

Recommendations to the Legislative Assembly of BC's Select Standing Committee on Health

Submitted: June 16, 2022

Re: the urgent and ongoing illicit drug toxicity and overdose crisis

RECOMMENDATION #1:

That the Province take a more active role to prevent municipalities from undermining harm reduction efforts of people who use drugs (PWUD) by:

- Actively monitoring and intervening when municipalities make decisions that impact public health, including zoning bylaw amendments and business license denials.
- Amending the *Community Charter* to affirm that provincial approval is required for ALL municipal decisions impacting public health and harm reduction, including zoning enactments and determinations regarding re-zoning applications and business licences.
- Fulfil 2016 Ministerial Order M-488:
 - Work with (and fund) health authorities and drug user groups to establish and maintain overdose prevention services in all communities.
 - Invest in property for the use of drug user groups and their harm reduction initiatives.
 - Provide realistic funding for the establishment and continuation of drug user groups.

BASIS FOR RECOMMENDATION:

Municipalities use zoning bylaws and business licence denials to close existing drug user-run harm reduction services and to prevent new ones from opening. Amendments to zoning bylaws that create new land uses such as “supervised consumption site” and “harm reduction service” are unlawfully used to close existing sites¹ and prevent new sites from opening unless a re-zoning application is approved. Services are further restricted by administrative decisions to deny business licenses and re-zoning applications to PWUD. However, the *Community Charter* requires municipalities to obtain approval from the Minister of Health to pass any law that impacts public health.² This approval is not consistently being sought by municipalities, yet the Province is not proactively monitoring or intervening.

The 2016 Ministerial Order requiring that overdose prevention services be established throughout BC “wherever there is need” is not being fulfilled.³

Health authorities are establishing overdose prevention services largely *at the request* of municipalities. This is contrary to the Order, which requires services based on need—not politics. At this time, there is no community in BC where overdose prevention services *are not* needed. Though PWUD are working hard to fulfil the Order, they oftentimes face tremendous opposition in doing so, and would benefit from both property and funding from the Province.

¹ The *Local Government Act* authorizes “non-conforming uses” at s. 528(1): If—at the time a land use regulation bylaw is adopted—there is a space to which that bylaw applies but whose use does not conform to the bylaw, the use may be continued as a legal non-conforming use. Despite this protection, municipalities routinely inform existing harm reduction sites that they must apply to re-zone the property in order to be in compliance; if the Province were to monitor these legislative processes, per this recommendation, it could ensure that drug user groups receive due protection and be able to continue providing their life-saving services.

² The BC Court of Appeal has moreover ruled that it would be “absurd” if municipalities were able to avoid the *Community Charter* requirement to obtain provincial approval simply by using local powers (i.e. zoning bylaws) to legislate on provincial matters, such as public health. The BCCA also stated that relevant provisions of the *Community Charter* are “very badly drafted.” *Canadian Plastic Bag Association v. Victoria (City)*, 2019 BCCA 254 at paras 55-6.

³ https://www.bclaws.gov.bc.ca/civix/document/id/mo/hmo/m0488_2016

RECOMMENDATION #2:

That the Province prevent police from interfering with harm reduction, including at drug user groups, by:

- Legislating “bubble zones” around harm reduction services and drug user-run spaces to prevent police loitering, interference, and intimidation within these zones.⁴ The presence of police is a deterrent to accessing life-saving services. A “bubble zone” law could mirror BC’s *Access to Abortion Services Act*, which protects access to abortion services by preventing activities such as protesting, physical interference, and intimidation from occurring outside of abortion facilities.⁵
- Issuing a directive under the *Public Health Act*⁶ to police and the BC Provincial Court to treat harm reduction supplies as health supplies rather than drug paraphernalia—and therefore not a basis for search, detention, arrest, or breach of a bail/probation order.
- Amending the *Police Act* (pursuant to the 2019 recommendation of BC’s Provincial Health Officer)⁷ to divert police resources away from the enforcement of simple possession and street-based drug trafficking. This would complement the Province’s s.56 decriminalization exemption by ensuring the allocation of police resources reflects a deprioritization of low-level drug offences.

