

# LawNow

relating law to life in Canada

## Canada's Ban on Conversion Therapy



PLUS  
Consumer Issues  
Illegal Substances

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# We Must Reject the Harmful Practice of Conversion Therapy

June 6, 2022 by Junaid B. Jahangir

**Canada banned conversion therapy, effective January 7, 2022. What does this ban mean to me?**



Photo by Sharon McCutcheon from Pexels

**OPINION | The views expressed in this article are those of the author.**

The issue of conversion therapy is of paramount importance to me. I have spent more than a decade addressing Muslim homophobia and building the case for Muslim same-sex unions.

In 2005, when I gingerly broached the issue of homosexuality in an [Islamic magazine](#), I was met with stiff resistance. To date, the Muslim position remains that acting upon same-sex desires constitutes a major sin. And justifying same-sex unions is tantamount to apostasy, which under classical interpretations of Islam merits the death punishment in an Islamic state. Such opinions continue to be advocated on the [Muslims in Calgary website](#) as part of normative Islam.

It took me more than a decade to create Islamic scholarship that affirms gay Muslims. Back in 2005, there weren't many resources

for LGBTQ Muslims. I came across [Rabbi Emeritus Gershom Barnard's](#) article that was later replaced by the Conservative Jewish affirmation of same-sex unions. He had written:

*[I]n my lifetime, medical opinion has changed from treating homosexuals with hormones, to treating them with psychoanalysis, to treating them with behavioral conditioning, to saying that there is no treatment, indeed, that there is nothing to treat.*

However, several LGBTQ Muslim youth, who discover themselves at a young age, are either morally persuaded or willingly consider conversion therapy to deal with the cognitive dissonance they feel between their sexuality and their faith, as it is presented to them. They also become susceptible to homelessness, substance abuse, unsafe sexual practices, feelings of worthlessness, self-hatred, and suicide attempts.

In working on my [2016 paper](#) that critiqued conversion therapy in Islam, I came across the testimonies of several Muslim teenagers who expressed extreme discomfort with their sexual orientation. One felt that fasting had not helped in controlling his desires. Another expressed that she couldn't eat or sleep. And yet another wanted to commit suicide.

For my paper, I referenced the exhaustive [2009 task force report](#) of the American Psychological Association (APA) on sexual orientation change efforts (SOCE), which clearly indicates that there is no scientific evidence for any long-term success of

conversion therapy. Based on a comprehensive survey of the literature, it confirms that the negative impact of conversion therapy include depression, hopelessness, loss of faith, deteriorated relationships with family, poor self-image, social isolation, intimacy difficulties, self-hatred, sexual dysfunction, suicidal ideation, feelings of being dehumanized, increase in substance abuse and high-risk sexual behaviours.

For me, this work is a labour of love. I do not charge any money for the gazillion community presentations, keynote addresses, interfaith marriages, media articles, community work and the “Allah Loves Us All” videos that promote an Inclusive Islam.

If anything, I have paid a steep personal price for all this work. I must be careful of hateful messages and travel plans. And my Economics research and Associate Professor ambitions have been delayed.

The painstaking scholarship led me to volunteer for Alberta’s [Conversion Therapy Working Group](#). The Group was tasked with coming up with a robust position to ban this harmful practice in Alberta. Unfortunately and unceremoniously, the UCP government disbanded the group with no further indication of where the province stands on this issue.

Canada has now banned conversion therapy and related conduct under the *Criminal Code*. I am hopeful this change in law will send a strong message that Canada stands by vulnerable youth by rejecting conversion therapy. However, I think there is much more work to be done, especially by religious groups, to ensure this unscientific practice causes no further harm.

As the Prophet of Islam taught: *la darar wa ladirar* (do no harm and accept no harm).

### Junaid B. Jahangir

Junaid B. Jahangir is an Assistant Professor of Economics at MacEwan University and the co-author of *Islamic Law and Muslim Same-Sex Unions*.

# Supporting Canada's Ban on Conversion Therapy: A cisgender, straight woman's perspective

June 10, 2022 by Nathalie Tremblay

**I am a cisgender, straight woman. So, what does the ban on conversion therapy mean to me? A lot!**



Photo by Marta Branco from Pexels

**OPINION | The views expressed in this article are those of the author.**

Given how I just identified myself, you may be wondering why I would be so supportive of something that is seemingly outside of my reality. Well ... if one wonders that, one may not get the point of protecting human rights.

## Some background

My personal – yet somewhat educated – interpretation of conversion therapy is that:

- It is a practice aimed at devaluing a person's identity to replace it with one that is deemed acceptable only by a specific group of people.

- It causes great harm (mental as well as physical).
- Forcing someone to undergo conversion therapy is essentially attempting to erase that person.
- Banning this practice is a sign of respect for all humankind.

A lot of what we see on social media is the product of a lack of understanding or direct misinformation. Lately, I have seen people commenting how this law is pointless because conversion therapy is not happening in Canada. You do not have to conduct an extensive Google search to find studies and data to support the contrary: it is alive and well in our country. In a study recently published by the scientific journal [PLOS one](#), 10% of respondents indicated they had experienced conversion therapy (that's thousands of people) and, out of that number, 72% were under the age of 20.

My article is not meant to drown readers in a sea of statistics or discuss what conversion therapy is. [CPLEA's resources](#) explain, in simple language, how the law protects those experiencing, and prosecutes those perpetuating, conversion therapy, so I won't elaborate further.

## My thought process

We often hear about the importance of being allies. And there are many “recipes” on how to become one. A recent conversation with a community organizer comes to mind. We discussed how difficult it is to mobilize our privilege when we cannot connect directly to the trauma experienced by others. To show empathy we have to imagine ourselves in a similar situation or having similar feelings. So, I decided to search within my own life experience.

My dip into the empathy well started with two simple questions:

1. Has there ever been a time in my life when who I am was not acceptable?
2. What happened if/when I listened to the voices telling me I had to change?

And my starting point revealed itself: Having been considered “overweight” all my life, pressures to conform to societal norms have come from many directions and sometimes even from trusted people who loved me. These pressures have resulted in self-hatred, self-harm, and years of recovery.

I am in no way equating my situation to the level of trauma experienced by people being denied the true expression of their gender or sexuality, but it gives me an empathetic lens to gain a better understanding. I can draw from my lived experience and past feelings to muster a modicum of imagination, enough to put myself in someone else’s shoes to generate empathy and support. It provides me with a tiny speck of solidarity. But a tiny speck is often all we need to move forward, to evolve, to become an ally, or, at the very least, get out of the way.

I identify as a woman. But not too long ago in Canada – right around the time my mother was born – the law did not recognize women as “persons”! In the 1970’s, my mother would not have been allowed to purchase a car

without my father’s signature. (I can only imagine if my mother had been a lesbian, oh my!) But we have made gains, we have acquired rights, and – hopefully – we won’t have to go back to a time when being who we are is a problem or a disadvantage. Why would I support a society wanting to demonize a person’s identity when I myself benefit from laws that protect who I am?

## My conclusions

Let’s get back to my original question: why would I care about banning conversion therapy?

Because I want to live in a society that respects people’s identity without denial, obstacles, or pain and suffering. I want to live in a society where human rights are more than a mere vehicle for free speech and truly protect the most vulnerable among us. And – admittedly, more selfishly – because when everyone’s rights are protected ... my own are as well.

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### Nathalie Tremblay

Nathalie Tremblay, MEd, is the Education Design and Evaluation Specialist at the Centre for Public Legal Education Alberta.

# A Faith Perspective: Canada's ban on conversion therapy

June 20, 2022 by Pam Rocker

**An essay on what Canada's ban on conversion therapy means to me as an advocate for inclusion and safety for 2SLGBTQ+ people in faith communities.**



Photo by Sharon McCutcheon  
from Pexels

**OPINION | The views expressed in this article are those of the author.**

My name is Pam Rocker. I am the Director of [Affirming Connections](#), an organization based in Southern Alberta. We support the voices of people of faith, faith communities, and organizations that work to eliminate religious discrimination and to provide affirming and brave spaces for people to explore their spirituality, without any barriers to inclusion or fear of exclusion.

I founded Affirming Connections in 2018 because I know that religious-based discrimination against queer folks is still rampant, and that religious attacks require religious responses. There are so many people and communities who support 2SLGBTQ+ people being their full selves and who want their places of worship to be true sanctuaries. I wanted to be a part of giving that good news a platform.

I became involved with professionals, activists, and community leaders who were lobbying for the conversion therapy ban in 2019 when I first heard that Alberta's incoming UCP government had disbanded the Conversion Therapy Ban Working Group. I knew that provincial government support would not be possible under that leadership, and that it was going to take hard work from our communities to enact sustainable and legal change.

In 2020, I helped organize petitions, letter writing, and a rally in Calgary in support of a proposed local bylaw. The bylaw included banning conversion therapy practices and making sure that those who continued to perpetuate this "therapy" would face meaningful consequences. In February, over 100 of us gathered at Calgary's City Hall. Wearing rainbow scarves, we showed our overwhelming support for the bylaw and made a public statement that 2SLGBTQ+ people should never be forced to change who they are, how they identify, how they express their gender, or who they love. And no one should be made to choose between their faith and their sexual orientation or gender identity.

