

Issues of Substance: Prohibition, Decriminalization, and Legalization with Strict Regulation

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The Waterloo Region Crime Prevention Council,
Kitchener, Ontario, Canada

www.preventingcrime.ca

www.overdoseprevention.ca



Introduction

For 27 years, the Waterloo Region Crime Prevention Council has been a community-led Advisory Committee to Regional Council, and a national model for crime prevention through social development.

In November 2021, the Waterloo Region Crime Prevention Council adopted the following Motion:

“That WRPCPC’s ad hoc committee on drug-related issues develop a position paper with recommendations on drug policy models for Council’s consideration, specifically reviewing:

- a. Status quo (prohibition of certain drugs)
- b. Decriminalization (of simple possession of certain drugs)
- c. Legalization with strict regulation

In addition, the ad hoc committee will present the key findings and recommendations to WRPCPC in 2022. The subcommittee will follow a similar process undertaken for the WRPCPC’s position paper on prostitution. The committee will review the available evidence and the wisdom of the community, highlighting the advantages and disadvantages of the models, and bringing a recommendation to Council for consideration and potentially, adoption by WRPCPC as a formal position.”

The Committee is comprised of three Council members, one former Council member, and two community professionals engaged in direct service provision to people who consume unregulated drugs. The Committee met frequently, conducted an informal literature review, drew on local evidence and wisdom, participated in several related law and policy presentations, and, with more than a century of combined, relevant experience between the members, developed indicators, and came to consensus on a recommendation for the membership of the Crime Prevention Council.

The Committee is pleased to share the findings with Council for consideration.

Policy options

1. Prohibition: the production, distribution, sale, and possession of certain drugs is criminalized by the *Controlled Drugs and Substances Act* and subject to criminal sanctions.

2a. Partial decriminalization of simple possession: The possession of certain drugs is subject, at the discretion of police, to administrative sanctions (e.g. fines, court diversion measures) or, in some proposed models criminal sanctions, below certain ‘thresholds’.** Production, distribution, and sales remain criminal offenses.

2b. Decriminalization of simple possession: The possession of certain drugs is decriminalized at certain ‘thresholds’** with no administrative or criminal sanctions. There may be allowance at certain thresholds for selling and/or sharing. Production, distribution and sales remain criminal offenses.

3. Legalization with strict regulation: Certain drugs are legalized, and subject to federal and provincial regulations (e.g. quality control standards, retail sales, marketing etc.) concerning production, distribution, sales, possession, and consumption.

** Thresholds is a term referring to limits on quantities of a particular substance one is permitted to possess before trafficking charges can take effect. Establishing thresholds is extremely challenging and contentious given the range of individual dose tolerances, issues of sharing/splitting, bulk buying for personal use, subsistence selling etc.

