

Constructing, Assessing, and Managing the Risk Posed by Intoxicants within Federal Prisons

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ABSTRACT

In this article, we unpack how changing drug management policies in Canadian federal prisons create new ways of thinking about responses (policy or otherwise) to drug use and the essence of intoxication. As constructions of ‘intoxicants’ continue to evolve, we endeavour to shed light on the complexities underpinning interpretations of intoxicants that are present yet ‘managed’ in prison spaces. We recommend policymakers revisit prison legislation that serves to counter harm reduction practices by pushing for ‘drug free’ prisoners. Harm reduction principles must also continue to be supported in and through prison policies and initiatives.

Keywords: prison; intoxication; drug use; risk; legislation; corrections and conditional release

I. INTRODUCTION

Drug substances can take many forms, including pills, alcohol, nicotine, or hallucinogenic herbs, and the methods of drug consumption can vary; for instance, drugs can be inhaled, injected, ingested, or snorted. Jozaghi estimates that between 155 and 250 million people worldwide use illegal substances¹ and that in Canada there are more

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¹ Ehsan Jozaghi, “‘The Biggest Mistake God Ever Made was to Create Junkies’: Unsafe Injection Practices, Health Care Discrimination and Overdose Deaths in Montreal,

than 125,000 injection drug users.² Illegal drugs have extensive repercussions for drug users and taxpayers; costing Canadians approximately \$8.2 billion dollars of which \$1.4 billion is oriented toward illegal drug injection.³

Correctional Services Canada recognizes that “drugs can and do enter federal correctional institutions”⁴; drug use, particularly in prison, has become “an unfortunate fact around the world.”⁵ Drug use is central to the prison world,⁶ where a number of individuals with histories of substance use, street-involvement, and mental illness are housed.⁷ Prisons in Canada hold a number of opiate users and appear to be acute ‘concentration points’ for the use and attendant risks of powerful new synthetic opioids, like fentanyl.⁸ Moreover, the risks associated with drug use (e.g., transmitted infections, overdoses) are most pronounced for marginalized members of society.⁹

Canada” (2013) 2:1 *Can Graduate J Sociology & Criminology* 21 [Jozaghi, “Biggest Mistake”] See also Ehsan Jozaghi, “Science Versus Politics: The Need for Supervised Injection Facilities in Montreal, Canada” (2012) 23:5 *Intl J Drug Policy* 420.

² Jozaghi, “Biggest Mistake”, *supra* note 1. See also Benedikt Fischer et al, “Crack across Canada: Comparing Crack Users and Crack Non-users in a Canadian Multi-city Cohort of Illicit Opioid Users” (2006) 101:12 *Addiction* 1760; Thomas Kerr et al, “Responding to an Explosive HIV Epidemic Driven by Frequently Cocaine Injection: Is There a Role for Safe Injecting Facilities?” (2003) 33:3 *J Drug Issues* 579.

³ See generally Jurgen Rehm et al, “The Costs of Substance Abuse in Canada 2002: Highlights” (March 2006), online (pdf): *Canadian Center on Substance Abuse* <www.ccsa.ca/sites/default/files/2019-05.pdf> [perma.cc/4H84-DKZ6]; Ronald Wall et al, “Social Costs of Untreated Opioid Dependence” (2000) 77:4 *J Urban Health* 688; Jozaghi, “Biggest Mistake”, *supra* note 1.

⁴ Correctional Service Canada, *Final report of the study group for the risk management of infectious diseases* (Ottawa: CSC, 1999) at 2.

⁵ Public Safety Canada, *Corrections Fast Facts 2: Drugs in Prisons* (Ottawa: PSC, 2005), online: <www.publicsafety.gc.ca/lbrr/archives/cff-2-2005%20e-eng.pdf> [perma.cc/93-ZC-M4JR]; Emily van der Meulen, “‘It Goes on Everywhere’: Injection Drug Use in Canadian Federal Prisons” (2017) 52:7 *Substance Use & Misuse* 884.

⁶ See generally Ben Crewe, “Prisoner Society in the Era of Hard Drugs” (2005) 7:4 *Punishment & Society* 457 [Crewe, “Era of Hard Drugs”].

⁷ See generally Roger C Bland et al, “Psychiatric Disorders in the Population and in Prisoners” (1998) 21:3 *Intl J L & Psychiatry* 273.

⁸ Sandra M Bucierius & Kevin Haggerty, “Fentanyl Behind Bars: The Implications of Synthetic Opiates for Prisoners and Correctional Officers” (2019) 71 *Intl J Drug Policy* 133.

⁹ See e.g. Annie Dufour et al, “Prevalence and Risk Behaviours for HIV Infection Among Inmates of a Provincial Prison in Quebec City” (1996) 10:9 *AIDS* 1009; Fiona Kouyoumdjian et al, “Health Status of Prisoners in Canada: Narrative Review” (2016)

Van der Meulen and colleagues contend that there exists a growing global recognition that punitive drug policies and drug law enforcement efforts have not had their intended effect of eliminating, or reducing, drug use.¹⁰ Social, political, and media discourses generally reflect or highlight substance-tied intoxication when said intoxication presents as a social problem (e.g., driving under the influence, public intoxication), treating its effects as accidental, intentional, or incidental.¹¹ In response, risk management initiatives have been developed and implemented in hopes to create spaces for safer drug use, thus preserving lives.¹² Consistent with the importation perspective,¹³ what happens in mainstream society, in time, happens in prison settings. The movement toward risk management tied to intoxicant use is no exception as harm reduction is slowly making its way into federal prisons.¹⁴

In this paper, we aim to address significant gaps in our thinking about intoxication, the substances that create the state of intoxication, and how the policing of intoxicants is changing forms in Canadian federal prisons, via the introduction of risk management programs tied to drug use against the backdrop of a continued push for drug free prisons. We reflect on the current Canadian socio-political climate of harm reduction and the federal initiatives and preventative measures rolled out by Canada's federal government and correctional service, and then present intoxication and prison drug use as both a health problem and a social construct.¹⁵ Indeed, complexities informing interpretations of intoxicants that are present yet

62:3 *Can Family Physician* 215; Céline Poulin et al, "Prevalence of HIV and Hepatitis C Virus Infections Among Inmates of Quebec Provincial Prisons" (2007) 177:3 *Can Medical Association J* 252; Leiyu Shi & Gregory D Stevens, *Vulnerable Populations in the United States*, 2nd ed (San Francisco, CA: Wiley, 2010); Bucerius & Haggerty, *supra* note 8.

¹⁰ Emily van der Meulen, Ann De Shalit & Sandra Ka Hon Chu, "A Legacy of Harm: Punitive Drug Policies and Women's Carceral Experiences in Canada" (2018) 28:2 *Women & Crim Justice* 81.

¹¹ See generally Angus Bancroft, *Drugs, Intoxication and Society* (Cambridge, UK: Polity, 2009).

¹² van der Meulen, *supra* note 5.

¹³ See generally John Irwin & Donald R Cressey, "Thieves, Convicts, and the Inmate Culture" (1962) 10:2 *Soc Problems* 142.

¹⁴ van der Meulen, *supra* note 5.

