



READ



BETWEEN



THE



LINES



PART 1: DRUG LAWS



PART 2: INTERACTING WITH POLICE



Stella, l'amie de Maimie
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This document does not provide any legal advice. Consult a lawyer if you have questions about a legal concern or file. This information is not intended to influence anyone to commit illegal acts.

This document is a tool for people who use drugs and for members of their communities who wish to improve their living and working conditions. It was created through community consultations and provides a lot of information that was found to be relevant. However, keep in mind that this document does not cover many other laws and legal issues relevant to people who use, share, or sell drugs.

We hope that this information will be useful. We know that it is not easy to confront legal systems, especially when you are part of criminalized, racialized, stigmatized, and marginalized communities. If you need support or accompaniment, you may want to ask a community organization if they can provide the support you need, or if they can refer you to the right resource.

This document was produced in Montréal, Québec. This document focuses on criminal law and procedures (e.g. not family law, youth protection, housing). Procedures may be different in other cities and provinces.

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READ BETWEEN

THE LINES

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PART 1:

DRUG LAWS

CRIMINALIZATION means making something illegal through criminal law (a “criminal offence”). It also refers to all the related consequences and different forms of social control that come from being involved in activities that are criminalized or being part of a community targeted by criminal laws.

The legal, social, health and other consequences that result from criminalization extend far beyond being arrested or going to prison (e.g. eviction, interrogation, inability to access services and support). Some people also use the term to refer to the existence and application of other types of punitive and harmful laws that affect criminalized communities (e.g. immigration, municipal).

CHAPTER 1

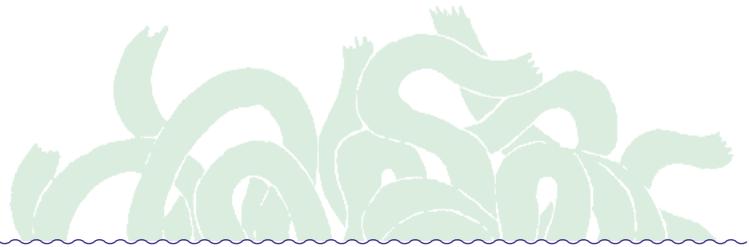
INTRODUCTION TO PART 1

PART 1 provides information on laws that criminalize substances and related activities. This guide was designed to facilitate knowledge of drug offences so that people can better protect themselves, and particularly to protect themselves from saying things to police (statements) that may incriminate or otherwise involve them - or others - in a criminal offence. PART 1 also provides information on possible consequences if you are found guilty of a criminal offence (“sentencing”). We understand that many people regularly share, use, or sell drugs without being arrested. The information in this guide is not intended to contribute to panic or fear. Information is power—it helps us protect ourselves and minimize the harms caused by criminalization.

DIFFERENT LAWS CRIMINALIZE DIFFERENT DRUGS

The *Controlled Drugs and Substances Act* (CDSA) criminalizes many substance-related activities in Canada. These criminal activities (“criminal offences”) mean the people involved in these activities may face certain risks such as surveillance, searches, seizure of substances and drug use equipment, detention, arrest, prosecution, deportation, and the consequences of being found guilty (fine, probation, conditional sentence, imprisonment, deportation, criminal record, etc.).

Since 2018, cannabis is both criminalized and legalized by the *Cannabis Act* (CA). Before 2018 cannabis was criminalized by the CDSA. Some activities that were criminal offences under the CDSA are not anymore; however, the CA continues to criminalize possession, sale, distribution, production, etc. beyond the limits authorized by this law. E.g. under this law, a person who is found guilty of possessing a quantity of pot above the legal limits could face a maximum of 5 years in prison.



This document provides information on laws, prosecutions and police regarding drugs in Canada. While so-called Canada is a colonial state settled on Indigenous lands, whether stolen through treaties or unceded, and its legitimacy can and should be questioned, laws exist based on the borders and powers of the Canadian state and its provinces, and it is within this context that we need to understand them.

DIFFERENT POWERS DEPENDING ON DIFFERENT GOVERNMENTS AND REGIONS

The CDSA and the CA are criminal laws. Criminal laws are federal laws (like criminal offences related to sex work). Like any federal law, these offences are the same across Canada—they apply in all provinces and territories. In contrast, the

powers of prosecutors who prosecute criminal charges are often provincial, and police strategies and directives often depend on regional or municipal authorities. In short, *the application of these laws can change from one city or region to another.*

The federal government has the power to create and change (amend) federal laws, including the CDSA and the CA. This document reflects the laws in force as of September 2021. Contact Stella to find out if this is the most up-to-date version. Contact your local community organization or outreach worker to find out if there have been changes to the laws.

SOME DEFINITIONS

Some legal terms help for understanding the laws and procedures used by police and the court. Here are some terms that are used throughout this document.

CRIMINAL OFFENCE

Criminal laws determine which activities are defined by law as criminal activities. These activities become criminal offences for which you could be arrested.

CROWN PROSECUTORS ("CROWN")

These are the government's lawyers. They prosecute people in court for criminal offences. The Crown has a lot of discretionary power and often determines the outcome of your case.

BEING "CHARGED"/ "ACCUSED"

In Quebec, the police have to identify a criminal offence in order to arrest you. They then send this information to the Crown. The Crown decides whether to charge you, and if so, for which offence(s) (does not have to be the same offence as the one the police used).

BEING "PROSECUTED"

The Crown has officially filed the charges against you and your criminal file is ongoing ("prosecution").

THE "ACCUSED"

A person charged with a criminal offence.

DISCRETIONARY POWER

This means that someone has a lot of decision-making power about what they can do, and how to treat you or your file. Police and the Crown have a lot of discretionary power.

DPCP (DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS)

The DPCP is the boss of prosecutors in Quebec and is in charge of most criminal prosecutions in Quebec. The DPCP can instruct prosecutors and can even create guidelines to follow. The other provinces and territories also have their own prosecutorial institutions.

"ACQUITTED"

When you are acquitted of an offence, it means that you were charged, but you were found not guilty by the court. Only a judge or a jury can officially "acquit" you of an offence. Your case may also be "withdrawn" by the Crown prosecutor, which means that they withdraw the charges and the case is dropped.

"FOUND GUILTY"

This means that you were charged with an offence and the result is that you have been found guilty by the court. It could be because you pleaded guilty or because you went to trial and the judge or jury determined that you are guilty.

"SENTENCE"

Possible consequences/punishments associated with a criminal offence under the law. If you are "found guilty" of an offence, the sentence imposed will be ordered by the court and will depend on the circumstances of the offence and your individual circumstances.

“CRIMINAL RECORD/PRIORS”

If you have already been convicted of a criminal offence(s) in the past, those offences (“priors”) are listed in your criminal record.

LAW ENFORCEMENT OFFICERS

Any government official responsible for the application of a law. This includes police officers, immigration officers, youth protection agents (Director of Youth Protection), municipal inspectors, correctional officers, etc.

“CONTROLLED SUBSTANCE”

A substance included on the list of an appendix to the CDSA (see pages 38-40).

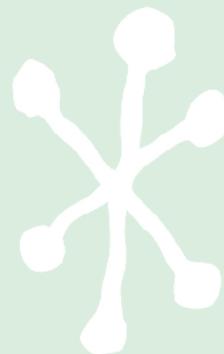
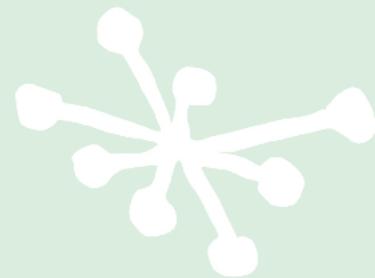
“SCHEDULES”

Various types of substances are classified in the CDSA under different categories (“schedules”). The same activity (e.g. possession, sale) can have different consequences depending on the type of drug and the associated schedule. See pages 38-40 and 59-64.

CHAPTER 2

CRIMINALIZATION OF BLACK AND INDIGENOUS COMMUNITIES

AND OTHER
FORMS OF
PROFILING



Drug prohibitions and enforcement are rooted in colonialism and the oppression of Black, Indigenous, racialized and migrant communities. As people from those communities are specifically surveilled and targeted by police, they are arrested more frequently and experience human rights violations by law enforcement more frequently. They are also prosecuted more frequently, receive more punitive sentences, and are incarcerated at higher rates than white people (e.g. wealthy white people who use drugs are not arrested as much as Black people from poorer neighbourhoods). Historically and today, repressive drug laws and policies are created and maintained with racist objectives and provide the basis for exclusionary immigration policies, child apprehensions, continued incarceration of Black and Indigenous communities and other discriminatory and punitive control of racialized communities.

COLONIALISM in Canada refers to how white Europeans invaded land and violently asserted dominance over Indigenous people, as well as to the far-reaching and ongoing consequences of their arrival.

Most migrant and racialized communities in Canada are also affected by colonialism including through histories of slavery and forced displacements.

SYSTEMIC RACISM includes the many ways in which policies, institutions, social norms and other factors benefit white people and place them at an advantage, while harming, targeting and disadvantaging Black, Indigenous and racialized people. **It does not need to be intentional or explicit**, but it often is, both currently or historically.



SYSTEMIC BIAS refers to situations where institutions and people who hold power (e.g.: governments, judges, officers, employers, teachers) have implicit or explicit discriminatory policies, practices, thoughts, and actions that target or disproportionately affect certain communities. Systemic bias occurs whether or not the people involved are aware of its existence.

RACIAL AND SOCIAL PROFILING includes when law enforcement suspects or targets people on the basis of their race and social situation, and often in combination with specific locations. This happens on a systemic basis through programs that send more police resources to investigate specific communities, and on an individual basis where officers are more likely to question, pull over, ticket, arrest, or investigate targeted people (e.g. Black, Indigenous, racialized and migrant people, people who are homeless or street involved).

This is not an unexpected side effect of criminalization; it is part of its goal. Law enforcement both historically and currently prioritizes policing Black, Indigenous, racialized and migrant people and will continue to find ways to do so. Ongoing racial and social profiling is also encouraged through funding and promoting specific law enforcement operations. These operations (“escouades spécialisées”) are framed differently from time to time (e.g. “anti-gang squad,” “les incivilités,” “anti-gun squad”). But in fact, they produce the same results: racist and disproportionate surveillance, interrogation, detention, searches and arrests of people from targeted communities, who are often from Black and Indigenous communities, but can also be from other racialized communities. E.g. the use of anti-radicalization operations to target people from Arab and Muslim communities, or racialized youth who are caught up in police surveillance because they associate with Black youth.

It is important to work towards the decriminalization of drugs and to educate the public about the human rights violations maintained by laws that criminalize drugs. However, our communities must equally educate and advocate to dismantle systemic racism, anti-Black racism and colonization which are the foundation of law enforcement, of punitive laws, and of local government and community surveillance (“public safety”) committees. Otherwise, governments and law enforcement will continue to come up with other ways to profile, surveil and arrest Black, Indigenous, racialized, and migrant people who use, share, and sell drugs, as well as their communities.