Key Concept One: The Paradox of Prohibition

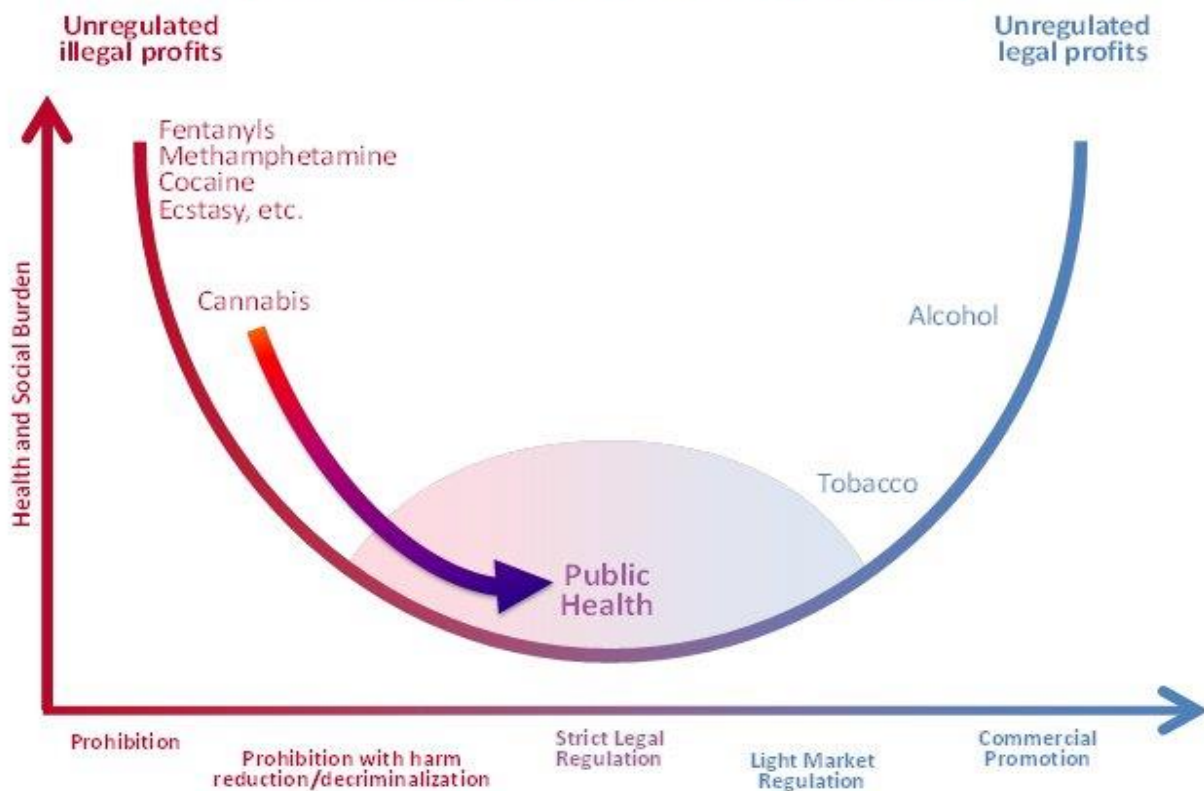
This concept, shown below, was adapted for WRPCPC’s submission on the legalization-regulation of cannabis in 2018¹. Central to the model for the best possible health and safety outcomes is a regulatory regime that is neither full prohibition nor laissez faire

¹ An Ounce of Prevention: Report of the Waterloo Region Crime Prevention Council’s Working Group on Cannabis Legalization-Regulation. Waterloo Region Crime Prevention Council, 2018.

marketplaces, both of which are largely motivated by profit, characterized by the absence of regulation, and high health and socio-economic burdens.

For example, alcohol is among the most dangerous of recreational drugs but the policy of alcohol prohibition led to worse health and social outcomes than a legal-regulated model. As public health knowledge and interest increased since the repeal of alcohol prohibition, regulations now guide quality control standards, marketing practices, licensing of producers, distributors and retailers etc.

The Paradox of Prohibition



Adapted by WRCPC / @DrugsWRCPC (with permission from the Canadian Drug Policy Coalition) from Marks, J. (1990). The paradox of prohibition. In Hall, W. (Ed.), *Controlled availability: Wisdom or disaster?* (pp.7-10). Kensington, NSW: National Drug and Alcohol Research Centre.

Key Concept Two: Phenomenology vs Pharmacology

There is significant evidence that points to Canadian drug law and policy creating more harms than benefits. That is, current drug laws and policies (phenomenology) create harms not inherent to the pharmaceutical characteristics of a particular substance. A Provincial Chief Coroner recently surmised that:

“... not only are the policies and laws that we currently live under misinformed, I really believe they are actually doing harm. We are punishing people who are already experiencing problematic use, we are using all sorts of resources, law enforcement, courts, jails to further harm people who are already suffering².”

Locally, WRPCPC's (Un)Safe³ research showed extremely high levels of victimization (91%) associated with consumers accessing unregulated drug markets, and further, a reluctance to report these crimes to police (86% of crimes were unreported) - a function more of criminalization than any pharmaceutical properties. Similarly, the WRPCPC efforts that led to the establishment of Canada's *Good Samaritan Drug Overdose Act*⁴ included local research⁵ demonstrating that fear of police attendance meant most witnesses to an overdose emergency would not call 911. Finally, the absence of quality control standards in prohibition and decriminalization models is a policy choice that permits the availability and consumption of substances with unknown and often harmful ingredients and dosages, and the abandonment of basic institutional consumer health and safety protocols – all key contributors to the worst poisoning crisis in Canadian history. These are among the many examples of policy-induced harms.

