High Stakes: Why Legalization is the Bold Move Canada Needs

Abigail Proctor a*

^a Department of Psychology, Carleton University, Ottawa



0009-0009-0513-0297

ABSTRACT: Decriminalization and legalization of illicit drugs have been a hot topic ever since they hit the black market and have progressed a long way. The history and subject of drugs continues to be a controversial topic, but it is evident that we still need change. This essay differentiates the concepts of decriminalization and legalization, their effects on drug policy, and their impacts on the user, and argues for the legalization of illegal drugs in Canada. It is argued that the legalization of illicit drugs allows for proper addiction treatment, safe consumption, addresses the large amounts of overdoses and opioid crisis and reduces stigmatization. Systemic and fundamental change is needed to prioritize the health, safety, and well-being of society as a whole.

KEYWORDS: drug policy, legalization, decriminalization, opioid crisis, criminal justice system, mental health



https://doi.org/10.25071/2817-5344/58

* Corresponding Author - Email Address: abiproctor01@cmail.carleton.ca Received 15 May 2023; Received in revised form 13 June 2023; Accepted 29 June 2023 © 2023 The Author(s). This is an open access article under the CC BY-NC-SA 4.0 license

Drug Policy and the Shift Towards Decriminalization

Drug legalization activists believe society has been kept in the dark regarding the many truths regarding drug use. "We have miseducated the public," said John Leland in 2021. Drug policy has brought the debate about decriminalization compared to legalization in the context of illicit drugs. When considering drug use in society, it is crucial to consider the lengthy history of our nation in the context of drug policy. Since the 1960s and before, Canada and other Westernized countries have taken a 'hard on drugs approach' to criminalizing and penalizing drug users. In 1971, President of The United States, Richard Nixon, began the War on Drugs, majorly increasing drug policy, mandatory sentencing, and 'no-knock' warrants. The first sight of decriminalization occurred in 1977 when President Jimmy Carter proposed that marijuana be decriminalized up to an ounce for personal possession.

Nevertheless, another shift occurred in the 1980s/90s, when Ronald Reagan's presidency increased imprisonment rates, specifically drug charges, with incarcerated individuals for nonviolent drug charges arising from 50,000 in 1980 to 400,000 in 1997.⁴ Anti-drug propaganda such as the 'Just Say No' slogan headlined the media, supporting the zero-tolerance attitude of the government. Anti-drug policies continued with the presidency of George W. Bush, with an increase in the militarization of domestic drug law enforcement.⁵ We saw a significant change with Barack Obama, who spoke openly about his marijuana use as a kid. This marked a shift in public opinion now dramatically in favour of sensible reform, with health-based approaches and reducing criminality of drug use. Society has seen this through the legalization of marijuana in the last decade and the much more recent decriminalization of small amounts of illicit drugs for personal use in response to the opioid crisis in British Columbia. With these changes and the devastating events of the opioid crisis, much more has been discussed regarding decriminalization and legalization. This essay will differentiate the concepts of decriminalization and legalization, their effects on drug policy, and their impacts on the user, and argue for the legalization of illicit drugs in Canada. It will be argued that legalizing illicit drugs allows for proper addiction treatment and safe consumption, addresses the large amounts of overdoses and opioid crisis, and reduces stigmatization.

Decriminalization

Decriminalizing illicit drugs entails the removal of criminal penalties for possession of the drug for personal use and possession of drug-affiliated paraphernalia while charges for trafficking and manufacturing still stand. Often decriminalization replaces criminal intervention with civil intervention, where charges would be replaced with referral to education or treatment program or a fine. Decriminalization moves the focus of drug use from a criminal issue to a public health and social issue. Data from 2019 shows that there were 48,000 drug-related offences involving possession for personal use in Canada.

Differentiating Decriminalization from Legalization

It is essential to understand that decriminalization is not legalization, meaning that it is still illegal to manufacture, sell, and possess copious amounts of drugs. Legalization in the context of drug policy includes removal of criminal charges for drug possession for personal use within limits. This means that the drugs would not be controlled and regulated by the government, allowing for the continued mystery and issue of what truly is being put into drugs. Decriminalization does not mean anyone can walk into a store and buy illicit drugs, like tobacco or alcohol. Decriminalization is not new, as we first saw its effects in 1977 with the proposal to decriminalize marijuana in the US, which was later passed, making marijuana legal in most states.

