



September 16, 2020

The Hon. Patty Hajdu, P.C., M.P.
Minister of Health

Dear Minister Hajdu:

Re: Decriminalization of simple possession of controlled substances

Thank you for your correspondence of August 27, 2020 responding to our [open letter of May 13, 2020](#), in which we called on the Government of Canada to decriminalize simple drug possession. As you know, that letter has been signed by more than 170 civil society organizations across the country, including national organizations of human rights advocates and public health professionals, expert researchers, service providers, legal experts, people who use drugs, Indigenous organizations, and organizations representing families who have lost loved ones to overdose and drug-related harms.

We also appreciate the opportunity to have met with you and Minister of Justice and Attorney General Lametti on July 27, 2020 to discuss the key points raised in our letter. We write this open letter in follow-up to that discussion, and in reply to your August 27 correspondence as well as recent statements by representatives of your government.

As is evident in your letter, we know you share our concern that the COVID-19 pandemic is compounding the ongoing public health crisis related to high rates of opioid overdose and deaths, as well as other harms sometimes associated with substance use. We welcome the measures your government has taken to respond to these crises, to which you refer in your letter, including reducing barriers to a safe supply of quality-controlled alternatives to contaminated street drugs, and easing requirements for prescribing controlled substances and establishing additional overdose prevention sites. We agree with your statement that “it is also important for the Government of Canada to support alternative approaches that direct people [who use drugs] to care and social services if they come into contact with law enforcement.”

Your letter affirms you have instructed Health Canada “to identify additional areas where federal exemptions... could help mitigate” these harms. **However, your letter does not address the central recommendation in our original letter, namely that you use your power as federal Minister of Health, under section 56 of the *Controlled Drugs and Substances Act (CDSA)*, to immediately exempt all persons in Canada from the criminal prohibition on simple possession (i.e. for personal use).** That section empowers you to exempt, in the public interest, any person (or class of persons) and any substance (or class of substances) from the application of all or any of the provisions of this Act. As we have discussed, this is a simple, straightforward action that is entirely within your immediate power and is quite appropriate given the urgency of addressing the ongoing public health crisis.

Our original letter underscored that criminalizing simple possession does not protect public health or safety, but in fact does ample harm.¹ Such harm has sparked widespread calls, from a variety of sectors,

experts, and entities — domestic and international (including all UN agencies²) — to end this misguided and damaging use of the criminal law. Amidst calls to also reconsider the role of police in various contexts, and a growing body of evidence about the disproportionate impact of punitive drug policy on Black and Indigenous communities, support for decriminalization continues to grow. We reiterate our request that you and your government heed these calls, most immediately by issuing a proactive federal exemption to all people in Canada from simple possession offences.

We note two important developments since our original joint letter to you and our meeting that underscore the importance of decriminalizing simple possession in full:

In July, the Canadian Association of Chiefs of Police released a report in which police chiefs across the country “agree the evidence suggests, and numerous Canadian health leaders support, decriminalization for simple possession as an effective way to reduce the public health and public safety harms associated with substance use.”³ The report affirms that a “compelling case” has been made for “transformative change” to Canada’s current approach to drug possession. In addition, **in August 2020, the Director of the Public Prosecution Service of Canada (PPSC) issued a guideline that suggests alternatives to prosecution for simple possession in many instances.⁴** In principle, these are positive steps forward. But we regret that the PPSC guideline has been weakened by far too many caveats and qualifiers, which could be applied to continue the prosecution of simple possession charges in many circumstances in which this is unwarranted. The guideline leaves ample room for leaving the *status quo* of criminal prohibition largely intact, which will likely continue to have a disproportionate impact on the most marginalized people who use drugs, including Black and Indigenous people.

We also note recent statements made by you and other representatives of your government as the calls for decriminalization continue to mount. We therefore take this opportunity to address some specific issues in relation to decriminalization that we submit should inform your next steps, and those of your government.

First, we are dismayed to hear government representatives continue to resist calls for decriminalization by claiming that “it is not a silver bullet.” **This is a misleading response: no proponent of decriminalization has ever suggested that decriminalization is a panacea for all ills related to drug prohibition and/or drug use.** This is a classic “straw man” argument. But it is abundantly clear that criminalizing simple possession results in unnecessary harms to health and to human rights. Decriminalization is a necessary measure to reduce and prevent harms and must be accompanied by other measures, including strengthening investments in harm reduction services and evidence-based treatment for problematic substance use, and scaling up “safe supply” initiatives. In fact, decriminalization would improve the efficacy and accessibility of these initiatives; it should not be viewed as mutually exclusive or antithetical to other tools and approaches which are also needed to undo drug-related harms and the harms arising out of Canada’s war on drugs. It debases the public policy dialogue to continue to mischaracterize the rationale for decriminalization so as to then dismiss it on false premises, rather than acting on the strong evidence and principled reasons for such change.