² B.C.'s chief coroner laments lack of action as opioid crisis hits worst death toll yet. Ian Mulgrew, Vancouver Sun, January 30, 2022.

³ (Un)Safe. Waterloo Region Crime Prevention Council. December 2020.


⁴ *Good Samaritan Drug Overdose Act* (S.C. 2017, c. 4). Government of Canada. Royal Assent May 4, 2017

⁵ *Between Life and Death: The Barriers to Calling 9-1-1 During an Overdose Emergency*. Waterloo Region Crime Prevention Council. September 2012.

Separating the pharmacological characteristics of opiates and opioids from phenomenological characteristics might look like this:

Opiates/Opioids	Pharmacology	Phenomenology
Euphoria, sedation, pain mgmt.	X	
Withdrawal	X	
Constipation	X	
Decreased sex drive, appetite	X	
Flushing	X	
Overdose poisoning		X
Viral infections		X
Bacterial infections		X
Violence		X
Crime and victimization		X
Enforcement-Courts-Corrections-P&P		X
Discrimination, stigmatization		X

Adapted by WRCPC with permission c/o Dr. Martin Schechter, NAOMI, 2006.



Key Concept Three: Choices - Prohibition, Decriminalization of Simple Possession, Legalization with Strict Regulation

Canada’s first narcotic law - *The Opium Act* of 1908 - was rooted not in evidence but rather, racism and moral temperance movements. Other substances have been prohibited over the last 114 years, enshrined in the *Controlled Drugs and Substances Act*⁶(CDSA). Indigenous, Black and persons of colour continue to be intentionally and disproportionately harmed, injured and killed - by a wide margin - through the on-going application of narcotic laws firmly rooted in colonialism.

⁶ Controlled Drugs and Substances Act (S.C. 1996, c. 19). Government of Canada. Retrieved from: <https://laws-lois.justice.gc.ca/eng/acts/c-38.8/>

Despite being the dominant intervention across Canada via the disbursement of billions of dollars of public funding annually⁷, and despite the best efforts of staff within enforcement and justice systems, there remains an absence of evidence demonstrating sustained impact in reducing the supply of (or demand for) currently illegal substances on a population level. In 2011, WRPC's Waterloo Region Integrated Drugs Strategy⁸ recommended the Government of Canada evaluate the effectiveness of drug law and policy. Today, efforts from Waterloo Region Police Service place Waterloo region in 6th in national rates of 'opioid-related offenses' - primarily possession charges - and 2nd in Ontario⁹.

The CDSA is a federal statute within the jurisdiction of Parliament. Related, Health Canada can grant certain exemptions to the CDSA, for example, S. 56 exemptions that permit supervised consumption services, Urgent Public Health Needs Sites or, potentially, decriminalization of simple possession within municipal boundaries. A handful of large Canadian municipalities have submitted S. 56 exemption requests for municipally-based decriminalization. Almost 50 years after the Le Dain Commission's Final Report of the Commission of Inquiry into the Non-medical Use of Drugs¹⁰ recommended the end of criminal sanctions, a 2021 expert advisory committee convened by Health Canada recommended "that Health Canada end criminal penalties related to simple possession and most also recommend that Health Canada end all coercive measures¹¹".

A wide range of drug law and policy choices have always been available to elected officials in Canada. Related bills currently under consideration include Bill C-5¹² (repeal

⁷ Canadian Substance Use Costs and Harms Scientific Working Group. (2020). Canadian substance use costs and harms 2015–2017. (Prepared by the Canadian Institute for Substance Use Research and the Canadian Centre on Substance Use and Addiction.) Ottawa, Ont.: Canadian Centre on Substance Use and Addiction.