Decriminalization Efforts in Canada

A recent study in Canada showed that 59% of Canadians favoured decriminalizing drugs. ¹³ The Canadian Association of Chiefs of Police released a review regarding the decriminalization of illicit drugs, in which Bill C-22 is reviewed. Bill C-22 is a comprehensive bill of proposed legislative material to address the

systematic discrimination and disproportionate representation of marginalized communities.

Bill C-5 was introduced to amend the Criminal Code and Controlled Drugs and Substances Act (CDSA). The significant revisions that Bill C-5 include the removal of mandatory minimum sentences for offences within the; the removal of limitations placed on the use of conditional sentences; and amends the CDSA to require that peace officers and prosecutors consider referring people to treatment programs or other support services, rather than prosecuting for small drug charges.¹⁴ Bill C-5 recognizes the impact that the Criminal Code and CDSA have on racialized people, specifically the disproportionate effects on Indigenous and other racial groups leading to overrepresentation in the criminal justice system. 15 The Bill acknowledges the current opioid crisis in Canada and its effect on the criminal justice system. It is necessary to notice that drug use in Canada needs to be seen as a public health issue and not a criminal justice issue. The Canadian Drug Policy Coalition (CDPC) acknowledges that previous drug prohibition failed to reduce drug use effectively and, in turn, increased unsafe drug use. The CDPC takes accountability for the prohibition fueling the current opioid epidemic, as the detrimental effects of prohibition are continued to be seen in addiction and illicit drug sales today. By adhering to a public health approach, the CDPC proposes decriminalization is the safest approach to the issue because of the focus on the user's safety and mental health. This public health-based approach allows struggling drug users to receive the appropriate treatment and access appropriate mental health services rather than facing punishment from the criminal justice system. The proposed effects of Bill C-5 are some of the first steps toward decriminalization in Canada. Bill C-5 received Royal assent on November 17th, 2022.

Another example of decriminalization in Canadian policy is the recent change in British Columbia. On May 31st, 2022, Health Canada recently passed an exemption in British Columbia for decriminalizing illicit drug possession for personal use, up to 2.5 grams of specifically cocaine, opioids, methamphetamine, and ecstasy. ¹⁶ This exemption only applies to adults over the age of 18 in the province of British Columbia. No criminal charges can be laid for

those possessing up to 2.5 grams of the selected substances for personal use, and they will be referred to appropriate services instead. However, selling, manufacturing, and trafficking charges are unaffected.¹⁷ This act of decriminalization is in response to the devastating opioid crisis occurring in Vancouver. With this recent event, the controversy over decriminalization and legalization has risen. With decriminalization comes many positives as well as negatives.

The Transformative Potential of Decriminalization

Decriminalization would allow for civil involvement in drugrelated charges. This would decrease the involvement of the criminal justice system, decrease incarceration, and decrease the financial burden on the court system. With fewer criminal charges of drugrelated offences, this puts less pressure on the courts and criminal justice system as a whole, allowing courts and law enforcement to place their focus more on other important criminal matters. This saves the criminal justice system and the Canadian government money, time, and resources. Decriminalization calls for education and treatment in the replacement of criminal charges. This places an increased need for addiction treatment services, allowing the user to reach the help they may need rather than be punished for their addiction.¹⁸ Decriminalization allows those struggling with mental illness to be approached accordingly rather than penalized and their condition ignored. People with mental illness, those experiencing homelessness, racialized individuals, and those of lower social class have been targeted by the criminal justice system concerning drug offences; decriminalization would allow these individuals to reach the help they need for their specific situation. ¹⁹ This also increases harm reduction efforts, involving the distribution of clean kits (needles, syringes, pipes, etc.), education on naloxone in response to overdoses, and emphasizing the physical safety of the user. Decriminalization can change society's perception of drugs, reducing stigma. If we break the taboo of conversation regarding safe drug use, we can positively impact the lives and safety of many. Decriminalization can significantly impact the lives of many, including the user, their family and friends, and society as a whole.