We need to be accountable for the ways we may perpetuate racist, classist and sexist perspectives of people who use, share, and sell drugs. Although people from all communities and backgrounds use drugs, drug use is framed and presented differently depending on the racial, social, economic, and gendered location of the person, as well as the type of drug they use, share, or sell. **Although government, law enforcement (e.g. police, correctional officers), and the court systems (e.g. judges, prosecutors) are ultimately responsible for the surveillance and incarceration of racialized and criminalized communities, these systems are also maintained by racist, classist, and sexist ideas and attitudes towards drug users and their communities.**

CHAPTER 3

INTERSECTING FORMS OF CRIMINALIZATION

Law enforcement uses a variety of tools to target criminalized, racialized, and marginalized communities. People who use, share, and sell drugs may face risks of criminalization created by different types of laws (e.g. related to drug use, sex work, HIV status, immigration status, youth protection, or being in public space). **These forms of repression work together to target individuals and to violate their rights.** E.g. police raids related to anti-sex work or anti-gun operations may provide a legal basis for police to enter a location in instances where they would otherwise not have legal authority to enter or investigate, and this entry may in turn lead to drug, immigration, youth protection, or other charges.

Various forms of criminalization empower law enforcement, and also prevent criminalized people from seeking supports and services when they experience abuse by law enforcement, neighbours, employers, partners, etc. Some people who use drugs may denounce the violence they experience to police, to their community members, on social media, etc. However, some people who use drugs and experience violence fear reporting it, not only because they fear discrimination and mistreatment related to their drug use, but also because of the risks of criminalization they may face. E.g. if they also sell drugs or live with people who do, they may fear trafficking charges; if they experienced abuse in the context of sex work and they are HIV positive, they may fear the risk of aggravated sexual assault charges for not disclosing their HIV status; if they have precarious immigration status, they may fear losing their status or deportation.

Policing is also very different depending on gender, race, and migrant status. Police treat men, women, and people they perceive as trans or queer differently, and they may use specific tactics based on the person's perceived gender. Law enforcement responses are also unequal depending on race and migrant status. E.g. police may be more inclined to have a "saviour" approach with certain cis or white women, whereas they often treat trans and/or Black women as aggressors and "criminals." Or, when interacting with a hetero couple, police may be more likely to be consider the woman as a "victim," while her male partner might be more severely punished as "criminal."

It is important to work towards the decriminalization of drugs and to educate about the human rights violations maintained by laws that criminalize drugs. Yet our communities must equally educate and advocate for the decriminalization of all other aspects of drug users' lives and communities. We need to take into consideration these intersections to be more representative and inclusive in our actions and education. See pages 128-132 for more about decriminalization.

CHAPTER 4

RISK OF DEPORTATION

Immigration Law and “Criminal Inadmissibility”

If you are in Canada without Canadian citizenship and you are charged with a criminal offence, it may impact your immigration status and your ability to stay in Canada.

By law, everyone in Canada has certain basic rights regardless of their immigration status.

However, if you are found guilty of a criminal offence, Immigration Canada may determine that you are “inadmissible” under the *Immigration and Refugee Protection Act*. This means that you lose your immigration status and you could be ordered to leave Canada (“removal/deportation”), even if you have permanent residence.

Often, we do not know the details of the experiences and circumstances of other people in our communities (e.g. whether a person has Canadian citizenship or not, and whether they face serious risks if law enforcement officers

show up). It is important, when considering how to be in solidarity with other drug users and people in the community, to be aware of the possibility that other people in your environment could have precarious immigration status.

See pages 56–58 for more information on criminal offences that can result in “inadmissibility” (loss of immigration status and risk of deportation) depending on the type of immigration status.

If you do not have Canadian citizenship and you are charged with a criminal offence, it is extremely important to ensure that your lawyer fully understands the impact of your criminal file on your immigration status or that they work in direct collaboration with a lawyer who has these skills.

CHAPTER 5

BE CAREFUL NOT TO MAKE INCRIMINATING STATEMENTS

No matter where you are and no matter what legal exceptions may apply, any time you speak to police you are making a statement.

This statement is evidence that can be used to accuse and to prosecute you. It can also be used to accuse and prosecute other people (e.g. people you live with, a dealer/seller, a client, a partner, members of your community or family). This evidence could be used in your trial or in someone else's trial. It could also be used by the Crown to influence someone to plead guilty or to provide information.

**ANY TIME YOU
SPEAK TO
THE POLICE YOU
ARE MAKING
A STATEMENT.**

The police will try to make you talk. They know how to provoke us and make us talk. They are trained for it. Among other things, they will try to convince you that it is in your best interests to speak, and that it is your obligation to do so. They can use tactics developed by experts to take advantage of the stress and vulnerability related to being detained. They are legally allowed to lie to you in order to get you to talk. Even if you are prepared for the situation, the pressure and risks of interacting with the police can catch you off guard. **If you do not want to make a statement, it is essential that you do not react to their questions, comments, or behaviors. Try to maintain control over yourself, avoid conflict, and remain silent.**

Ideally, the best thing to do when dealing with police is to stay silent. But some people do not have the privilege to "just keep quiet" when questioned by police. For many reasons, refusing to respond to police may worsen the situation, lead to your detention by police or immigration, lead to a charge of obstruction or breach of condition, etc.

It may be useful to **THINK IN ADVANCE** about how you may decide to **RESPOND TO POLICE** if you have to deal with them, and how different strategies may play out (e.g. stay silent, speak with police **WITHOUT PROVIDING ANY INCRIMINATING STATEMENTS**, cry, stay calm, have a panic attack). Different strategies often lead to different outcomes depending on many factors, including your social, racial or gender identity, your economic, health or immigration status, language barriers, being considered intoxicated or not, and whether you are known to police or have a criminal record.

Interacting with law enforcement is often challenging for criminalized and/or racialized people. The interaction may lead to less harm if you remain in control of yourself when interacting with police. This is difficult if you are stressed or if you fear for your safety, and particularly if the police are profiling you, making racist, transphobic or anti-sex work slurs, questioning you about your immigration status, etc. But if you **PLAN IN ADVANCE WHAT YOU WOULD AND WOULD NOT SAY TO LAW ENFORCEMENT IN VARIOUS CONTEXTS**, it may be a bit easier to stay in control of yourself and reduce the possible risks and consequences of the situation if it arises. See PART 2 for info about your rights and police powers in different contexts, and different strategies people may use for dealing with police.

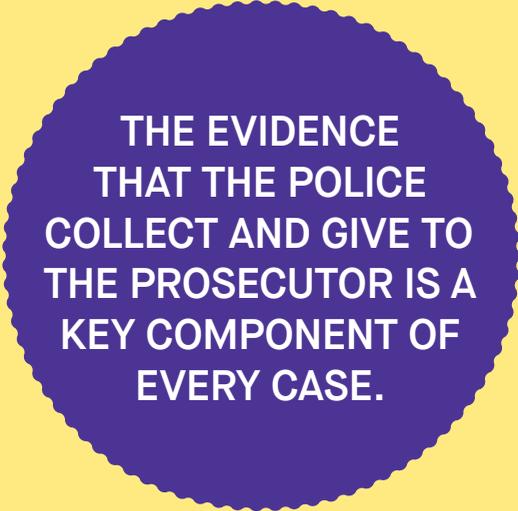
**BEING CHARGED WITH AN OFFENCE
AND BEING FOUND GUILTY OF AN OFFENCE
ARE TWO VERY DIFFERENT THINGS.**

The police must identify at least one offence to arrest you.

If the police arrest you for an offence they might give you a piece of paper with your court date and with conditions to be followed, or they can detain you until when you go to court. See pages 89 and 117-125.

The police send the information and evidence related to the offence to the Crown, who decides which criminal offence(s) you will be charged and prosecuted for. E.g. the police can arrest someone for "possession for the purpose of trafficking" but ultimately the Crown could prosecute them for "possession for the purpose of trafficking," "trafficking," and "breach of condition."

The evidence that the police collect and give to the prosecutor is the key component of every case. The evidence may include just the police report, or it may also include your statements, texts, photos, the analysis of the substance they seized, etc.



**THE EVIDENCE
THAT THE POLICE
COLLECT AND GIVE TO
THE PROSECUTOR IS A
KEY COMPONENT OF
EVERY CASE.**

If you are charged with a criminal offence, the Crown MUST PROVE that you committed it. They must provide the evidence before you are found guilty of an offence: either to convince a judge or jury that you are guilty, or in some cases to convince you to plead guilty. See pages 25-31 to better understand what evidence is often used for different drug offences.

If the evidence against you is weak or non-existent, it is possible that you will not be convicted.

Too often the person accused produces the evidence herself by making statements and/or confessions to the police. Remember: what you say may contribute to the harms resulting from police interactions (e.g. lead to a criminal or immigration charge, involvement in an investigation, evidence against you or your community members). Your silence cannot incriminate you, but your statement might.

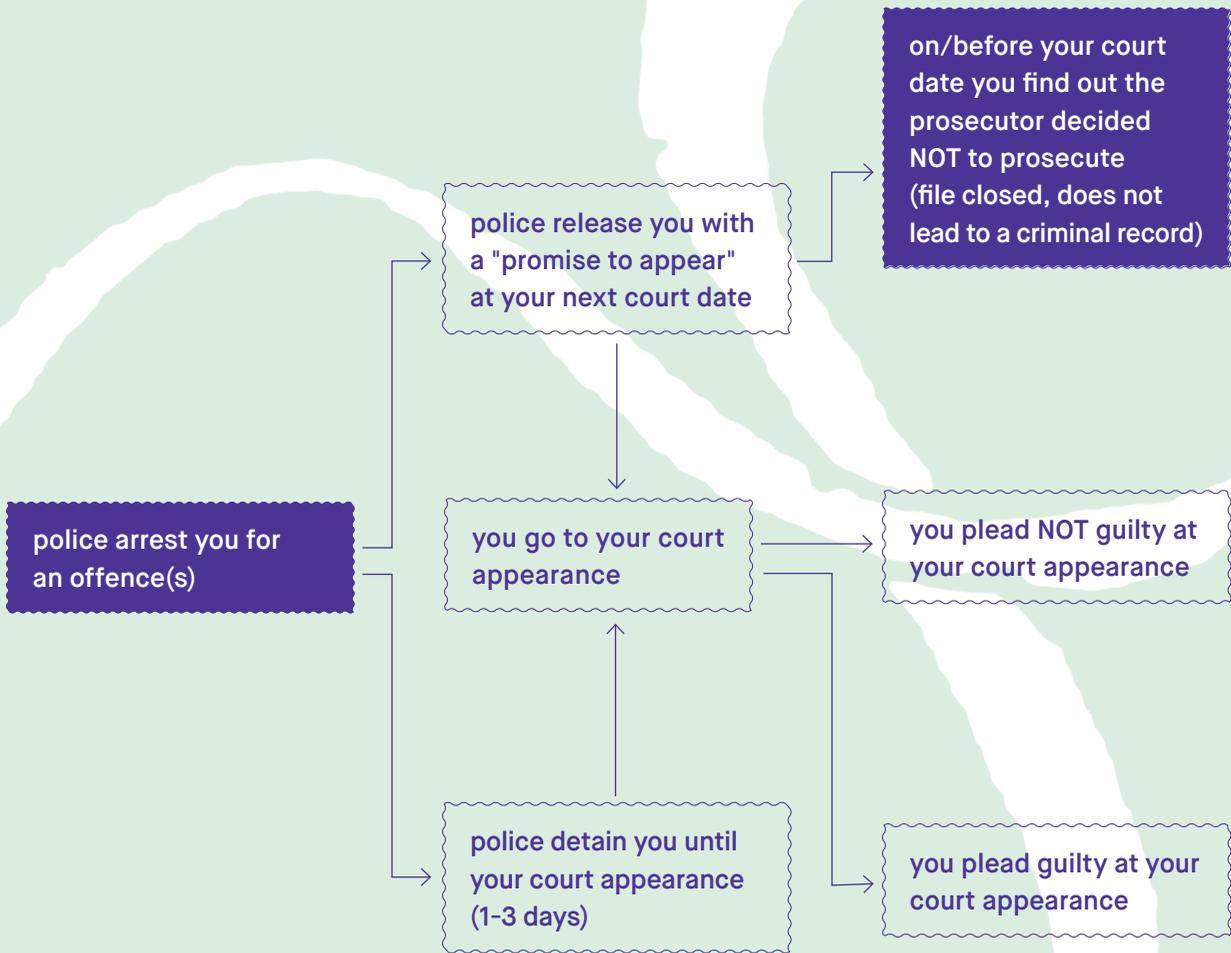
Our social context and our racial identity impact our risk of being monitored, arrested, and punished by legal systems and actors. Other factors can also increase the possibility of attracting the police and leading to violations of our rights and other harmful consequences (e.g. being known to police, being present in a location that is under surveillance).