¹⁵ See generally Susan Boyd, Connie Carter & Donald MacPherson, "Making Drug Use into a Problem: The Politics of Drug Policy in Canada" in W Antony, J Antony & L Samuelson, eds, *Power and Resistance: Critical Thinking about Canadian Social Issues* (Winnipeg: Fernwood, 2017) 344.

‘managed’ in prison spaces remain a challenge for correctional workers and prisoners alike; thus, we contend, perhaps it is time to revisit legislation that stands in opposition to the values and interpretations underpinning harm reduction practices tied to prisoner drug use.

II. CONSTRUCTING DRUG USE AND INTOXICANTS

Typically, there are two central (mis)perceptions about intoxication that continually re-emerge in society. First, citizens mostly think of the experience of intoxication – getting drunk, getting high, and so on – as happening at largely psychological and physiological levels.¹⁶ The content and the construction of the experience of intoxication itself is less commonly considered. Second, when intoxication is considered, even as a point of study we too often, although not always, turn it into a problem, rather than seeing it as a societal social practice,¹⁷ as much bounded by social rules, norms, and conventions as any other social activity in everyday life (for instance, alcohol in social settings is often a norm in society, but there are also social settings where the same could be said of heroin use. For instance, how about heroin use at a safe injection site?).¹⁸

Pleasure¹⁹ is used to validate and legitimate select, culturally privileged,

¹⁶ See generally Bancroft, *supra* note 11. See also Angus Bancroft et al, “Working at Pleasure in Young Women’s Alcohol Consumption: A Participatory Visual Ethnography” (2014) 19:3 Sociological Research Online 1.

¹⁷ Bancroft, *supra* note 11.

¹⁸ For examples of discussions concerning drug use shaped by particular contexts, settings, and social activities, see Andrew Woolford, “Tainted Space: Representations of Injection Drug-use and HIV/AIDS in Vancouver’s Downtown Eastside” (2001) 129 BC Studies 27; Anke Stallwitz, *The Role of Community-Mindedness in the Self-Regulation of Drug Cultures* (New York, NY: Springer, 2012); Susan Boyd, Dave Murray & Donald MacPherson, “Telling Our Stories: Heroin-Assisted Treatment and SNAP Activism in the Downtown Eastside of Vancouver” (2017) 14:1 Harm Reduction J 36; Andrew Ivsins et al, “From Risky Places to Safe Spaces: Re-assembling Spaces and Places in Vancouver’s Downtown Eastside” (2019) 59 Health & Place 102164.

¹⁹ Pleasure is here conceived of as a ‘good’ consumed only in instances where putative benefits outweigh any real or imagined risks; pleasure is thus the utility that describes the difference in these calculations: A Boys et al, “Drug Use and Initiation in Prison: Results from a National Prison Survey in England and Wales” (2002) 97:12 Addiction 1551. Pleasure is not a singular positive state of being, and can both construct and challenge the identities, spaces, and rituals that maintain key group and personal boundaries: Bancroft et al, *supra* note 16. Bancroft and colleagues suggest that pleasure “can involve invoking unpleasurable activities such as extreme, forced intoxication in

modes of consumption and sociability²⁰ while disregarding or discounting others. Focusing upon alcohol consumption, for example, Bancroft and colleagues suggest that, “[t]he many activities in which people may engage in and identities they may construct around alcohol are reduced to one, that of unbounded, unfettered sociability.”²¹ In a sense, pleasure can be intimately tied to the permittance or disavowal of intoxication. However, recognizing that pleasure seeking behaviours presuppose choice of which not all social actors may have the similar social privilege to engage (especially when drug use is tied to coping mechanisms and addiction), the policing of intoxication and intoxicants is very much dependent on perception of risk, severity, and security in diverse environments.

Nevertheless, it is the social aspect of intoxicants that requires much attention; all social activity happens somewhere, whether it be sipping a coffee in a café or injecting, ingesting or snorting fentanyl in prison. Even with the same consumer, the effects of the drug may vary according to diet, mood, and time of day.²² One could also argue that the social aspect creates a social site or space for particular types of activity to occur. As Nugent contends, how intoxication is experienced depends on what is consumed, in what quantities, the social context, and the spatial setting.²³ The social context refers to the meaning bound up with the act of consumption: “There is a wide spectrum covering the individual act of gratification at one

the pursuit of pleasure, and finding pleasure in risk and transgression”: Bancroft et al, *supra* note 16 at 2 [emphasis added]. Yet, pleasure is not always a ‘free space’ as advertised in society, where identities can be freely constructed and pleasures experienced without limits or cost. Pleasure is an aspect of social organization and subject to social control: see generally Bancroft et al, *supra* note 16. Sociologically speaking, pleasure can be as broad as the limits to which humans delineate, as there are countless ways for social beings to experience pleasure or feel pleased in their society. In essence, while we might have greater liberties in society to engage in various pleasing or pleasurable activities and interactions, in the prison setting such pleasures are often curtailed, their loss being a pain of imprisonment and their restriction another factor underpinning the complex relationship between correctional officer and prisoner: see Gresham M Sykes, *The Society of Captives: A Study of Maximum Security Prison* (Princeton: Princeton University Press, 1958).

²⁰ Bancroft et al, *supra* note 16. See also Pat O’Malley & Mariana Valverde, “Pleasure, Freedom and Drugs: The Uses of ‘Pleasure’ in Liberal Governance of Drug and Alcohol Consumption” (2004) 38:1 *Sociology* 25.

²¹ Bancroft et al, *supra* note 16 at 1.

²² Steven Topik, “Coffee as a Social Drug” (2009) 71 *Cultural Critique* 81 at 101.

²³ Paul Nugent, “Modernity, Tradition, and Intoxication: Comparative Lessons from South Africa and West Africa” (2014) 222 *Past & Present* 126 at 126.

end, and performative bouts of consumption, at the other end—with many gradations in between.”²⁴ The setting refers to the spatial configuration under which the act of consumption takes place: it may be just anywhere, it may be located in a clandestine location or channeled into approved and controlled spaces such as overdose prevention sites or hospital wards.

Together, the context and the setting shape the overall experience of intoxication. However, the issue of modernity is germane to these dimensions; how and where intoxicants are consumed in prison and general society is intimately bound up with ideas about the wider consequences of consumptive acts and the ways in which intoxication is perceived, regulated, and produced.²⁵

For instance, as McIntosh and McKeganey contend, in the minds of many people “addiction to illegal drugs is a one-way road leading inevitably to destitution and ultimately to the death of those who become addicts. This image, however, could hardly be further from the truth.”²⁶ Certainly, drug users are at a risk of a range of adverse health outcomes, yet, not all drug users are addicts and there is a pathway to recovery from addiction.²⁷ Recall, how one constructs drug use and types of intoxicants, can change depending on the context in which one is socially and spatially situated. Chemical intoxicants, such as hard drugs, have historically lacked a gray area in societal perception or in terms of the law.²⁸ To self-administer any hard drugs is, as Letcher contends:

[T]o be branded by mainstream society a ‘drug-abuser,’ a discursive label that castigates and marks one as a deviant member of society, someone who has forfeited the normal rights of citizenship and become a justified target for the ‘war on drugs’. Drug -users/abusers are socially excluded and, if caught and brought to justice, may be spatially excluded in prisons and detention centers.²⁹

Such a label carries connotations of the user as societal pollution and threatening or dangerous to others,³⁰ largely due to “the constructed image

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ James McIntosh & Neil McKeganey, “Addicts’ Narratives of Recovery from Drug Use: Constructing a Non-addict Identity” (2000) 50:10 Soc Science & Medicine 1501 at 1501.