The City of Edmonton banned conversion therapy on December 10, 2019, and Calgary followed on May 25, 2020. After several grueling days of hearing painful true stories from conversion therapy survivors, and harmful rhetoric from those who supported conversion therapy, we were exhausted and overwhelmed with how much trauma queer folks have to share for even the chance to be taken seriously. However, we still rejoiced. The strength of survivors and our allies moved

City Council to vote in favour of the strongest bylaw against conversion therapy approved anywhere in Canada up to that time. A letter signed by 44 Clergy Members in Calgary – who publicly stated that conversion therapy and all its practices have no place in our faith communities or in society – supported our efforts.

I grew up thinking God would only love me if I was a “good” Christian, married to a man. So that’s what I did. My faith was meaningful for me in many ways, but the concept of hell terrified me. And it kept me in the closet for far too long. I performed different forms of conversion therapy on myself, hoping that I would be cured, praying I would change. I finally realized there was nothing unnatural or sinful about who I was. I did not want to leave my faith behind, but I would no longer hide or believe the lie that others could control my access to the divine. I was finally free. Everyone deserves the same freedom to explore their spirituality without any barriers to inclusion, and without having to fracture themselves in order to belong.

While it is amazing that we now have a clear nationwide ban of this harmful practice, the fight to truly end conversion therapy is far from over. Unfortunately, [there is evidence to suggest](#) there are still people experiencing conversion therapy since the nation-wide ban came into effect. We need diverse strategies to truly eradicate not only conversion therapy, but the erroneous, unscientific, and unbiblical beliefs that are the foundation of these practices.

If you are a survivor of conversion therapy, or if you are at risk of being subjected to it right now, please know you are not alone. There are people in your corner who want to help you. There are many resources available, including on the [Community-Based Research Centre’s](#) website. There is also lots of information on inclusive theology and understanding how faith and 2SLGBTQ+ identities can go together on the [Affirming Connections](#) website.

For those of us who are lucky enough to be seen by our friends, family, and faith communities as worthy of love and respect just the way we are, it’s our collective responsibility to use that privilege to uplift and protect those who are at risk of this practice. Be public in your support and let folks around you know what you stand for and that you are a safe person and advocate.

To get connected with our organization, Affirming Connections, please check out our [events](#), social media channels, [videos](#), [resources](#), and list of [Affirming Ministries](#) across Canada. You are not alone!

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### Pam Rocker

Pam Rocker (she/her) is an activist, speaker, award-winning writer, and musician. She is the founder and Director of [Affirming Connections](#), an organization based in Southern Alberta that supports the voices of people of faith, faith communities, and organizations that work to eliminate religious discrimination and to provide affirming and brave spaces for people to explore their spirituality, without any barriers to inclusion or fear of exclusion.

# CPLEA Resources: Canada's ban on conversion therapy

July 8, 2022 by Centre For Public Legal  
Education Alberta

**June is Pride Month but the need for LGBTQ+ resources continues year-round, including about Canada's recent ban on conversion therapy.**



Photo by Anete Lusina  
from Pexels

On January 7, 2022, Canada banned conversion therapy. Canada's *Criminal Code* now includes four new criminal offences banning conversion therapy and related conduct. The Centre for Public Legal Education Alberta (CPLEA) has created several legal information resources, available in English and French, that describe what is conversion therapy and the new offences. Thank you to the Department of Justice Canada for funding this project!

## **INFO SHEET & POSTER | A primer on the ban**

Looking for the highlights? Check out our two-page info sheet and 11"x17" poster that explain what is conversion therapy and the four new offences. Download, save or print them in English or French.

[View the info sheet and poster.](#)

## **FAQs | The ban explained further**

Check out our FAQs that explain the ban in more detail, including what happens if someone is making you undergo, or you are making someone undergo, conversion therapy.

### [Go to the FAQs](#)

## **LAWNOW | A collection of personal essays**

We have assembled a collection of personal essays addressing the question of 'what does the ban on conversion therapy mean for/to me?' from various perspectives.

- [We Must Reject the Harmful Practice of Conversion Therapy](#) by Junaid B. Jahangir
- [Supporting Canada's Ban on Conversion Therapy: A cisgender, straight woman's perspective](#) by Nathalie Tremblay
- [A Faith Perspective: Canada's ban on conversion therapy](#) by Pam Rocker

## **WEBINAR | A panel discussion**

During this webinar, learn more about the political, legal, psycho-social, youth and lived experience perspectives. Moderated by the Centre for Public Legal Education Alberta (CPLEA), our insightful panel features:

- **Blake Desjarlais**, Member of Parliament for Edmonton Griesbach
- **Emmet Michael**, musician
- **Glynnis Lieb**, Executive Director for the Institute for Sexual Minority Studies & Services (iSMSS), University of Alberta

- **Rin Lawrence**, Chair of the Diversity, Equity, and Human Rights Committee and Chair of the Teacher Gender and Sexuality Alliance (GSA), Edmonton Public Teachers Local 37
- **Charles Easton**, LGBTQ+ Lawyer

The **Centre for Sexuality** is always available to provide free, short-term counselling services to help individuals and/or families address sexuality, gender, sexual health and/or relationship concerns.

The webinar was hosted live on June 1, 2022 and the recording is now available to watch on-demand.

## Ban on Conversion Therapy in Canada



### Want to stay in touch?

If you would like to receive more information about these resources, including printed copies of the poster and info sheet, sign up for our mailing list. And watch for an announcement in September about our short video!

**Sign me up!**

### Centre for Public Legal Education Alberta

The Centre for Public Legal Education Alberta (CPLA) makes the law understandable for Albertans. Information is available through its many websites, info sheets, videos, webinars, FAQs and more. Visit [www.cplea.ca](http://www.cplea.ca) to learn more.

# Alberta's New Surrogate Forms

June 15, 2022 by Shelly Chamaschuk

## The new GA Forms came into effect on June 15, 2022 for all grant applications in Alberta.

The *Surrogate Rules of Court* set out many of the rules that personal representatives must follow and the forms they must complete when applying to the Court of Queen's Bench in Alberta for a grant of probate or a grant of administration of an estate. In an effort to modernize and simplify the process for getting a grant, Alberta amended these *Surrogate Rules* and simplified the forms. The new rules and forms came into effect on June 15, 2022. This article provides a brief overview of the important changes.

### New Forms

The forms used before June 15th were called NC (Non-contentious) forms. These forms are replaced by new forms called GA (Grant Application) forms. You can find the GA forms on the [Alberta Queen's Printer](#) website (for purchase) and the [Government of Alberta](#) website (for free). The GA forms are fillable PDF forms that you can download and save.

The Court accepted applications submitted prior to June 15, 2022 using the old NC forms. Effective June 15, 2022, the Court no longer accepts grant applications submitted using the NC forms. All applications must be submitted using the GA forms.

Most applicants will have to prepare and submit to the Court the following GA forms to get a grant:

- Form GA1 – Grant Application
- Form GA2 – Inventory

- Form GA3 – Notice to Beneficiaries and Other Interested Parties
- Form GA4 – Notice to Public Trustee (if there are minors or disabled adults interested in the estate)
- Form GA5 – Affidavit of Service
- Form GA7 – Notice of Grant Issuing

Below is a more detailed description of these forms.

### Form GA1 – Grant Application

This form is a compilation of the information found in a number of NC forms. It has five parts:

#### Part 1 – The Deceased

The applicant must provide the full legal name (and other names known by), date of birth and date of death, and last address of the deceased.

The applicant must also indicate the net value of the deceased's estate in Alberta. This information is gathered in more detail in Form GA2 Inventory. The Court uses the net value of the estate to calculate the court fees charged for processing and issuing the grant.

#### Part 2 – The Applicant(s)

The information collected here is about the applicants and their right and priority to apply for the grant. The applicant may have authority as stated in the will, or, if there is no will, as set out in the *Estate Administration Act*. The applicant must include here any renunciations, nominations, bonds (for applicants residing outside of Alberta), and consents of beneficiaries to proceeding without a bond.

In this part, the applicant sets out information about the will and any codicils. They must also attach any other documents referred to in the will (such as a matrimonial property settlement agreement, or a list directing the distribution of personal items).

### Part 3 – Persons requiring notification

This part lists the names, mailing addresses and email addresses of the beneficiaries of the estate, along with a description of the gift each beneficiary is to receive. It also lists any persons with potential claims against the estate, such as a spouse or adult interdependent partner who is not receiving all of the deceased's estate, children under the age of 18, adult children unable to earn a livelihood due to disability, or missing persons.



Photo Credit: CPLEA

### Part 4 – Documents and Other Information for the Court's Consideration

The form requires the applicant to include the will/codicil, affidavit of witness to a will/codicil, and any relevant court orders, renunciations, nominations, bonds, etc.