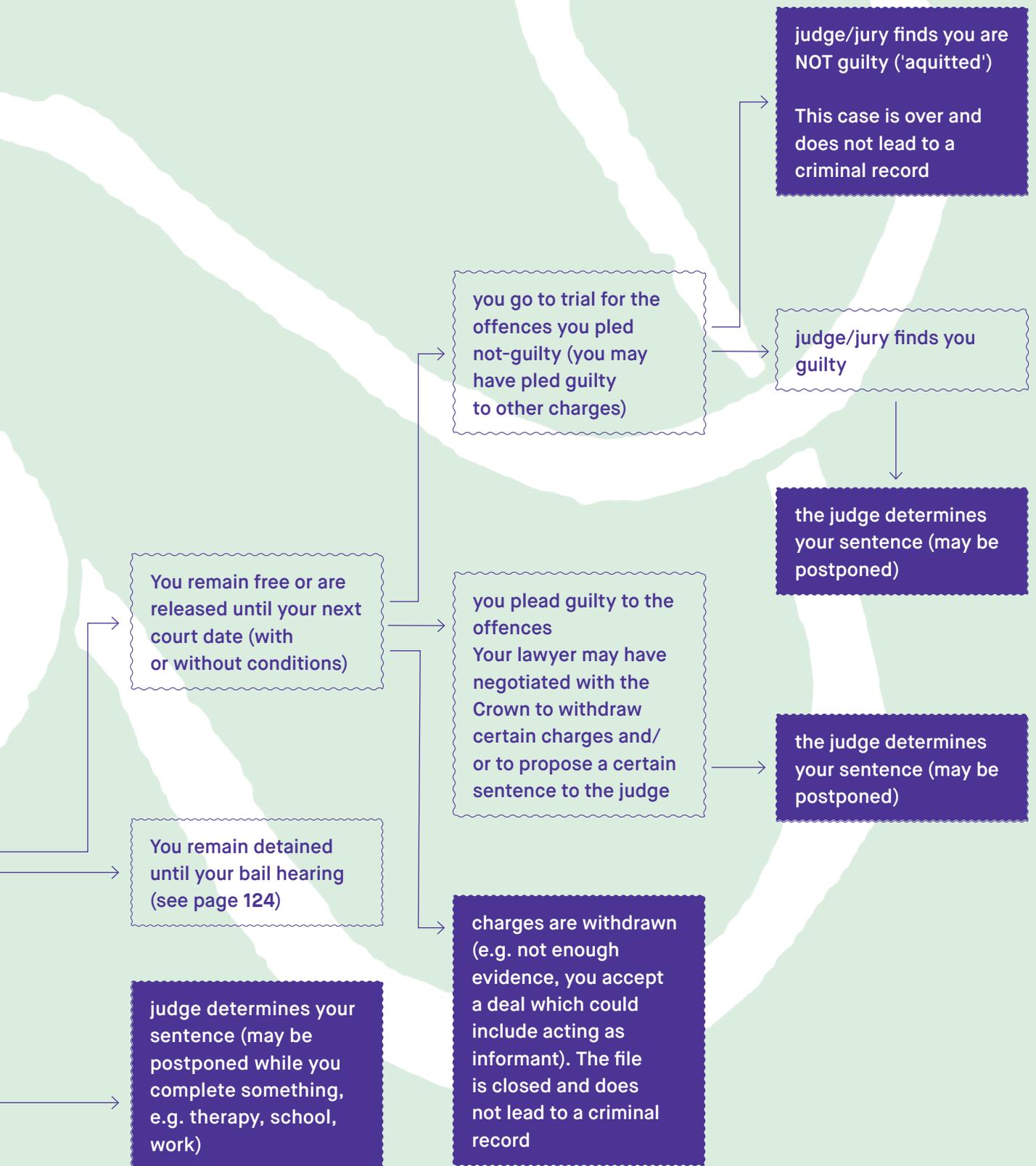
See pages 94-98 for questions to ask yourself in advance to not make incriminating statements.

**YOUR SILENCE
CANNOT INCRIMINATE
YOU, BUT YOUR
STATEMENT MIGHT.**

CHAPTER 6

STAGES INVOLVED IF YOU ARE ARRESTED FOR A CRIMINAL OFFENCE





CHAPTER 7

CONTROLLED DRUGS AND SUBSTANCES ACT (CDSA) OFFENCES



CRIMINAL OFFENCES: DEFINITIONS AND INCRIMINATING EVIDENCE

This information intends to clarify which activities related to controlled substances are criminal activities under the Controlled Drugs and Substances Act (CDSA), meaning “criminal offences” for which you may be charged. This table includes the main offences in the CDSA, but there are others. The possible sentences if you are found guilty of one of these offences are on pages 59-64. Remember that criminal offences related to cannabis are mainly found in the Cannabis Act (see pages 65-72). Also, some drugs are regulated by neither of these two laws (e.g. estrogen, poppers).

Although all of the acts named below are criminal offences, this information is not provided to contribute to panic and fear. We understand that many people regularly share drugs with others without being arrested for drug trafficking, or know that their roommates have drugs in the house without being arrested for possession themselves. This guide was designed to facilitate knowledge of the range of drug offences so that people can better protect themselves, and particularly to prevent saying things to the police (making statements) that are admissions and/or confessions to criminal offences. Information is power—it helps us protect ourselves and minimize the harms caused by criminalization.

**INFORMATION
IS POWER—IT HELPS
US PROTECT OURSELVES
AND MINIMIZE
THE HARMS CAUSED
BY CRIMINALIZATION**

REMEMBER

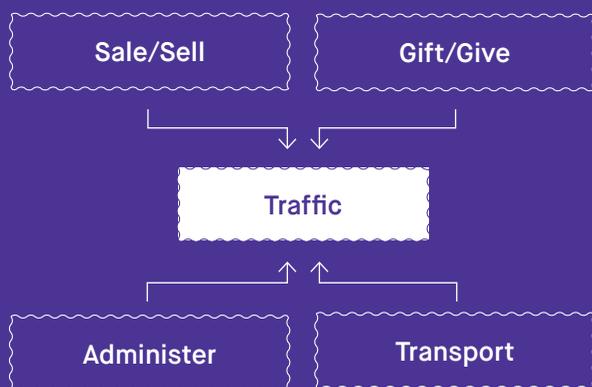
- An activity becomes a “criminal activity” (or “criminalized”) by the simple fact that a law defines it as such. You don’t have to do any bad or cause any harm to a person to be charged with a criminal offence.
- **You can be charged with several offences at the same time** (e.g. for trafficking AND for possession for the purpose of trafficking). You can also be convicted of one offence while being acquitted of another for which there is insufficient evidence.
- **If you are charged with a criminal offence, the Crown MUST PROVE the ELEMENTS of the offence to convince the judge or jury that you committed it for you to be found guilty of the offence.** These definitions and elements of drug offences have been made over the years and they can be changed over time, either by judges or by the federal government.
- **The following table explains certain kinds of evidence the Crown can use to prove that you have committed the offence.**

THE CRIMINAL OFFENCE	SECTION OF THE LAW	THE CRIMINALIZED ACTIVITIES AND THE ELEMENTS OF THE OFFENCE THAT THE CROWN MUST PROVE
<p>POSSESSION</p> <p>“Simple possession”</p>	<p>S. 4(1) of the CDSA</p>	<p>The evidence must establish ALL of the following elements —that you had:</p> <ul style="list-style-type: none"> ~ knowledge or “willful blindness” that the substance was in your possession, AND ~ knowledge or “willful blindness” that the drug is a “controlled substance,” meaning an illegal substance named in the CDSA (the Crown does not have to prove your knowledge of the precise nature of the substance, see page 32); AND ~ some measure of control over these drugs AND consent to their possession. <p>“Possession” is not limited to having drugs on you (see page 31 for definition).</p> <p>Here, “willful blindness” means that due to the circumstances, you should have known it was in your possession.</p> <p>The law requires “a measurable quantity” of the substance: a person can be accused of possession just based on residue in a bag if it is measurable amount (ex. 0.001 g of crack).</p> <p>Whether you had knowledge that the drug was in your possession can be determined by several pieces of evidence, such as the quantity of drugs, their location (ex. whether hidden or in sight), and whether the police obtain incriminating statements and/or confessions from you or others.</p> <p>The mere fact that drugs are in a car in which you are the driver or passenger cannot be the only basis on which you are convicted of possession.</p> <p>See page 33 for information on possessing methadone or other OATs.</p> <p>There are certain “exemptions” to this offence (contexts where you should not be charged). See page 77 for info.</p> <p>NOTE: You cannot be found guilty of “simple” possession of a Schedule 4 substance regardless of how you obtained the drug (see page 39 for the list of drugs in SCHEDULE 4), but you can be charged for all other offences (ex. possession for the purpose of trafficking).</p>
<p>OBTAINING A PRACTITIONER</p> <p>(“double doctoring”)</p>	<p>S. 4(2) of the CDSA</p>	<p>The evidence must show that you asked a doctor for drugs or a prescription for drugs without disclosing to them all the information about the drugs or prescriptions that you received from another doctor in the last 30 days.</p> <p>You can be charged with this offence whether you do it to obtain the drugs for your own personal use or to share or sell to others.</p> <p>It appears that charges for this offence are relatively rare.</p>

THE CRIMINAL OFFENCE	SECTION OF THE LAW	THE CRIMINALIZED ACTIVITIES AND THE ELEMENTS OF THE OFFENCE THAT THE CROWN MUST PROVE
<p>TRAFFICKING IN SUBSTANCE</p> <p>"drug trafficking"</p> <p>*THIS IS NOT LIMITED TO SALE*</p>	<p>S. 5(l) of the CDSA</p>	<p>The proof must establish that you did ONE of the following acts OR that you offered to do ONE of them, even if the act did not take place:</p> <ul style="list-style-type: none"> • Selling drugs, including the sale of a prescription to obtain them: <ul style="list-style-type: none"> ~ This includes offering to sell, even if the transfer is not completed or no one has received anything in return. ~ One can be accused of trafficking by helping or encouraging someone to do it: if the accused is acting on behalf of a buyer and brings the buyer to the seller/dealer and if, without this help, the sale would never have taken place. ~ But the sole fact of helping a purchaser obtain drugs is not <i>always</i> sufficient. Ex., in one case in Ontario, the accused was acquitted because he only introduced the undercover cop to the seller/dealer. There was no evidence that he was acting on behalf of the seller: he was not involved in buying the drug, settling the price, delivering the drug, or handling the drug or the money. This example highlights the importance of communicating thoroughly with your lawyer about the possibility of a defense. ~ But it is possible for someone who simply helps facilitate the sale of drugs to be found guilty of trafficking. It will depend on the specific facts and circumstances, as well as the judge hearing the case. • A "gift," that is, sharing, cutting or giving someone drugs for free: <ul style="list-style-type: none"> ~ By law, if it is established that someone gave drugs to someone else, whatever the reason for doing so, this is considered trafficking. The person does not need to receive anything in return. • Administration of drugs: <ul style="list-style-type: none"> ~ One can be accused of trafficking for having administered (ex. injected) an illegal substance to someone, including when it is done at the person's request (the person asked you to). • The transfer, transport, shipping or delivery of drugs: <ul style="list-style-type: none"> ~ Transport means moving the dope for the purpose of distributing it to someone else. ~ If the transportation is for personal consumption only, this may lead to a charge of possession, but not trafficking. On the other hand, the transport of a drug to your residence, for the purpose of using with your spouse, friend, client, roommate, etc. then meets the definition of traffic. <p>There are certain "exemptions" from this offense for people inside an SIS for possession, production or transfer IF it is for "drug checking" purposes. See p.114-116.</p> <p>Also, see page 35 about other types of criminal charges related to <u>death by overdose.</u></p>