²⁷ *Ibid.*

²⁸ *Ibid.* See also Andy Letcher, “Mad Thoughts on Mushrooms: Discourse and Power in the Study of Psychedelic Consciousness” (2007) 18:2 Anthropology Consciousness 74.

²⁹ Letcher, *supra* note 28 at 77.

³⁰ See generally Mary Douglas, *Purity and Danger: An Analysis of the Concepts of Pollution and*

of the heroin-injecting addict – as a morally degenerate vector of disease or as ‘drug-crazed’ criminal – about which most anxieties about drugs are orientated.”³¹

On the other hand, however, some intoxicants are socially acceptable and bear little or no stigma in society. For instance, Letcher contends that: “the use of certain other addictive or habit forming substances, caffeine and alcohol for example, have been naturalized to such an extent that it would be laughable even to consider them drugs.”³² For instance, coffee; “one of the most widely consumed beverages and internationally traded commodities in the world in good part because caffeine is the world’s most popular drug, a legal drug at that.”³³ But coffee’s status in society has not always been the case.³⁴

Although abounding perceptions of intoxicants exist in society, the practices and methods of managing intoxicants remain of concern. Social aspects, as well as how pleasure is experienced, inure in drug use and consumption, yet the sociality in drug use moves in lockstep with the spatial dimensions of drug use. Said differently, perceptions of risk and security mediate constructions of intoxicants and their use, all informing ongoing challenges for those tasked with policing intoxicants in society more generally and in prison spaces. Regarding the latter, prison drug use, shifting tides of drug policies and management that attempt to grapple with the realities of drug use and dependency, promote a contemporary climate of harm reduction through preventative prison drug use initiatives, fully

Taboo (London: Routledge, 1994); Kevin Hetherington, *New Age Travellers: Vanloads of Uproarious Humanity* (London, UK: Cassell, 2000).

³¹ Letcher, *supra* note 28 at 77. See also Mike Jay, *Emperors of Dreams: Drugs in the Nineteenth Century* (Sawtry: Dedalus, 2000); Richard Davenport-Hines, *The Pursuit of Oblivion: A Social History of Drugs* (London, UK: Phoenix Press, 2001).

³² Letcher, *supra* note 28 at 77.

³³ Topik, *supra* note 22 at 81 [emphasis added].

³⁴ As a social drug, coffee “has followed a circuitous path to legality and to popularity. Coffee’s status has owed as much to its social role, viewed as both virtuous and pernicious, as to its pharmacological effects”: see Topik, *supra* note 22 at 81 [emphasis added]. Yet, rarely has it been outlawed as an intoxicant (for further details on this history, see *ibid*). Coffee consumption occurs in various settings, and the rituals of consumption (such as the ‘wake up and smell the coffee’ breakfast or the ‘coffee break’) have manifested quite different social registers. The social spaces in which it is used is intimately involved in social constructs that perpetually negotiate its permittance in society. As Topik suggests, “[t]he locale, circumstances, and social ceremonies are as meaningful and consequential as coffee’s pharmacological effects”: see Topik, *supra* note 22 at 102.

informed by socio-political or cultural influence. The consequence is then contradictions in both interpretations of intoxicants and their management in prison spaces; each a challenge for correctional workers.

III. POLICING INTOXICANTS IN SOCIETY: CONTEMPORARY DRUG POLICIES IN CANADA

The pursuit of pleasure might stand as one of the many explanations for the recent increase in the incidence and prevalence of illicit drug use in many parts of the world;³⁵ however, drug policies do not operate in a vacuum; policies arise from greater economic, political, and social influences. Moreover, Canada is in the midst of an opioid crisis, which calls into question the risks associated with opioid use generally and how government initiatives and preventative measures attempt to combat drug use in society (and prisons). A recent United Nations report found Canadians to be the world's second largest economy of per-capita consumers of opioids.³⁶ In 2015, Canadian doctors wrote opioid prescriptions to one in every two Canadians.³⁷ In 2016, there were over 2,800 suspected opioid-related deaths reported in Canada.³⁸ In 2017, 4,100 opioid-related deaths were reported in the country, most of which were accidental.³⁹ Health officials have concluded that 4,460 Canadians died from overdoses in 2018, with over 2400 having occurred in Western Canada alone despite increasingly urgent government intervention.⁴⁰ The

³⁵ See generally Cameron Duff, "The Pleasure in Context" (2008) 19:5 Intl J Drug Policy 384.

³⁶ Carly Weeks & Karen Howlett, "Prescription of Opioid Drugs Skyrocketing in Canada", *The Globe and Mail* (18 August 2015), online: <www.theglobeandmail.com/news/national/sales-of-opioid-drug-prescriptions-skyrocketing/article26008639/> [perma.cc/8WMF-YS4S].

³⁷ Karen Howlett, "A Killer High: How Canada got Addicted to Fentanyl", *The Globe and Mail* (8 April 2016), online: <www.theglobeandmail.com/news/> [perma.cc/D6WR-GH2T].

³⁸ See generally Health Canada, *Government of Canada Actions on Opioids 2016 and 2017*, Catalogue No H140236/2017E-PDF (Ottawa: Health Canada, 2017), online: <www.canada.ca/en/health-canada/services/publications/healthy-living/actions-opioids-2016-2017.html> [perma.cc/6352-LTU4] [Health Canada, *Actions on Opioids*].

³⁹ Health Canada, *Opioid-related Harms in Canada* (Ottawa: Health Canada, last modified 17 June 2020), online: <health-infobase.canada.ca/substance-related-harms/opioids/graphs?index=209> [perma.cc/33TA-GMYZ].

⁴⁰ *Ibid.*

frightening realities of the opioid crisis, we recognize, require drug policies that implement evidence-based practices of harm reduction and prevention.

A remarkable advancement in harm reduction practices was the establishment of North America's first supervised injection facility, *Insite*, which opened on 22 September 2003.⁴¹ Operating on a harm reduction model, *Insite* is a space in the Downtown Eastside of Vancouver, BC, where an individual may inject drugs and connect with a variety of health care services without fear of arrest.⁴² As Jozaghi and Reid indicate, "the policy change toward improving access to sterile syringes and the operation of *Insite*, for example, have been found to contribute to reductions in syringe sharing... [and] drug overdose deaths in the Downtown Eastside."⁴³ Perhaps for these reasons, there is broad support for programs like *Insite* from health, social service, human rights, legal, prisoner advocacy, and related organizations and associations across Canada.⁴⁴

⁴¹ Ehsan Jozaghi & Andrew A Reid, "A Case Study of the Transformative Effect of Peer Injection Drug Users in the Downtown Eastside of Vancouver, Canada" (2014) 56:5 *Can J Corr* 563. See also Martin A Andresen & Jozaghi Ehsan, "The Point of Diminishing Returns: An Examination of Expanding Vancouver's *Insite*" (2012) 49:16 *Urban Studies* 3531; Ehsan Jozaghi & Martin A Andresen, "Should North America's First and Only Supervised Injection Facility (*InSite*) be Expanded in British Columbia, Canada?" (2013) 10:1 *Harm Reduction J* 1.