⁴ Except in cases of emergency or exigent circumstances.

⁵ https://www.bclaws.gov.bc.ca/civix/document/id/lc/statreg/96001_01 at ss. 2-7.

⁶ Using the combined powers provided in ss. 30-33, 54, and 58.

⁷ <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/reports-publications/special-reports/stopping-the-harm-report.pdf> at p. 37.

BASIS FOR RECOMMENDATION:

Police are deterring access to life-saving harm reduction sites by loitering and investigating outside of overdose prevention services and drug user-run spaces.⁸ Although the Province encourages all PWUD to access harm reduction services, it provides no legal protection to people travelling to a site. For example, a person with drug in hand could be stopped and searched on the doorstep of a harm reduction site, completely undermining the purpose of the site, and deterring people from accessing the service.

Police are detaining and investigating people for carrying basic harm reduction supplies, such as crack pipes and syringes (which are oftentimes provided by the health authorities).

As harm reduction supplies are currently classified as “drug paraphernalia” under the *Criminal Code*, police use possession of these supplies as a basis to detain and investigate PWUD. The BC Provincial Court’s *Bail Orders*

Picklist and *Probation Orders Picklist* also contain “Drug Paraphernalia” conditions that prohibit people from carrying harm reduction supplies.⁹ These measures have a chilling effect on people’s willingness to carry said supplies, despite being encouraged to do so by the health authorities and the Province.

Police routinely detain and arrest people for simple possession and street-based drug trafficking offences. Though the Province requested a threshold quantity of 4.5 grams in its 2022 decriminalization application to Health Canada, this number was lowered to 2.5 grams in large part because of police pressure. This low quantity threshold will not protect people most in need of decriminalization (i.e., people who use large quantities of drugs, people who live in rural and remote communities, etc.)¹⁰ In addition, street-based drug traffickers (many of whom use drugs themselves) are routinely arrested, despite providing some of the only safe supply to PWUD. BC has one of the highest sentencing ranges (1-3 years of incarceration) for people who traffic drugs containing fentanyl—nearly all street drugs currently.

⁸ <https://www.sciencedirect.com/science/article/pii/S0955395919302361>

⁹ See, for example: <https://www.provincialcourt.bc.ca/downloads/criminal/picklists/BAIL%20PICKLIST.pdf> at p. 11.

¹⁰ https://www.pivotlegal.org/vandu_and_pivot_on_threshold_amounts

RECOMMENDATION #3:

That the Province improve access to prescription-grade safe supply by:

- Using s. 13 of the *Health Professions General Regulation*¹¹ to, because of the current Public Health Emergency (declared in 2016), override barriers to prescription-grade safe supply imposed by the professional regulatory bodies (i.e., the Colleges of Physicians and Pharmacists).
- Using s. 3 of the *Health Authorities Act*¹² to improve provincial standards for the healthcare of PWUD. This could include:
 - Requiring training and/or providing curriculum for prescribers of heroin and other opioids that reflect harm reduction principles; and
 - Mandating the BC College of Physicians and Surgeons to establish standards and clinical guidelines for prescribing heroin and other opioids, not just for opioid use disorder, but more generally, to meet the needs of all PWUD and account for illicit drug market toxicity.

BASIS FOR RECOMMENDATION:

There are significant barriers to retaining and maintaining opioid prescriptions (i.e., diacetylmorphine, Methadone, Suboxone, etc.) Barriers include discomfort and a lack of training among prescribers of opioids; overly-narrow prescription guidelines that do not account for maintenance goals or illicit drug market toxicity; and prescription restrictions such as bans on carries, mandatory witnessed doses, and urine screening. These barriers force people to the illicit market.

¹¹ https://www.bclaws.gov.bc.ca/civix/document/id/lc/statreg/275_2008

¹² https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96180_01