However, we must consider the negative aspects or aspects of drug policy that decriminalization does not fix.

The Limitations and Challenges of Decriminalization

Decriminalization continues to be a controversial topic, and we must also address the opposing side. Removing criminal charges concerning drug-related offences allows for deference to appropriate services but does not target some of the root issues of safety in drug use. The overdose crisis is driven by an unpredictable, illegal drug supply marked with adulterants, contaminants and other substances.²⁰ Decriminalization does not address the opioid crisis caused by unsafe and unexpected substances cut into drugs. Decriminalization does not affect the supply and manufacturing of drugs which would continue to be unregulated by the government. This does not promote a safer supply of drugs but merely the user's safety in the act of use. In order to assure the safety of users, decriminalization must be paired with safer pharmaceutical alternatives to the current toxic drug market.²¹ An alternative to decriminalization often advocated by drug policy activists is legalization and regulation, which includes a rule to control who can access what drugs and when.²² Another primary concern with decriminalization is a possible increase in addiction and substance use; this will be addressed further in the essay. Decriminalization currently addresses some of the many fundamental issues within drug policy but still leaves many problems unaddressed.

Legalization

Legalization in the context of drug policy includes the removal of criminal charges for drug possession for personal use within limits.²³ In addition, illicit drugs would be legally regulated by the government, sold, and manufactured by contained facilities. An example of legalization in Canada is tobacco, alcohol, or marijuana; there are restrictions regarding consumption, manufacturing, and sales. This allows for products to be safe for consumption and knowledge and quality control of ingredients of drugs.

Prohibition to Regulation

Legalization is not new, as alcohol and tobacco have been legally regulated for decades. A report for Congress by Harry Hogan, 1998, looked at the possibility of legalization of prohibited drugs and how this could look. The debate construes if opioid substances could be sold over the counter to the public or through medical institutions where the persons are already dependent on the substance. Legalization brings significant debate to drug policy and has many positive and negative aspects. Legalization has grown in support and has been spoken more about in recent years. A study conducted in Latin America in 2021 looked at the legalization of drugs and its impacts on society, precisely the public opinion. They found there is less support for legalization in countries where the government is less effective and significant public health issues persist. However, it was found that legalization would help to mitigate the many effects of trafficking in Latin America. However, and the property of the public opinion is the many effects of trafficking in Latin America.

Addressing the Failures of Drug Prohibition

Arguments for legalization are rooted in a public health and safety-based approach. As the effects of decriminalization are consistent with legalization, the positive results also apply to legalization. It has been seen throughout history that drug prohibition does not work; if there is a demand for a substance, there will be a market for it.²⁷ Black markets are the current distributor of illicit substances; they generate crime, allow for inadequate quality of drugs, and are unsafe. Legalization could limit the abilities and distributions of the black market for drugs. Harry Hogan stated that the prohibition or restriction of the availability of a substance is a denial of freedom and that the freedom to experiment with altered states of consciousness is in the same category as freedom of speech or religion in the US.²⁸ The inconsistencies in the government's regulation of drugs must be pointed out, alcohol and tobacco are both harmful drugs, yet they are legalized and profit the government. Nevertheless, other illicit drugs cost the government, continue to be criminalized and cost the government even more. Legalization of drugs would allow intrinsic freedom and rights of society to be met.

The overdose crisis that is occurring across Canada is being fueled by unsafe and poor-quality drugs that are circulating the

streets. Almost 23,000 Canadians lost their lives due to overdose between 2016 and 2021.²⁹ Fentanyl is being cut into unsuspecting drugs, causing users to overdose on the unexpected amount of such a harsh substance.³⁰ These unsafe drugs have taken over the streets and caused other drugs to take over. Recently, there has been a shortage of crystal meth on the streets of Canada, causing crystal users to resort to "downers" and any small amount of fentanyl, causing an overdose.³¹ Drugs must be monitored and quality-controlled to ensure the safety of society. Legal regulation, monitoring, distribution, and manufacturing could significantly reduce the impacts of the current opioid crisis.