⁴² Jozaghi & Reid, *supra* note 41 at 564. See also "Insite: Supervised Consumption Site" (last visited 14 May 2020), online: *Vancouver Coastal Health* <www.vch.ca/locations-services/result/res_id=964> [perma.cc/YK8X-E4Q8]. To date, researchers have demonstrated the effectiveness of the facility and other harm reduction programs in the community (for a concise summary of the research, see Dan Small, "An Appeal to Humanity: Legal Victory in Favour of North America's only Supervised Injection Facility: *Insite*" (2010) 7:1 *Harm Reduction* 23). See also Jozaghi, "Biggest Mistake", *supra* note 1; Ehsan Jozaghi, Hugh Lampkin & Martin A Andresen, "Peer-engagement and its Role in Reducing the Risky Behaviour Among Crack and Methamphetamine Smokers of the Downtown Eastside Community of Vancouver, Canada" (2016) 13:1 *Harm Reduction J* 19.

⁴³ Jozaghi & Reid, *supra* note 41 at 564–65.

⁴⁴ van der Meulen, *supra* note 5 at 898. As van der Meulen indicates, "[o]ver 240 such organizations [from areas such as health, social services, human rights, legal, and prisoner advocacy, etc.] recently endorsed a statement in support of PNSPs [prison-based needle and syringe programs], calling on the federal government to implement them without delay." The statement further serves to remind Canadians that "prisoners are part of our communities; for too long, they have been mistakenly seen as outsiders. Prisoners are our mothers, fathers, partners, daughters, sons, constituents, family and friends": see "Canada Can't Wait: The Time for Prison-based Needle and Syringe Programs is Now" (last modified 1 June 2016), online: *Canadian HIV/AIDS Legal Network* <www.aidslaw.ca/site/canada-cant-wait/?lang=en> [perma.cc/34FD-9KEQ].

Nonetheless, since 1987, Canada has had successive drug strategies in place that strive to balance public health and public safety objectives through the key pillars of prevention, treatment, enforcement and, at times, harm reduction.⁴⁵ Under the National Anti-Drug Strategy (NADS) enacted by the Harper government in 2006, the government removed the harm reduction pillar. Canada's approach to drug policies, especially between 2006 and 2015 when federal Conservative governments were in power, was modeled on a 'tough on crime' and 'law and order' framework, with drug criminalization as a core component.⁴⁶ Perhaps this is without surprise given the criminalization of drugs in Canada in particular "has a long history that is strongly connected to social marginalization, racism, and sexism, dating back to at least the 20th century."⁴⁷

In 2016, under the current Liberal Trudeau government, a new drug strategy formally restored harm reduction as a key pillar in Canada, alongside the existing pillars of prevention, treatment and enforcement.⁴⁸ The (re)inclusion of harm reduction as a pillar of Canada's drug policy, hopefully, better enables the government to address the current opioid crisis⁴⁹ and evidences the government's commitment to harm reduction-focused policies—such as support for properly established and maintained

Whether using drugs or not, people who are incarcerated have a legal, ethical, and moral right to adequate health care and related supports, including harm reduction programs.

⁴⁵ Health Canada, *The New Canadian Drugs and Substances Strategy* (Ottawa: Health Canada, last modified 12 December 2016), online: <www.canada.ca/en/health-canada/news/2016/12/new-canadian-drugs-substances-strategy.html> [perma.cc/ACF6-859T] [Health Canada, *New Substances Strategy*].

⁴⁶ van der Meulen, De Shalit & Ka Hon Chu, *supra* note 10 at 86. For instance, a significant example of heightened criminalization occurred in 2007 when the National Drug Strategy was renamed the National Anti-Drug Strategy, signaling an expanded punitive drug control framework and eliminating harm reduction as a core feature of the Federal government's response to drugs. See also Kora DeBeck et al, "Canada's New Federal 'National Anti-Drug Strategy': An Informal Audit of Reported Funding Allocation" (2009) 20:2 *Intl J Drug Policy* 188.

⁴⁷ van der Meulen, De Shalit & Ka Hon Chu, *supra* note 10 at 85. See also Catherine Carstairs, "The Racist Roots of Canada's Drug Laws" (2004) 84:1 *Beaver: Exploring Canada's History* 11; Patricia G Erickson, "Social Regulation of Drugs: The New 'Normal?'" (2015) 5 *Radical Criminology* 193; Todd Gordon, "Neoliberalism, Racism, and the War on Drugs in Canada" (2006) 33:1 *Soc Justice* 59; Ehsan Jozaghi, "'A Little Heaven in Hell': The Role of a Supervised Injection Facility in Transforming Place" (2012) 33:8 *Urban Geography* 1144 [Jozaghi, "Heaven in Hell"].

⁴⁸ Health Canada, *New Substances Strategy*, *supra* note 45.

⁴⁹ *Ibid.*

overdose prevention sites and increased access to naloxone. In addition, one could also argue that, in some ways, with the decriminalization of marijuana in 2019 and the associated pardoning of those with prior charges tied to marijuana use,⁵⁰ the push for drug decriminalization is gaining momentum in Canadian society.⁵¹ At the 2018 National Caucus meeting for Liberal MPs, one of the top priorities by delegates was the decriminalization of low-level drug possession.⁵² However, the current federal Liberal government's conversations about decriminalization at the federal level, despite talk of decriminalization of possession of diverse drugs and greater harm-reduction practices, have not translated into an alternative to criminalization and, in some cases, the resulting incarceration.

IV. DRUGS IN PRISON: INTERNATIONALLY AND IN CANADA

Turning to prisoners, specifically the motives and meanings associated with prison drug use, researchers have conducted several qualitative studies in the United Kingdom.⁵³ Certainly, Ben Crewe's research stands out for its explicit analysis of prisoner drug use.⁵⁴ Using an ethnographic approach to understand 'the prisoner society,' Crewe's focus on the social life of British prison officers strongly supports the notion that "the role of drugs in prison

⁵⁰ See Bill C-93, *An Act to provide no-cost, expedited record suspensions for simple possession of cannabis*, 1st Sess, 42nd Parl, 2019 (assented to 21 June 2019), SC 2019, c 20.

⁵¹ Rachel Aiello, "Sex Work, Drugs, and Pharmacare: What Liberals Want in 2019 Platform", *CTV News* (21 April 2018), online: <www.ctvnews.ca/politics/sex-work-drugs-and-pharmacare-what-liberals-want-in-2019-platform> [perma.cc/VNG8-XS6B].

