Submission to HESA Committee Study on 'Opioid Epidemic and Toxic Drug Crisis'

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The Toxic Drug Crisis is Driven by the Illegality and Lack of Regulation of Currently Illicit Drugs

Contrary to dominant narratives, rates of drug use and rates of substance use disorders (SUD) have not increased in Canada over the last decade. Nonetheless, rates of drug-related fatalities and hospitalizations have skyrocketed during this period. The overwhelming driver of this crisis is the prohibition of drugs under the *Controlled Drugs and Substances Act* (CDSA). Prohibition has not decreased availability or use of illicit drugs but has caused continuous shifts in Canada's unregulated drug supply. It has created a variable and volatile drug market that poses imminent risk of fatal and non-fatal overdose to all people who consume drugs, including those who use episodically or recreationally. People are now unknowingly consuming drugs that contain multiple, often novel, substances as the direct consequence of enforcement initiatives that cause drug producers and sellers to introduce ever-more substances and potent analogues into the supply to evade detection. Solutions to the toxic drug crisis must therefore be oriented toward the responsible regulation of the drug supply.

Between January 2016 and June 2023 in Canada (excluding Quebec) there were 40,642 apparent opioid toxicity deaths, now averaging 22 deaths per day, and 39,435 opioid-related and 16,863 stimulant-related poisoning hospitalizations. **From January to June 2023, 80% of opioid deaths involved fentanyl from the *unregulated* supply**, a 21% increase since 2018. While this appears to have stabilized in recent years, other depressant type drugs such as benzodiazepines are increasingly found mixed into the unregulated opioid supply (Figure 1) and benzodiazepines combined with opioids increasingly account for a greater proportion of unregulated drug deaths (e.g. Ontario). Changes to the supply have caused unprecedented mortality, negative health outcomes and social impacts, thousands of hospitalizations, and a growing cohort of people with brain damage after non-fatal overdoses. Traditional opioid therapies (e.g., methadone) are less effective for some due to increased drug tolerance and co-occurring drug dependencies. Naloxone, an opioid overdose reversal drug, has saved countless lives, but with the increasing presence of non-opioid depressant drugs such as benzodiazepines in the supply, overdose response has become more complicated.

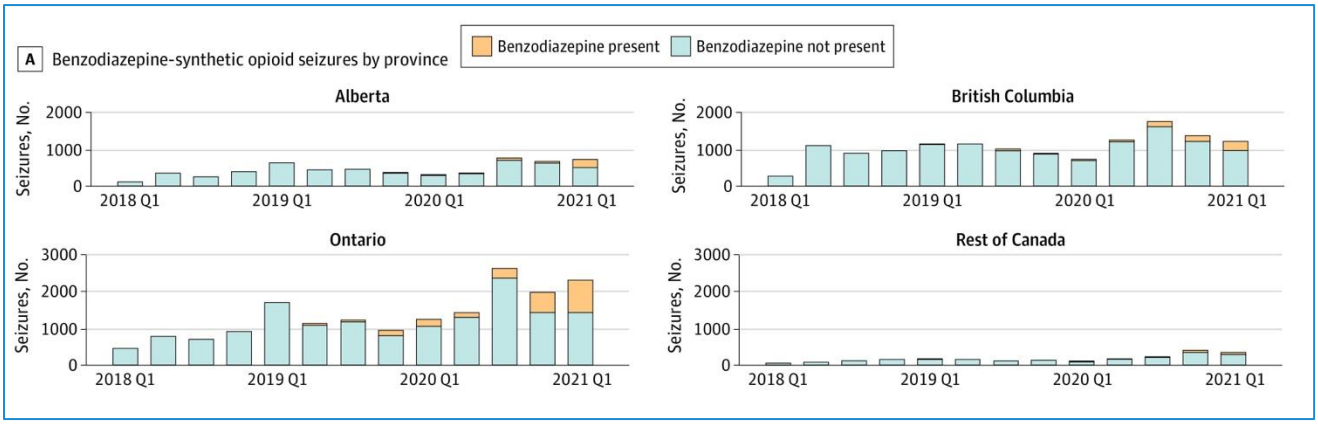

Figure 1: Seizures of Synthetic Opioids that Contain Benzodiazepines in Canada from Drug Analysis Service of Health Canada data.
Source: Pardo B. Insights Into Mixing Fentanyl and Benzodiazepines From Canadian Drug Seizures. JAMA Psychiatry. 2022 Jan 1;79(1):81-83. doi: 10.1001/jamapsychiatry.2021.3292.