⁸ Waterloo Region Integrated Drugs Strategy. Waterloo Region Crime Prevention Council. December 2011.

⁹ Police-reported crime statistics in Canada, 2020. Statistics Canada, Canadian Centre for Justice and Community Safety Statistics. July 2021.

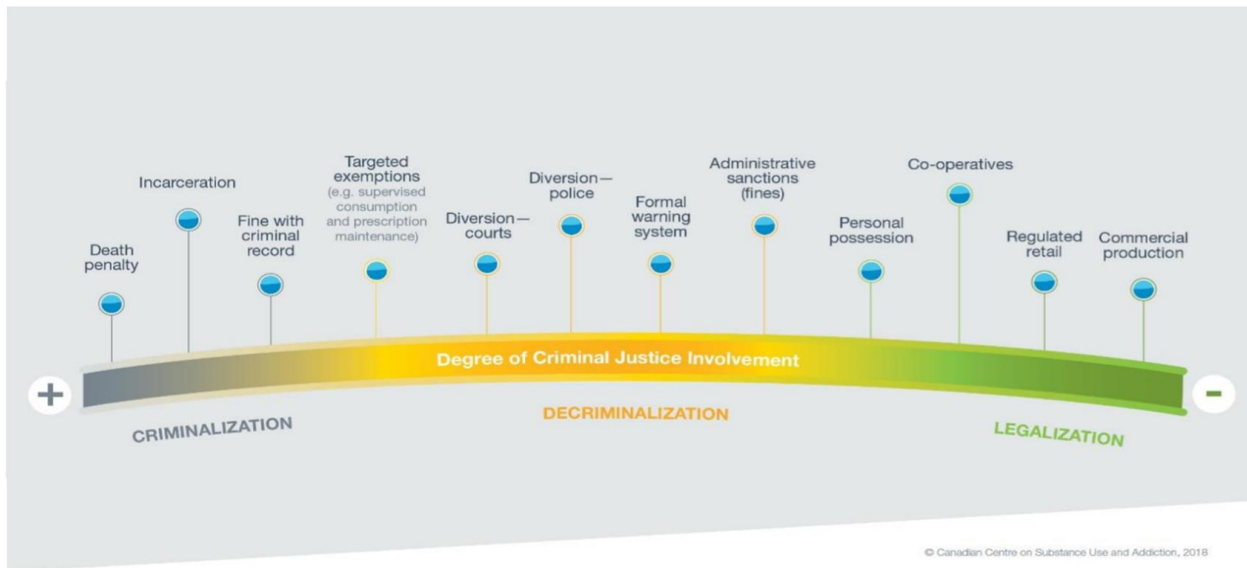
¹⁰ Final Report of the Commission of Inquiry into the Non-medical Use of Drugs. Le Dain Commission. Government of Canada. 1973.

¹¹ Report 2: Recommendations on the federal government's drug policy as articulated in a draft Canadian Drugs and Substances Strategy (CDSS). Health Canada. Government of Canada. 2021.

¹² C-5 "An Act to amend the Criminal Code and the Controlled Drugs and Substances Act". 44th Parliament, 1st session.

of select mandatory minimums, amendments to the CDSA) and a private members bill, C-216¹³ (*An Act to amend the Controlled Drugs and Substances Act and to enact the Expungement of Certain Drug-related Convictions Act and the National Strategy on Substance Use Act*). These are among the opportunities currently before Members of Parliament.

Figure 1: The Regulatory Continuum



(The Regulatory Continuum c/o The Canadian Centre on Substance Use and Addiction)¹⁴

Policy Options

In considering the drug policy options, the WRPCPC subcommittee chose key indicators and evaluated them against each policy option. Options 2a and 2b generally combined. The indicators are not intended to be exhaustive. The indicators are not weighted, though clearly, for the Committee, a model that prevents thousands of accidental drug poisoning fatalities and injuries annually is preferable to models that facilitate thousands of preventable deaths and injuries. To our knowledge, this is a novel approach in Canada.

