes into force.
- **Other services available:** We are fully supportive of greater access to health and social services, and the investments needed for these — including by redirecting resources currently wasted on policing, prosecuting, and imprisoning people for drug offences. We caution, however, that it would be a mistake to insist that certain services, or a certain degree of services, be in place in a jurisdiction before effecting decriminalization. Even in the complete absence of any services, it is beneficial to remove criminalization, and its attendant stigma and other harms, from the lives of people who use drugs. A reminder that the current *status quo* of drug prohibition is not neutral: it is actively killing people who use drugs across the

country. Ensuring adequate access to valuable health and social services must be a *complement* to decriminalization, not a *precondition*. (We are also mindful of the fact that the approach adopted by Health Canada in responding to the exemption requests from Vancouver and British Columbia will inevitably set something of a precedent for handling similar requests in future. But most jurisdictions in Canada do not enjoy the same history and extent of health and social services as Vancouver; they should not be deprived of the benefits of decriminalization because they may not be in position to meet a standard that may be feasible for Vancouver to demonstrate. Indeed, doing so would actually compound inequity by maintaining a criminal prohibition in place to harm those already experiencing less access to supportive services.)

- **Diversion requirements:** Offering people access to health and social services, including for drug dependence where this may be needed or useful, is welcome — provided that this is not premised upon being apprehended for possessing drugs and that police are not seen as the gateway to access. But mandating referrals to, or attendance at, certain services — including a health assessment or treatment — or simply diverting people who would otherwise face simple possession charges to participation in a drug treatment court or similar program, is not. In no way should such approaches feature in any decriminalization scheme, including as a term in an exemption issued under section 56. It is counterproductive to maintain such coercive measures while seeking to decriminalize and destigmatize people who use drugs; such an approach also raises human rights concerns. International drug control conventions do not require Canada to impose any such alternative to simply fully decriminalizing simple possession, which all UN agencies have recommended. People who use drugs have been clear that administrative penalties of any kind — including tickets and fines, compulsory attendance at “dissuasion commissions” or participation in drug treatment courts, and confiscation of drugs without charges — are not conducive to destigmatizing drug use or encouraging access without fear to supervised consumption, safe supply programming, and other supports for people who use drugs, and are likely to increase the risk of negative consequences of drug use. Our call is for full decriminalization, not a partial workaround that perpetuates much of the same fear, stigma, and harms to health as does criminalization.
- **Evaluation requirements:** We fully appreciate the benefit of evaluating how decriminalization plays out. We encourage Health Canada to collaborate with other orders of government, academic researchers, and civil society organizations — including organizations of people who use drugs — to support efforts to gather such data, which can also inform policy in future. However, we must flag two concerns. First, it would be unnecessary and unwarranted to insist on an evaluation plan as a condition of granting an exemption for decriminalization. There is more than enough evidence establishing the harms of criminalization, and the health and lives of people who use drugs cannot be held hostage to a demand for yet more research. Again, such evaluation efforts, in at least some jurisdictions, would be a welcome complement to local decriminalization, but must not be made preconditions. Second, it is essential that any assessment be based on fair and appropriate measures based on the objectives of decriminalization (i.e., a reduction in the number of charges laid for simple possession and of people being charged, as well as some demographic analysis to address potential continued bias in the application of the law). Other outcomes, including the anticipated benefits for health and well-being of persons previously

criminalized, savings in public expenditures by eliminating enforcement of the prohibition on simple possession, etc., are important and data regarding all other potential benefits ancillary to decriminalization are welcome. However, these are secondary and not essential to judging the success of decriminalization efforts, the goal of which is to reduce the inherent harm of being criminalized and of the policing that accompanies it.

We hope and expect to see more requests for exemptions in the near future. Our recent primer on decriminalization for municipalities and provinces has been downloaded hundreds of times. We have shared, and are sharing, it widely with these other orders of government. We and other community advocates – including parents who have lost children to toxic drugs and other harms caused or exacerbated by our stigmatizing, punitive drug laws – are also actively encouraging municipalities across the country to support decriminalization. A growing number are recognizing the need for a more health-friendly approach, as seen in the resolutions adopted in recent months by the Toronto Board of Health, the City of Montreal, and several other smaller municipalities.

We thank you and your staff for taking the time to meet and correspond with us on this issue in the past and we hope that we can continue the conversation. There is truly no time to waste. We urge you to listen to the health and human rights experts who have already spoken about this, follow the public health evidence, and issue these exemptions quickly, without onerous and unnecessary conditions or restrictions. Lives and health are at stake.

Sincerely,



Richard Elliott, Executive Director, HIV Legal Network



Donald MacPherson, Executive Director, Canadian Drug Policy Coalition



Caitlin Shane, Staff Lawyer – Drug Policy, Pivot Legal Society

Cc: His Worship Kennedy Stewart, Mayor of Vancouver  
Dr. Patricia Daly, Medical Health Officer, Vancouver Coastal Health  
Hon. John Horgan, Premier of British Columbia  
Ms. Jill Lot, Deputy Minister, Office of the Premier of British Columbia  
Hon. Adrian Dix, Minister of Health, British Columbia  
Hon. Sheila Malcolmson, Minister of Mental Health and Addictions, British Columbia  
Dr. Bonnie Henry, Provincial Health Officer, British Columbia