⁵² *Ibid.* The argued benefits of the decriminalization of drug possession, although beyond the scope of our paper, include reductions of drug use, infection, and rates of overdose among drug users: Boyd, Carter & MacPherson, *supra* note 15. See also Tristin Hopper, "What Would it Look Like if Canada Decriminalized all the Drugs?", *National Post* (2 August 2018), online: <nationalpost.com/news/canada/what-would-it-look-like-if-canada-decriminalized-all-the-drugs> [perma.cc/N6AY-Q455].

⁵³ See e.g. Tony Bullock, "Changing Levels of Drug Use Before, During and After Imprisonment" in Malcolm Ramsay, ed, *Prisoners' Drug Use and Treatment: Seven Research Studies* (London, UK: Home Office Research, Development & Statistics Directorate, 2003) 23; Nina Cope, "Drug Use in Prison: The Experience of Young Offenders" (2000) 7:4 *Drugs* 355.

⁵⁴ Crewe, "Era of Hard Drugs", *supra* note 6. See also Ben Crewe, "Prison Drug Dealing and the Ethnographic Lens" (2006) 45:4 *Howard J Crim Justice* 347 [Crewe, "Prison Drug Dealing"]; Ben Crewe, *The Prisoner Society: Power, Adaptation, and Social Life in an English Prison* (Oxford: Oxford University Press, 2009) [Crewe, *Prisoner Society*].

social life and culture would be hard to overstate.”⁵⁵ According to Crewe, in prisons in the United Kingdom, drug dealing has become the dominant illegal economy.⁵⁶ Drugs, specifically drug trafficking, are a source of income in prison, representing one of the few ways for prisoners to make money that they will need to survive upon release or to simply buy canteen products, such as food or toiletries.⁵⁷

In Canada, drugs are particularly accessible for remand populations,⁵⁸ as the turnover rate is high and the average length of stay is less than two weeks.⁵⁹ Such constant movement “makes it relatively easy for prisoners to smuggle drugs into prison and smuggle it onto different units (drugs are often smuggled within body cavities).”⁶⁰ In addition, prisoners may accrue respect by importing drugs because the practice recognizes their “‘nerve’, resistance to the system, ambition and connections to organized drug networks outside prison.”⁶¹ Moreover, the market in prison for drugs cannot be denied, as scholarly literature indicates that patterns of life-time drug use, injection drug use, and problematic drug use are higher among prisoners than the general population.⁶²

Internationally researchers have documented the widespread use of drugs by individuals during incarceration. In Canada too, illicit drugs can be regularly found in prisons, although local specifics and concentrations vary.⁶³ Canadian researchers have found, in some institutions, relatively

⁵⁵ Crewe, *Prisoner Society*, *supra* note 53 at 370.

⁵⁶ See generally Crewe, “Era of Hard Drugs”, *supra* note 6; Crewe, “Prison Drug Dealing”, *supra* note 54; Crewe, *Prisoner Society*, *supra* note 54.

⁵⁷ Bucerius & Haggerty, *supra* note 8 at 136.

⁵⁸ In Canada, remanded prisoners are held in provincial or territorial prisons, which operated under provincial or territorial correctional systems (not CSC).

⁵⁹ See generally Statistics Canada, *Adult Correctional Statistics in Canada, 2015/2016*, by Julie Reitano, Catalogue No 85-002-X (Ottawa: Statistics Canada, 1 March 2017).

⁶⁰ Bucerius & Haggerty, *supra* note 8 at 135.

⁶¹ Crewe, “Era of Hard Drugs”, *supra* note 6 at 470.

⁶² See generally Austl, Commonwealth, Australian Institute of Health and Welfare, *The Health of Australia’s Prisoners 2020* (Catalogue No PHE 170) (Canberra: AIHW, 2013); Boys et al, *supra* note 19; Seena Fazel, Parveen Bains & Helen Doll, “Substance Abuse and Dependence in Prisoners: A Systematic Review” (2006) 101:2 *Addiction* 181; Torsten Kolind & Karen Duke, “Drugs in Prisons: Exploring Use, Control, Treatment and Policy” (2016) 23:2 *Drugs Education Prevention & Policy* 89.

⁶³ See generally Kristian Mjærland, “‘A Culture of Sharing’: Drug Exchange in a Norwegian Prison” (2014) 16:3 *Punishment & Society* 336; Michael Wheatley, “Drug Misuse in Prison” in Y Jewkes, B Crewe & J Bennett, eds, *Handbook on Prisons* (London, ON: Routledge, 2016) 205.

high rates of in-prison injection drug use.⁶⁴ However, research relying on prisoners' self-reports of drug use, particularly when conducted internally given drug use remains illegal in prison, can raise concerns about reliability and validity.⁶⁵

In Britain, Crewe found that drugs like heroin and cannabis were most widely available in prison;⁶⁶ conversely, in Canada, we are witnessing a heavy influx of pharmacological drugs like fentanyl and oxycontin.⁶⁷ For example, fentanyl, a substance 50 to 100 times the potency of morphine,⁶⁸ is becoming more prominent as a substance in opioid-related deaths, accounting for 55% of such deaths in 2016 and up to 72% of deaths in 2017.⁶⁹ In many cases, other substances are laced with fentanyl, which is then unknowingly consumed by drug users.⁷⁰

⁶⁴ van der Meulen, *supra* note 5 at 884. See also Anne Marie DiCenso, Giselle Dias & Jacqueline Gahagan, "Unlocking our Futures: A National Study on Women, Prisons, HIV and Hepatitis C" (Toronto, ON: Prisoners with HIV/AIDS Support Action Network, 2003); Ralf Jürgens & Glenn Betteridge, "Prisoners who Inject Drugs: Public Health and Human Rights Imperatives" (2005) 8:2 Health & Human Rights 47; Will Small et al, "Incarceration, Addiction and Harm Reduction: Inmates Experience Injecting Drugs in Prison" (2005) 40:6 Substance Use & Misuse 831; Correctional Services Canada, *Summary of Emerging Findings from the 2007 National Inmate Infectious Diseases and Risk-Behaviours Survey (Summary)*, by Dianne Zakaria et al, Report No R-211 (Ottawa: CSC, 2010).

⁶⁵ van der Meulen, *supra* note 5; Kolind & Duke, *supra* note 62.

⁶⁶ See generally Crewe, "Era of Hard Drugs", *supra* note 6; Crewe, "Prison Drug Dealing", *supra* note 54; Crewe, *Prisoner Society*, *supra* note 54.

⁶⁷ See generally Correctional Service Canada, *Overdose Incidents in Federal Custody, 2012/2013-2016/2017*, by Laura McKendy, Stephanie Biro & Leslie Anne Keown, Report No SR-12-02 (Ottawa: CSC, 2018).

⁶⁸ "WHO Recommends the Most Stringent Level of International Control for Synthetic Opioid Carfentanil" (13 December 2017), online: *World Health Organization* <www.who.int/medicines/news/2017/WHO-recommends-most-stringent-level-int-control/en/> [perma.cc/YWVG7-MGPT] [*World Health Organization*].