¹³ C-216 “*An Act to amend the Controlled Drugs and Substances Act and to enact the Expungement of Certain Drug-related Convictions Act and the National Strategy on Substance Use Act*”. 44th Parliament, 1st session.

¹⁴ Decriminalization: Options and Evidence [Policy Brief]. Rebecca Jesseman and Doris Payer. Canadian Centre on Substance Use and Addiction. June 2018.

Indicator	Prohibition	Decriminalization (2a, 2b) of simple possession	Legalization with Strict Regulation
Manufacturing and Distribution	<p>No change</p> <ul style="list-style-type: none"> - Low or no production standards - No health and safety standards for labour force, operations, environmental impacts etc. - Subject to violence, including homicide, for participants and communities - Enforcement activities can escalate violence - Uncertain product quality trending over time toward more toxic products - No age restrictions - Distribution is inherently dangerous between sellers-retailers-consumers. - Crime and victimization unlikely to be reported - No taxation 		<p>New</p> <p>Licensed manufacturers are strictly regulated by health and safety standards, and subject to compliance inspections and sanctions for violations</p> <p>Distribution and retail sales are strictly regulated by health and safety standards, and subject to inspection and sanctions for violations</p> <p>Taxation in effect</p>
Quality Control (QC)	<p>No or low QC standards</p> <ul style="list-style-type: none"> - Unknown composition, quality, dosage - High risk of cross contamination - No safe, standardized chain of command - No standardized labeling - No application of core consumer health and safety protections 		<p>QC standards</p> <p>Licensed manufacturers consistently produce pharmaceutical-grade substances with safer ingredients, standardized dosages, appropriate labeling etc.</p> <p>Establishment of universal standards, inspections and if necessary, enforcement of QC standards</p>
Drug Poisoning Deaths and Injuries	<p>Highest risk of accidental poisoning deaths and injuries</p>		<p>Lowest risk when consuming as directed</p>
Psychosocial impacts on consumers	<p>Creates and perpetuates false and negative beliefs, stereotypes and</p>	<p>2A and 2B are likely to produce different outcomes</p>	<p>Enables self-determination and autonomy</p>

	<p>structural discrimination from governments, elected officials, health and social service systems and providers, family members, society at large etc. Reducing autonomy and perceived self-worth.</p> <p>Fear of criminalization and reliance on unregulated marketplaces decreases mental health, produces unhealthy relationships, increases vulnerability, isolation, and traumatic events, facilitating instability.</p> <p>Reliance on unregulated markets leaves consumers vulnerable to victimization, isolation and unhealthy relationships</p> <p>Fear of being poisoned by a toxic drug supply causes instability and reduced mental health</p>	<p>Potentially reduces some stigma and discrimination aimed at consumers.</p> <p>May assist in sustaining and/or improving relationships with family, friends, and community.</p> <p>Reliance on unregulated markets leaves consumers vulnerable to victimization, isolation and unhealthy relationships</p> <p>Fear of being poisoned by a toxic drug supply causes instability and reduced mental health</p>	<p>Removes barriers to seeking connection, support, and treatment</p> <p>Removes ties to unhealthy relationships related to the unregulated market</p> <p>Breaks cycles of trauma and vulnerability caused by the unregulated market</p> <p>Eliminates the psychosocial harms of incarceration and fear of poisoning</p>
<p>Impacts on life opportunities for consumers</p>	<p>Low</p> <p>Criminal sanctions are extremely disruptive to labour force participation, educational attainment, family-friend relationships, personal health, international travel etc.</p>	<p>Low to medium</p> <p>Improved chances of employment, educational attainment, interpersonal relationships, travel etc.</p> <p>Limits to opportunities imposed by accessing a criminalized,</p>	<p>Medium to high</p> <p>No inherent instability in a regulated marketplace</p> <p>Reduces barriers to employment, housing, employment, education, interpersonal relationships etc.</p> <p>Price, product, and retail</p>