There is also a new requirement that the applicant provide the Court with proof of death. Acceptable documents proving death are a Death Certificate or Funeral Director's Statement of Death.

### Part 5 – Applicant's Oath or Affirmation

The *Estate Administration Act* and the *Surrogate Rules* set out the roles and responsibilities of an applicant (personal representative of an estate). But many applicants are not aware of these. Now,

the Form GA1 sets out many of these roles, responsibilities, and duties of the personal representative, and the applicant must acknowledge and undertake to perform them.

Notably, the applicant must swear or affirm that all the information in the grant application is true to applicant's best knowledge and belief, including:

- believing the deceased made the original will/codicil submitted
- not knowing of any later wills or codicils
- acknowledging they have reviewed the Schedule of core tasks of a personal representative listed in the *Estate Administration Act*
- acknowledging they must carry out the core tasks of a personal representative, which are:
  - identifying the estate assets and liabilities
  - administering and managing the estate
  - satisfying the debts and obligations of the estate
  - distributing and accounting for the administration of the estate

The applicant must also acknowledge the law requires them to perform the role of personal representative:

- honestly and in good faith
- in agreement with the deceased's intentions as set out in the will/codicil (if there is one)
- with the care, diligence, and skill that a person of ordinary prudence would exercise in comparable circumstances where a fiduciary relationship exists

The applicant must undertake to:

- give proper notice of the application to those entitled to receive notice and serve

the Form GA2 Inventory on those entitled to receive it

- file proof of service in Form GA5
- if the value of any asset or debt is “to be determined”, serve an amended Form GA2 Inventory on those persons entitled to receive one when updated information is available

Finally, the applicant must:

- acknowledge they must distribute the estate as soon as practicable
- acknowledge they will get a signed Form GA20 from any trustee before distributing property to that trustee
- undertake to notify all beneficiaries and persons with potential claims against the estate who were identified in the application by providing them with notice when the Court issues the grant
- agree to faithfully administer the deceased’s estate according to law and give a true accounting of their administration to the persons entitled to it when lawfully required

### **Form GA2 – Inventory**

There are two important changes to the reporting requirements for the deceased’s assets and debts. Before June 15, 2022, the applicant only had to report assets the deceased owned that were located within Alberta. In Form GA2, the applicant must now list:

1. the deceased’s assets located within Alberta as well as those assets located outside Alberta, and
2. any assets the deceased owned jointly with other persons who are not the deceased’s spouse or adult interdependent partner.

The Inventory form has four parts.

### **Part 1 – Assets owned by deceased**

This is a list of assets located within or outside Alberta, such as land, bank accounts, investment accounts, shares in companies, annuities, life insurance, household goods, and personal effects.

### **Part 2 – Assets owned jointly by the deceased and persons other than a spouse or adult interdependent partner**

The ownership and transfer of a deceased’s jointly-owned assets are governed by rules that have evolved over time through the courts (common law). Depending on the circumstances, jointly owned assets may form part of the deceased’s estate or may pass outside of the deceased’s estate by right of survivorship to the surviving joint owner.

The applicant must list the jointly owned assets to the best of their ability using the information available to them. The list of jointly owned assets may not be complete because the applicant may not be legally entitled to all the required information about the asset.

### **Part 3 – Liabilities**

The applicant must list all debts and expenses of the deceased as of the date of death.

### **Part 4 – Net value of estate**

Tally the assets within and outside Alberta separately. The net value of the estate within Alberta is calculated by adding the deceased’s total assets within Alberta and the jointly owned assets that form part of the deceased’s estate within Alberta, and then subtracting the deceased’s total liabilities.

Another important change is that Form GA2 Inventory is no longer part of the primary application (Form GA1). This means the Court clerks do not review the Inventory. The applicant must serve Form GA2 Inventory on the residuary beneficiaries (as part of Form

GA3 Notice) and must file it with the Court when they file Form GA5 Affidavit of Service.

### **Form GA3 – Notice to Beneficiaries and Other Interested Parties**

The old NC forms had different notices for different beneficiaries. There is now one consolidated notice form for all beneficiaries and other interested parties. The following people must receive this form:

- a non-residuary beneficiary (a person receiving a specific gift)
- a residuary beneficiary (a person receiving part of the residue of the estate)
- a beneficiary on intestacy where there is no will
- a beneficiary of a void or revoked gift
- a family member with a potential claim against the estate (for example, a spouse, adult interdependent adult, former spouse, former adult interdependent adult, minor child, adult child who is unable to earn a livelihood due to a disability)

### **Form GA4 – Notice to Public Trustee (if there are minors or disabled adults interested in the estate)**

The applicant must provide notice of the application to the Public Trustee in certain circumstances. These include when there is a minor child interested in the estate, a missing beneficiary, or the Public Trustee is the trustee for a beneficiary of the estate.

### **Form GA5 – Affidavit of Service**

One of the important oversight roles of the Court is to ensure all persons entitled to receive notice of the application have been served with notice. The Court achieves this by requiring the applicant to serve Form GA3 on those entitled to receive notice of the application and then submit to the Court a sworn Form GA5 Affidavit of Service confirming they served the notices.

The order of service and filing has changed to bring the surrogate process in line with all other court filing processes. Under the new *Surrogate Rules*, the applicant must first file Form GA1 Application with the Court and then serve a Form GA3 Notice on all interested parties. The Court will not issue a grant until it has received a filed Form GA5 Affidavit of Service for each interested party.

### **Form GA7 – Notice of Grant Issuing**

This is a new form and requirement. Upon receiving the grant, the applicant must serve interested parties with a notice saying the Court has issued the grant. Interested parties include any persons with potential claims against the estate such as a spouse or adult interdependent partner who is not receiving all of the deceased's estate, children under the age of 18, or adult children unable to earn a livelihood due to disability.

### **Towards a More Efficient Process**

One of the goals of the surrogate reform project was to simplify the forms and reduce the duplication of information required under the NC forms. The new GA forms are intended to create a more streamlined and efficient process for processing grant applications in Alberta.

**EDITOR'S NOTE** Read CPLEA's [Getting a Grant of Probate and Administration in Alberta](#) booklet to learn more about the process for getting a grant.

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#### **Shelly Chamaschuk**

Shelly Chamaschuk is a partner at [Reynolds Mirth Richards & Farmer LLP](#) in Edmonton, Alberta. She is the firm's Wills, Estates & Trusts Team Lead, helping businesses, family enterprises, and individuals meet their legal needs, now and for the future.

# What Powers Do Police Have to Stop Me?

July 5, 2022 By Melody Izadi

**Questions often come up around police stops, including whether police can stop you and whether you have to speak to them or follow their instructions if they do.**

**DISCLAIMER |** *This article is meant to be a guide, not specific legal advice for your situation. Always consult a legal clinic or speak to and/or retain a lawyer to provide you with sound legal advice that is specific to your particular situation.*

## Can the police stop me?

While some may assume this question is easy to answer, legally speaking the answer is complicated. The most important piece of information to know is *where* you are when police approach you.

**Are driving a motor vehicle?** Generally speaking, under each province's legislation, the police have a great power to stop motorists operating a motor vehicle. They can often stop you for no reason at all. This is because driving is a privilege, not a right.

In addition, provincial drinking and drug legislation provides police with a large matrix of powers to stop and question you if:

- you have alcohol and/or drugs in view, whether the driver can readily access that alcohol or drug, or
- there exists at least a suspicion those substances were consumed while a driver (or even a passenger!) is in the motor vehicle or *can* operate the motor vehicle.

**Are you legally trespassing on another's property?** If you are not on your own property, police may have the legal ability

to stop you if the owner of the property has complained.

**Are you travelling?** You give up certain privacy rights when you are trying to leave or enter Canada. Whether you are at border control, or in the airport catching an international or domestic flight, police can stop you using various legislative powers and mandates.



Photo from Pexels/Pixabay

## Do I have to speak to police if they stop me?

There is a difference between what information you *must* provide police, and what information you *can* provide police. Again, this depends on the context and where you are or what situation you find yourself in.

Police must meet certain legal thresholds to detain and/or arrest you. This is known as either a reasonable suspicion that you may be committing an offence, or reasonable and probable grounds that you committed an offence. Police do **not** need to have proof beyond a reasonable doubt to arrest or detain you. Whether the police had sufficient grounds to stop or detain you is a legal question that can be litigated once your matter is in court.

Most criminal defence lawyers will advise you to remain silent if you are arrested or detained by police. However, *how silent* is silent? Under

Canada's *Criminal Code*, if you provide a false name to police (or no name at all), you can be charged with obstructing a police officer in the course of their duties. If you give fake information that causes the police to investigate something that never happened, you can be arrested and charged under the *Criminal Code* as well.

In the case of a motor vehicle collision, often provincial legislation competes with your duty to report and provide information (not to mention your obligation to your insurance provider) and your right to remain silent under section 7 of *The Charter*. If you are criminally charged, your lawyer can challenge the use of statements you made as being a legally compelled statement. They may use this general argument: if used against you at your trial, these statements would infringe the *Charter of Rights and Freedoms*. However, making this legal argument in court at your trial does not negate the fact that likely, under at least one statute, you are legally compelled to speak with police if you are involved in a motor vehicle collision. This includes information like admitting you were driving one of the vehicles involved.

