

Committed to Using All Available Tools:

Why Governments Need to Recognize When It Is Time for Policy Change

by Hajar Seiyad





My name is Hajar Seiyad, and I am in my final year at the University of Toronto Scarborough completing a double major in Mental Health Studies and Political Science. I became a UofMosaic Fellow at Mosaic Institute to receive specialized training that prioritizes anti-racist and anti-oppressive practices, and also enhances my ability to co-create dialogue with fellow changemakers.

For my research paper, I chose to write about the current opioid crisis and potential policy pathways available for decision-makers in relation to decriminalization in Canada. I highlight the current body of literature and provide a unique way of looking at decriminalization as a public health strategy to address the opioid overdose epidemic and preserve human rights.

This topic aligns with Mosaic's themes of dismantling prejudice and inclusion and promotes ideas of systems thinking and changemaking. In light of British Columbia receiving an exemption to decriminalize possession of some illegal drugs from 2023 to 2026, I hope this publication will encourage people to view substance use as a public health matter and reduce the stigma preventing people who use drugs from accessing life-saving services.

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WHY GOVERNMENTS NEED TO RECOGNIZE WHEN IT IS TIME FOR POLICY CHANGE BASED ON WHAT IS HAPPENING ON THE GROUND

The scope and impact of the opioid crisis in Canada is stark. In 2021, the average number of opioid-related deaths in Canada reached an all-time high of 21 deaths per day (Government of Canada 2023). As devastating as these numbers are, they underscore the need for continued commitment by all levels of government to act fast, especially with the best interests of all Canadians in mind. This should mean aligning government efforts and policies with current research that prioritizes collaboration with community. However, despite calls to action by advocates and researchers, policies are not being amended fast enough. In this article, I provide a brief overview of current federal illicit drugs and opioids law and how transformative change has been achieved in Portugal. I introduce two potential policy pathways Canada can implement but will argue for a third, more comprehensive policy that I believe will positively impact the most people in Canada. Ultimately, my belief is that policymakers must examine and utilize all available tools, resources, and research that will reduce stigma and substance use harms, while saving lives and ending the crisis.

BACKGROUND

Currently, Canada does not have a federal law in place related to the decriminalization of illicit drugs and opioids. Marijuana was legalized in 2018 by the Liberal government, but they explicitly stated their government is not interested in decriminalizing any other drugs (The Canadian Press 2018). However, the COVID-19 pandemic has exacerbated the opioid epidemic. Alongside Canada's increased collective attention to public health statistics, there has also been more attention on the social determinants of health and health inequities affecting vulnerable populations more severely; including racialized populations and people who use drugs (PWUD). The federal government provides provincial governments with their health budgets that can include the allocation of funds towards harm reduction services. These services are implemented and overseen by the provinces, including safe injection sites and the distribution of naloxone medication kits that temporarily reverse opioid overdose effects. Since the onset of the pandemic, there have been calls for the decriminalization of opioid drugs by advocates and researchers, as emerging primary research has shown that Black, Indigenous, and racialized persons and those experiencing homelessness have been criminally charged at disproportionate rates, even when found with small amounts (Borgat 2020).

The Controlled Drugs and Substances Act (CDSA) is a Canadian federal drug control statute under which someone can be criminally charged for possession of illegal drugs in Canada. However, exemptions from the CDSA can also be granted so that criminal charges will not be laid for personal possession of small amounts (up to 2.5 grams). Health Canada recently granted the province of British Columbia this exemption. The time-limited exemption takes effect from January 31, 2023 to January 31, 2026, which means adults in British Columbia will not be arrested or charged for possessing small amounts of certain illegal drugs for personal use (Province of British Columbia 2022). Many municipal governments across Canada, including the municipal government of Toronto, have also submitted applications to be eligible for decriminalization as it is considered to be an alternative response to criminal penalties for petty crimes, such as simple possession (Greer 2021). Granting exemptions to the CDSA has marked a shift in the Canadian government's approaches to drug use, which is contextualized within the Canadian landscape beyond the scope of the opioid epidemic. Key cultural shifts in Canadian policy occurring in the past few years include the legalization of marijuana in 2018, the 2021 Liberal government bill to repeal mandatory minimum drug sentences for drug offences, and the COVID-19 pandemic that worsened the country's overdose rate (Gilmore 2021).

Decriminalization strategies are increasingly viewed as possible measures to address the ongoing, global opioid crisis and tackle the soaring rates of addiction. Portugal is regarded as the gold standard for decriminalization. The country was the first nation to decriminalize the acquisition, use, and possession of all illicit drugs on July 1st, 2001 (Hughes and Stevens 2010). Extensive independent evaluations and informational interviews have been conducted to analyze the current state of affairs in Portugal in relation to overdoses, HIV infection rates, and drug crimes – all of which have decreased since decriminalization (Ferreira 2017). Statistical indicators have proven that since the law's inception, there has been a reduction of drug offenders in the criminal justice system; reduced opiate-related deaths and infectious diseases; and increased drug treatment uptake (Hughes and Stevens 2010). Additionally, since one of the main arguments against decriminalization is the fear that drug use will increase, analysts were keen to note that other than lifetime reported use of cannabis, self-reported drug use did not rise in the post-reform period (Laqueur 2015). It is crucial to highlight that Portugal's recovery from its opioid crisis pre-2001 would not have been possible without a drastic cultural shift in how its citizens viewed drugs. Greater education and awareness about the harms associated with illicit drug use spurred political action and grassroots advocacy that encouraged politicians to push for decriminalization (Ferreira 2017).



