



THE CANADIAN
BAR ASSOCIATION
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September 13, 2024

Via email: GEN-NHQ-POL-CONSULTATION@CSC-SCC.GC.CA; Policy-Politiques.GEN-NHQ@csc-scc.gc.ca

Mr. Patrick Derby
Director, Strategic Policy Division
Correctional Service Canada
340 Laurier Avenue West
Ottawa ON K2P 0P9

Dear Mr. Derby:

Re: Commissioner's Directive (CD) 585 – National Drugs and Substances Strategy Guidelines

We write on behalf of the Criminal Justice Section and its Committee on Imprisonment and Release of the Canadian Bar Association (CBA Section) in response to the draft of Commissioner's Directive 585: National Drugs and Substances Strategy, as well as Guidelines 585-1 – Individual Substance Use Framework, and 585-2 – Contraband Interdiction and Management, issued by Correctional Service Canada (CSC) on July 23, 2024.

The CBA is a national association of over 40,000 members, including lawyers, notaries, academics, and law students, with a mandate to seek improvements in the law and the administration of justice. The Criminal Justice Section comprises prosecutors, defense counsel, and legal academics specializing in criminal law. Our members have extensive experience in addressing legal issues related to imprisonment, drug use, and corrections, making our input particularly relevant to this consultation.

We commend CSC for its efforts to update its approach to drugs and substance use within the prison system, but we believe that further steps are needed to fully align with modern principles of harm reduction, human rights, and public health. In particular, we recommend that CSC consult with drug users and drug policy organizations with expertise in the effects of drug policies on incarcerated individuals and communities affected by drugs. Evidence-based best practices from these stakeholders should inform CSC's policies to ensure the safety, dignity, and health of incarcerated individuals.

Harm Reduction in Prisons

The CBA takes the position that people in prison, like those in the broader community, should have access to comprehensive harm reduction measures. This includes access to confidential safe consumption sites, clean supplies (including those necessary for injection drug use), and a safe supply

of drugs. These measures are vital to protect the health and safety of incarcerated individuals, reduce the spread of infectious diseases, and prevent fatal overdoses. Harm reduction practices should be paired with recovery-oriented programs. Treatment programs should be provided confidentially through health care, rather than as part of a person's correctional plan. Treatment should always be voluntary and non-coercive.

The Canadian Drugs and Substances Strategy advocates for diverting individuals who use drugs away from the criminal justice system and towards health and social services.¹ Punitive responses to drug use, such as strip searches, dry cells, and disciplinary charges, encourage people to hide their drug use, leading to unsafe practices like covert drug use, which increases the risk of overdose. Incarcerated individuals may also resort to concealing drugs in their body cavities, a practice that poses significant health risks.²

Key Concerns with Current CSC Practices

CSC's current reliance on intrusive surveillance and punitive strategies is outdated and ineffective. For example, strip searches, a routine practice in many correctional institutions, are degrading and dehumanizing. Incarcerated individuals frequently report that these searches feel like sexual assaults, regardless of their gender. One study found that women's experiences of strip searches are consistent with the trauma of sexual assault.³ Additionally, the Correctional Investigator of Canada has labeled dry cell detention "incredibly restrictive, degrading, and inhumane."⁴ According to the Correctional Investigator's review of data from one CSC region, nearly three-quarters of dry cell cases did not result in any evidence of contraband being found.⁵ This calls into question the effectiveness of these practices, particularly given the humiliation and degradation they cause for both incarcerated individuals and staff.

Decriminalization and Safe Drug Supply

We urge CSC to follow the federal government's lead in decriminalizing the possession of small amounts of illegal drugs for personal use. In January 2023, British Columbia was granted a three-year exemption under the Controlled Drugs and Substances Act, allowing for the decriminalization of possession of up to 2.5 grams of certain illegal drugs.⁶ We recommend that CSC adopt a similar approach within prisons to ensure that individuals found in possession of drugs for personal use are not subjected to punishment, including inhumane and sexually abusive procedures like strip searches.