	<p>Little to no remedy for ancillary interpersonal crimes and victimization (e.g. unlikely to seek police assistance)</p> <p>Unpredictable product creates uncertainty about adverse effects (e.g. bootleg benzodiazepines in fentanyl products incapacitating consumers for hours, causing amnesia etc.)</p>	<p>unregulated market that can require significant energy, time and money.</p> <p>Unpredictable product creates uncertainty about adverse effects</p>	<p>stability avoids negative health, safety and wellbeing outcomes</p>
<p>Consumer Eligibility (e.g. age, health condition, sale premises etc.)</p>	<p>No restrictions in support of individual or public health and safety</p>		<p>Regulated with eligibility standards supporting individual and public health and safety</p>
<p>Prevalence of substance use</p>	<p>Reducing and/or delaying demand for psychoactive substances is best advanced through sustained universal prevention policies and programs addressing, for example, the structural determinants of health, the calls to action of the Truth and Reconciliation Commission, the articles of the UN Declaration on the Rights of Indigenous Peoples etc.</p> <p>Early studies of Canada’s legal-regulatory change to cannabis suggest mixed results, and no discernable impacts on overall prevalence.</p> <p>New cannabis-related funding was/is directed to enforcement and education with no new prevention capacity, limiting demand-side opportunities.</p>		
<p>Health care and social service engagement and capacity for ‘compliance’</p> <p>(Of note, 61% of people who died of opioid poisoning were not consuming</p>	<p>Low</p> <p>Criminalization and systemic carceral logic increases the risk of ill health and socio-economic well-being, and prevents and/or hampers engagement and provision of quality service for both consumers and practitioners, including</p>	<p>Low to medium</p> <p>Potential engagement opportunities and service improvement via potential reductions in discrimination and stigma associated with criminalization and carceral logic.</p> <p>Reduced risk to health and well-being if</p>	<p>Medium to high</p> <p>Consumers can access health and social services without fear of criminalization and, in time, service discrimination.</p> <p>Capacity of ancillary services (e.g. housing and other structural determinants of health,</p>

<p>opioids daily¹⁵, and health care utilization in the week and/or month before death was/is common.^{16,17})</p>	<p>initiation, diagnosis, treatment and related pathways to improved health.</p>	<p>incarceration is not an option.</p> <p>In circumstances where mandatory, non-carceral sanctions are applied and capacity of ancillary services are significantly established and/or expanded (e.g. housing and other structural determinants of health, addiction treatment, primary care etc.), benefits may be possible. Conversely, it is likely most people consuming unregulated drugs do so occasionally, and require no administrative sanctions.</p>	<p>addiction treatment, primary care etc.) - especially for select populations - remains limited however legalization improves personal stability and capacity to utilize and maintain 'compliance'</p> <p>Improved health and medical knowledge in research, diagnosis and treatment.</p>
<p>Application of Enforcement and Justice Systems</p> <p>(e.g. police, courts, corrections, probation and parole, agencies administering diversion sanctions)</p>	<p>No change</p> <p>Continues to disproportionately harm people without stable housing; low income individuals and neighbourhoods; people with mental health issues; Black, Indigenous and people of colour; women and youth.</p> <p>Continued risk of victimization, compromised health and socio-economic</p>	<p>Low (A) to moderate (B) change in possession offenses only</p> <p>Production and distribution offenses remain.</p> <p>Continued risk of victimization, compromised health and socio-economic well-being via reliance on an unregulated marketplace, and administrative or criminal sanctions.</p>	<p>Substantial reductions in production, distribution, and possession offenses</p> <p>Establishment of regulatory inspection, enforcement and justice mechanisms.</p> <p>Decline in gun-related violence.</p>

¹⁵ Response to the Opioid Overdose Crisis in Vancouver Coastal Health. Chief Medical Health Officer Report, Vancouver Coastal Health Authority. 2018.

¹⁶ BC Coroners Service Death Review Panel: A Review of Illicit Drug Toxicity Deaths. B.C. Coroners Service, 2022.

¹⁷ Patterns of Medication and Healthcare Use among People who Died of an Opioid-Related Toxicity during the COVID-19 Pandemic in Ontario. Ontario Drug Policy Research Network, 2022.