Challenging Stereotypes and Misconceptions

There is a heavy stigma regarding substance use. Society often generalizes all users together, placing them into the category of addicts, people with no self-control or worth, and "monsters." When this is not always the case, the recreational user of 'hard' drugs exists. It is more common than we think; look at the men of Wall Street, many of whom are avid users of opioids but not the stereotypical 'addict.' There are other examples of recreational users.

Dr. Carl Hart is a well-affirmed academic who heavily advocates for the legalization of illicit drugs. Dr. Hart grew up in the heart of the growth of recreational cocaine in the '80s, living in a neighbourhood filled with drug abuse in Miami, observing the impacts that drugs and addiction had. Despite Hart's rough upbringing, he pursued a prestigious education, attending Columbia University and learning amongst some of the most well-known researchers. Hart argues that the violence and despair that define the crack epidemic had to do more with Black America's social conditions than the physical pull of the drugs. Hart strongly believes that public health and pharmacology are to blame for the lack of change in the war on drugs.

Having used 'soft drugs', Hart experimented using heroin during his research. "He describes using heroin in carefully managed doses, with a product he trusts, in the company of friends, at times when being in an altered state does not interfere with his life, and achieving a dreamy light sedation, free of stress." Hart's heroin use

is never excessive and always used with his and others' safety in mind, never interfering with his functionality in day-to-day life. He relates his drug use to some of the other luxuries in life; he says, "Like vacation, sex, and the arts, heroin is one of the tools I use to maintain my work-life balance." Hart applies his heroin use in the context of a shared racial identity that he feels he is in a constant state of hypervigilance to minimize the damage caused by living in his own skin. When the heroin binds to the opioid receptors in his brain, it is as if he can overlook his burden and feel he no longer has to constantly fight a battle. Hart's argument also points out how heroin and the use of other illegal drugs are often used in negative contexts to skew the blame of the situation; in this article, the example of George Floyd's death was used, and there was a slight trace of heroin in his system.³⁵

Hart's research concludes that a heroin user is not any less likely to be functional compared to a 'soft' drug user. Hart believes that public health is infantilizing Americans and that a more enlightened approach to drugs would allow users to act on their own opinions and preferences. It is no surprise that Hart's argument is viewed as highly controversial. Much of the media, researchers, and scientists are hesitant towards this argument. Hart has used illegal substances as he grew up surrounded by addiction, so he feels aligned with those vilified for their use. Overall, Hart suggests legalizing substances and that the basic operational pattern of policy regarding the war on drugs has shown resistance to change. The marginalized communities impacted within US society can be seen to be impacted in Canadian society as well, where we also see Indigenous communities stereotyped and affected by drug policy in Canada.

Balancing Act

We must address the negative aspects of legalization and the valid concerns that arise. A significant concern that occurs in the context of legalization and is a primary reason for the lack of support is the suspicion that legalization would increase addiction and drug use. This may not necessarily be true. Many plans and thoughts of legalization are thought to make drugs available to those already dependent on the drug, meaning they could only be distributed and

administered through a medical institution. This would allow those at risk of reaching unsafe drugs to obtain drugs that are safe for consumption. Legalization for those already reliant on the substance would not be much different from many of our medications in Canada. There would still be restrictions in place regarding amounts, age, and other requirements in place for users' safety. Regarding the suspicion of increased addiction, we have seen the evidence against this in past legalizations. Alcohol prohibition in the past resulted in unsafe, illegal markets for alcohol and did not decrease addiction or use.³⁶ It is safer for society to have the substance legally regulated and manufactured. In the context of the legalization of marijuana, a study conducted by Miceh et al. in 2017 looks at the prevalence of marijuana use in adolescence, specifically over time. It was found that since 2005, marijuana use in adolescents has not increased, despite beliefs of the opposite. Despite the unknown possibilities that may arise with legalization, we must understand that the worst may not always be expected of drastic change. With legal drug regulation comes great restrictions; these drugs would not be available to everyone.