THE CRIMINAL OFFENCE	SECTION OF THE LAW	THE CRIMINALIZED ACTIVITIES AND THE ELEMENTS OF THE OFFENCE THAT THE CROWN MUST PROVE
POSSESSION FOR THE PURPOSE OF TRAFFICKING	S. 5(2) of the CDSA	<p>The evidence must establish ALL of the following elements—that you had:</p> <ul style="list-style-type: none"> ~ knowledge or “willful blindness” that the substance was in your possession (this is not limited to physical possession—see page 31 for the definition of possession); <u>AND</u> ~ knowledge or “willful blindness” that the drug is a “controlled substance,” meaning an illegal substance named in the CDSA (the Crown does not have to prove your knowledge of the precise nature of the substance, see page 32); <u>AND</u> ~ some measure of control over these drugs <u>AND</u> consent to their possession (e.g. even if we know that drugs are sold at the location where we are arrested, that is not enough to determine that we have control over these drugs); <u>AND</u> ~ possession of the substance for the purpose (with the intent) of trafficking (this is not limited to selling, see s.5(1) on page 26 for the definition of “trafficking”). <p>EVEN THOUGH THERE MUST BE A “MEASURABLE QUANTITY” OF DRUGS TO BE ACCUSED OF THIS OFFENCE, IT DOES NOT REQUIRE ANY SPECIFIC AMOUNT. The quantity is not an essential element of the offence, although the quantity may, in certain circumstances, provide evidence from which the judge can presume the accused’s intention to traffic the drugs.</p> <p>The presence of measuring and packaging equipment, multiple bagged quantities, large amounts of cash, notebooks, etc. can be considered evidence of intention to sell.</p> <p>You may be found guilty of this offence even if there is insufficient evidence to find you guilty of the drug trafficking offence.</p>

ACTIVITIES THAT CAN LEAD TO A DRUG “TRAFFICKING” CHARGE



→ CASE STUDY

Nathalie brought coke to share with a client at a motel, at her client’s request. After doing a few lines, **the client starts to turn blue and stops breathing, so she calls 911.** Police show up with the ambulance and she panics. She assumes that either way she will be charged with possession for personal use, so **she tells them that she brought the drugs;** but that he had asked for them, because she wants the police to know that the drugs were his idea. She doesn’t ever consider that she could be charged with trafficking because he didn’t pay for them. Her lawyer later tells her about the “Good Sam” law, but her statement to police has already been sent to the Crown. In the end **she is charged and found guilty of trafficking for having shared the drugs** with her client. (See pages 99-101 for info about the Good Sam Law and about calling 911 during an overdose).



THE CRIMINAL OFFENCE	SECTION OF THE LAW	THE CRIMINALIZED ACTIVITIES AND THE ELEMENTS OF THE OFFENCE THAT THE CROWN MUST PROVE
<p>IMPORT (OR EXPORT)</p> <p>and</p> <p>POSSESSION FOR THE PURPOSE OF IMPORT (OR EXPORT)</p>	<p>S. 6(1) of the CDSA</p> <p>and</p> <p>S. 6(2) of the CDSA</p>	<p>The evidence must establish ALL of the following elements—that you had:</p> <ul style="list-style-type: none"> ~ brought drugs, or organised their entry, into the country; <u>AND</u> ~ knowledge (or “willful blindness” or “recklessness”) that the drug is a “controlled substance” (illegal substance); <u>AND</u> ~ the intention to import the substance. <p>Bring drugs or organise their entry into the country:</p> <ul style="list-style-type: none"> ~ The offence is committed as soon as the drug enters/leaves a country (crosses the border) and continues until the drug arrives at its intended final destination in Canada. ~ The offence is not limited to the time or place the drugs crossed the border. It continues until the person (or someone acting on their account) reclaims the drugs. ~ The offence can be committed anywhere in Canada. E.g. if the drug comes from Jamaica and arrives in Montreal via Toronto, the offence took place both in Montreal and in Toronto. ~ It is not necessary to prove that you personally brought the drugs into the country nor that you were present at the place of entry. A charge may be laid related to the place of entry, the destination, or some place in between. ~ The fact that law enforcement intercepts and/or diverts the drugs is irrelevant to the offence or to a defense. <p>The knowledge (or “willful blindness” or “recklessness”) that the drug is a “controlled substance”, meaning an illegal substance AND the intention to import the substance.</p> <ul style="list-style-type: none"> ~ The Crown does not have to prove that you knew the precise nature of the substance (see page 32). ~ Here, “willful blindness” implies that the accused deliberately failed to inquire for more information when she knew she should have. E.g. if someone buys you a ticket, gives you a suitcase, and tells you that it is a gift and that someone will pick you up when you arrive, and you choose not to ask any questions. ~ Here, “recklessness” implies that the accused should have known of an associated danger or risk but continued to participate anyway. In one case, the person agreed to import two bottles of wine in which cocaine was dissolved. The court concluded that, although the accused said she was an innocent and deceived dupe, and that she was unaware that cocaine could be present in liquid form, the value of the cocaine was significant enough to infer that the producer would not have entrusted it to a blind courier for importation. ~ “Willful blindness” and “recklessness” are not defenses.

THE CRIMINAL OFFENCE	SECTION OF THE LAW	THE CRIMINALIZED ACTIVITIES AND THE ELEMENTS OF THE OFFENCE THAT THE CROWN MUST PROVE
<p>IMPORT (OR EXPORT)</p> <p>and</p> <p>POSSESSION FOR THE PURPOSE OF IMPORT (OR EXPORT)</p> <p>(continued)</p>	<p>S. 6(1) of the CDSA</p> <p>and</p> <p>S. 6(2) of the CDSA</p> <p>(continued)</p>	<p>The behaviour of the accused following the importation may provide convincing evidence of his participation in the offence. Ex. the accused meeting with people, receiving calls of short duration and at late hours; the use of coded language by the accused and his “accomplices”; using public telephones to talk to “accomplices” when they own a cell phone.</p> <p>After the drugs arrive at their intended final destination, other people involved could be prosecuted for “simple” possession, possession for the purpose of trafficking, or trafficking. But at this point, the act of importation has been completed, and according to the law, people involved only from this point on should not be found guilty for importation.</p> <p>Police experts have testified in importation cases that the preferred method of importing heroin into Montreal, Toronto and Vancouver is transporting drugs in fake suitcases (and we see these facts frequently in court judgments). We also see that heroin often enters by flights coming from Africa, the Netherlands (Holland) and Belgium, and that cocaine often enters from Jamaica and Barbados, and that the carriers are often women in their 30s and 40s.</p>



THE CRIMINAL OFFENCE	SECTION OF THE LAW	THE CRIMINALIZED ACTIVITIES AND THE ELEMENTS OF THE OFFENCE THAT THE CROWN MUST PROVE
<p>PRODUCTION OF SUBSTANCE</p> <p>and</p> <p>POSSESSION, SALE, ETC., FOR USE IN PRODUCTION OR TRAFFICKING</p>	<p>S. 7(l) of the CDSA</p> <p>and</p> <p>S. 7.1(l) of the CDSA</p>	<p>By law, the definition of "production" includes the obtaining of a substance by any method (eg, manufacture, synthesis, alteration, cultivation, harvest). The offence also includes offering to produce the substance.</p> <p>The evidence must establish that you have some control over the location and operation of production.</p> <p>~ The mere fact of temporarily being in a place of production or cultivation does not in itself conclude that you are producing, cultivating or harvesting this substance.</p> <p>~ The fact that you do not live on the site of production is not in itself a defense.</p> <p>Production charges often result from a detailed investigation/surveillance. These investigations may involve warrants to intercept private communications, track or trace warrants (e.g. placing a tracking device on a car), garbage searches, search warrants, etc.</p> <p>Police may find out about production when they are informed of large or suspicious purchases of chemical precursors used to produce synthetic narcotics (See substances in Schedule VI on page 39). Other purchases may also look suspicious, such as the combination of motors, dust masks, meat grinder, submersible pump, garbage bags and chemical resistant gloves.</p> <p>When someone is charged with production, they are often charged with both possession for the purpose of trafficking (5 (2)) and possession for use in trafficking (7.1 (1)).</p> <p>For art. 7.1 (1), the evidence must establish that you either possess, produce, sell or transport something with the intention that it be used:</p> <p>~ for the production of a controlled substance (except with legitimate authorization to produce it) OR</p> <p>~ to traffic in a drug listed in the CDSA ("controlled substance").</p>

THE DEFINITION OF POSSESSION

The law defines that a person is in “possession of a thing”:

- ~ When she has it in her **personal possession**, OR
- ~ When she knows—with full knowledge—that she has it in the **possession or custody of another person**; OR
- ~ When she knows—with full knowledge—that she has it in any place, whether or not that place belongs to her or is occupied by her.

When one person has anything in their custody/possession *for more than one person*—and **everyone knows and consents to this**—the thing is considered to be in the possession/care of all of them.

The physical presence of a person in a place where the police find drugs, is not enough in itself to prove possession within the meaning of the law.

According to an Ontario court, one cannot be found guilty of possession when they believe that the prescription drugs found in your home were obtained by your spouse/roommate under a valid prescription and for personal use.

This definition applies to all of the types of criminal possession charges, including:

- ~ “Simple” possession
- ~ Possession for trafficking
- ~ Possession for Import/export
- ~ Possession, sale, etc., for use in production or trafficking

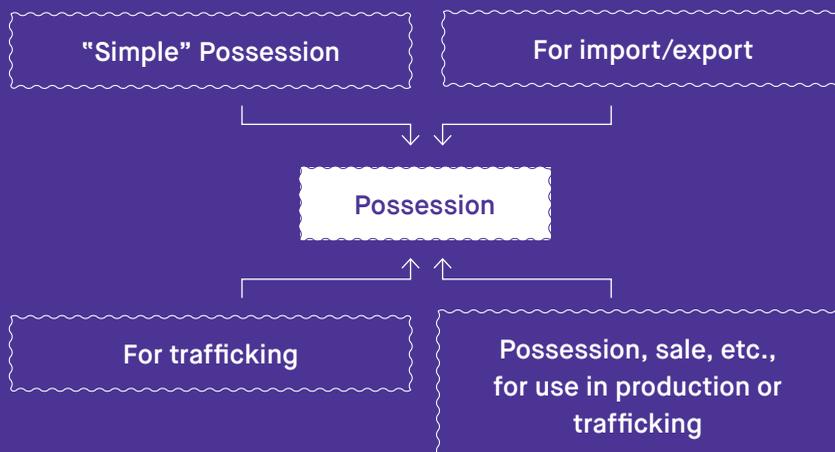
For each offence, certain elements must be proven (see the offence table on pages 25-30 for more information) **based on all of the evidence and the circumstances (including statements).**

→ CASE STUDY

Police show up at Jean and Temela’s house. They say they got a 911 call from a neighbour who heard screams of a woman in distress.