Naloxone kits as distributed in British Columbia, Canada Photo: Wikicommons, James Heilman, MD

POLICY OPTIONS

There are three options available for decision-makers in relation to decriminalization in Canada:

1. Canada can maintain the status quo of having no policy on decriminalization;
2. Canada can have a decriminalization policy with a low possession threshold; or
3. Canada can have a decriminalization policy that ends criminal penalties; expunges previous criminal offence records; and has a threshold for simple possession that is high enough to account for the purchasing and consumption habits of all PWUDs (Health Canada 2021).

Canada cannot afford to continue to maintain the status quo of having no official decriminalization policy. Canada also cannot continue to call for additional research and cite outdated ideas and perpetuate myths that inspire fear mongering. For example, Prime Minister Trudeau has cited in the past that he is concerned that any attempt at decriminalization will increase the amount of drugs that people will use (Aziz 2021). These comments made by the federal government imply that decriminalization leads to an increase in drug use, which is contradicted by research that has come out of Portugal wherein self-reported drug use did not rise after decriminalization (Laqueur 2015). Similar findings were released in 2003 in British Columbia, where a NGO (Portland Hotel Society) had built Canada's first supervised injection facility named Insite (Abidi et. al. 2020, 116). Insite had shown a reduction in the public use of drugs via injection; injection related litter; and spread of infectious diseases (Abidi et. al. 2020, 116). Proponents against decriminalization however, argue that the opioid crisis will get much worse than it already is, as there is no direct impact on stopping the toxic drug supply in Canada (Miller, 2022). As argued by Abidi et. al., the lack of support for individuals who are addicted to drugs, is partially due to the stigma and stereotypes which surround criminalization and possession of drugs (117). In Canada, a Federal decriminalization strategy can result in more political will at the provincial and territorial levels, where a harm reduction (HR) approach is used rather than a criminalization one (Abidi et. al., 2020, 117). The arguments against instituting decriminalization are similar to arguments against the legalization of safe consumption sites wherein critiques said that public funds were better spent on addiction treatment and that sites would simply encourage more illegal activity (Barry et al. 2019).

After the province of British Columbia sent an exemption request to the CDSA in response to B.C.'s ongoing overdose crisis (declared as a public health crisis since 2016), the federal Minister of Mental Health and Addictions and Associate Minister of Health granted the exemption to B.C. (Government of Canada 2023). This exemption is a good first step as any attempt at

decriminalization is an effort to reduce stigma. However, reducing the threshold from 4.5g of opioids to a 2.5g cumulative threshold is not very impactful for PWUDs (Ibrahim 2022). The issue here is that a 4.5g threshold was already a compromise that advocates made, knowing full well that it was still low for PWUDs. As PWUD typically have higher thresholds, thresholds that are too low expose these individuals to greater police surveillance as they will be buying smaller quantities and will need to do this multiple times, hence accessing the illegal market more (Ibrahim 2022).

With the number of overdose deaths and associated drug-related harms increasing, drug policy change is needed now, particularly to help those who are already at the fringes of society.



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RECOMMENDATION

The best approach that Canada can spearhead at this time, within the context of the COVID-19 pandemic and opioid crisis, a shadow pandemic that is disproportionately hurting marginalized communities, is to create a federal decriminalization policy. In the midst of the pandemic and in response to the rising calls to action to mitigate the impacts of the opioid overdose crisis, the federal government commissioned a report to better understand potential alternatives to criminal penalties for simple possession of drugs that are controlled. This task force came back with evidence that unanimously pointed to the need to end criminal penalties, expunge previous criminal offence records related to simple possession, and most importantly, to set a threshold for simple possession based on presumption of innocence and be set high enough to account for the purchasing and consumption habits of all PWUD (Health Canada 2021). These task force recommendations are held in high regard due to the quality and rigour of the research, but also because of the diverse

voices that made up the expert task force, including officials from all levels of government, as well as First Nations, Inuit, Métis, and community advocates. The focus on marginalized communities is the reason why this policy option is the best one as marginalized and racialized communities across Canada have been harmed by the unmistakable racial inequity that is seen within institutional systems in Canada, including the criminal justice and healthcare systems.

CONCLUSION

Opioid criminalization cannot continue because Black and Indigenous people have historically been over-policed and over-incarcerated due to criminalization of simple possession (Health Canada 2021). These individuals are often overrepresented in penal and foster care systems, as well as experiencing homelessness, all of which can be linked to these systemic failures. Importantly, possession is increasingly being viewed from a health perspective rather than a criminal justice one (Government of Canada 2023). This is important because decriminalization as a policy initiative has been evaluated to address stigma related to substance abuse. Research has found that decriminalization could play a role in reframing substance use problems to be seen as chronic health conditions and mental health addictions, rather than criminal activities (Wogen and Restrepo 2020). This means that decriminalization is viewed as a public health strategy to address current opioid overdose crises and as a way to protect and preserve public health and legal rights.

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