Conclusion

The ongoing debate regarding decriminalization and legalization, and drug policy in general, will continue to be a hot topic. We must consider all relevant criteria when reviewing the positives and negatives of drug policy. There is sufficient support and research for both decriminalization and legalization, but one must be chosen in order for change to occur. Decriminalization can greatly impact the criminal justice system's involvement in minor drug offences and civil involvement in these matters. This would allow for a greater focus on addiction services, education, and other support services. While yes, decriminalization allows more emphasis on the safety and concern of the user; it does not fully address the opioid and overdose crises. Legalization reaps the same benefits that decriminalization offers, yet it ensures the control of the quality of drugs. This allows for the legal regulation of the distribution, manufacturing, and marketing of specific illicit drugs. With this in

mind, there is sufficient and supplementary support for legalization, making it the more appropriate choice for Canadian drug policy. Legalization of illicit drugs allows for proper addiction treatment and safe consumption, addresses the large amounts of overdoses and opioid crisis, and reduces stigmatization. This can greatly depreciate the lives lost to the opioid and overdose crises across Canada. In the dire state of society, action is greatly needed relating to drug policy in Canada. We must see both systemic and fundamental change so that we are prioritizing the health and wellness of society. Drug policy is a public health issue, not a criminal justice issue.

Notes

- ¹ John Leland, "This Heroin-Using Professor Wants to Change How We Think about Drugs," *The New York Times*, April 10, 2021, sec. New York,
- https://www.nytimes.com/2021/04/10/nyregion/Carl-Hart-drugs.html.
- ² Drug Policy Alliance, "A Brief History of the Drug War," Drug Policy Alliance (Drug Policy Alliance, 2021), https://drugpolicy.org/issues/brief-history-drug-war.
- ³ Drug Policy Alliance, "History of the Drug War."
- ⁴ Drug Policy Alliance, "History of the Drug War."
- ⁵ Drug Policy Alliance, "History of the Drug War."
- ⁶ Government Communications and Public Engagement, "Decriminalizing People Who Use Drugs in B.C.," www2.gov.bc.ca, May 13, 2023,

https://www2.gov.bc.ca/gov/content/overdose/decriminalization#:~:text=Under% 20this%20exemption%2C%20adults%20.

- ⁷ Northeast Addition Editorial Team, "The Decriminalization of Drugs | Here Are the Pros & Cons," Northeast Addictions Treatment Center, 2022, https://neaddictions.com/articles/decriminalization-of-drugs/.
- ⁸ Alcohol and Drug Foundation, "Overview: Decriminalisation vs Legalisation Alcohol and Drug Foundation," adf.org.au, October 31, 2019,

https://adf.org.au/talking-about-drugs/law/decriminalisation/overview-decriminalisation-legalisation/.

- ⁹ Alcohol and Drug Foundation, "Decriminalisation vs Legalisation."
- ¹⁰ Alcohol and Drug Foundation, "Decriminalisation vs Legalisation."
- ¹¹ Alcohol and Drug Foundation, "Decriminalisation vs Legalisation."
- ¹² Drug Policy Alliance, "History of the Drug War."
- ¹³ Greer and Shane, "Decriminalizing Drug Use."
- ¹⁴ Julia Nicol, "Legislative Summary of Bill C-5: An Act to Amend the Criminal Code and the Controlled Drugs and Substances Act," lop.parl.ca, May 31, 2022, https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/Legisl ativeSummaries/441C5E.
- 15 Nicol, "Bill C."
- ¹⁶ Government Communications, "Decriminalizing People."
- ¹⁷ Government Communications, "Decriminalizing People."
- ¹⁸ Northeast Addition Editorial Team, "The Decriminalization of Drugs."
- ¹⁹ Greer and Shane, "Decriminalizing Drug Use."
- ²⁰ Greer and Shane, "Decriminalizing Drug Use."
- ²¹ Greer and Shane, "Decriminalizing Drug Use."
- ²² Greer and Shane, "Decriminalizing Drug Use."
- ²³ Alcohol and Drug Foundation, "Decriminalisation vs Legalisation."
- ²⁴ H Hogan, "Drug Legalization: Pro and Con | Office of Justice Programs," www.ojp.gov, 1998, https://www.ojp.gov/ncjrs/virtual-library/abstracts/drug-legalization-pro-and-con.
- ²⁵ Asbel Bohigues and Xavier Fernández-i-Marín, "Drug Legalization, Elite Support, and Government Effectiveness in Latin America," *Journal of Drug Issues*, December 26, 2021, 002204262110554, https://doi.org/10.1177/00220426211055434.
- ²⁶ Bohigues and Fernández-i-Marín, "Drug Legalization."
- ²⁷ Hogan, "Drug Legalization."