### **Do I have to follow police instructions if they stop me?**

Are the police asking you to take a sobriety test in relation to a motor vehicle? Then yes. This includes anything from walking a straight line, providing a urine sample, or providing a breath test. Notably, [Canada's Criminal Code now says](#) the minimum fine for blowing double the legal limit or more is the same minimum fine as refusing to provide a breath sample to police – both carry a fine of \$2000. And the punishment is higher for refusing to take a lawfully demanded breath test (again, a fine of \$2000) compared to if you provide a breath sample to police and blow over the legal limit but less than double the legal limit (a fine of \$1000 or \$1500, depending on the level).

### **Remember...**

Whether the police demand is lawful is litigated after the fact, in court, often months if not years after your arrest.

If you are arrested or detained, police are duty-bound to provide you an opportunity to speak with a lawyer under section 10 of the *Charter of Rights and Freedoms*. This may be a lawyer you know or duty counsel. If you have any questions upon your arrest or detention, ask the lawyer you speak with for clarification before you make any decisions that can gravely affect your well-being, case, or legal interests.

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### **Melody Izadi**

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# Racial Profiling in the Retail Industry

July 15, 2022 by Myrna El Fakhry Tuttle

**Consumer racial profiling is usually built on the misconception that certain ethnic groups are more likely to shoplift than others.**

Consumer racial profiling is a serious issue that has not been researched enough in Canada. Different terms are used to characterize consumer racial profiling, such as “consumer marketplace discrimination” or “shopping while Black”.



Photo by Tim Douglas from Pexels

Consumer racial profiling often occurs in places such as grocery stores, restaurants, clothing stores, department stores, etc. It also comes in various forms, with customers encountering discriminatory treatment based on their race or ethnicity while shopping or seeking services. Employees or security personnel may view these customers as “suspicious” or a “threat” based on their racist beliefs.

## What is consumer racial profiling?

According to the [Nova Scotia Human Rights Commission](#) (NSHRC):

*Consumer racial profiling is the practice of targeting a consumer for discriminatory treatment based on the consumer’s race, or*

*ethnicity, or both. This practice may or may not be intentional. ...*

*Through the literature, consumer racial profiling has been shown to affect members of racialized groups including those who identify as Black, African, Hispanic, Asian, and First Nations.*

[Anne-Marie G. Harris et al.](#) defined consumer racial profiling as follows:

*A type of differential treatment of consumers in the marketplace based on race/ethnicity that constitutes denial of or degradation in the products and/or services that are offered to the consumer.*

As specified by the NSHRC, “consumer racial profiling is just a piece of systemic racism and racial profiling.”

According to the [Ontario Human Rights Commission](#), racial profiling is:

*Any action undertaken for reasons of safety, security or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment.*

The [Alberta Human Rights Commission](#) states that racial profiling “occurs when an individual is subjected to differential treatment or greater scrutiny because of negative stereotypes related to their race or other grounds such as religious beliefs, colour, ancestry or place of origin or a combination of these.”

Racial profiling is not a protected ground under the [Alberta Human Rights Act](#) (the Act). Nevertheless, the Act protects against racial

profiling that leads to discrimination based on race, religious beliefs, colour, age, gender, place of origin, etc.

In practice, consumer racial profiling can include the following:

- Avoidance (ignoring)
- Rejection (refusing service)
- Discouragement (providing slow service)
- Verbal actions (using degrading racial epithets)
- Physical actions (subject to detentions, interrogations, or arrests)

### **Why does consumer racial profiling take place?**

Businesses lose billions of dollars to shoplifting every year. They use different [strategies](#) to stop shoplifting, including by hiring security guards and fitting room attendants and by installing video cameras. And often businesses justify racial profiling as another way to stop shoplifting.

However, [shoplifter profiling](#), which is legal, is completely different from racial profiling, which is illegal. Racial profiling is usually built on the misconception that certain ethnic groups are more likely to shoplift than others. This misconception allows employees to profile these customers by focusing on their race rather than their behaviour.

Even when not suspected of shoplifting, certain customers may experience discriminatory treatment in their communications with employees, such as a lack of respect and professionalism and less friendliness.

Some [examples](#) of behaviours consumers may encounter include:

- followed as soon as they enter a shop
- searched physically or having their belongings searched

- removed physically from the store without just cause
- questioned about their ability to afford a product or service
- regularly accused of theft and detained wrongfully

### **How does racial profiling affect consumers?**

[Victims](#) of consumer racial profiling can be affected “emotionally, psychologically, mentally, financially and physically.”

Consumer racial profiling [can lead](#) to false theft accusations, wrongful detentions, and harassment even if there is no sufficient evidence. Victims of consumer racial profiling may be insulted, humiliated, and abused, which can have a harmful effect on their dignity. In addition, they may not know what to do about the unfair treatment they experience.

According to the [Alberta Human Rights Commission](#), racial profiling may:

- *result in an individual's loss of dignity and self-confidence.*
- *erode individuals' confidence in businesses, organizations and institutions. Individuals who are discriminated against as a result of racial profiling lose confidence in the ability of the institutions to serve them in a fair manner.*
- *disempower individuals. Individuals who are discriminated against as a result of racial profiling may feel that they should not aspire to positions of power or authority in society as they may perceive that they are seen as undesirable by others.*

[Scott Wortley](#) stated: “To argue that racial profiling is harmless, that it only hurts those who break the law, is to totally ignore the psychological and social damage that can result from always being considered one of the usual suspects.”

## What does the caselaw say?

In *McCarthy v Kenny Tan Pharmacy Inc.*, the applicant, a Black woman, alleged discrimination with respect to services and facilities because of her race and colour. She claimed an employee in the respondent store discriminated against her aggressively and rudely by searching her backpack and walking away without apologizing.

The Human Rights Tribunal stated:

*In assessing allegations of racial discrimination, the following principles are applicable:*

- (a) The prohibited ground or grounds of discrimination need not be the sole or the major factor leading to the discriminatory conduct; it is sufficient if they are a factor;*
- (b) There is no need to establish an intention or motivation to discriminate; the focus of the enquiry is on the effect of the respondent's actions on the complainant;*
- (c) The prohibited ground or grounds need not be the cause of the respondent's discriminatory conduct; it is sufficient if they are a factor or operative element;*
- (d) There need be no direct evidence of discrimination; discrimination will more often be proven by circumstantial evidence and inference; and*
- (e) Racial stereotyping will usually be the result of subtle, unconscious beliefs, biases and prejudices (at para 53).*

The Tribunal added:

*... anti-Black racism and its subtle manifestations are well-recognized in Canadian law, including the recognition that a Black person can be treated adversely by a service-provider because of a conscious or an unconscious stereotype of Black people being criminals (at para 54).*

The Tribunal found the applicant had established her race and colour were a

factor in how the employee treated her. The applicant's race and colour were not the sole factor but were a significant factor in the adverse treatment. The Tribunal concluded the respondent store was liable for the employee's conduct and ordered the store to pay \$8,000 because of racial profiling.

In *Wickham v Hong Shing Chinese Restaurant*, the Human Rights Tribunal found that the applicant and his three friends, who were all Black, were racially profiled when a Chinese food restaurant asked the friends to pre-pay for their meal.

The Tribunal stated:

*... anti-Black racism often manifests itself in subtle ways. A prevailing and particularly pernicious stereotype that is sometimes applied to Black people is that they are criminals, or have a propensity towards criminal activity... The stereotype of "Black person as criminal" is closely related to racial profiling, which is a form of racial discrimination (at para 38). ...*

*In essence, the applicant was presumed to be a potential thief in waiting despite any evidence to that effect. His mere presence as a Black man in a restaurant was presumed to be sufficient evidence of his presumed propensity to engage in criminal behaviour. At its core racial profiling is a form of shorthand that enables the perpetrator of the behaviour to assume certain facts, and ignore others (at para 45).*

The Tribunal concluded by saying "the applicant provided a detailed and nuanced explanation of the impact that the incident had on him. He alluded to feelings of helplessness, and frustration that despite his academic achievements he was still treated as a second-class citizen" (at para 46).

The Tribunal awarded the applicant \$10,000 in damages for injury to his dignity, feelings, and self-respect.

## Commentary

In 2017, the NSHRC, in consultation with the Atlantic division of the Retail Council of Canada, launched an [online course](#) called "Serving All Customers Better." The NSHRC's goal was to encourage and help businesses address and prevent consumer racial profiling.

To prevent consumer racial profiling, businesses need to have zero-tolerance policies banning the practice. They must also educate their employees about the meaning of racial profiling and discipline employees who engage in it. Consumers should be able to go shopping without experiencing racial profiling. Failing that, they should know their rights and where to get help if they have a negative experience.