When police arrive, they push their way into the house (see pages 108-109 on police powers) and immediately **see a baggie of what looks like heroin** on the coffee table.

Temela states that the heroin that’s on the table belongs to both of them, which Jean denies, but in the end, **both of them are charged with “simple” possession.**



KNOWLEDGE OF THE TYPE/CONTENT OF THE DRUG

As explained in the table of offences, one of the elements required to prove possession involves knowledge that the drug is a “controlled substance” (substance listed in the CDSA). By law, **the Crown does not have to prove that the accused knew the exact nature of the substance for the accused to be convicted of a substance-related offence. The Crown need only prove that the accused knew it was a “controlled substance,” meaning an illegal substance.**

- E.g. to be found guilty of importing cocaine, the Crown does not have to prove that you knew it was cocaine you were importing.
- E.g. to be found guilty of trafficking fentanyl, the Crown does not necessarily have to prove that you knew there was fentanyl in the drug you were selling or sharing.

The courts have concluded that as long as a person knows that the drug is a “controlled drug,” that person can be found guilty of anything the drug contains. This applies to all trafficking, import/export or possession offences.

To date it is not known if or how “drug checking” (test that determines its contents) or accessibility to drug checking could impact prosecutions and court decisions related to specific types of drugs.

The question may seem theoretical since fentanyl, heroin, crack, cocaine, meth, etc. are all Schedule 1 drugs (see full list on page 38). As such, trafficking any one of these drugs is the same offence in the CDSA, and the same possible sentence applies. However, **judges may order harsher sentences depending on the type of drug.** There has always been a tendency to order harsher sentences for certain drugs depending on current events or media (ex. harsher penalties for crack than for cocaine; or more severe penalties for all drugs containing fentanyl).

THE CROWN ONLY NEEDS TO PROVE THAT YOU KNEW IT WAS A “CONTROLLED SUBSTANCE,” MEANING AN ILLEGAL SUBSTANCE.

POSSESSION OF METHADONE OR OTHER OAT/OST (OPIOID AGONIST TREATMENT)

Since May 2018, certain health care providers (e.g. physicians, some nurses) no longer need an exemption from the federal government to prescribe, administer, or sell/provide methadone to patients.

Pharmacists may sell/provide methadone to you if they have a written order/prescription in your name that is signed and dated by a health care provider.

Usually, you must ingest the methadone in the pharmacy while supervised by the pharmacist, but some physicians may provide “carry orders” (it depends on the province), which allow you to pick up several doses from the pharmacists at a time and take them with you. When you pick up the initial dose of a carry prescription, the pharmacist often requires you to ingest the first dose in front of them.

Methadone carries became slightly more common in certain areas in 2020 to limit the number of required pharmacy visits during the COVID-19 pandemic. The number of carry doses (“carry level”) authorised depends on what the physician orders.

Like other drugs listed in Schedules 1-3 in the CDSA (e.g. Adderall, hydromorphone, Ritalin—see pages 38-39), it is not legal to possess methadone just because it was initially legally prescribed to someone. It is only legal for the person on the prescription/carry to have it in their possession.

Also, like with all other drugs listed in the CDSA, you can be charged with drug trafficking for selling a prescription only (without selling any drug itself). See pages 22-31 for more information of CDSA offences.

TRAFFICKING OR PRODUCTION CHARGES AND BEING RELEASED ON BAIL

If you are arrested and detained, the prosecutor may decide to detain you until your “bail hearing.” At that point, you go before the judge who decides whether you will be released or detained during the legal proceedings. See pages 124-125 for more information on bail hearings.

If you are at risk of being charged with a CDSA offence, it may be important to **prepare in advance a release plan** for requesting bail (“plan de sortie”).

When you are detained after being arrested, the next day you go before a judge. Most of the time, for offences that are considered less serious, the law generally favours that you are released with conditions, **BUT if you are accused of certain specific offences—including trafficking, possession for the purpose of trafficking, production, etc.**—the law favours that you are detained until you can prove why you should be released.

If you are charged with one of these offences you will be detained until your bail hearing, and at your bail hearing you will need to prove to the judge why you should be released or else you will be detained until trial (weeks or months).

Factors that may help you be released on bail include:

- Depositing a **large sum of money** (“bail”), or signing a document (“recognizance”) that says you would pay a large sum of money, that the court would keep if you violate your bail conditions. Or, having someone (a surety) who is able to prove they have these funds commit to this amount.
- A **fixed address**.
 - ~ It may have to be somewhere other than your usual residence, if your conditions prevent you from returning to your residence.
 - ~ If you do not have a place to live, you will have to live with someone (friend, family member, etc.).
 - ~ It is possible, but very rare, to be released with the address of a shelter.
- **Ties to the community** (e.g. family, legal job, studies, community engagements).
- **Proof** of how you will support yourself and meet your needs if released (access to **legal income**).
- Agreeing to **conditions** that will prohibit you from seeing certain people, going to certain areas, having a cell phone, etc.
- Going to **rehab or seeking medical treatment** for drug use: simply telling the court that you will go to rehab may not get you released, but if someone (e.g. your lawyer, outreach worker, friend) can reserve you a spot in a formal rehab center, this may convince the court to release you or transfer you to a full-time rehab residence.
- **If you are Indigenous:** The judge has a legal obligation to consider the present and historical injustice and overrepresentation of Indigenous peoples within the criminal legal system, as well as your personal circumstances (e.g. personal, family and/or community history, current circumstances), when making a decision about your release (see page 47 for more info).

“TRAFFIC” (SHARING, ADMINISTRATION, SALE, TRANSPORT) RELATED TO DEATH BY OVERDOSE

In Canada several people have been charged with “manslaughter” and “causing death by criminal negligence” for giving or selling drugs/alcohol to someone who then overdosed and died as a result. These are homicide charges (for killing a person), but not murder charges that involves an intention to kill the person. **In all cases, the person was also accused of trafficking** (ex. for injecting the drug at their friend’s request, for bringing drugs to a friend’s home to consume, for giving drugs to someone staying at their apartment), except for cases which only involved alcohol.

This type of case where a person is accused of homicide in the context of overdose began in the 1990s and the circumstances of these cases vary widely. Some real cases include: friends who use drugs together and call for help as soon as they notice one of them is in distress; friends who use and one of them orders everyone to leave and not to call for help when one of them convulses and stops breathing; a man who over a span of years pays several Indigenous women to drink until they overdose and die.

In the beginning, the cases that received the most attention involved direct administration of the drug (ex. a person injected coke to a person who fatally overdosed). More recently, cases receiving media attention often involve accusations against the person who sold the drug to the person who fatally overdosed. However, some cases also involve people who simply gave the drugs to someone for free (ex. a man gave a dozen morphine pills to a woman who was staying at his home), as well as friends who help each other administer (inject) the dope.

- **In some cases, the person was acquitted.** E.g. a case where the accused injected the first dose and the person who died injected his second fatal dose himself; a case where there was not enough evidence to prove that the accused sold the drugs to the person.
- **In other cases, the person was found guilty, even when the person did not know what was in the drug.** E.g. a person was sentenced to 18 months for manslaughter for bringing drugs that he thought was coke (it was actually a synthetic opioid and his friend died.)
- **In some cases, the Crown may withdraw the charge of manslaughter.** E.g. if the accused pleads guilty to trafficking charges.

Based on what we know about recent cases, the sentences for these types of offences in the context of overdose-related death range from 18 months to 15 years (the maximum sentence for these offences is life imprisonment). In other cases of manslaughter or causing death by criminal negligence (ex., unintentionally discharging a firearm, hitting someone with the intention of injuring them but not of killing them, distracted driver who kills someone on the road), sentences can range from probation to life imprisonment. In cases of death from overdose, **several factors may also have an impact** on sentencing. These may include the **type of drug, the accused’s knowledge of the type of drug that led to the overdose, and the background of the accused and the deceased.** E.g. sentences have been harsher in cases where the accused person knew they were giving them opioids, where the accused is much older or otherwise considered more responsible than the deceased, or where the deceased did not use drugs regularly.

THE POSSIBILITY OF A DEFENSE AT TRIAL

Sometimes when one is arrested by the police, they think they will be found guilty of everything, especially if they are marginalized and do not have access to adequate and rigorous legal support. In these cases, people may feel pressured to confess or plead guilty to everything. However, **even in circumstances where you think all the evidence is against you and you have no chance to defend yourself, it is important to communicate thoroughly with your lawyer and to consider the possibility of fighting the charges.**

- It is true that in circumstances where you have no possible defense, it may be more strategic to plead guilty to the offence. This may encourage the prosecutor to withdraw other charges, and a guilty plea may be considered a favourable element in sentencing.
- It is also true that, for many reasons, people often plead guilty before adequately analyzing the possibility of a defense (e.g. wanting to be released as quickly as possible, not having access to a lawyer who invests the necessary time).

Even if you think there is no way to defend yourself, the only way to know is if you have a lawyer who thoroughly analyzes this with you.

- Ex., in a Quebec case, the police raided an apartment where there were 5 people and a lot of drugs, scales, ledgers (account book), and packaged sums of money. Ultimately, since there was no admission/confession or other evidence to establish beyond a reasonable doubt who was responsible for the trafficking operation, all 5 were acquitted of trafficking (although a few pleaded guilty to “simple” possession).
- Ex., in an Ontario case, a woman who was in possession of 5 grams of fentanyl was acquitted of possession for the purpose of trafficking, because the defense adequately explained her situation to the judge during her trial. The judge understood that due to her situation of poverty and homelessness, she bought her drugs in bulk because it was cheaper and she kept all of them on her person at all times because she did not have a safe place to store them (although she pleaded guilty to “simple” possession).

**IT IS IMPORTANT
TO COMMUNICATE
THOROUGHLY WITH YOUR
LAWYER AND TO CONSIDER
THE POSSIBILITY OF
FIGHTING THE CHARGES.**

PLEADING GUILTY TO AN OFFENCE

In certain circumstances where you have no possibility of a defense, for several reasons, an accused may decide to plead guilty to one or more offences. Ex., if it encourages the prosecutor to withdraw other charges, results in a lesser sentence, speeds up your release from detention, or to take the charge for someone else.

A guilty plea that is made before the trial starts may lead to better results than a plea made after the trial begins, when the court's resources have already been invested, the witnesses have already had to come and testify, etc.

A prosecutor may also try to encourage you to plead guilty to one charge in exchange for dropping another charge (including a charge that has a mandatory minimum sentence).

Sometimes, the decision to plead guilty is made without the person having been sufficiently informed of the consequences of the guilty plea and without the person having had the opportunity to properly evaluate these consequences (e.g. having a more serious criminal record, accepting a sentence that makes incarceration more likely if you are found guilty of an offence in the future, possible loss of immigration status and risk of deportation).

You have the right to a lawyer who clearly explains ALL of the possible consequences of each guilty plea in your specific situation (e.g. impacts related to your children, your job, your ability to travel, your immigration status, your studies, future employment and projects).

You have the right to a lawyer who **CLEARLY EXPLAINS ALL OF THE POSSIBLE CONSEQUENCES** of each guilty plea in your specific situation. You have the right to **ACCESS AND EVALUATE THIS INFORMATION BEFORE** entering a guilty plea.