- ²⁸ Hogan, "Drug Legalization."
- ²⁹ Drug Policy Alliance, "History of the Drug War."
- 30 Drug Policy Alliance, "History of the Drug War."
- 31 Drug Policy Alliance, "History of the Drug War."
- ³² "The Opioid Addict on the Trading Floor," *Bloomberg.com*, October 19, 2017, https://www.bloomberg.com/news/features/2017-10-19/the-opioid-addict-on-the-wall-street-trading-floor.
- 33 Leland, "Heroin-Using Professor."
- 34 Leland, "Heroin-Using Professor."
- 35 Leland, "Heroin-Using Professor."
- ³⁶ Drug Policy Alliance, "History of the Drug War."

Bibliography

- Abelson, Max, and Jenna Smialek. "The Opioid Addict on the Trading Floor." *Bloomberg.com*, October 19, 2017. https://www.bloomberg.com/news/features/2017-10-19/the-opioid-addict-on-the-wall-street-trading-floor.
- Alcohol and Drug Foundation. "Overview: Decriminalisation vs Legalisation - Alcohol and Drug Foundation." adf.org.au, October 31, 2019. https://adf.org.au/talking-aboutdrugs/law/decriminalisation/overview-decriminalisationlegalisation/.
- Bohigues, Asbel, and Xavier Fernández-i-Marín. "Drug Legalization, Elite Support, and Government Effectiveness in Latin America." *Journal of Drug Issues* 52, no. 2 (December 26, 2021): 002204262110554. https://doi.org/10.1177/00220426211055434.
- Canadian Association of Chiefs of Police, "Decriminalization of Illicit Drugs", February 19 2021.

 https://cacp.ca/index.html?asst_id=2467#:~:text=Decrimina lization%3A%20Under%20a%20decriminalization%20regi me,are%20available%20for%20designated%20activities.
- Drug Policy Alliance. "A Brief History of the Drug War." Drug Policy Alliance. Drug Policy Alliance, 2021. https://drugpolicy.org/issues/brief-history-drug-war.
- Engagement, Government Communications and Public.

 "Decriminalizing People Who Use Drugs in B.C."

 www2.gov.bc.ca, May 13, 2023.

 https://www2.gov.bc.ca/gov/content/overdose/decriminaliza
 tion#:~:text=Under%20this%20exemption%2C%20adults%
 20.
- Greer, Alissa, and Caitlin Shane. "Decriminalizing Drug Use Is a Necessary Step, but It Won't End the Opioid Overdose Crisis." Canadian Healthcare Network, July 11, 2021.

- https://www.canadianhealthcarenetwork.ca/decriminalizing-drug-use-necessary-step-it-wont-end-opioid-overdose-crisis.
- Hogan, H. "Drug Legalization: Pro and Con | Office of Justice Programs." www.ojp.gov, 1998. https://www.ojp.gov/ncjrs/virtual-library/abstracts/druglegalization-pro-and-con.
- Klippenstein, L. "Decriminalization of Drugs in Canada: What Does It Mean and How Would It Work? LawNow Magazine." www.lawnow.org, August 17, 2002. https://www.lawnow.org/decriminalization-of-drugs-incanada/.
- Leland, John. "This Heroin-Using Professor Wants to Change How We Think about Drugs." *The New York Times*, April 10, 2021, sec. New York. https://www.nytimes.com/2021/04/10/nyregion/Carl-Hart-drugs.html.
- Nicol, Julia. "Legislative Summary of Bill C-5: An Act to Amend the Criminal Code and the Controlled Drugs and Substances Act." lop.parl.ca, May 31, 2022. https://lop.parl.ca/sites/PublicWebsite/default/en_CA/Resea rchPublications/LegislativeSummaries/441C5E.
- Northeast Addition Editorial Team. "The Decriminalization of Drugs | Here Are the Pros & Cons." Northeast Addictions Treatment Center, 2022. https://neaddictions.com/articles/decriminalization-of-drugs/.