



Submission to Toronto Board of Health on
Toronto Overdose Action Plan: Status Report 2021 (June 3, 2021)
Report from the Medical Officer of Health

HIV Legal Network

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Introduction

The HIV Legal Network promotes the human rights of people living with, at risk of or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education and community mobilization. Since our inception, the HIV Legal Network has worked to defend and uphold the rights of people who use drugs.

We make this submission to inform the Board of Health's consideration of the June 3, 2021 Report from the Medical Officer of Health, and in particular, the Medical Officer of Health's recommendations that the Board of Health "reiterate its call urging the Federal Minister of Health to use the authority under the *Controlled Drugs and Substances Act* to permit the simple possession of all drugs for personal use" and to

"...request the Medical Officer of Health, in consultation with the Executive Director, Social Development, Finance and Administration and other relevant City divisions, to **convene a working group to develop a health- and social equity-based alternative approach to criminal sanctions for the possession of all drugs for personal use within the city environs, as a step towards requesting an exemption under the Controlled Drugs and Substances Act**, with such working group to be comprised of the following:

- a. people with lived and living experience of drug use and family members;
- b. community-based service providers, including Black- and Indigenous-led agencies;
- c. relevant City divisions and agencies, including law enforcement; and
- d. policy and research experts in relevant areas, including substance use, human rights, and mental health."

Overview

As the Medical Officer of Health notes in the *Toronto Overdose Action Plan: Status Report 2021*, the Board of Toronto has previously recommended decriminalizing simple drug possession on multiple occasions. In [July 2018](#), the Board of Health endorsed Dr. de Villa's recommendation to call on the federal government to "decriminalize the possession of all drugs for personal use and scale up prevention, harm reduction, and treatment services." In June 2020, the Board of Health outlined a specific route for decriminalization, [urging the federal Minister of Health to "grant an exemption under the Controlled Drugs and Substances Act to permit the possession of all drugs for personal use for all Canadians](#), at least for the duration of the COVID-19 pandemic, and to immediately scale up prevention, harm reduction, and treatment services." Most recently, [in November 2020](#) the Board of Health "reiterated its call urging the Federal Minister of Health to use the authority under the *Controlled Drugs and Substances Act* to permit the simple possession of all drugs for personal use, the need for which has become critical as the opioid poisoning crisis continues to worsen during the COVID-19 pandemic and, further, to support the immediate scale up of prevention, harm reduction, and treatment services."

Since the Board of Health resolution to decriminalize personal drug possession was adopted in July 2018, more than 1100 people have fatally overdosed in Toronto alone.¹ We make this submission to urge the Board of Health to act on its recommendation, without delay.

In particular, we urge the Board of Health to:

- 1. Include a recommendation with an explicit and firm commitment from the Medical Officer of Health to make the request for a federal exemption**

While the establishment of a working group is an important measure to implement decriminalization in the city, the recommendation as currently worded merely indicates that it is "*a step towards* requesting an exemption under the *Controlled Drugs and Substances Act*." [emphasis added] This does not establish a clear commitment and instruction from the Board of Health to submit an exemption request, or to submit such request without delay.

As you know, Vancouver made a formal exemption request to the federal Health Minister in December 2020, following a City Council motion adopted on November 25, 2020 that provided:

"THEREFORE BE IT RESOLVED THAT Council direct the Mayor to consult with the Vancouver Coastal Health Chief Medical Health Officer **and then write to the federal Ministers of Health, Public Safety and Emergency Preparedness, and Justice and Attorney General to request a federal exemption from the Controlled Drugs and Substances Act to decriminalize personal possession of illicit substances within the City's boundaries** for medical purposes, in order to address urgent public health concerns caused by the overdose crisis and COVID-19."

Similarly, we would propose a recommendation from the Board of Health that requests the Medical Officer of Health to work with the working group described in Recommendation 2 to submit, *without*

¹ Based on the Toronto Overdose Information System The total number of opioid deaths in Toronto between July 2018 and April 30, 2021 (inclusive) was 1095. An alert in May 2021 indicated there were also 13 overdose deaths that occurred in a five-day period between May 2nd and 6th, 2021. Online: [Toronto Overdose Information System | Tableau Public](#).

delay, an application to the federal Minister of Health for a local exemption under the *Controlled Drugs and Substances Act*.

2. Establish a concrete timeframe for the establishment of the Working Group and the development of features of the model of decriminalization informing the exemption request

Almost three years since the Board of Health's first resolution in support of decriminalizing simple drug possession, there is no time to waste. People are dying in this city at unprecedented rates, and we urge the Medical Officer of Health to outline a concrete timeline for action that includes dates for the establishment of the proposed working group and key outputs.

3. Ensure law enforcement have no veto power in any decisions of the working group, and prioritize the perspectives of people who use drugs

In our recent conversations with the office of the federal Minister of Health, we have twice confirmed that it is not the intention of Health Canada or the Minister of Health to require that local police authorities approve every aspect of a jurisdiction's request for an exemption under section 56 of the *Controlled Drugs and Substances Act* to decriminalize simple possession locally. It is important that the proposed working group and the Medical Officer of Health govern themselves accordingly. More specifically, police participation in the working group must not be allowed to translate into police dictating or vetoing elements of the exemption request submitted to the federal Health Minister, as this would risk undermining any benefits of decriminalization. Rather, the perspectives of people who use drugs must be prioritized in establishing the parameters of a model that is supposedly meant to benefit them, keeping in mind the stated recognition that drugs and drug use should be responded to as a health issue, not a criminal matter. To ensure accountability and transparency, we urge the Medical Officer of Health to document and publish:

- the membership of the working group;
- the process for decision-making and any major points of disagreement between members;
- the timeline for key outputs; and
- the findings of the working group (including where there are conflicting conclusions from working group members).