You have the right to change lawyers. You also have the right to shop around for a second legal opinion. However, some lawyers may not give you advice as long as you are still represented by another lawyer.

You have the right to access and evaluate this information BEFORE entering a guilty plea. This may involve a few more days, weeks or months in detention. When your lawyer meets with you in detention and explains your options, you might be ready to decide that day, but you might also need more time to think it over, as this important decision will have long term consequences for your future. **Do not hesitate to ask your lawyer to explain the information and issues!**

CLASSIFICATION OF SUBSTANCES IN THE CDSA

This section explains which drugs are included in the CDSA and how they are classified.

- Various types of substances are classified in the CDSA under different categories (“schedules”).
- **The same activity (e.g. possession, sale) can have different consequences depending on the type of drug and the associated schedule. See p.59-64 for possible sentences.**
- It is relevant to know which schedule applies to the drug you have, because it predicts how severely prosecutors and judges will treat a charge, which includes the severity of the possible sentence under the law if ever you are found guilty.
- The level of stigma and perceived “dangerousness” (e.g. perceived risk of harm to public health and safety) associated with these categories of drugs varies, and the associated possible sentences vary accordingly. E.g. you can face a prison term of up to 3 years for “simple” possession of a Schedule 3 substance, but up to 7 years for a Schedule 1 substance. The sentence will also depend on who you are in relation to legal systems, because sentencing is an individualized process. See page 41 for more on sentencing.

The following table shows how several substances are classified according to the Schedules of the CDSA.

SCHEDULE	
1	<ul style="list-style-type: none">• Heroin (smack, H, junk)• Pharmaceutical opioids (hydromorphone/Dilaudid, oxycodone/Oxys, pethidine/Demerol)• Other opioids (morphine, opium, etc.)• Codeine (cough syrup often used in lean/purple drank)• Fentanyl and its analogues (carfentanil, alfentanil, etc.)• Cocaine (coke, blow)• Crack (puff, roche, freebase)• Phencyclidine (PCP, angel dust, mess)• Amphetamines (Adderall)• Methamphetamines (crystal meth, ice)• Ketamine (K, special-K)• GHB (GH, liquid X)• Methadone (*see page 33 for more info on possession of methadone)• Bath salts (BZP, MDVP, M-CAT)• MDMA (MD/molly, extasy/X)

SCHEDULE II	<ul style="list-style-type: none"> • Synthetic cannabinoids (spice, K2) <p>The majority of cannabis products are no longer included in the CDSA, but are now in the <i>Cannabis Act</i> (see page 65).</p>
SCHEDULE III	<ul style="list-style-type: none"> • Mescaline • Psilocin and psilocybin mushrooms (magic mushrooms, shrooms, mush) • LSD (acid, blotters) • Methaqualone (Quaaludes) • Methylphenidate (Ritalin, Concerta, etc.)
SCHEDULE IV	<ul style="list-style-type: none"> • Zolpidem (Ambien) • Salvia divinorum (salvia, Sally D) • Barbiturate (barbs, downers) • Benzodiazepines (benzo, Xanax, Valium, Ativan, Librium, etc.) • Anabolic steroids (testosterone) <p>NOTE—You cannot be accused of “simple” possession of a Schedule 4 substance, regardless of the way you obtained it. BUT you can be accused of all other offences (e.g.: possession for purpose of trafficking). See pages 26-30 for the list of possible offences.</p>
SCHEDULE VI	<p>Ingredients that are used in the production of drugs mentioned above (MDMA, LSD, fentanyl, meth, GHB, cocaine, PCP). These include:</p> <ul style="list-style-type: none"> • Ephedrine, Pseudoephedrine • Acetone (commonly found in nail polish remover) • Toluene (commonly found in some solvents and glue) • Diethyl ether (found in some household products) • A lot of the other ones are more obscure molecules that can be synthesized and become additives for meth, MDMA or GHB (GBL (gamma butyrolactone); BDO/BD (1,4 butanediol)) <p>NOTE: You cannot be accused of “simple” possession, possession for purpose of trafficking, or for trafficking of the Schedule 6 substance. BUT you can be accused of all other offences (e.g.: importing, possession for the purpose of exporting, or production). See pages 28-30 for the list of these offences.</p>
SCHEDULE IX	<p>Manufacturing devices (production equipment that compacts powders into tablets, or fills capsules.)</p>

→ CASE STUDY

Joanne is facing trafficking and possession for the purpose of trafficking charges. She was charged after police raided her apartment (see pages 108-109 for info about police powers and residential locations). **Police found quantities of benzos, shrooms and “illicit” cannabis** (see pages 68-71 for *Cannabis Act* offences), **a scale, packaging material, a large amount of cash, as well as a small baggie of crack** on the counter.

- Joanne was charged with:**
- ~ Possession for purpose of trafficking of crack (Schedule 1)
 - ~ Possession for purpose of trafficking of benzos (Schedule 4)
 - ~ Possession for purpose of trafficking of shrooms (Schedule 3)
 - ~ Possession for the purpose of selling illicit cannabis (under the *Cannabis Act*)

THE SAME ACTIVITY (E.G. POSSESSION, SALE) CAN HAVE DIFFERENT CONSEQUENCES DEPENDING ON THE TYPE OF DRUG AND THE ASSOCIATED SCHEDULE.

Sometimes your drug may contain substances from several Schedules. E.g. You may have benzos (Schedule 4) which contain fentanyl (Schedule 1). In this case, how you might be accused or found guilty depends on certain factors.

- **If you are charged with “simple” possession:** First, you cannot be charged with “simple” possession of a Schedule 4 substance (benzo). For Schedule 1 (fentanyl), it will be up to the prosecutor to decide (discretionary power) whether to charge you for possession or not.
- **If you are charged with possession for the purpose of trafficking:** You may be charged in connection with Schedule 4 or Schedule 1 or both. It depends on the Crown’s evidence (which includes your statements if you have made any), as well as the Crown’s discretionary power.

Your drug may have been included in the law very recently.

- It is important to know that the laws change and drugs that were not illegal before might be illegal now.
- If your drug is similar to the ones in the table, it is very possible that it is included in the full list.
- Note that the list of Schedules in this document is not complete! Don’t assume your dope is legal—check the law or with members of your community.

Sometimes your drug is not included in the CDSA or the CA: e.g.: estrogen, poppers.

Selling and administering certain drugs may be regulated by other laws, even if it is not an illegal substance. E.g. selling or administering certain legal substances is only legal if done by a member of a professional order (e.g.: College of physicians, Order of Pharmacists of Quebec). If you are not a member of an order that is authorized to do the act, you may be charged with a “regulatory” offence (*infraction pénale*). This is different from a criminal act and does not lead to a criminal record. However, if you are found guilty of a “regulatory” offence it can lead to huge fines, and failure to pay could eventually lead to a warrant of imprisonment even if it does not result in a criminal record. If someone contacts you to ask you questions about such things (e.g.: inspector), the same reminders apply. That is, anything you say could be used as evidence against you. You have no legal obligation to answer their questions. If a formal complaint process is initiated, you will receive a written document confirming the complaint/accusation. If you do communicate with them, think about what statements might support their investigation and what might end it.

REMINDER: For cannabis products: Almost all cannabis products are now regulated under the Cannabis Act (CA), but some synthetic cannabis products remain in SCHEDULE II of the CDSA.

SENTENCING

Possible consequences
if you are found guilty

If you are found guilty of a criminal offence, the next step is “sentencing” where the court determines your punishment (the consequences).

You could be found guilty because you went to trial and the judge or jury decided you were guilty OR because you pleaded guilty. (See page 36 regarding the possibility of having a defense at trial.)

You may have pleaded guilty because:

- your lawyer negotiated an “agreement” with the prosecutor: they both agreed on a specific sentence and together they proposed this sentence to the judge (in the majority of cases, a judge will order a sentence proposed by both the Crown and the defense); OR
- you decided that you would probably lose if you went to trial, and even though the prosecutor refused to propose the sentence your lawyer suggested, you evaluated that you may have a better chance of receiving a less punitive sentence if you plead guilty at this point. If your lawyer and the prosecutor do not agree on the sentence, the judge determines it after hearing their arguments.

See page 37 for pleading guilty to an offence.

In all cases, the judge has the power to make the final decision on your sentence (even if you have an “agreement” with the prosecutor).

Several types of sentences are possible, such as a conditional or unconditional discharge, a fine, a suspended sentence with probation and conditions (e.g. community service, rehab), as well as imprisonment in an institution or in the community (conditional sentence). **The type of sentence, as well as the conditions and duration, is determined on a case-by-case basis. It depends on several factors and on who you are in relation to the legal systems.**

Note that being found guilty of a drug offence can also have other types of consequences, like a travel ban to the US.

The type of sentence, the conditions and the duration, is decided on a case-by-case basis. This depends on several factors, including who you are in relation to the legal system. By law, sentencing is an individualized process. Meaning that in every case the court must consider what the appropriate sentence is for the individual accused, the offence(s) in question and the specific context. E.g. the type and context of the offence, the circumstances of your arrest, your criminal record (“prior”), whether or not this is your first charge for this type of offence, your current situation, the level of details and assurances in your “rehabilitation” plan, if there were any victims of the offence, and whether the offence was prosecuted as a summary or indictable offence (see page 45). Other factors may also play a role in sentencing, such as systemic racism and bias, classism, anti-migrant or anti-sex work bias, transphobia, and misogyny. These factors might be used (implicitly or explicitly) to increase or decrease the sentence.

→ CASE STUDY

Remember Joanne was charged with 4 different offences related to the same event (see page 39):

- ~ Possession for purpose of trafficking of crack (Schedule 1)
- ~ Possession for purpose of trafficking of benzos (Schedule 4)
- ~ Possession for purpose of trafficking of shrooms (Schedule 3)
- ~ Possession for the purpose of selling illicit cannabis (under the *Cannabis Act*)

Joanne has a previous CDSA conviction in the last 10 years, so there are mandatory minimum sentences (MMS) that apply to her for the possession for the purpose of trafficking crack charge if she is found guilty (see page 46 for info on MMS).

After negotiations between her defence lawyer and the Crown, she agrees to plead guilty to 4 charges (possession for purpose of trafficking of benzos, possession for purpose of trafficking shrooms, possession for the purpose of selling illicit cannabis, and "simple" possession of crack).

The DPCP agrees to withdraw the possession for purpose of trafficking of crack charge and Joanne avoids the risk of the MMS if she were to be found guilty of this offence.

IF YOU ARE PROSECUTED WITH A “SUMMARY OFFENCE” OR AN “INDICTABLE OFFENCE”

If you are arrested for a criminal offence, you could be prosecuted for an “indictable offence” OR for a “summary” offence.

Sometimes it’s the law that determines which, and sometimes it’s the prosecutor’s decision (it depends on the offence).

This determines the maximum possible sentence associated with the offence and will also have an impact on the severity with which the prosecutor and the judge will handle your case.

Basically, an “indictable offence” is considered more serious and so the possible sentence is more severe. E.g. if you are charged with “possession for the purpose of trafficking” shrooms and it’s prosecuted as a “summary offence,” the maximum possible sentence is 18 months. But for this same offence, if you it’s prosecuted as an “indictable offence,” the maximum possible sentence is 10 years.

Note: **some offences are always prosecuted as “indictable offences.”** E.g. “trafficking” or “possession for the purpose of trafficking” of substances included in Schedules 1 and 2 of the CDSA.

