

CONTROLLED DRUG AND SUBSTANCES ACT SECTION 56(1) EXEMPTION PROCESS (M. JANZ)

RECOMMENDATION

That the March 21, 2022, Community and Public Services Committee report OCM01092, be received for information.

Report Purpose

Information only.

Previous Council/Committee Action

At the February 7/9, 2022, City Council meeting, Councillor M. Janz made the following inquiry:

Can Administration provide an information report on what would be required to pursue a section 56(1) exemption to the *Controlled Drugs and Substances Act* and include information as to how the City of Toronto has initiated this process as well as the anticipated benefits of this approach.

Executive Summary

- A number of jurisdictions in Canada, including the City of Toronto, have initiated a section 56(1) exemption from the *Controlled Drugs and Substances Act* to decriminalize personal possession of illicit substances within their boundaries. At this time, those exemption requests appear to be still under review.
- The exemptions requests have been proposed as an additional tool to support broader harm reduction efforts in response to increasing drug poisoning deaths.
- There is no specific application form required by Health Canada for an exemption request. The application process to Health Canada appears to be extensive and may be an iterative process over an extended period of time.
- A number of other initiatives are currently underway at the federal and provincial level that could influence future exemption requests.

CONTROLLED DRUG AND SUBSTANCES ACT SECTION 56(1) EXEMPTION PROCESS (M. JANZ)

REPORT

Background: Section 56(1) *Controlled Drugs and Substances Act* Exemption

The *Controlled Drugs and Substances Act* (CDSA) regulates possession of controlled substances. The CDSA is administered by Health Canada. Under section 56(1) of the CDSA, the Federal Minister of Health has the authority to exempt any person, or class of persons, or any controlled substance from the CDSA.

The exemption can only be granted under one of the grounds:

- (1) Necessary for a medical purpose; or
- (2) Necessary for a scientific purpose; or
- (3) Otherwise in the public interest.

For example, a section 56(1) exemption for a medical purpose is the class exemption that authorizes the possession, transportation and administration of certain controlled substances by certain classes of paramedics in Alberta. An example of an exemption request for a scientific purpose may include a request to conduct research involving controlled substances. An example of a public interest exemption is the “travelers exemption” which allows individuals to bring their prescription drug products into or out of Canada when crossing the international border.

Exemption requests under the public interest category are considered unique and have no formal application form or approval timelines.

Process for a Section 56(1) CDSA Exemption:

There is no prescribed application process under the CDSA to apply for a unique exemption.

Interested municipalities may make the request for an exemption to the Federal Minister of Health and the process to review an exemption application is iterative and collaborative with Health Canada.

Through informal discussions with Health Canada, the following information is helpful in supporting an application for this purpose, which includes but is not limited to:

- Providing a rationale for the request including details on the local context, as well as goals and objectives for the proposed exemption and identifying the anticipated outcomes.
- Operational considerations such as: how simple possession would be defined; to whom and when the exemption would apply; and risk mitigation measures that would be put in place.
- Providing examples of the public education and communications strategy, training, and any guidelines developed to support readiness, including law enforcement, to ensure that the new rules and objectives of the potential exemption would be made clear to the public and that law enforcement are ready to apply the proposed new approach within the requested boundaries.
- Detailed information related to consultations that have occurred with potentially impacted stakeholders and Indigenous peoples, including with people who use drugs, law enforcement, and racialized communities. This would include expressions of support or opposition from

CONTROLLED DRUG AND SUBSTANCES ACT SECTION 56(1) EXEMPTION PROCESS (M. JANZ)

Indigenous communities whose lands are within the municipality, and/or the Provincial Government boundaries.

- Description of the measures that would be in place to divert people who use drugs from the criminal justice system to health and social services.
- Description of the readiness and capacity of health and social systems in the community to meet any increase in demand.
- Details related to how success will be measured, with an emphasis on the impacts of the approach on vulnerable and high-risk populations.
- Any other data that would support the application and clarify processes to help manage risks.

The application process is iterative and further details may be requested by Health Canada throughout the process. After reviewing all application materials, if an exemption is granted the federal government may include any appropriate terms and conditions on the exemption.

City of Toronto Multi-Year Process

The City of Toronto has a municipal public health system composed of the Toronto Board of Health and Toronto Public Health. Under provincial legislation in Ontario, municipal boards of health set public health policy for a municipality. The Toronto Board of Health sets the public health policy for the municipality of Toronto. Toronto Public Health delivers health services and programs to implement public health policy.

Between 2018 and 2022, the Toronto Board of Health advocated to the Federal Government to decriminalize the possession of drugs for personal use.

On January 4, 2022, Toronto Public Health submitted a 153 page comprehensive submission to Health Canada to request a section 56(1) exemption to the CDSA to allow for the possession of drugs for personal use in Toronto.

Toronto Public Health has not received a decision on the exemption request. Health Canada will not share any comments on exemption requests still under review.