### Myrna El Fakhry Tuttle

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# Regulating Paralegals in Alberta

JULY 25, 2022 BY HEIDI SEMKOWICH

**The Alberta Association of Professional Paralegals is advocating for regulation of paralegals and is already working to develop quality education programs.**



Photo by Alexander Suhorucov from Pexels

**OPINION | The views expressed in this article are those of the author.**

In response to the growing access to justice issue in Alberta, legal stakeholders are trying to figure out what they can do to ease the mounting pressure on our court system. One of the biggest issues Albertans face when dealing with a legal matter is whether they can afford to retain a lawyer. The reality is that most Albertans cannot afford a lawyer, so they turn to another possible solution – paralegals.

Paralegals are members of the legal team that have additional education and training and perform substantive legal tasks. They typically have a billable rate, and, in most cases, work under the supervision of a lawyer.

Paralegals *can* perform a variety of substantive legal tasks, which include drafting pleadings, legal research, drafting memos and submissions, preparation of trial materials, and meeting with clients. Paralegals can also appear as agents in Provincial Court but cannot file documents on behalf of parties.

However, Alberta does not regulate paralegals. This presents two key issues:

1. Anyone can say they are a paralegal whether they have the proper education and training or not.
2. Independent practicing paralegals are providing legal services they are not authorized to provide, sometimes with incredibly negative results for their clients.

Simply stated, the lack of regulatory oversight is harming Albertans and our justice system.

## **Alberta Association of Professional Paralegals (AAPP)**

The AAPP was originally formed in 1981 to provide recognition for legal assistants who were looking to be recognized for the independent work they performed. At that time, senior level legal assistants, with their vast knowledge and experience, filled a vital role of performing legal services as paralegals. This continues to ring true today, however, the term 'paralegal' is now far more common than it was then.

Today our Association is comprised of students, legal support professionals, paralegals who work under the direct supervision of a lawyer or member of the judiciary, and paralegals who are independently practicing. The Association also welcomes other legal stakeholders as Affiliate members, and retirees to remain active as Alumni members.

All paralegal members must meet specific criteria to be granted a paralegal membership, including graduation from a recognized paralegal studies program and proof of employment in a paralegal capacity. The

same requirements apply to applicants for independent paralegal membership, though we also require proof of valid practice insurance as well as a proposed scope of practice.

The need for *qualified* paralegal services is growing in Alberta. This is evidenced by the growing number of people who are retaining the services of paralegals (qualified or not). However, in far too many instances, vulnerable individuals looking for legal assistance are being taken advantage of. The AAPP routinely receives complaints and concerns from members of the public about sub-par services. Unfortunately, we are not able to offer any resolution to individuals experiencing fraud and harm.

### **What will Regulation Achieve?**

The AAPP is actively lobbying the government to regulate paralegals in Alberta. We intend for the profession to be recognized for the skills and knowledge it brings with it and to ensure individuals are practicing within set boundaries in an ethical, professional, and exemplary manner.

Through regulation, the AAPP will ensure all practicing paralegals have the required education, skills, and insurance. The AAPP will also have enforcement authority to hold paralegals accountable. In short, regulation protects the public and preserves the reputation of the profession.

The AAPP has been working closely with several post-secondary institutions on the development of paralegal studies programs, including the Paralegal Post-Diploma Certificate program at Red Deer Polytechnic (RDP). RDP's program boasts a flexible delivery method which allows students to remain working while completing the program. In addition to acquiring in-depth knowledge in several areas of law, students will gain hands-on experience which will prepare them to successfully perform advanced legal tasks.

For more information on this program, [visit RDP's website](#).

### **Conclusion**

Other jurisdictions regulate paralegals. For example, Ontario has regulated paralegals since 2007 with remarkable success. They can practice in several areas of law and play an important role in the administration of justice in Ontario. This is a fantastic example of how Alberta can successfully address the access to justice issue and protect both the public and the reputation of the paralegal profession.

The Honourable Justice Beverley McLachlin said it best: "There is no justice without access to justice." It is my firm belief that paralegals can and will play an integral role in helping address Alberta's access to justice issue.

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#### **Heidi Semkowich**

Heidi Semkowich works full-time as a paralegal at a law firm in Edmonton, and is the President of the Alberta Association of Professional Paralegals.

# Buy Now Pay Later (BNPL): Do you know what you are getting into?

July 28, 2022 by Judy Feng

**As BNPL gains popularity among Canadian shoppers, here are three things you should know about it plus some words of caution.**

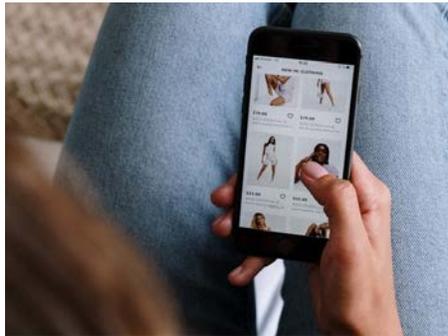


Photo by cottonbro from Pexels

You may notice that many online retailers (also known as merchants) now allow you to buy goods and services through a **buy now, pay later (BNPL)** option. Thinking of buying a new electronic device? Clothing? Or how about an airline ticket? Whatever consumer good or service you are thinking of, there's probably a BNPL option for buying it. Hundreds of retailers (and it's a growing list) now offer BNPL as a payment option.

BNPL is catching on with consumers too. According to the [Financial Consumer Agency of Canada's \(FCAC\) recent survey](#), 34% of Canadians surveyed are familiar with BNPL. And 8% have used at least one BNPL service from September 2019 to March 2021. More recently, the [MNP Consumer Debt Index](#) identified BNPL as being the likely method of

payment for one in five Canadians in the fall of 2021.

## What is BNPL?

BNPL (also known as BNPL loans, financing or services) allows you to make smaller payments to buy goods and services, instead of making one large lump sum payment. Companies with a lending platform offer BNPL as a way for you to buy from participating retailers. When you choose to pay through BNPL at the checkout with a retailer, the BNPL platform will ask for your personal information. The BNPL company then uses the information to prequalify you through a credit check. If approved (which often happens within minutes), you will then purchase the goods under the terms of the BNPL company's loan agreement.

Sounds easy enough, right? Well, here's what you should know about BNPL.

### 1. With BNPL, you sign up for more than just a loan

When using BNPL, you sign up for more than just a loan. There are terms or even a separate service agreement about your rights and responsibilities while using the BNPL company's platform. You also agree to the company's privacy agreement or policy. Depending on the company, other policies may apply – for example, buyer and fraud protection policies. As such, review all agreements and policies before buying something through BNPL. That way, you can

at least try to understand what you may be getting into.

## **2. Not all BNPL agreements and policies are the same**

Do not assume that all BNPL companies and their agreements and policies are the same. Your rights and responsibilities can vary on matters such as:

- loan terms
- late payment and defaults
- fees
- returns, refunds and cancellations
- complaints
- dispute resolution processes

To illustrate just how different BNPL agreements and policies can be, let's talk about refunds. One BNPL company takes a hands-off approach with merchant refunds. Their service agreement says refunds are subject to the terms of the merchant and you must contact the merchant directly to request refunds. Some other BNPL companies have a policy of facilitating merchant returns through their platform or app. As such, if you want to make a return, you could report it on the BNPL company's platform or app. The company would then support you in resolving the issue with the merchant.

## **3. BNPL loan terms and conditions may depend on the participating retailer or your personal credit profile**

Many retailers and BNPL companies will advertise financing plans with 0% APR (zero interest on approved credit) and "easy" terms. Sounds enticing, right? However, retailers may have different financing terms. Some retailers may not even have 0% APR financing available.

As a cautionary tale, I loaded up a shopping cart for fun to test out the BNPL purchase process on a retailer's website. It didn't turn

out to be so fun when I realized that paying through the BNPL option was around 20% higher than paying through other methods.

It's also important to watch out for the fine print when making a purchase and on the BNPL company website. The fine print may say that your monthly payment, interest and available loan terms depend on your personal credit profile. You may end up qualifying for a purchase on different terms than family members, friends and other people with a different credit profile.

### **Words of caution**

As regulatory and industry experts point out, the BNPL space is quickly evolving. There are risks though. To name just a few, there are major consumer protection concerns around BNPL borrowing, including consumers taking on too much debt and dispute resolution. Using BNPL to make a one-time purchase may not seem like much. But it can be tempting and easy to fall into a retail spiral. So, you may end with more monthly payments for a variety of goods and services – and consequently, more debt than you expect.

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### **Judy Feng**

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# Drug Decriminalization: How attitudes toward drugs are changing the social and legal landscape

August 4, 2022 by John Cooper

**Today, attention is on decriminalizing possession of “harder” substances, with an emphasis on compassion, care and support for people who use drugs.**

Attitudes toward drug use are changing. Gone are the days of “Reefer Madness” of the 1930s and “dope fiend” references finding their way into politicians’ speeches in the 1950s and ‘60s. Cheech & Chong’s goofy 1970s stoner comedy is passé, and the politically-conservative “Just Say No” stance of the 1980s is obsolete. In the last 30 years cannabis went mainstream. The legalization of marijuana by Prime Minister Justin Trudeau in 2018 was not a watershed moment but part of a series of actions recognizing society’s changing position on drug use. Today, attention is on decriminalizing possession of “harder” substances, with an emphasis on compassion, care and support for people who use drugs.