“AGGRAVATING” AND “MITIGATING” FACTORS

Based on the law (as well as the judge’s values), the court will perceive certain factors related to the offence and to your personal situation as reasons why your sentence will be more serious or more lenient.

“Aggravating” factors (reasons the court decides your sentence should be more punitive) could include: your previous criminal record, you did not have a serious drug dependency at the time of the offence, you committed the offence for financial gain, you committed a “breach of trust or authority” in connection with the offence, etc.

“Mitigating” factors (reasons the court decides your sentence should be more lenient) could include: you have no previous criminal record, you pleaded guilty, you had a serious drug dependency at the time of the offence, you have since been in rehab or received other treatment, your age, your family situation, your remorse and regret about the offence, your projects, your involvement in the community, etc.

“MAXIMUM SENTENCES” AND “MINIMUM SENTENCES”

The law fixes a maximum sentence for any criminal offence.

- For any offence, the law fixes the most serious sentence the judge can order for that offence, regardless of the context.
- A maximum sentence can range from 6 months to life imprisonment (e.g. 2, 5, 10, 14 years).
- A maximum sentence does not prevent the judge from considering the circumstances of the accused and of the offence, and it does not force the judge to order a specific sentence.

Some offences also have a mandatory minimum sentence (MMS).

- Meaning that if you are found guilty of this offence the judge **MUST** order at least this minimum sentence, even if their assessment of the appropriate sentence would have been less severe. For this and many other reasons, many consider that all MMS are unconstitutional.
- MMS are associated with offences that the law (and government) consider as particularly serious and requiring severe punishment regardless of the circumstances of the accused and the offence.
- MMS are also a tool for prosecutors to obtain guilty pleas: sometimes the person pleads guilty to an offence—even though they may have a defense—in exchange for the withdrawal an offence with the risk of an MMS.

Since 2012, drug-related sentences (in the CDSA) are much more punitive: MMS were added to offences that previously did not include them, and many MMS were increased by several years.

- The offences of possession for the purpose of trafficking, trafficking, importing/exporting and the production of drugs in Schedules 1 and 2 all have associated MMS.
- Also, certain drugs were moved from Schedule 3 to Schedule 1 (ex. amphetamines, GHB) and the penalties associated with Schedule 1 are more severe.
- Since then, a few courts have found certain MMS related to drug-offences to be unconstitutional (violate our Charter rights).

IF YOU ARE AN INDIGENOUS PERSON (FIRST NATIONS, INUIT OR MÉTIS) –GLADUE REPORTS

The present and historical injustice and overrepresentation of Indigenous peoples within the criminal legal system is a recognised fact, even by the legal system. **Sentencing judges have the power and the DUTY under the *Criminal Code* to ensure that sentences for Indigenous people take into account:**

- ~ Systemic or background factors that may be among the reasons why you are in now court; and
- ~ Types of sentences that may be more appropriate due to your "Aboriginal heritage or connection."

This law applies to all Indigenous Peoples in Canada, regardless of where they live, whether it is on or off reserve, in a large city or rural area. **A judge has an obligation to recognize and take these factors into account.** It is not simply an option.

A Gladue Report is a report submitted to the court which dictates that before a judge makes a decision on sentencing, bail or parole, they must take your circumstances as an Indigenous person into account.

- *Gladue* reports include information about your personal, family and/or community history, as well as your current circumstances.
- These reports are often produced by a person from the Native Para-Judicial Services of Quebec (NPJSQ/SPAQ) or Makivik in the North.
- **The defense can provide this report and/or the judge can request that it be produced to ensure that these factors are correctly presented and addressed by the court.**
- The *Gladue* report is not mandatory, but anyone who self-identifies as an Indigenous person has the right to have one prepared for the judge to review before making a decision. Even

**THIS LAW APPLIES
TO ALL INDIGENOUS
PEOPLES IN CANADA.
A JUDGE HAS AN OBLIGATION
TO RECOGNIZE AND TAKE
THESE FACTORS INTO
ACCOUNT.**

without a report, the judge must recognize and consider your Indigenous identity when making the decision that is most appropriate for your personal situation. Note: One of the reasons mandatory minimum sentences are considered unconstitutional is that they prevent judges from applying the *Gladue* principles when sentencing Indigenous people.

- In some cities or regions these reports might be made regularly, but in others they might be difficult to obtain. Also, some lawyers will automatically respect this obligation, but others may be ignorant or negligent about this duty and/or your Indigenous identity.
- You may decide to tell your lawyer that you are Indigenous to know about specific court procedures for Indigenous peoples.

*Different provinces and regions have implemented different initiatives aimed at "addressing" the overrepresentation of Indigenous peoples in the criminal legal system, including specialized Indigenous courts, restorative justice-based alternatives to incarceration, and access to court workers.

IF YOU ARE BLACK –SENTENCING REPORTS ON SYSTEMIC ANTI-BLACK RACISM

In some cases, in some provinces, the court has recognised that in the context of sentencing Black people, systemic anti-Black racism, oppression, and other background factors related to Black people in Canada such as slavery, segregation, colonialism, intergenerational and personal trauma, targeted and excessive policing, and the overrepresentation of Black people in the criminal court and prison systems, must be considered.

In some provinces, Black people have submitted an “Impact of Race and Culture Assessment” (IRCA) report at sentencing, which aims to inform the court of the realities of anti-Black systemic racism in Canada. An IRCA explains how a person’s racial-identity and cultural heritage

should be considered as a significant factor in considering their sentence. Unlike a *Gladue* report, the Supreme Court of Canada has not yet determined that courts have a legal obligation to consider IRCAs, so considering an IRCA would be at the discretion of the judge.

We have no knowledge of any court decision in Quebec that applied this development in law. To date, we are only aware of these successes in Ontario, Nova Scotia and Alberta courts.

IF YOU ARE OR HAVE BEEN A PERSON WHO USES DRUGS

People who use drugs are systematically targeted by the police and for prosecution through the criminalization of drugs. They are often treated more harshly by prosecutors and judges. These realities are produced by criminalization and stigma associated with drugs and people who use them.

At the same time, when a person is found guilty of a serious drug offence, if they prove to the court that they had a serious drug dependency at the time they committed the offence, but that they have since “beat their addiction,” the court may consider this a reason why a slightly less severe sentence is appropriate. This is not a defense, but a factor that could be considered by the court at the sentencing stage. Support letters from community organizations and/or case workers attesting to your participation or ‘progress’ in programs and accessing services may also support a less severe sentence.

This could apply to some people for trafficking or importation offences. These offences exist because the law considers drug users to be victims, and the people who produce, import and sell drugs to be criminals responsible for the suffering of these victims and their communities. So when the accused has a significant drug dependency, they may be seen as a “victim of drugs” as well as the “offender”.

That being said, there are many other factors (e.g. gender or racial identity) that also impact whether a judge perceives you as a “good victim” deserving of compassion and leniency. These factors and values affect not only sentencing, but also whether you are detained or released while your case is ongoing.

Stigma is the mark of unwanted differentness, “othering” and discreditation that is imposed on a person. It is a set of assumptions about people, activities and behaviours that reduces people to stereotypes.

Stigma’s effects extend beyond negative perception and into real-world consequences, like discrimination, exclusion from mainstream society and its protections, and criminalization.

IF YOU START OR FINISH TREATMENT/REHAB

In general, judges and prosecutors usually expect people who use drugs to attend or undergo some type of treatment. This is not limited to people arrested for drug offences, but to many types of criminal charge.

Participating in a treatment program is often a way to delay legal proceedings and/or obtain a less punitive outcome later on. People who use drugs may or may not want to undergo treatment/rehab, and may or may not want to use treatment/rehab as a way to minimize the punitive consequences of criminalization.

This may include participating in a treatment program regulated by the court (a “specialised tribunal/drug treatment court”), but it may also include a treatment program that you have selected yourself. In order for the treatment to have a positive impact on your case, the court needs to recognize its value and legitimacy. But this does not necessarily mean that you are limited to the place or type of therapy that others (judge, prosecutor, or even your lawyer) may suggest or expect.

There are many types of court regulated “specialised tribunals/drug treatment courts” related to drug offences in different cities and in different courts. Some of these court programs are very restrictive. They may require the person to plead guilty. They may also be very restrictive in terms of the therapy itself and other required living and working conditions.

You may be able to select and propose your own treatment to the court (e.g. AA/NA meetings, residential rehab, outpatient drug treatment programs). **In this case, it may be possible to negotiate an outcome that does not include a guilty plea.** You may also have greater capacity at following through with a treatment that you have selected based on your needs, which also means that this may have a more positive impact on your case.



THIS MAY INCLUDE PARTICIPATING IN A TREATMENT PROGRAM REGULATED BY THE COURT, BUT IT MAY ALSO INCLUDE A TREATMENT PROGRAM THAT YOU HAVE SELECTED YOURSELF.

The “specialised tribunals” in Montréal are:

- At the provincial court house (Palais de Justice), it’s the PTTCQ (Programme de traitement de la toxicomanie de la Cour du Québec). There is also a PTTCQ in Puvirnitug.
- At the municipal court house (Cour municipale de Montréal), it’s the PAJTO (Programme d’accompagnement justice en toxicomanie).

A perspective of some judges/prosecutors is that at the time of committing an offence, a person “with a drug problem” at that time might have had little or no power due to their addiction. Then, if they have since been in therapy and abstain and reject all forms of drug and alcohol use, they deserve the compassion and leniency of the court. This leniency is offered not only because they no longer use drugs, but also because they denounce the use of drugs, all associated activities, and everyone in the community who is associated with drugs.

This perspective perpetuated by the courts may represent some people’s experience. However, for many others, **this perspective denies current drug users their agency, minimizes and misrepresents the complex realities of their lives, and perpetuates stigma, pity, hate and resulting human rights abuses.** People who use drugs are incredibly diverse, as are their relationships with using.

For more on how the rights of people who use drugs are violated by court or program requirements that promote abstinence-only practices and ideologies and require or pressure people to change their living and working activities, see: Sex Work and Harm Reduction Discourse: A Reflection, Tara Santini, Alana Klein, Stella, l’amie de Maimie & Butterfly Asian and Migrant Sex Worker Support Network, 2020.

Anti-sex work and prohibitionist ideologies, laws, conditions, programs and funding deny sex workers their agency and erase the fact that, for many, sex work is an activity to increase their resources and opportunities and a potential way to change their conditions and to protect themselves.

For more on how laws, court orders, and programming that set “exiting” sex work (abstaining from doing sex work, leaving their job or their network) as a pre-determined expectation or requirement are harmful to sex workers collectively and individually, violate their rights, and are in conflict with harm reduction principles, see: [Sex Work and Harm Reduction Discourse: A Reflection](#), Tara Santini, Alana Klein, Stella, l'amie de Maimie & Butterfly Asian and Migrant Sex Worker Support Network, 2020.

IF YOU ARE A SEX WORKER

Just like people who use drugs, sex workers are constantly stigmatized, dismissed and misrepresented as either immoral criminals, helpless victims, or both, *particularly* if they are sex workers who use drugs. And just like people who use drugs, no matter what charges they face, judges and prosecutors expect anyone who does sex work to either stop (“exit”) or want to stop doing sex work.

Some sex workers may want to stop doing sex work. Others may want to change the type of sex work they do, improve their working conditions, or get a second job or project outside of the sex industry in addition to their sex work. **Yet no matter what a sex worker may want, the distorted idea that sex work is inherently harmful and that all sex workers must or should want to stop doing sex work is harmful to all sex workers both individually and collectively.**

That said, **this harmful perspective has the potential to either help or hurt your case, depending on where you’re at, and how you are willing to represent yourself and your realities to the court** (e.g. your work, relationships, situation, goals).