The following are highlights of the Toronto Public Health January 2022 submission:

- Joint submission - signed by the City of Toronto City Manager, Toronto Medical Officer of Health, and the City of Toronto's Chief of Police
- Growing need - data shared on accidental drug poisoning deaths (including, but not limited to, opioids) and highlighting growing trends and increasing numbers of deaths in Toronto
- Identified benefit - examples shared as to how the current approach to drug criminalization may be giving rise to increased harms, including social stigma, violence, and structural racism and discouraging people from seeking the support they may need and using substances alone or in unsafe locations resulting in increased risk of injury, disease, and overdose
- Extensive consultation - demonstrating support for Toronto's exemption request through public engagement (interviews, roundtable discussions, online surveys) and engagement with a working group comprised of drug users, service providers, and other drug policy experts

CONTROLLED DRUG AND SUBSTANCES ACT SECTION 56(1) EXEMPTION PROCESS (M. JANZ)

- Broader approach - highlighting how the exemption request supplements other efforts to address drug poisoning that includes supporting prevention, harm reduction, safe supply, treatment and enforcement as informed by their Drug Strategy and Overdose Action Plan
- Letters of support - correspondence shared from other stakeholders confirming support

Anticipated Benefits

Initial research indicates that there are a number of possible benefits to decriminalizing controlled drugs and substances. These benefits may include:

- Decreased harm - Decriminalization aims to decrease harm by applying multiple principles, policies and practices that focus on education, treatment and other wrap-around services instead of criminal sanctions.
- Improved public health - Decriminalization could contribute to: less stigma and fear; decrease in high-risk consumption patterns (drug use occurring in the shadows); improved doctor/patient transparency; more appropriate prescribing and less reliance on illicit market; decreased overdoses and the transmission of blood-borne disease (HIV, Hepatitis C).
- Improved health equity - Decriminalization mitigates underlying concerns related to the social determinants of health, for populations that are already overrepresented in the issues of poverty, judicial and health systems including Indigenous, Black and other racialized, marginalized and low-income communities, especially when considered through an intersectional lens.

Intergovernmental Context and Potential Considerations

In 2018, the Government of Canada established an independent Expert Task Force on Substance Use to explore potential alternatives to criminal penalties for the simple possession of controlled substances. In 2021, the Task Force released two reports to Health Canada which included recommending that criminal penalties related to simple possession and consumption of controlled substances be ended, in addition to recommending a number of other measures to provide a full spectrum of supports for people who use drugs or are in recovery.

A number of jurisdictions across Canada have similarly begun expressing and pursuing interest in decriminalizing small possession and consumption of drugs within their boundaries through a Section 56(1) exemption from the CDSA. In addition to Toronto Public Health, the City of Vancouver (with the support of the Vancouver Coastal Health Authority) and the Province of British Columbia have formally submitted exemption requests to Health Canada. Montreal, Ottawa, and Winnipeg are in earlier stages of exploring potential interest. At this time, Health Canada has not made any decision on the Toronto, Vancouver or British Columbia exemption requests.

On December 7, 2021, the federal government introduced Bill C-5 which among other actions would repeal certain mandatory minimum penalties and establish diversion measures for simple drug possession offenses. On December 15, 2021, a private member's Bill C-216 was introduced, which seeks to: repeal simple possession offenses; expunge certain drug-related convictions; and

CONTROLLED DRUG AND SUBSTANCES ACT SECTION 56(1) EXEMPTION PROCESS (M. JANZ)

establish a national strategy on substance use. Both Bills are pending further debate, and if approved, could have a major bearing on any future section 56(1) exemption requests.

The Government of Alberta has established a special committee to examine the concept of safer drug supply which will report back to the Legislative Assembly with recommendations by April 30, 2022. While this committee's mandate does not include exploring the potential benefits and risks associated with decriminalization, that topic has been discussed. Administration will monitor for the completed report and evaluate how the recommendations can support an inclusive and compassionate Edmonton.

Given the differences in public health models, considerations for collaboration and alignment between municipalities and their respective provincial health authorities may vary across Canadian jurisdictions seeking section 56(1) exemption.

Budget/Financial Implications

The preparation of evidence to support any application for 56(1) exemption to the CDSA would be a significant undertaking that could require substantial staff time, specialized external expertise and community outreach with ongoing communication and monitoring requirements should any exemption be approved. At this point in time, it is difficult to estimate overall costs to activate such work pending further scoping, engagement and analysis.

COMMUNITY INSIGHT

Through the significant public engagement completed for ConnectEdmonton and the City Plan, Edmontonians emphasized that the City's work should improve equity, end poverty, eliminate racism and make clear progress towards Truth and Reconciliation. This is the Big City Move of Inclusive and Compassionate.

The topic of decriminalizing personal possession of drugs is highly complex and has elicited a wide range of evolving perspectives. As part of a Section 56(1) exemption application, a robust community consultation is required to inform the public and stakeholders of the proposal and ensure that the voices of community members have been heard.

GBA+

Should there be a decision to proceed, a GBA+ analysis will be integrated into the overall planning process to help document where there may be any inequalities that could contribute to the marginalization of diverse individuals.