



Centre for Addiction and Mental Health
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Written Submission to

**House of Commons Standing Committee on
Justice and Human Rights**

on

***Bill C-15, An Act to amend the Controlled Drugs
and Substances Act and to make consequential
amendments to other Acts***

May 2009

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The Case against Mandatory Minimum Sentences for Drug Offences

The Centre for Addiction and Mental Health, (CAMH) is Canada's leading mental health and addictions teaching hospital and a centre of excellence in research in mental health and addictions. CAMH is also a pioneer in developing alternatives to incarceration for drug users, partnering in Canada's first drug treatment court in 1998. CAMH has also played a central role in developing drug policies at the municipal, provincial, and federal levels based on evidence from our own internationally recognized research and research done by other experts in the field. CAMH believes that efforts to address drug use and drug control should include a balance of approaches, including reducing the harms associated with drugs use for individuals, families and communities.

Bill C-15, an *Act to amend the Controlled Drugs and Substances Act* is an initiative of the federal government's National Anti-Drug Strategy. The goal of the Bill is to institute mandatory minimum sentences for serious drug offences, including possession for the purpose of trafficking, production (growing) and importing/exporting. CAMH believes that mandatory minimum sentences are not an effective response to illegal substance use in Canada and encourages the Committee to reconsider this approach. We understand that some stakeholders, including the Toronto Drug Strategy (City of Toronto), have suggested that – in the event the legislation becomes law – there be provision for a mandatory review after two years. We support this recommendation.

The Root of the Problem

CAMH's approach to drug use, drug addiction and drug policy is rooted in a public health framework. Within such a framework our priority is always to address those problems that pose the greatest risk to society. We believe that the public response to drug use and drug addiction should be proportionate to the harms that are caused by substance use – including the harms caused by legal substances – most notably alcohol. By using the law, and mandatory minimums in particular, we risk losing the ability to respond proportionally to the problem.

The incarceration of individuals with addictions does not address the root of the problem (the individual's substance use problem) but increases the risk of additional related problems. According to a survey by Correctional Service of Canada, 38% of inmates reported using an illegal drug at least once in their current institution (Robinson and Mirabelli). Drug use in prisons exposes individuals to serious risks of HIV and Hepatitis C in part because of the lack of needle exchange programs. It has been suggested that the rate of HIV in Canadian prisons is on the increase (Canadian HIV/AIDS Legal Network). Individuals incarcerated for drug offenses are eventually released back into the community where they continue to experience the harms related to their drug use and may pose an additional risk of HIV transmission (Canadian HIV/AIDS Legal Network).

Users vs. Dealers: a false distinction

Many of the people to whom mandatory minimum sentences would be applied are users who also deal in small amounts of drugs to support their own substance use. Several

studies have revealed that the distinction between user and dealer is not always clear. In a Vancouver study, researchers found that 20% of the users surveyed also dealt drugs as a means to either support their own use or to earn money to pay debts incurred from their drug use (Canadian HIV/AIDS Legal Network). Researchers have shown that the most effective means of reducing their substance use, and the criminal behaviour that accompanies it, is to provide treatment for their addiction (Drug Policy Research Centre). Some of these individuals are the most marginalized people in our society and their difficulties are not solved by imprisonment. Those further up the trafficking chain deal in large amounts and distance themselves from street level activity where most arrests are made (Canadian HIV/AIDS Legal Network, Gabor and Crutcher). CAMH recommends that the federal government reinvest the funding to support the implementation of mandatory minimum sentences into demand reduction programs such as addiction treatment or drug treatment courts.

Aboriginal Population

CAMH is also concerned about the potential negative effect of mandatory minimum sentences on Canada's Aboriginal population, who are already disproportionately represented in Canada's prisons. Aboriginal people continue to have high levels of representation in custody. According to the 2006 Census, Aboriginal people represented 4% of the adult population in Canada, yet they accounted for 24% of adult admissions to provincial/ territorial custody, 19% of admissions to remand and 18% of admissions to federal custody (Landry and Sinha). Aboriginal peoples are also over represented in the substance using populations and require special efforts by government to address the social and economic determinants of addiction; the documented rate of illicit drug use among First Nations alone (7.3%) is more than double the rate of the general Canadian population (3.0%). Other research suggests that prescription abuse could be on the rise and requires further study (Dell and Lyons). CAMH is encouraged by the announcements of new funding for Aboriginal treatment services, but has concerns that mandatory minimum sentences may exacerbate the individual and community difficulties faced by Canada's Aboriginal peoples.

Drug Treatment Courts

CAMH is pleased to see that drug treatment courts are recognized as a means to address the addiction issues of those who are facing mandatory minimum sentences. We encourage the federal government to support drug treatment courts with permanent funding and expand the access and availability of these programs across the country. Evaluation of drug treatment courts have shown that they play an important role in providing treatment to individuals whose addiction brings them into conflict with the law. Participants in an evaluation of the Toronto Drug Treatment Court stated that the program went beyond helping clients with their substance abuse, to helping them reconnect with family and setting goals for their future. The program serves individuals who are very unstable, actively using and often incarcerated (Newton-Taylor). This population has significant difficulty accessing traditional addiction treatment programs and therefore the drug treatment court program is an important element in the addiction system. Drug treatment courts should be recognized as an integral part of the addictions services system with permanent funding, expanded eligibility requirements and increased availability.

Lessons from the United States

Canada only has to look to the United States to examine the effects of mandatory minimums on the state and federal criminal justice and corrections systems. In the 1980s state and the federal governments in the United States established minimum penalties including lengthy prison sentences for even small possession charges for federal drug offences. Research over the last 20 years in the US has shown that the prevalence of substance use has not decreased, and that the main effect these policies have had is to significantly increase the public cost of the criminal justice system and importantly, the size of the prison population throughout the US (Gabor and Crutcher). From 1980 to 1995 the number of people imprisoned for drug law violations in state and federal prisons increased by 700%; from 51,950 to 388,000. This increase is attributed to harsher enforcement policies and mandatory minimum sentences (Drucker). As well state spending on corrections increased from \$12 billion in 1987 to \$49 billion in 2007, and federal spending increased from \$541 million in 1982 to \$5.5 billion in 2003 an increase of 925% (Pew Center on the States and Hughes).

Recently, several states have recognized that the policies of harsher sentences and continued incarceration of drug offenders have not been effective and have begun to implement policies that address the ever growing prison populations. For example, Texas, which saw a 300% increase in its prison population from 1985 to 2005, has recently expanded the drug treatment system as an alternative to incarceration (Pew Center on the States). Similarly, New York has also decided to repeal its mandatory minimums for drug offences and replace them with increased drug treatment and drug court programs (Peters). As the United States moves towards repealing mandatory minimums because of the crushing financial burden they impose, we urge the federal government not to take Canada down this path.

Costs of Treatment vs. Incarceration

In a report prepared for Justice Canada in 2002 on the effects of mandatory minimum sentences on crime, sentencing disparities and justice system expenditures, the authors state that mandatory minimum sentences “do not appear to influence drug consumption or drug-related crime in any measurable way. A variety of research methods concludes that treatment-based approaches are more cost effective than lengthy prison terms” (Gabor and Crutcher, pg 18). CAMH encourages the federal government to examine the real costs associated with the passing of Bill-15, to individuals, communities and governments. Reducing the demand for illicit drugs by investing in addiction treatment, including drug treatment courts, would be a much more cost effective and successful policy direction.

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