	<p>well-being via reliance on an unregulated marketplace, and administrative or criminal sanctions.</p> <p>No change to gun-related violence.</p> <p>No evidence of effectiveness to positively affect demand or supply.</p>	<p>No change to gun-related violence.</p> <p>No evidence of effectiveness to positively affect demand or supply.</p>	
<p>Individual and Community Safety (Violence and Victimization)</p>	<p>High</p> <p>Prohibition via enforcement of CDSA is inherently unsafe for both individual and community safety.</p>	<p>High</p> <p>No safety improvements as no change to prohibition of production, distribution and 'retail' mechanisms. Market disruptions via enforcement measures can provoke violence. Retail transactions remain inherently risky.</p>	<p>Low</p> <p>Community safety improvements expected via legalized- regulated production, distribution and 'retail' models.</p> <p>Overall, safety is anticipated to improve.</p>
	<p>For no/low income consumers, self-managing withdrawal symptoms via the unregulated market is expensive, time consuming and sometimes, dependent on funding through risky acquisition activities (i.e. survival sex work, petty crime, selling small quantities of drugs, recycling material etc.).</p> <p>The regulatory models here may not address issues of crime and safety for all no/low income persons living with substance(s) addiction. Targeted interventions such as 'safe supply' programs, improved treatment and support programs etc., are necessary to improve individual and community safety.</p>		
<p>Burden on Downstream Services</p>	<p>High</p> <p>Health, financial, social, and psychological burdens are overwhelming and traumatizing service systems and staff, including first responders, hospitals,</p>	<p>High - Medium</p> <p>Similar to prohibition.</p> <p>Potential reduction in justice system costs.</p>	<p>Low</p> <p>The least financial, health, social and psychological burden to affected downstream services.</p> <p>Significant cost reductions to</p>

	enforcement-justice systems, physical and mental health services, shelter staff etc.		enforcement and justice systems in particular.
Costs to Taxpayers	High Cost of every system hospitalizations, injuries, EMS, police, incarceration and the continuous cycle	Medium - High Similar to Prohibition with potential cost savings via court and corrections (A and B) and enforcement (B).	Low Reduces financial burden on affected, publicly funded services. Revenue via taxation is an option. New costs in regulations, inspections and enforcement
Impact on regions and people outside of Canada	High Demand for unregulated substances is met by transnational production-distribution entities, and dependent in whole or in part, by corruption, bribery, violence and threats of violence, including death, to people, state institutions including enforcement, courts and corrections, elected officials, journalists, farmers, legal professionals, ancillary services and many others, including people not directly participating in the drugs trade. Militaristic interventions to disrupt production-distribution activities can be harmful to, for example, people and communities who rely on farming for income. Ecological damage and cultural dislocation, especially for Indigenous communities, is a common feature.		Low Reduces or eliminates domestic reliance on international drug markets. Regulated, domestic production remains an option.

Recommendation

The subcommittee of the Waterloo Region Crime Prevention Council recommends legalization with strict regulation of substances as the approach that offers the greatest potential for both individual and community health, safety and well-being, and the lowest financial burden to taxpayers.

Conclusion

On February 11, 2022, the membership of the Waterloo Region Crime Prevention Council passed the following motion:

The Waterloo Region Crime Prevention Council endorses the ad hoc committee's Issues of Substance report, rejecting prohibition and decriminalization of simple possession, and supporting legalization with strict regulation as the legislative approach that offers the greatest opportunity for significantly improving both individual and community health, safety and well-being for all residents of Canada, substantially reducing accidental drug poisoning deaths and injuries, and providing the lowest financial burden to taxpayers and further;

urges the Government of Canada to expedite an inclusive consultation process in 2022 to collaboratively inform a new legal framework that is grounded in equity, evidence, and the wisdom of people most affected by drug-related issues, and further;

that the Issues of Substance report be presented to Region of Waterloo Council, and shared with all orders of government; including local MPs, MPPs, and all relevant federal and provincial Ministers, as well as with related stakeholders.



Photo: Waterloo Region Overdose Awareness Day 2021, Kitchener, Ontario