According to [Statistics Canada](#), in 2019:

*21% of Canadians reported having used cannabis in the past 12 months ... (and) about 4% of Canadians reported having used at least one illegal drug. Among these users, cocaine was the most*

*commonly used drug (2%), accounting for approximately half (49%) of illegal drug use. Illegal drug use includes consumption of at least one of the following substances: cocaine, ecstasy, methamphetamine, hallucinogens, inhalants, heroin, and salvia [a hallucinogenic herb from southern Mexico].*



Photo by SHVETS production from Pexels

The [Canadian Centre on Substance Abuse and Addiction](#) reported:

*9.6% of Canadian adults who used opioid medications [such as codeine, fentanyl, morphine, oxycodone and diacetylmorphine] in 2018 reported some form of problematic use (e.g., taking in amounts greater than prescribed, tampering with the product before taking it or using to get high or improve mood).*

Police-reported drug offence statistics for cannabis, heroin, ecstasy, methamphetamine, and cocaine dropped between 2019 and 2020. But Statistics Canada found that opioid-related offences increased 34% to 5,142 in 2020.

## **Decriminalization, legalization and a push for change**

Historically, illegal substance use has been racialized, moralized, and used as a tool to exacerbate economic power dynamics. According to researchers [Gillian Kolla and Carol Strike](#) in “[Practices of care among people who buy, use, and sell drugs in community settings](#)”, the “popular perception of people who sell drugs is negative, with drug selling framed as predatory and morally reprehensible.” People who use drugs (PWUD) are often voiceless and powerless to find care and acceptance in society. Helping them survive includes initiatives focused on harm reduction and access to housing.

According to Sandra Ka Hon Chu, a lawyer and Director of Research and Advocacy at [HIV Legal Network](#), decriminalization would remove criminal laws governing simple drug possession (possession for personal use). Legalization would involve developing a legal and regulatory framework governing the ways in which currently controlled substances are sold, bought, or possessed. And as with alcohol and cannabis, consumer protection measures would be in place.

Data show that illegal substance use leads to increased confrontations with police. A [2012 Canadian Drug Policy Coalition report](#) said:

*The “most prominent feature of Canada’s response to certain drugs over the last century has been a reliance on the criminal law, also called “prohibition.” This has occurred despite a resounding lack of evidence to show that the criminal law reduces the harms associated with drugs and despite growing evidence that the criminal law in fact increases those harms.”*

A study the same year by [Lianping Ti et al](#), entitled “[Police confrontations among street-involved youth in a Canadian setting](#)”, found that:

- 44% of their study sample “reported being stopped, searched, or detained by police without arrest in the last six months,”
- 19% reported confiscation of drug paraphernalia without arrest, and
- 17% “reported experiencing what they believed to be violence by police without arrest in the previous six months.”

In 2017, the [Canadian Public Health Association \(CPHA\)](#), in “[Decriminalization of Personal Use of Psychoactive Substances](#)”, called on federal, provincial and territorial cooperation to:

- decriminalize possession of small quantities of currently illegal psychoactive substances (IPS)
- offer summary conviction sentencing alternatives
- use legal provisions to decriminalize small-quantity sales of IPS by young offenders
- offer a broader range of treatment options
- further develop the existing harm reduction/health promotion infrastructure
- offer amnesty for those already convicted of small-quantity IPS possession
- provide “expanded evidence-informed harm reduction options” including access “to supervised consumption facilities and drug purity testing services”

Although the attitude toward illegal drug consumption as a moral failing or criminal act is shifting, harassment and intimidation continue. A healthcare professional who insisted on anonymity said that, in RAAM (Rapid Access to Addictions Medicine) clinics – places usually considered “safe havens”

where PWUD can receive counselling, advice, medications and support – police officers will troll the area outside, waiting to issue arrest warrants to RAAM clients. That behaviour flies in the face of the move toward decriminalization. Law professor W.A. Bogart, in an [article written for Policy Options](#), cites “recent, significant momentum toward decriminalization of drugs for personal use.” He continued that endorsements for reform have come from B.C. medical officer of health Bonnie Henry, the Canadian Association of Chiefs of Police, The Canadian Association of Social Workers, and former federal health minister Jane Philpott.

In December 2021, to find solutions to the opioid overdose crisis, the Toronto Board of Health voted to ask federal authorities to decriminalize possession of insignificant amounts of illegal drugs. Every day, 19 families lose a loved one to an opioid death (between January 2016 and June 2021, upwards of 24,500 deaths, more than heart attacks and car collisions). Despite this, some police chiefs are hesitant to endorse decriminalization of possession for personal use. For instance, in January 2022 on Twitter, the Alberta Association of Chiefs of Police said that provincial safeguards focusing on issues like consumption around minors, public consumption and vehicle operation must be in place before it would endorse decriminalization.

However, in an email interview, Jean-François Crépault, Senior Policy Analyst for the [Centre for Addiction and Mental Health \(CAMH\)](#), said, in general:

*Canadian police seem to be in favour of decriminalization. The Vancouver Police Department has supported it for years, and the Canadian Association of Chiefs of Police released a report recommending it in 2020. I have a feeling that police (or others who aren't convinced) might be less apprehensive about decriminalization if it*

*comes with investment in the health and social services we've been talking about.*

## Recommendations

In June 2021, the Health Canada Expert Task Force on Substance Use provided recommendations on Canada's substance use policy as part of a [draft "Canadian Drugs and Substances Strategy"](#). Those recommendations include:

- legal regulation to reduce the scale of the illegal market and reduce access to toxic substances
- a safer supply (providing alternatives to the toxic illegal drug market)
- reducing stigma
- making “equity a core principle and equity, anti-racism and anti-colonialism a priority area”
- leadership at the national level, and
- “harm reduction as an effective, evidence-based, non-judgmental public health approach for individuals who use substances, integrated into a full continuum of health and social services including housing.”

A point of discussion is section 56 of the [Controlled Drugs and Substances Act](#). It states that the “Minister (of Health) may, on any terms and conditions” exempt persons from prosecution under the law “if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.”

In September 2021, in its [“Statement on the decriminalization of substance use”](#), CAMH called on the federal government “to implement a system in which people do not face criminal penalties for using psychoactive substances.” Among CAMH's recommendations:

- decriminalize all drugs nationwide

- develop personal possession thresholds carefully
- work with provinces to ramp up services for harm reduction and treatment
- replace the unregulated and toxic drug supply
- work to reduce criminalization through alternatives to incarceration
- invest in social determinants like a basic income guarantee, and
- ensure evaluation of decriminalization measures and involve people who use drugs in the development of drug policy reform measures.

### Shifts in drug policy

According to CAMH’s Crépault, drug governance in the past saw major drug policy shifts and a patchwork approach:

*For example, there were two major developments in 2003: a bill was introduced that would have decriminalized personal possession of cannabis, and the federal government began funding [Vancouver-based] Insite, the first supervised injection site in North America. Then just three years later, Canadians elected a government that introduced mandatory minimum sentences for drug offences and attempted to shut Insite down. Some areas of drug policy fall under provincial/territorial jurisdiction (for instance treatment, and to a lesser extent harm reduction). But public opinion does seem to be moving toward seeing substance use as something that, when it becomes problematic, should be addressed through the health system and not criminal justice.*

In an email interview, Ka Hon Chu said:

*I believe policymakers look to the public for a pulse on evolving norms, including towards drug use. The fact that various*

*policies and bills have been introduced in recent years that acknowledge the harms of drug prohibition and how it contributes to stigma and negatively affects the health of people who use drugs is a signal of this shift and is reflected in some of the language policymakers employ in these policies and bills.*

For example, [Bill C-5](#) calls for addressing problematic substance abuse as a health and social issue. It was introduced to the House of Commons in December 2021 to amend the *Criminal Code* and the *Controlled Drugs and Substances Act* by, among other things, removing mandatory minimum sentences for drug offences.

The opioid crisis has been “quite pressing,” added Crépault. Furthermore:

*I don’t know if people realize how much damage our drug laws do. More people have died of opioid overdoses since 2020 than of COVID-19. One thing I think citizens ought to know is that prohibition hasn’t deterred substance use and hasn’t helped people having problems with drugs ... the threat of criminal penalties dissuades people who use drugs from seeking health services. Criminal records greatly impact people’s ability to travel or get work – and racialized people are also more likely to be targeted. The unpredictability and increasing toxicity and contamination of the opioid supply are also a function of criminalization.*

Ka Hon Chu said increased compassion is a driving force behind change. She cited a case in B.C. where “the judge ordered a suspended sentence for a woman convicted of selling drugs, acknowledging that her own drug dependence was a significant factor in her decision to sell drugs, which lessened the ‘moral blameworthiness’ of the accused.”