Second, it is disingenuous to suggest that decriminalization could result in a harsher regime for users. The government has full control over what, if any, alternatives might be implemented in place of criminal sanctions. We stress that **decriminalization must mean the removal of any and all criminal sanctions and other punitive measures (e.g. administrative penalties, fines, etc.) by the state for the possession of substances for personal use.** There is no adequate justification for continuing to punish people for simple possession. In issuing an exemption under section 56 of the CDSA, and in taking legislative measures to repeal CDSA section 4 — which we have also advised as a necessary, longer-term solution — **we urge you to ensure that the government does not water down decriminalization reforms** by, for example, replacing criminal sanctions with other punitive measures or by attaching unnecessary caveats and limitations such as those found in the recent PPSC guideline.

As we have consistently emphasized, decriminalization is long overdue. Now more than ever, there is urgent need for bold policy action that meaningfully upholds the health and safety of people who use drugs. In 2016, Canada rightfully declared that drug use is a matter of public health rather than criminal justice, and it has since repeatedly stated its concern about the stigmatization of people who use drugs, but those declarations ring hollow if drug possession remains criminalized. **All people in Canada should be exempted from the criminal prohibition on simple possession found in section 4(1) of the CDSA.**

During our July meeting, we specifically noted that some cities and provinces (e.g. British Columbia) have officially stated their support for decriminalization. You also indicated your government's willingness to consider proposals from other orders of government wishing to pursue decriminalization. Just last week, Minister, you spoke on CBC Radio (*The Current*, September 11, 2020), during which interview you were asked about calls for decriminalization and spoke about the importance of the federal government "working with the provinces to ensure they have the tools they need" to respond to the ongoing overdose crisis. You also noted that you were in conversation with provinces about "how best to support them." Elsewhere in that interview, you underscored that your government is strongly committed to science and to public health — both of which support decriminalization of simple possession.

Therefore, we urge you to act without delay to heed the calls from public health experts by issuing a national exemption from CDSA section 4, and also to heed the calls from other jurisdictions. Should you receive requests for a local exemption from such jurisdictions, we hope that you will approve those requests without delay.

We look forward to continued dialogue on how to move Canada's drug policy away from harmful, failed criminalization to evidence-based, human rights-respecting, public health approaches.

Sincerely,

Richard Elliott, Executive Director, Canadian HIV/AIDS Legal Network
Donald MacPherson, Executive Director, Canadian Drug Policy Coalition
Caitlin Shane, Staff Lawyer - Drug Policy, Pivot Legal Society

c.c. The Hon. Bill Blair, Minister of Public Safety and Emergency Preparedness
The Hon. David Lametti, Minister of Justice and Attorney General of Canada
Signatories of original correspondence calling for decriminalization of simple possession

¹ E.g. Canadian Centre on Substance Use and Addiction, *Decriminalization: Options and Evidence*, 2018. Available at: <https://www.ccsa.ca/sites/default/files/2019-04/CCSA-Decriminalization-Controlled-Substances-Policy-Brief-2018-en.pdf>.

² E.g. United Nations Chief Executives Board, *United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration*, UNCEB, 2nd Session, Annex 1, UN Doc CEB/2018/2, January 18, 2019. Available at: https://digitallibrary.un.org/record/3792232/files/CEB_2018_2-EN.pdf.

³ Canadian Association of Chiefs of Police, *Decriminalization for Simple Possession of Illicit Drugs: Exploring Impacts on Public Safety and Policing*, 2020. Available at: http://www.cacp.ca/index.html?asst_id=2189.

⁴ Guideline of the Director Issued under Section 3(3)(c) of the *Director of Public Prosecutions Act*: "5.13 Prosecution of Possession of Controlled Substances Contrary to s. 4(1) of the *Controlled Drugs and Substances Act*," *Public Prosecution Service of Canada Deskbook*, August 17, 2020. Available at: <https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p5/ch13.html>.