⁶⁹ McKendy et al, *supra* note 67 at 1. A key contributor to the escalating levels of opioid addiction and fatalities has been the emergence of the synthetic opioid fentanyl and its analogues, such as carfentanil (World Health Organization, 2017) which is a staggering 10,000 times more potent than morphine: see *World Health Organization*, *supra* note 68. The rise of drug overdose incidents, specifically those involving opioids, remains a growing concern for Canadian society: see McKendy et al, *supra* note 67 at iii. See also Health Canada, *Actions on Opioids*, *supra* note 38. McKendy and colleagues, in their study of overdose incidents in federal corrections, found that the community opioid crisis may be paralleled in custodial settings: see McKendy et al, *supra* note 67 at iv.

⁷⁰ Health Canada, *Actions on Opioids*, *supra* note 38.

Bucerius and Haggerty examined the implications of opiates for prisoners and correctional officers. They conducted semi-structured interviews with 587 adult prisoners and 131 COs across prisons in a province in Western Canada. Prisoners, they found, felt that; “(1) the presence of fentanyl leads to an increased number of overdoses; (2) prisons are nonetheless perceived as a... safe place to use drugs; (3) fentanyl is often mixed into other drugs, making it hard for drug users to avoid fentanyl; and (4) fentanyl may be weaponized.”⁷¹ For officers, they identified; “(1) increased fears about inadvertent personal exposure or widespread institutional opioid contamination; (2) fear of targeted poisonings; (3) changing attitudes towards opioid-using prisoners; and (4) a declining commitment to correctional careers.”⁷² In effect, the authors suggest that the presence of fentanyl and its analogues in prison “has significantly influenced how prisoners experience prison and relate to each other and how COs perceive their jobs.”⁷³ Without a doubt, new synthetic opioids, particularly fentanyl and its analogues, are informing prisoner drug use and the ways correctional officers police drugs in prison and manage prisoner drug use and dependency.

Reflecting on Bucerius and Haggerty’s finding that prisoners felt prison is a safe place to use drugs, it must be noted that the finding remains significant despite the “the stark increase in overdoses in prisons since the onset of the opioid crisis.”⁷⁴ The spatial and social dimensions, as well as the secure space in close quarters to staff and prisoners alike if an overdose is to occur, creates the prison as a ‘safe’ site to consume drugs and become intoxicated. Specifically, prisoners typically use in the presence of another prisoner who can inform nearby officers in the event of an overdose, and correctional officers have naloxone, and are occupationally obligated to constantly monitor prisoners for overdose symptoms throughout a work shift.⁷⁵ Given most prisoners use of fentanyl “appears to be unintentional, consumed by users who thought they were ingesting something else, a

⁷¹ Bucerius & Haggerty, *supra* note 8 at 133.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid* at 135.

⁷⁵ See generally Bucerius & Haggerty, *supra* note 8. Naloxone is used to offset or temporarily stop the symptoms tied to opioid overdose (see “OSH Answers Fact Sheets: First Aid: Administering Naloxone (naloxone hydrochloride)” (last modified 14 May 2020), online: *Canadian Centre for Occupational Health and Safety* <www.ccohs.ca/oshanswers/hsprograms/firstaid_naloxone.html> [perma.cc/SD92-SPBK].

situation that significantly increases the chances of accidental fatalities,” the increased safety provided by using within the company of prisoners and in close contact to officers is possibly lifesaving.⁷⁶ Indeed, risk management is a key component of correctional officer work, yet, the dynamic between correctional officers and prisoners suggests prisoners can still hold socially reciprocal relationships within prisons,⁷⁷ and that in the case of a potentially lethal overdose there is a higher likelihood that prisoners will be saved.⁷⁸

Overall, in prison, context and setting shape the intoxication experience, as such federal and community efforts to advance harm reduction principles in prison represent a step toward supporting correctional officers and prisoners alike. However, as we now turn, more could be done to recognize the realities of intoxicants in prison; to advance drug policies and legislation based upon empirical evidence; and to assess, construct, and manage intoxicants in prison in a more meaningful way than what penal populism and conservative rhetoric allow.

V. REVISITING PRISON LEGISLATION

The continued introduction of safe injection practices and needle exchange programs in federal prisons is perhaps one way that CSC is putting forth efforts toward safer prisoner drug use, despite, at the same time, continuing to focus on ‘drug free prisons’ and uphold the *Drug-Free Prisons Act*.⁷⁹ In theory, the ‘drug free prison’ law was described as a means “to combat drug use in penitentiaries and ensure that criminals are held accountable for their drug or alcohol abuse while in prison.”⁸⁰ In practice,

⁷⁶ Bucerius & Haggerty, *supra* note 8 at 135. See also Asraf Amlani et al, “Why the FUSS (Fentanyl Urine Screening Study)? A Cross-sectional Survey to Characterize an Emerging Threat to People who use Drugs in British Columbia, Canada” (2015) 12:1 Harm Reduction J 54. The possibility for lifesaving intervention is particularly noteworthy in the case of routine drug using prisoners who are attempting to address their substance abuse needs (i.e., working toward reducing or ceasing their use of drugs). See generally Crewe, “Era of Hard Drugs”, *supra* note 6.

⁷⁷ See generally Crewe, “Era of Hard Drugs”, *supra* note 6.
⁷⁸ See generally Bucerius & Haggerty, *supra* note 8.

⁷⁹ The ‘Drug Free Prison’ legislation was passed prior to the Conservative Harper government’s defeat in the October 2015 federal election and the succession of the Liberal Trudeau government. See *Drug Free Prisons Act*, SC 2015, c 50.

⁸⁰ Public Safety Canada, *Harper Government Highlights Royal Assent of the Drug-Free Prisons Act* (New Release) (Ottawa, PSC, 18 June 2015), online: <www.canada.ca/en/news/archive/2015/06/harper-government-highlights-royal-assent-drug-free-prisons-act.html> [perma.cc/6VDH-E9D4].

however, the law “empowers the government to cancel an individual’s parole if they test positive for illicit drugs in urinalysis, or if they fail or refuse to provide a urine sample, while stipulating that a condition of an individual’s release could include abstinence from the use of drugs or alcohol.”⁸¹

CSC, in light of the legislation juxtaposed with the push for harm reduction, is seemingly in a conflicting position; both striving for safe drug use while trying to keep the institutions drug free and enforce zero tolerance. This is a position that rests heavily on correctional staff who must uphold the two conflicting positions (e.g., support harm reduction and zero tolerance). In essence, the legislation, which informs the management and policing of intoxicants in prison, creates potential ambiguity and frustration in the correctional officer role and their duties and responsibilities towards prisoners. Not to ignore the unpredictability and possible confusion it suggests to prisoners, who are seemingly encouraged to use safe injection practices but could be penalized for their drug use given the more public nature of the drug use (i.e., increased staff awareness of their drug possession and use given they either sign up for clean needles or use the overdose prevention site).⁸² Moreover, the *Corrections and Conditional Release Act* still provides the means to discipline a prisoner when said prisoner is in possession of, or deals in, contraband (ss. i) and takes an intoxicant into their body (ss. k).⁸³

With incarceration, however, individuals do not suddenly master their addictions⁸⁴ and the challenges associated with drug use; as such the sale, distribution, and use of drugs and substances in Canadian prisons endures.

