



November 29, 2021

BY EMAIL: [TPHconsult@toronto.ca](mailto:TPHconsult@toronto.ca)

To Dr. Eileen de Villa, Medical Officer of Health, Toronto Public Health:

**Re: Toronto's submission to Health Canada for a section 56 exemption to the *Controlled Drugs and Substances Act***

For almost three decades, the HIV Legal Network has worked to uphold the human rights of people living with and affected by HIV and advocated for the removal of punitive drug laws and policies that have fueled deadly stigma and epidemics of preventable illness and death. **As such, the HIV Legal Network supports the long-overdue decriminalization of personal drug possession as well as necessity trafficking, and looks forward to reviewing the full details of Toronto's "alternative approach" to drug decriminalization.**

As you know, pursuant to section 56(1) of the *Controlled Drugs and Substances Act* (CDSA), the federal Health Minister may, "on any terms and conditions that the Minister considers necessary, exempt from the application of all or any of the provisions of this Act or the regulations any person or class of persons or any controlled substance or precursor or any class of either of them if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose *or is otherwise in the public interest.*" [emphasis added] **We urge Toronto Public Health to situate its exemption request squarely "in the public interest" (rather than for a "medical purpose"), as drug decriminalization should be rooted in human rights and social justice**, and not unnecessarily tied to health outcomes. As we detail further below, tethering drug decriminalization to health outcomes may result in inadvertent and further harms to people who use drugs.

While we welcome Toronto Public Health's efforts to convene a working group to develop a section 56(1) exemption, going forward, we implore Toronto Public Health to center the people most directly affected by criminalization at all stages of the exemption process: people who are most often profiled, harassed, arrested, and charged for their drug use. As the working group has repeatedly underscored, drug prohibition perpetuates grave harms on Indigenous, Black, other racialized, marginalized, and low-income communities who are disproportionately arrested and incarcerated for drug offences and disproportionately subjected to child apprehension orders. **The meaningful and equitable input of people who use drugs, particularly those from Indigenous and Black communities, must be**

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**prioritized in the proposed “Quantities Panel” and the Evaluation team, and their participation should be adequately compensated.** People who use drugs, and particularly those who have been most harmed by punitive drug laws, are best equipped to determine the appropriate quantities and thresholds reflecting real-world drug use practices and to develop an evaluation plan for an exemption that is intended to benefit them. Without the expertise and leadership of people who use drugs, there is a real danger of “net widening” and further criminalization.

**We support an exemption that applies city-wide to all drugs and to all residents of Toronto, including youth.** The exclusion of youth from the section 56(1) exemption submissions of Vancouver and B.C. is discriminatory and troubling, since the prohibition on drug possession does harm to those criminalized, regardless of their age. We urge Toronto Public Health not to repeat this mistake and ensure youth are included in its application.

We also support an exemption that makes clear that it **does not replace criminalization with any fines or penalties** such as geographic, drug use, or personal contact restrictions or curfews, referrals to drug treatment courts, other involuntary treatment, or other health interventions. Coercive health interventions are not only ineffective, but they violate the rights to liberty and autonomy of people who use drugs. Additionally, **there should be clear rules prohibiting police from confiscating people’s substances, paraphernalia, or medical supplies, and strict limitations relating to when police can stop, search, and investigate a person for drug possession.**

As many members of the working group have also emphasized, **police should not be tasked with referring people to services**, as such an encounter would still be experienced as coercive by people who use drugs. It is imperative that the proposed “dedicated outreach team” that is responsible for making referrals to the community anchors includes people who use drugs and other skilled and trained frontline workers. Any savings realized through de-tasking police, prosecutors, and prisons systems from the enforcement of drug offences should be reinvested in low-threshold harm reduction, health, and social services.

**We also have concerns with the limitations of decriminalizing a multi-day supply that does not permit the sharing and selling of drugs for subsistence, to support personal drug use costs, and to provide a safe supply (i.e. “necessity trafficking”).** It is common for people to sell limited quantities of drugs to others in their network as a means of livelihood, to support their own independent use, or to provide a safe supply and it is a poor use of public resources to criminalize selling or sharing in these circumstances. Decriminalizing necessity trafficking is in line with a human rights-based approach to drug policy.

As noted above, **Toronto’s exemption and corresponding evaluation should not be tied to health outcomes, including the current overdose crisis.** The criminalization of drug possession has perpetuated numerous harms and human rights violations against people

who use drugs (including *Charter* rights to life, liberty, and security of the person) and there is no justification for continuing to do so. The removal of the constant threat of criminalization is itself a positive outcome, irrespective of impacts on health. While the expansion of health and harm reduction services for people who use drugs is a laudable objective, and we strongly urge the city to invest in sustained funding for low-threshold harm reduction, health, and social services, including gender-responsive services for women and trans people, this exemption request alone will not lead to the significant expansion of health services. Even in the absence of new services, it is beneficial to remove criminalization and its attendant stigma and other harms from the lives of people who use drugs.

As such, **an evaluation of this exemption, and indicators of success, cannot hinge on health outcomes.** Rather, an assessment should 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, are important. 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.

The work of undoing the harmful legacy of drug criminalization is only beginning, and we conclude by recommending that **Toronto Public Health supports a longer-term working group comprising people who use drugs and civil society organizations who can provide input and oversight to the exemption process**, including during negotiations between Toronto Public Health and Health Canada. This would facilitate ongoing transparency and accountability to the communities most directly affected by the proposed exemption.

Sincerely,



Sandra Ka Hon Chu, Co-Executive Director  
HIV Legal Network