While municipalities and provinces may call for exemptions, “it would be far preferable

for the federal government to pass or amend legislation to decriminalize drugs across the whole country," Crépault added. This would reduce some of the issue's intensity at the local level, where it profoundly affects political positions.

"Historically, the 'War on Drugs' has been affiliated with being 'tough on crime,' so politicians who are confronted with the need to decriminalize drug possession are concerned with appearing 'soft on crime' and losing voters on this basis," said Ka Hon Chu, adding that the legal profession has taken a stand on this issue. Groups like "the Criminal Lawyers' Association and the Canadian Lawyers for International Human Rights (CLAIHR) and legal human rights organizations, such as the HIV Legal Network, Westcoast LEAF and the BC Civil Liberties Association, have spoken out in support of decriminalizing simple drug possession."

### **What is needed immediately**

The toxic drug supply is a major issue that is causing illness and death and replacing it is currently "the most urgent" issue, said Crépault. As for how to do that?

*There are different models for accomplishing that, but the most important thing is to ensure that people who currently rely on toxic street drugs are able to access pharmaceutical-grade alternatives (often referred to as "safer supply"). Otherwise, decriminalization or not, people will continue to die from poisoned and contaminated drugs. We also need to make sure that we have the infrastructure and capacity to provide people with access or referrals to things like primary care, addictions and mental health care, and broader social services like housing.*

According to Ka Hon Chu, there is hope:

*We are closer than we have ever been to decriminalization, what with the Public Prosecution Service of Canada coming*

*out with guidelines in 2020 limiting the circumstances in which people are charged for simple drug possession, public health officials across the country calling for decriminalization, police forces across the country also supporting some version of decriminalization, and policymakers introducing bills that would reduce the criminalization of people who use drugs. People need to understand that more than a century of criminalizing drugs has not decreased drug use but has had colossal impacts on the health, safety and well-being of people who use drugs – with Black and Indigenous people bearing the heaviest burden of these harms. Decriminalizing is one step that policymakers can take to rectify some of these harms.*

It remains to be seen how Canada will respond to these concerns.

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### **John Cooper**

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# Decriminalization of Drugs in Canada: What does it mean and how would it work?

August 9, 2022 by Lee Klippenstein

**Drug policy is changing in Canada, with Bill C-5 and requests for exemptions under section 56(1) of the *Controlled Drugs and Substances Act*.**

There is a growing acknowledgement in Canada that drug use is a [health issue](#) and not a criminal justice problem. This is an important distinction given the way the opioid crisis is ravaging the Canadian population. [John Cooper recently wrote an excellent piece for LawNow](#), which discusses the changing attitude towards drug use and decriminalization. Hopefully, he has convinced you why governments should pursue decriminalization.

I intend to use this space to explore the *what* and *how* of decriminalization in Canada. In the process, I hope the *who*, *when*, and *where* will also become clear.

## What Does Decriminalization Mean?

When a drug is decriminalized, it means its possession is no longer a criminal act. It does not mean it is legal and anyone can buy it like a pack of cigarettes from a gas station or a bottle of vodka from a liquor store. It also does not mean the government is promoting or condoning its use. More importantly, decriminalization assists those who use drugs, not those who traffic them.

Decriminalization means that users of certain controlled substances will no longer face the

criminal penalties they would have before the drug was reclassified. The goal is to reduce the burden on addicts and recreational users, while freeing up scarce justice system resources.



Photo by Enric Cruz López from Pexels

Practically speaking, decriminalization is an exemption from federal laws (those put in place by the Canadian government). The *Criminal Code (CC)* and the *Controlled Drugs and Substances Act (CDSA)* govern drug policy in Canada. Created by the federal government, they apply across Canada but are enforced at the provincial and municipal levels, primarily through policing. Offences under the *CC* and *CDSA* are also prosecuted through the provincially-run court systems.

## Bill C-5: Proposed Federal Action

Canada is attempting to make modest moves towards reducing the criminal consequences of minor drug possession. In December 2021, the federal government introduced [Bill C-5](#) in the legislature. If passed, Bill C-5 will amend both the *CC* and the *CDSA* in significant ways.

The bill has passed through the House and is now before the Senate.

None of the changes in Bill C-5 will decriminalize any drug in the manner discussed above. Instead, the changes focus on removing certain mandatory minimum sentences for simple drug possession crimes. The changes also encourage conditional sentences and diversionary measures to address substance abuse in more appropriate ways.

Perhaps the most notable part of Bill C-5 in the context of decriminalization is the “declaration of principles” section (10.1), which will be added to the CDSA. This section states, in summary, that:

- substance abuse should be addressed *primarily* as a health and social issue
- interventions should aim to protect the health, dignity, and human rights of drug users
- criminal sanctions for the personal use of drugs increase the stigma of drug use and are not consistent with established public health evidence
- interventions should focus on the root causes of substances abuse, and measures should be directed towards these areas
- judicial resources should focus on offences that pose a greater risk to public safety

This federal bill does not go as far as some provinces and municipalities have requested. The proposed legislation, however, would alleviate some of the potential criminal justice issues that burden those who use these otherwise controlled substances.

### **How Does Decriminalization Happen?**

The levels of government dealing with the immediate impacts of the opioid crisis – people dying daily – want a drug policy that goes further to address the stigma and health issues associated with drug use.

Edmonton, Vancouver, and Toronto have all made requests to the federal government to decriminalize small amounts of substances such as cocaine, heroin, and fentanyl. British Columbia also made a request in November of 2021, and it is the first jurisdiction to receive an exemption.

### **Section 56(1) Exemptions: Municipal and Provincial Actions**

For a city or province to change drug policy in its jurisdiction, it requires an exemption from federal laws under section 56(1) of the CDSA. The Minister of Health and Health Canada grants these exemptions to an individual or a group. They decide on a case-by-case basis. Exemptions have been provided for things like research on the effects of ketamine in treating depression, or as class exemptions to allow pharmacists to provide otherwise controlled substances to their patients. (This was how Methadone was prescribed for a long time, however an exemption is no longer required.)

To receive a section 56(1) exemption, Health Canada considers several factors, including:

- potential benefits
- potential risks or harms
- evidence the substance is necessary for the activity
- safeguards for the use and storage of the substance

B.C. successfully attained an exemption by providing evidence of the severity of the opioid crisis, as well as the province’s capacity to deal with decriminalization. Health Canada accepted B.C.’s plan, which included that:

- adequate social supports would be available to drug users
- law enforcement was properly trained to educate those possessing controlled substances on how to access these resources, and

- B.C. has a comprehensive monitoring system that will allow it to provide ongoing feedback about the impacts of decriminalization in real time.

### **What Does Decriminalization Look Like on the Ground?**

In B.C., adults over the age of 18 will no longer face criminal penalties if police find them with less than 2.5 grams of any opioid, cocaine, methamphetamine, or MDMA (or any combined quantity of these four drugs). These four drugs are the ones deemed most likely to be associated with the ongoing opioid crisis.

The exemption will not apply if there is evidence the adult is using the drugs for more than personal use. It must be stressed that decriminalization in this form does nothing to shield drug traffickers. Law enforcement agents will make these determinations. They will also be trained to provide individual users with information regarding social services and health initiatives to address the underlying issues that cause substance abuse.

No one is suggesting that we turn a blind eye towards the use of controlled substances. Instead, the focus is on acknowledging that drug users are people with health issues that have already upended their lives. Rather than defaulting to prison and punishment, decriminalization initiatives allow drug users to operate with one less fear hovering over their head – that they are going to get “busted” – while also promoting ways for them to recover from their health issues.

It is unclear whether the B.C. model will apply, in its specifics at least, to any of the other jurisdictions that have requested a section 56(1) exemption. It is not even clear whether Edmonton or Toronto will receive this exemption – Health Canada must decide if these locales have met the requirements. The B.C. model does show the potential that decriminalization may hold. And if nothing else, the individuals dependent on these

substances in that province will have one less concern.

### **More to Come**

Both Bill C-5 and the requested section 56(1) exemptions suggest Canada may be on its way to a more progressive drug policy, which understands the drug user’s struggle as its starting point. There is likely much more to come on this topic in the coming months and years.

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#### **Lee Klippenstein**

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# A Brief History of Drug Criminalization in Canada

August 16, 2022 by Charles Davison

**Canada's legal history of drugs has evolved since the late 1800s, coming almost full circle with current calls to decriminalize possession for personal use.**

As I write this short history of the criminalization of drugs in Canada, the federal and British Columbia governments have announced that in early 2023 they will stop charging persons who are found in possession of small amounts of illegal substances for personal consumption. As will be seen, this change in policy seems to bring Canada closer to its position of just over a century ago. Until the early 1900's, it was not illegal to possess and use most of the drugs we have spent the last century battling through our courts and criminal justice systems.