Since 2016 there has been a sharp increase (47%) in the number of fentanyl identifications in samples submitted by law enforcement for analysis. Unregulated fentanyl is a major contributor to the toxic drug crisis. A decade ago, the primary illicit opioid used was heroin; now, heroin has almost entirely been replaced by fentanyl analogues. Fentanyl may not have proliferated had heroin been sensibly regulated, instead of prohibited. Notably, fentanyl is used widely in human medicine and is not inherently dangerous, however, in the unregulated market its dosage and purity are never assured.

Previous efforts to schedule and prohibit fentanyl and fentanyl precursors have not stopped people using substances but have increased the complexity of the unregulated drug supply. Health Canada's Drug Analysis Service (DAS) demonstrates the unintended consequences of scheduling substances: new and different substances continually emerge including novel synthetic opioids (fentanyl analogues, nitazene compounds) and other depressant type drugs such as a range of illicit benzodiazepines. Scheduling drugs and precursors creates incentives for underground chemists to create new substances that may be more dangerous. Additionally, scheduling substances and precursor chemicals further complicates law enforcement efforts, increasing costs related to enforcement strategies.

Resources spent on enforcement and reactive emergency health responses mean that less funding is available for the health and social supports that are demonstrably more cost-effective and improve health and safety for all.

Disproportionate Impacts of Drug Criminalization and Lack of Drug Regulation on Indigenous, Black and Racialized People

Prohibition, and its enforcement, functions as a significant driver of systemic racism and wide-ranging human rights violations in Canada. In 2021, the Federal Expert Task Force on Substance Use recommended equity as a core principle in a federal substance use strategy, highlighting the disproportionate harms of drug policy to Black, Indigenous and racialized communities.

The earliest example of federal drug prohibition in Canada was in the 1876 *Indian Act*, which prohibited Indigenous peoples from possessing and consuming alcohol, along with other stipulations designed to suppress Indigenous rights and sovereignty. The 1908 *Opium Act* prohibited opium use and targeted Chinese men, further demonstrating the racial dimensions of drug criminalization in Canada. Contemporary drug policy continues this legacy of disenfranchisement of Indigenous, Black and racialized people through targeted policing practices and disproportionate incarceration. The federal government has recognized systemic racism and overrepresentation of Indigenous peoples in its criminal-legal system. In the rationale for Bill C-5, which repealed mandatory minimum penalties for certain offences under the CDSA and the *Criminal Code*, the federal government noted that rates of incarceration of Indigenous people for charges that fall under Bill C-5 increased from 14% in 2007-2008 to 26% in 2016-2017, while Indigenous peoples only make up 4% of the population. As of 2018, 40% of all women incarcerated in federal institutions were Indigenous. This sweeping incarceration of Indigenous people, particularly women, constitutes a serious human rights violation. Discriminatory enforcement practices and sentencing rates further militate in favour of the full decriminalization of drug-related criminal sanctions through the repeal of the CDSA and replacement with robust and equity-focused regulatory models. These would contribute to Canada's stated commitment to reconciliation.

Further, moving towards legal regulation of all substances will address the toxic supply which is resulting in disproportionate rates of drug toxicity deaths in Indigenous communities. First Nations people have a risk of toxicity death approximately six to seven times greater than the general public, according to data from B.C. and Ontario. Several Indigenous communities have declared a state of emergency due to drug toxicity deaths. The Truth and Reconciliation report calls upon the federal government to recognize and implement the healthcare rights of Indigenous peoples and identify and close the gaps in health outcomes between Indigenous and non-Indigenous populations. It is essential to address the disparities in drug poisoning rates between Indigenous and non-Indigenous people. Processes to legally regulate drugs require proper consultation with First Nations, Inuit and Metis Peoples, and all interventions must uphold Indigenous sovereignty and self-determination. In B.C., the harm reduction policy of the First Nations Health Authority supports the expansion of pharmaceutical alternatives to the toxic drug supply in a manner that is culturally safe, and the health authority has also indicated support for all communities that choose to provide safe supply for its members.

Declaration of a National Public Health Emergency: Revisiting HESA committee recommendations on the opioid crisis in Canada from 2016

In 2016, the HESA committee completed a study on the opioid crisis and recommended the declaration of a national public health emergency. With death and hospitalization rates increasing substantially since 2016 including among episodic and recreational users, the need to declare the unregulated drug market, distinct from substance use disorders or addiction, a national public health emergency is more necessary than ever. This must be accompanied by a fundamental shift to a framework sufficient to displace the toxic unregulated supply with legal, regulated alternatives through appropriate controls over production, labeling and distribution to better ensure public safety and health.

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Involuntary Treatment and Compulsory Abstinence Programs are Ineffective and Unjustified

Calls for "involuntary treatment" increasingly dominate Canadian discourse. There is no empirical evidence to support the belief that compulsory treatment improves individual or public health outcomes or reduces drug use. Some studies indicate potential harms, associated increased risks to marginalized populations, and a correlation between compulsory drug abstinence programs and increase overdose-related risk. Recent research found individuals' substance use patterns were unchanged after coerced treatment. Any interventions to address an individual's substance use must therefore be voluntary and delivered in a culturally appropriate manner.