⁸¹ van der Meulen, De Shalit & Ka Hon Chu, *supra* note 10 at 90. See also “Bill C-12 Drug Free Prisons Act: Brief to the Standing Committee on Public Safety and National Security” (2014), online: *Canadian Criminal Justice Association (CCJA)* <www.ccja-acjp.ca/pub/en/briefs-articles/bill-c-12-drug-free-prisons-act/> [perma.cc/533Y-QLY] [CCJA].

⁸² Indeed, to our knowledge, there is no discussion to revisit, reconsider, or even abolish the ‘Drug Free Prison’ legislation.

⁸³ Disciplining a prisoner for drug use is in clear contradiction to encouraging prisoners to sign up for clean needles or to use the overdose prevention site (where available); see *Corrections and Conditional Release Act*, SC 1992, c 20.

⁸⁴ See generally McIntosh & McKeganey, *supra* note 26. The inability for individuals to master their addictions, in society generally and in prison specifically, remains problematic not just from a theoretical perspective, but asking people to master their addictions can become a health and life threat should they not have the resources and supportive networks in place to do so.

Punishment for addiction and the associated drug use, particularly as enshrined in the *Drug Free Prisons* legislation, goes against the principle that harm reduction and treatment is the optimal recourse for prisoners with addictions. In addition, as the Canadian Criminal Justice Association indicates in their brief towards the Canadian Parliamentary Standing Committee on Public Safety and National Security, “the removal or delay of the possibility of parole for those testing positive for drug use further impedes the [correctional] institution’s ability to ban drugs in prison, exacerbates the [prisoner’s] preparedness for re-integration, subjects her or him to intensified punishment, and does not ensure the safety of society.”⁸⁵

In doing so, perhaps it is time to revisit the legislation, particularly given that (i) problematic substance use and illegal drugs have long presented health and safety challenges in federal institutions⁸⁶ and (ii) CSC remains committed to addressing substance misuse in accordance with the principles of the new Canadian Drugs and Substances Strategy.⁸⁷

VI. PROMOTING HARM REDUCTION IN PRISON POLICIES AND INITIATIVES

The Office of the Correctional Investigator recognized the substantial rise in the number of overdose incidents as a result of problematic opioid use.⁸⁸ To counteract this trend, various initiatives were implemented by CSC to strengthen drug detection and identification. For instance, CSC has partnered with other federal and provincial public safety stakeholders on a study seeking to assess the efficacy of new and emerging technologies that would allow for non-intrusive detection of synthetic opioids in parcels, mail, and so on.⁸⁹ In addition CSC offers drug-related harm reduction options that include, but are not limited to (i) drug treatment programs,⁹⁰

⁸⁵ CCJA, *supra* note 81.

⁸⁶ Canada, *Office of the Correctional Investigator Annual Report 2017-2018*, Catalogue No PS100 (Ottawa: CIC, 29 June 2018) at 3, online <www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20172018-eng.pdf> [perma.cc/K2EW-ADY3] [CIC, 17/18].

⁸⁷ See generally Health Canada, *New Substances Strategy*, *supra* note 45.

⁸⁸ *Ibid.* A trend, as we previously noted, that mirrors the trend in the community. See also Correctional Service Canada, *Response to the 45th Annual Report of the Correctional Investigator 2017-2018* (Ottawa: CSC, 2018) at 3, online: <www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20172018-eng.pdf> [perma.cc/K2EW-ADY3] [CSC, *Response*].

⁸⁹ CSC, *Response*, *supra* note 88 at 3.

⁹⁰ See generally Correctional Service Canada, *The Aboriginal Offender Substance Abuse Pro-*

(ii) naloxone availability and opioid substitution through methadone maintenance treatment,⁹¹ (iii) needle exchange,⁹² (iv) overdose prevention sites,⁹³ and (v) bleach distribution for disinfecting used syringes.⁹⁴

First, drug-related treatment programs offered by CSC include *National Substance Abuse Program* (offered at High and Moderate intensities), *Aboriginal Offender Substance Abuse Program* (offered at High and Moderate intensities), *National Pre-release Substance Abuse Program*, and *National Substance Abuse Maintenance Program*.⁹⁵ Programming, however, has been critiqued for reasons that include lack of access, infrequency and inconsistency of programming.⁹⁶ Second, in 2017, CSC integrated a *Take-Home Naloxone Initiative* into the discharge planning of prisoners on *Opioid Substitution Therapy* (OST).⁹⁷ The Naloxone initiative provides individuals on conditional release with take-home kits on release and upon arrival at their community residence. In addition, CSC ensured Naloxone was made

gram: Examining the Effects of Successful Completion on Post-release Outcomes, by Dan Kunic & David D Varis, Report No R-217 (Ottawa: CSC, 2009); Correctional Service Canada, *Women Offender Substance Abuse Programming & Community Reintegration*, by Flora I Matheson, Sherri Doherty & Brian A Grant, Report No R-202 (Ottawa: CSC, 2008).
⁹¹ CIC, 17/18, *supra* note 86.

⁹² Correctional Service of Canada, *Prison Needle Exchange Program* (Ottawa: CSC, last modified 28 August 2019), online: <www.csc-scc.gc.ca/health/002006-2005-en.shtml> [perma.cc/2R5S-AEN7] [CSC, *Prison Needle Exchange*]. See also Canada, *Annual Report of the Office of the Correctional Investigator 2015-2016*, Catalogue No PS100E-PDF (Ottawa: CIC, 30 June 2016), online: <www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20152016-eng.pdf> [perma.cc/A5E7-EFMK] [CIC, 15/16].

⁹³ Correctional Service Canada, *Overdose Prevention Service* (Ottawa: CSC, last modified 28 August 2019), online: <www.csc-scc.gc.ca/health/002006-2003-en.shtml> [perma.cc/9SS5-RW75] [CSC, *Overdose Prevention*].

⁹⁴ See generally Correctional Service Canada, *Use of Bleach and the Methadone Maintenance Treatment program as Harm Reduction Measures in Canadian Penitentiaries* (Summary) by Jennie Thompson, Dianne Zakaria & Ashley Jarvis, Report No R-210 (Ottawa: CSC, 2010).

⁹⁵ For an overview see Correctional Service Canada, *National Substance Abuse Programs* (Ottawa: CSC, last modified 24 April 2014), online: <www.csc-scc.gc.ca/correctional-process/002001-2009-eng.shtml> [perma.cc/VZ9L-W3Y2].

⁹⁶ For example, see Correctional Service Canada, *Twenty Years Later: Revisiting the Task Force on Federally Sentenced Women*, by Meredith Barrett, Kim Allenby & Kelly Taylor, Research Report No R-222 (Ottawa: CSC, 2010); Emily van der Meulen et al, "On Point: Recommendations for Prison-based Needle and Syringe Programs in Canada" (2016), online (pdf): Ryerson <www.ryerson.ca/content/dam/criminology/tank/faculty/PNSP%20Report%20Jan%202016.pdf> [perma.cc/NR4U-XXTH].