## **The Opium Wars and Anti-Chinese Policies**

During the time of early European contact and exploration of North America, there were few, if any, laws against the possession and use of drugs and similar substances. People freely used opium and coca (from which cocaine is derived), which were also often found in medicines, teas and wines. (Fun fact: when it was first created in the late 1800's, the earliest forms of Coca-Cola contained a small amount of cocaine – some estimates say up to nine grams in a glass.)

During the same period when Great Britain was settling Canada, it was also fighting two wars with China commonly referred to as

the Opium Wars. Contrary to the "modern" approach by Britain and Canada to the drug trade, Britain was at war with China to be able to continue to import opium from India into China. The Chinese regime understood the social and other forms of havoc and upheaval caused by many of its citizens being addicted to opium. They opposed British efforts to continue the drug trade. Britain was, effectively, in the position of modern drug cartels, which resort to violence and terror to protect their income from the sale of highly addictive and dangerous substances.

As certain religious beliefs (mainly, Protestantism) became more influential, Canadian society began to view drugs differently. Ironically, given Britain's role as a major drug trafficker in 1800's China, Canadian efforts to control and eliminate drug use were inextricably linked to racist, anti-Chinese immigration laws and policies. Often Chinese immigrants were portrayed and seen as a threat to the morals and values of white-Canadian society. Among many stereotypes associated with Chinese men (who were often brought to Canada to work on the railroad), many believed they engaged in rampant opium-smoking and thus significantly tempted other sectors of the population.

Especially in the west, racial tensions grew during the early years of the twentieth century. Things culminated in a race riot aimed at Vancouver's Asian community in 1907. Then-Deputy Minister of Labour Mackenzie King went to Vancouver to review the situation. He met with anti-opium activists, among others, and returned to Ottawa intending to promote

the prohibition of drugs. His views and efforts set the stage for Canada's approach to drugs and narcotics ever since.



Photo by Cristian Mihaila  
from Pexels

### **The *Opium Act* and its Successors**

In 1908, with little or no debate, Parliament passed the *Opium Act*. This *Act* prohibited the manufacture, sale or importation of opium for non-medical purposes. In 1911, the *Act* was replaced by another that included cocaine and morphine as prohibited substances, and expanded police powers in this area. In 1920, Parliament passed a new law – the *Opium and Narcotic Drug Act*. One year later, Mackenzie King became Prime Minister and created the Narcotic Division within the federal government. He placed the Royal Canadian Mounted Police at the head of efforts to stamp out and punish the illegal drug trade. In 1922, the *Act* was expanded again to include cannabis among the list of prohibited drugs and to add lengthy prison sentences, believing this would deter the drug trade.

This approach treated any involvement with the drug trade, even only as an addict, as a serious criminal offence. And it continued for about the next 80 years. Some of the first calls to view drug addiction as a health problem instead of a crime came as early as the 1950's. However, the government largely ignored them for the rest of the twentieth century.

In the 1960's, drug use became even more widespread, and, sometimes, more open. Vancouver, being the site of the first moves towards prohibition, was again at the forefront of continuing efforts to ban the drug trade.

A 1971 "smoke-in" event staged by mainly young persons was met with significant police violence, including the use of police dogs and horses, and beatings with batons. Meanwhile, government continued to ignore and reject growing calls for change. These calls included recommendations from a government commission that pushed for treating addiction as a health problem, removing cannabis possession as a crime, and less severe punishments. Possession of as little as a single "joint" of marijuana continued to result in a criminal record, with all the restrictions (as to employability, travel and so on) that flowed from that.

For many years, it seemed Canada enacted and followed drug policies with the United States foremost in mind. Many of the steps taken in Canada mirrored those south of the border. However, in the 1990's, drug activists began to take note of, and draw inspiration from, what was happening in Europe. Other places were creating safe injection sites and safe needle exchange programs (often as a response to the AIDS and HIV epidemics), with some positive results.

Not content to wait for government action while addicts were dying, groups in Canada began to organize their own needle exchange programs and safe injection sites. Once again, Vancouver played a leading role in change in this area. In the early 2000's, the city permitted the first such locations to open and begin operations. An attempt by the Stephen Harper Conservatives to force city-backed supervised injection sites to close was defeated in the courts. Nonetheless, his government continued to pass legislation aimed at making drug-related sentences even harsher.

### **Back to Legalization**

In 2015, Justin Trudeau's Liberals defeated the Harper Conservatives, and formed their first national government. Trudeau first said he favoured legalizing cannabis possession during his campaign for the leadership of the Liberals,

and he continued to argue for legalization in his election campaign. Once in power, he started moving towards passing the *Cannabis Act*, which came into effect in October 2018. Under this legislation, it is no longer against the law to possess, or to purchase from a licensed dealer, small amounts of cannabis (in various forms) for personal use.

The calls to reconsider Canada's response to the health issues posed by drug use have continued. In spring 2022, the federal and British Columbia governments announced that for three years starting at the end of January 2023, that province will have an exemption under the *Controlled Drugs and Substances Act* (the current federal law criminalizing the possession and sale of controlled drugs and narcotics). This means persons found in possession of small amounts of most illegal substances will not be charged or prosecuted. Largely in response to the significant human costs of the recent opioid crisis in Canada, the focus will be on the health issues and concerns for addicts. Persons found with small amounts of drugs for personal use will not be arrested and jailed. Instead, they will be offered information and support about how to safely address and deal with their addictions.

We are not quite back to the situation of the early 1900's, where there were almost no restrictions or limits on the substances Canadians could consume and use. But we have travelled in a bit of a circle. Canada tried without success to control and stop the sale and consumption of intoxicating and similar chemicals and drugs through the police, the courts and our jails. And now we seem to be close to a paradigm shift towards seeing the challenges posed by substances and addictions to them as health concerns and not criminal conduct deserving of harsh punishment.

### Charles Davison

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# Say Yes to Understanding Drug Legislation

August 23, 2022 by Melody Izadi

**Drug legislation in Canada is complex with four main pieces of legislation governing drug offences and processes.**



Photo from Pexels/Pixabay

Most of us educated in the Canadian public school system have been told to say no to drugs. It is a slogan often stuck on the back of bathroom stall doors in bright coloured posters. Or the theme of Mr.-Intimidating-Police-Officer who comes to your Grade 5 class to give you a talk on how to be safe on the sidewalk.

But the reality is, drug use (and the underlying causes of it) is an extremely complicated issue. Who uses it, why and where are as complicated to understand and rectify as a Rubik's cube with ever-changing sticker colours. The legislation in this area is also arguably not sound, nor is it singular.

The Crown attorney's office that prosecutes drug offences is separate from those prosecuting other criminal offences. The legislations for drug offences are separate and complex. The police powers to search differ among the context, legislation, and offences under investigation. Deciphering

when and how and under what law you can be investigated, searched, or charged can be a complicated legal analysis that you may only understand after the fact.

So, what drug laws govern us in Canada? The four main pieces of legislation are described below.

## ***Controlled Drugs and Substances Act***

The *Controlled Drugs and Substances Act* (CDSA) is the main drug legislation policing the possession, sale, importation and trafficking of drugs in Canada. The CDSA deems what drugs are illegal and what offences are criminal. Under the CDSA, police can arrest you and apply for a search warrant to investigate any drug offences. And accused can be charged under the CDSA in our criminal justice system the same way an accused is charged with an offence under Canada's *Criminal Code*.

A separate prosecution team, the Public Prosecution Service of Canada, prosecutes offences under the CDSA. Say for example you are charged with an offence under the *Criminal Code* such as assault and with possessing a large amount of drugs in your car at the time of the assault. In this case, two separate prosecutors would prosecute you for those offences (unless other arrangements are made), even though you face one trial for both offences.

## ***Cannabis Act***

The *Cannabis Act* is the newest drug legislation in Canada. Parliament introduced this legislation to regulate the use, possession

and consumption of marijuana after a large societal push called for the decriminalization of marijuana nationally.

### **Customs Act**

The *Customs Act* provides border officers with the power to search travellers when they have reasonable and probable grounds to suspect something may contain or house prohibited, controlled or regulated goods. It is a long-standing legal fact that anyone crossing Canadian borders has reduced privacy.

### **Good Samaritan Drug Overdose Act**

The *Good Samaritan Drug Overdose Act* legally protects persons who overdose, or those on the scene of an overdose, from new or further charges. Parliament designed this legislation to encourage individuals to call for emergency services without fear of legal repercussion.

### **All Together Now**

This legislation can all intertwine in a drug prosecution. For example, if you are crossing the border, Canadian border agents or police could search your vehicle using their authority under the *Customs Act* or the *Cannabis Act*. If they find drugs, they can charge you criminally under the *CDSA*, and ticket you with violating the *Customs Act*.

With the legalization of marijuana, provinces have also created their own local legislation. For example, Ontario's *Cannabis Control Act* gives police the power to search a motor vehicle or boat without a warrant if they have reason to believe marijuana will be found within it. If the search yields cannabis, the individual can then be charged under the *CDSA* or other legislation.

Just like drug use, the legal matrix of drug regulation is a complicated area of the law. When in doubt, call your local criminal lawyer—especially if you cannot say no to drugs.

### **Melody Izadi**

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