This approach would be consistent with the Corrections and Conditional Release Act (CCRA), which emphasizes "safe and humane sentences" (s. 3), the prohibition on "cruel, inhumane, or degrading treatment or punishment" (s. 69), and the requirement for penitentiaries to be "safe, healthful, and free of practices that undermine a person's sense of personal dignity" (s. 70).⁷ A harm reduction approach within prisons would also align with the federal government's broader public health goals of reducing overdose deaths and minimizing the harms associated with drug use.

¹ Government of Canada, Canadian Drugs and Substances Strategy.

² Canadian Bar Association, Submissions on the Corrections and Conditional Release Act, 2023.

³ Kelly Hannah-Moffat, Prisons and Gendered Experiences of Strip Searches, 2020.

⁴ Correctional Investigator of Canada, Annual Report on Dry Cell Detention, 2022.

⁵ Ibid.

⁶ Government of Canada, Controlled Drugs and Substances Act Exemption – British Columbia, 2023.

⁷ Corrections and Conditional Release Act, SC 1992, c 20.

Guideline 585-1: Individual Substance Use Framework

Possession & Trafficking: We recommend that CSC not automatically treat possession of drugs as evidence of trafficking. Many individuals in custody possess drugs for personal use or to self-medicate. Some may be coerced into selling small quantities of drugs to pay off debts or assist friends. CSC policies should account for these realities and not conflate possession with trafficking.

Confidentiality of Health Information: CSC's policies on sharing private health information must comply with the Mandela Rules, which require the confidentiality of medical information unless there is a real and imminent threat to the patient or others.⁸

Self-Disclosure & Consent: We are concerned that the policy encourages parole officers to solicit self-disclosure of substance use and consent for sharing health information for risk management purposes. This practice could lead to discriminatory treatment of individuals who use drugs, including restricting their liberty. Substance use alone should not be grounds for punitive measures, as this would violate human rights laws.⁹

Harm Reduction Measures: We support the inclusion of harm reduction in CSC policy. However, we believe that there is a conflict in having correctional officers and primary workers monitor and document substance use while also encouraging individuals to seek treatment. A non-punitive, health-centered approach is critical.

Guideline 585-2: Contraband Interdiction and Management

Contraband Introduction: The policy should acknowledge that contraband is not only introduced by incarcerated individuals but also by staff and contractors. Intelligence-gathering efforts should focus on all possible sources of contraband, including correctional staff who may be involved in the illicit drug trade.¹⁰

Awareness Campaigns: CSC should implement strategies to raise awareness among incarcerated individuals about the health and wellness implications of contraband, in addition to the criminal, administrative, and disciplinary penalties. This would align with the Canadian Drugs and Substances Strategy's focus on health and harm reduction.¹¹

Discipline and Case Conferences: A case conference should be convened only when an individual has introduced more substances than would be considered for personal use. The language of the policy should be neutral and not biased against the individual involved. Factors such as coercion or pressure from others must be considered.¹²

Conclusion

In conclusion, we strongly encourage CSC to adopt a more compassionate, health-oriented approach to drug use within prisons. Policies should prioritize harm reduction over punitive measures, with a focus on treatment, safety, and dignity for incarcerated individuals. We urge CSC to consult with relevant

⁸ United Nations, Mandela Rules, 2015.

⁹ Canadian Human Rights Commission, Submissions on Discrimination and Substance Use, 2021.

¹⁰ Correctional Investigator of Canada, Report on Contraband and Institutional Subcultures, 2022.

¹¹ Government of Canada, Canadian Drugs and Substances Strategy, 2022.

¹² Canadian Bar Association, Criminal Justice Section Comments on Guideline 585-2, 2024.

stakeholders, including drug users and drug policy organizations, to ensure that its policies reflect evidence-based best practices.

We appreciate the opportunity to provide feedback and are available for further consultation on this important issue.

Yours truly,

(original letter signed by Julie Terrien for David Parry)

David Parry
Chair, Criminal Justice Section