⁹⁷ CIC, 17/18, *supra* note 86 at 4. From 2016 to 2018, the number of prisoners on OST in federal institutions has increased by approximately 25% (from 868 to 1088).

more accessible to staff, further increasing their ability to deliver the lifesaving measure in a timely manner when necessary.⁹⁸

Third, despite generating much concern among correctional staff,⁹⁹ the more recent harm reduction strategy of prison-based needle and syringe [exchange] programs (PNSPs) have served to reduce the transmission of infectious diseases (among other benefits) in select prisons internationally for decades.¹⁰⁰ PNSPs have been implemented at six federal institutions: Grand Valley Institution in Ontario, Atlantic Institution in New Brunswick, Fraser Valley Institution in British Columbia, Edmonton Institution for Women in Alberta, Nova Institution in Nova Scotia and Joliette Institution in Quebec.¹⁰¹ However, a recent statement by the Canadian HIV/AIDS Legal Network suggests such programs are fundamentally flawed:

[T]his program is fundamentally flawed – violating prisoners’ confidentiality in many ways. Prisoners do not trust it. There is no working program in the world that uses this approach, which operates as a very strong barrier to access. At the same time, the PNEP exists only in a handful of prisons, and remains vulnerable to cancellation. While most major political parties have stated their support for a PNSP, the Conservative Party of Canada has vowed to cancel the program if they come into power. The Correctional Service of Canada also has a history of cancelling or failing to meaningfully provide proven harm reduction measures to prisoners. That is why we need a positive decision in court: to ensure that the right to this evidence-based health program is enshrined in law.¹⁰²

⁹⁸ Criticism remains as Naloxone for staff is provided as an injectable rather than a spray, which is considered more difficult to use and requires closer contact to the person overdosing on the opioid. For a review of this critique, see Scott Weiner, “Should you Carry the Opioid Overdose Rescue Drug Naloxone?” (23 April 2019), online (blog): *Harvard Health Blog* <www.health.harvard.edu/blog/should-you-carry-the-opioid-overdose-rescue-drug-naloxone-2018050413773> [perma.cc/FF9V-K4JH].

⁹⁹ “Prison Needle Exchange Program: Handling Needles: Not Our Job!” (7 June 2019), online: *Union of Canadian Correctional Officers* <www.newswire.ca/news-releases/prison-needle-exchange-program-handling-needles-not-our-job-882785802.html> [perma.cc/3PRD-HKY6].

¹⁰⁰ CIC, *15/16*, *supra* note 92. See also Kate Dolan, Scott Rutter & Alex D Wodak, “Prison-based Syringe Exchange Programmes: A Review of International Research and Development” (2003) 98:2 *Addiction* 153; Rick Lines et al, *Prison Needle Exchange: Lessons from a Comprehensive Review of International Evidence and Experience*, 2nd ed, (Toronto: Canadian HIV/AIDS Legal Network, 2006); Jozaghi, “Heaven in Hell”, *supra* note 47.

¹⁰¹ CSC, *Prison Needle Exchange*, *supra* note 92.

¹⁰² “A Public Health Failure: Former Prisoner and HIV Groups Suing the Government of

The last harm-reduction we will present opened, most recently, in June of 2019, an overdose prevention site (OPS) was established in Drumheller Institution in Alberta. CSC opened the OPS to “continue ongoing efforts to help prevent fatal and non-fatal overdoses, reduce the sharing of needles, reduce the transmission of infectious diseases [,] [...] reduce the occurrence of skin infections, and facilitate referrals to other health care services and programs.”¹⁰³ CSC acknowledges “[t]here is no single effective intervention in managing substance use disorders,”¹⁰⁴ and in recognizing the realities of prison drug use and dependency, rightfully remains committed to providing harm reduction measures that appropriately addresses prisoners’ needs.¹⁰⁵

While prison policies and initiatives vary, it is clear they share a vision of promoting harm reduction within prison spaces. By recognizing the significance of these efforts, we acknowledge how the social and spatial dimensions of prison are necessary components of safe drug use. To forgo the benefits of the prison in terms of it acting as a safe place for drug use and dependency is to disavow the successes of harm reduction efforts and prison preventative measures already taking place across the country; it denies and denigrates the experiences of prisoners and correctional officers managing drug use and dependency in prison.¹⁰⁶ We recognize that the prison can be a site of safe drug use and will likely always be a site of drug consumption; as such, it would serve Canadian governments across the political spectrum to do the same and legislate accordingly.

VII. CONCLUSION

In Canadian society, conversations about how drugs are perceived and understood are shifting; government and correctional policy must be on the same page to deal with prison drug use and dependency. In our paper, we recognize that intoxication exists along a continuum of risk and governance. While the policing of intoxication remains reliant upon perceptions of risk, severity, and security, Duff reminds us, “to focus solely on the harms

Canada for Failing to Provide Access to Effective Prison Needle and Exchange Programs” (9 December 2019), online: *Canadian HIV/AIDS Legal Network* <www.aidslaw.ca/site/news-release-prison-needle-and-syringe-program/?lang=en> [perma.cc/Z8DP-GYBQ].

¹⁰³ CSC, *Overdose Prevention*, *supra* note 93.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ See generally Bucerius & Haggerty, *supra* note 8.

associated with this behaviour, as almost all existing drug research does, is to fail to reflect the lived experience of illicit drug use in all its confusing heterogeneity.”¹⁰⁷ Within the prison context itself, punitive prison and drug policies and zero tolerance towards drug use has accomplished little to address the realities and complexities of prisoners’ or correctional officers’ lives. Safe injection practices and needle exchange programs remain instrumental to the prison setting. Many of the changes in federal and correctional policy are in response to the real health and security risks associated with drug use in prison.¹⁰⁸

In essence, a focus of contemporary prison and drug policies requires us to reconsider intoxication and prison drug use as both a health problem and a social construct.¹⁰⁹ Our purpose was to provide the reader with insight into the very complex nature of intoxication and intoxicants as it relates to prisoner drug use. Directing attention towards how federal prisons construct, assess, and manage the risk posed by intoxicants serve to carve open discussions about responses (policy or otherwise) to drug use. To this end, we recommend that policymakers revisit prison legislation that serves to counter harm reduction practices by pushing for ‘drug free’ prisoners and that, simultaneously, harm reduction principles continued to be supported in and through prison policies and initiatives – making prison a safer place for prisoners, staff, and civilians.

Taken together, less anti-drug use legislation and more harm reduction practices, demonstrates (even endorses) new ways of thinking about drug use, both in and outside of prison, and the essence of intoxication, while advancing the need for continued support and resources for correctional officers and prisoners alike. Recognizing the social and spatial dimensions of drug use allows us to reconsider the essence of intoxication and the nature of its influence in specific contexts and settings. Notwithstanding such recognition, one thing remains clear: as constructions of ‘intoxicants’ continue to evolve, support and resources for the wellbeing and needs of prisoners and correctional staff must continue and keep apace.

¹⁰⁷ Duff, *supra* note 35 at 385.

¹⁰⁸ Bucerius & Haggerty, *supra* note 8 at 137

¹⁰⁹ See generally Boyd, Carter & MacPherson, *supra* note 15.