People experiencing poverty and housing instability and unionized workers are disproportionately impacted by coercive treatment policies. Treatment cannot be used as a substitute for housing, meaningful poverty reduction initiatives, or as a threat to employment security.

Public Support for Human Rights and Public Health Approaches

While there is overwhelming evidence of the numerous individual and community benefits of harm reduction services and decriminalization approaches, the reluctance to implement them is, in part, being driven by increasing rhetoric against these efforts. This rhetoric does not align with overall public sentiment. Several public opinion studies indicate increasing public support for human rights and public health approaches:

- 69% of 504 Canadians surveyed in 2021 agree or strongly agree with decriminalization;
- 47% of 1,000 Canadians surveyed in 2020 support decriminalization;
- 49% of 2,000 Canadians surveyed in 2023 endorse a health-based approach to drug use rather than one that is enforcement-based; and
- 63.5% (in AB) and 56.3% (in SK) of 1,602 adults surveyed in 2023 support safer supply programs for those unable to stop using.

Numerous groups including the Canadian Association of Chiefs of Police have called for decriminalization. Internationally, many countries have moved to health and human rights-based approaches, and depenalization or decriminalization. In a 2023 landmark report, the Office of the High Commissioner for Human Rights indicated support for decriminalization, harm reduction, *voluntary* health services, and consideration of the responsible regulation of drugs.

Core Recommendation: Legal Regulation of Currently Illicit Drugs

The key intervention needed to address the toxic drug crisis is the responsible legal regulation of all currently illicit drugs. Expert bodies, such as the Health Canada Expert Task Force on Substance Use in 2021, the B.C. Coroners Death Review panel in 2023, the Office of the United Nations High Commissioner for Human Rights in 2023, and the Law Enforcement Action Partnership have all recommended responsible regulation of currently illegal drugs.

Addressing the Unregulated Supply – Moving from Program to Policy Level Interventions

The need for harm reduction interventions has increased sharply in recent years and changes to the unregulated drug supply are outpacing these responses. Many of today's interventions, such as supervised consumption sites, naloxone distribution, and drug checking services are vital because of the unregulated market and associated poisoning risk. There would be a decreased need to continually scale up these services if the illicit market was displaced with a safer regulated one. It is not a tenable, long-term solution to address the toxic drug crisis at the programmatic level.

Regulating all currently illegal drugs is a matter of social and fiscal responsibility. Over time, overdose-poisoning rates would significantly reduce under a system of legal regulation, and resources spent on failed enforcement models could be allocated to supporting social determinants of health such as housing, healthcare, and other public health needs.

Regulation of currently illegal drugs may also better control access to those drugs. A recent study of youth perceptions of cannabis access has shown that since cannabis legalization, the proportion of youth reporting easy access to cannabis has declined year over year.

Models of Regulation

Transform Drug Policy Foundation has outlined five models for legal regulation of drugs in their paper "Blueprint for Legal Regulation":

1. **Prescription**: an equivalent to current prescription models for medical drugs, and some opiate maintenance programmes.
2. **Pharmacy sales**: drugs would be made available through pharmacies or pharmacy-like outlets, either on prescription or over the counter.
3. **Licensed sales**: vendors would be granted a licence to sell specific drugs under certain, clearly defined conditions, on off-licence like premises.
4. **Licensed premises**: vendors would be licensed to manage premises where drugs would be sold and consumed, much like public houses and bars.
5. **Unlicensed sales**: certain low risk substances could be managed through food and beverage legislation, as—for example—coffee is currently managed.

Other Recommendations

Recognizing that creating and implementing a framework for legalized, regulated drugs will take some time, we make the following recommendations that could have an immediate positive impact on deaths, hospitalizations and overall community well-being:

1. Allow for the provision of a safer supply of drugs through compassion clubs. Amnesty should be granted to compassion club models that provide a safer supply to a defined membership.
2. Scale up existing prescribed safe supply programs and provide a selection of substances adequate to displace the need to use unregulated drugs.
3. Implement nationwide decriminalization and the removal of criminal penalties to reduce drug related stigma.
4. Increase supports for harm reduction, housing, and voluntary, evidenced-based, non-profit drug treatment.

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About the Canadian Drug Policy Coalition

The Canadian Drug Policy Coalition (CDPC) is a national, non-partisan organization working to advance drug policy grounded in public health and human rights. We collaborate with dozens of civil society and human rights groups nationally, focusing on policy analysis, public education, community engagement and academic research.

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