As a sex worker, if you are willing and able to present yourself as a “credible and sympathetic victim”: this may encourage the court to perceive your sex work as something that you deserve to be pitied and forgiven for, and that could result in you receiving a less punitive outcome in your case.

But if you are not perceived as a “good victim,” your sex work may be used against you. A central part of anti-sex work ideology and resulting rights violations is to use sex workers’ experiences against them.

IF YOU ARE WILLING AND ABLE TO PRESENT YOURSELF AS A “CREDIBLE AND SYMPATHETIC VICTIM,” THIS MIGHT RESULT IN A LESS PUNITIVE OUTCOME IN YOUR CASE.



IF YOU ARE
NOT PERCEIVED AS A
“GOOD VICTIM,”
YOUR SEX WORK MAY
BE USED AGAINST YOU.

The court might decide that you are not a “good victim” if you don’t assume and promote an anti-sex work narrative and values, e.g.:

- you don’t apologize for your sex work and you don’t show remorse or regret about your sex work
- you don’t think you are a “victim” of sex work or that sex work is a “problem that you need to fix” and “exit from”
- you refuse to let the court present your sex work as a/the source of the problems and harms in your life
- you claim that sex work is a useful tool in your life

The court might decide that you are not a “good victim” because, e.g.:

- you have economic independence from your sex work and/or you show you are a decisive and confident person (and were at the time of the offence). If you are not financially vulnerable the court may consider you more responsible for your decisions. In one case where a sex worker was sentenced for importing, although the court recognized that she decided to operate her own massage business to avoid being exploited, they also used against her that she was “willing to do what is necessary in order to succeed and make money”
- the court perceives you and your prior record through a racist, colonial, misogynistic or transphobic lens, and the court decides you’re an immoral “recidivist” who needs to be punished and be “taught a lesson” so that you “change your ways”
- you refuse to reject your community as the court has ordered you to (e.g. to stop associating or communicating with other sex workers, clients, third parties, drug users or dealers/sellers)

IF YOU ARE A MINOR OR IF YOU ASSOCIATE WITH MINORS

If you are charged with a criminal offence and you are between 12 and 17 years of age (inclusive):

- The criminal procedure is not the same as that for a person 18 years and older. Even if you are charged with the same offence that would apply to a person over 18, the procedure related to your case, to your possible detention, and to sentencing if you are convicted, are determined by a separate law (*Youth Criminal Justice Act*) and a separate Youth Court (*Chambre de la jeunesse*).
- In some “very serious” cases (ex., drug trafficking and weapons charge associated with “organized crime”), a minor could be prosecuted as an adult. This implies the possibility of a public criminal record as well as a much more severe sentence.
- Also, the file of a minor accused of a criminal offence could be transferred to Director of Youth Protection (DYP). In this case, instead of being detained and regulated by the *Youth Criminal Justice* system, you could be detained and regulated by the DYP. These are two separate systems that have different procedures. Depending on your situation, and your needs, in some cases you might want to be transferred to the DYP, and in other cases you might want to stay in the criminal system. E.g. in some cases the DYP may offer conditions or outcomes that you prefer, while in other cases it may lead to a much longer and/or unwanted detention.

If you are 18 years or older, for some offences, associating with a minor may have an impact on your sentence.

- Ex. The CA has additional offences and harsher sentences for adults who involve or work with minors in connection with cannabis-related activities.
- Ex. The current CDSA carries a mandatory minimum sentence of **2 years** if you involved a minor in the trafficking of any drug listed in Schedules 1 and 3.

IF YOU ARE ARRESTED WITH A FIREARM IN YOUR POSSESSION

Searches and raids often lead to weapons charges. Sometimes this includes the police charging someone for possession of a pair of scissors or a pocket knife, and sometimes the police find actual guns.

Even if it is a single firearm for your personal protection, being found guilty for possession of a firearm can carry very serious sentences, especially if it is not your first weapons offence.

Also, if you have previously been found guilty of a criminal offence (not limited to weapons offences), it is possible that your previous sentence included a court order (condition) to not own any weapons for a period of up to 10 years. In this case, if you are accused of possessing a weapon AND of violating a weapons-related court order, the consequences can be extremely serious. Ex. You have priors related to weapons and you are then arrested with drugs and a weapon in your possession and are found guilty. Although you may get a year for trafficking, you might get 5 years for the weapon.

Even without priors, sentences for gun-related charges can be extremely harsh and lead to a much longer prison term.



IF YOU DON'T HAVE CANADIAN CITIZENSHIP

NEVER PLEAD GUILTY TO A CRIMINAL OFFENCE WITHOUT KNOWING THE IMPACT ON YOUR IMMIGRATION PROCESS

Also, your immigration lawyer must understand your criminal record (in Canada or abroad) and its possible impacts on your immigration status/file.

Depending on your immigration status and the type of offence, you may be at risk of being deported if you are found guilty of a criminal offence.

If you do not have your Canadian citizenship and you are charged with a criminal offence, it is extremely important to ensure that your lawyer fully understands the impact of your criminal record on your immigration status or that they work in direct collaboration with a lawyer who has this expertise.

It is extremely important to work with your lawyer to obtain a sentence (ideally a discharge) that does not put you at risk of deportation.

A discharge is a kind of sentence. There are two types: absolute discharge or conditional discharge. In immigration law, receiving a discharge (conditional or unconditional) is equivalent to being found "not guilty," so you will not lose your immigration status and you will not be deported.

If you are in Canada without Canadian citizenship and you are found guilty of a criminal offence, this may impact your immigration status.

- Immigration Canada may determine that you are “inadmissible” under the *Immigration and Refugee Protection Act*.
- This means that you lose your immigration status and could be ordered to leave Canada.

Migrants can have different legal immigration statuses. E.g. you can:

- Have your permanent residence or be waiting for it
- Have a valid visitor permit
- Have a valid work permit
- Have a valid study permit
- Be waiting for your sponsorship
- Have refugee status (asylum) or be waiting for it
- Have no legal status (e.g. your permit expired, you did not start any of these procedures, you received a removal/deportation order)

If you do NOT have Permanent Residence, you may be forced to leave Canada if you are found guilty of:

- 1 criminal offence which COULD be EITHER a “summary offence” OR an “indictable offence” (ex. “simple” possession); OR
- 2 criminal offences which can ONLY be “summary offences” AND these 2 offences are related to DIFFERENT EVENTS.

If you have Permanent Residence, you can lose it and be deported if you are found guilty of an offence AND:

- Your actual sentence (the one you received) is more than six months (e.g. you are found guilty of theft and receive a 7-month sentence); OR
- The maximum possible sentence for the offence under the law is 10 years or more (e.g. you are found guilty of “possession for the purpose of trafficking” a substance of Schedules 1-3 and your actual sentence is only a fine or 4 months, but the possible sentence under the law for this offence is life).

*See pages 59-64 and 68-72 for the maximum sentences associated with the CDSA and the CA.
* If you do not have your Canadian citizenship, for more info see *Immigration Status and Sex Work* and *Working in Canada Without Citizenship*, Stella, l’amie de Maimie, 2015.

→ CASE STUDY

Naomi is hitching a ride back from Toronto with a friend of a friend, David. Naomi is a trans woman who is in Canada on a tourist visa that she thinks might be expired.

When they get pulled over by police for speeding, she automatically worries about her immigration status.

Things that may influence how she responds to the situation might include:

- If she is charged with a criminal offence, will this affect her immigration status?
- What may happen if she hands over her passport when asked for ID considering she transitioned after the picture was taken and looks nothing like it?
- What may happen if she uses her chosen name or her deadname to identify herself?
- Although she is only a passenger in the vehicle, can she be charged with anything if the car is associated with a criminal offence?
- Is she in a position to deal with possibly being charged for something, and then later figuring out how to deal with the charges?
- Will she be immediately sent to Immigration detention, and possibly deported, if she is arrested?
- Does she have contact info for an immigration and/or criminal lawyer that she can call?

Note that if there is a warrant for her removal/deportation because of her immigration status, the cops may see this in their system, but otherwise her immigration info should not be immediately retrievable in the police's database. That said, the cops could contact the [Canadian Border Safety Agency \(CBSA\)](#) and inquire about her status.

When the police start questioning David, he becomes agitated and the situation escalates so the police decide to search the car. They find Schedule 1 and 3 substances (speed, GHB, MDMA and shrooms) in large quantities in a bag in the back seat of the car.

When asked for ID, Naomi decides to hand over her passport, declares that she wasn't aware of the presence of drugs in the car, and refuses to say anything else (more info on police stops and vehicles at pages 104-106.). They are both arrested for possession for purpose of trafficking, however Naomi's charges are later dropped by the prosecutor as there is not enough evidence/proof supporting Naomi's involvement in any criminal activity.

CDSA SENTENCES

Possible consequences
depending on the
offence and the type
of substance

LEGEND (TERMS USED IN THE TABLE)

IO	if the offence is prosecuted as an "indictable offence"
SO	if the offence is prosecuted on "summary offence"
1st	possible sentence if this is the first time you are found guilty of a CDSA offence
Not 1st	possible sentence if this is NOT the first time you are found guilty of a CDSA offence
MMS (mandatory minimum sentence)	If you are convicted of this offence the judge MUST order this sentence
Minor	person under 18 years old

See pages 45, 46 and 54 for more information on the above terms.

POSSIBLE SENTENCES ACCORDING TO CERTAIN OFFENCES OF THE CDSA

OFFENCE	DRUG LISTED IN SCHEDULE 1	DRUG LISTED IN SCHEDULE 2	DRUG LISTED IN SCHEDULE 3	DRUG LISTED IN SCHEDULE 4
POSSESSION ("Simple possession") S. 4 (1) CDSA	IO: max = 7 years SO 1st: max = 6 months + 1000\$ SO Not 1st: max = 1 year + 2000\$	IO: max = 5 years SO 1st: max = 6 months + 1000\$ SO Not 1st: max = 1 year + 2000\$	IO: max = 3 years SO 1st: max = 6 months + 1000\$ SO Not 1st: max = 1 year + 2000\$	"Simple" Possession of a Schedule 4 drug is not an offence
OBTAINING A SUBSTANCE "double doctoring" S. 4 (2) CDSA	IO: max = 7 years SO 1st: max = 6 months + 1000\$ SO Not 1st: max = 1 year + 2000\$	IO: max = 5 years SO 1st: max = 6 months + 1000\$ SO Not 1st: max = 1 year + 2000\$	IO: max = 3 years SO 1st: max = 6 months + 1000\$ SO Not 1st: max = 1 year + 2000\$	IO: max = 18 months SO 1st: max = 6 months + 1000\$ SO Not 1st: max = 1 year + 2000\$

POSSIBLE SENTENCES ACCORDING TO CERTAIN OFFENCES OF THE CDSA

OFFENCE	DRUG LISTED IN SCHEDULE 1	DRUG LISTED IN SCHEDULE 2	DRUG LISTED IN SCHEDULE 3	DRUG LISTED IN SCHEDULE 4
<p>TRAFFICKING IN SUBSTANCE</p> <p>or</p> <p>POSSESSION FOR THE PURPOSE OF TRAFFICKING</p> <p>Ss. 5 (1) and (2) CDSA</p>	<p>Max = Life</p> <p>MMS =1 year prison IF:</p> <ul style="list-style-type: none"> • within the last 10 years, you were found guilty of, or in prison for, any CDSA offence except for 4(1), or you used or threatened to use violence or a weapon in committing the offence, or • you committed the offence in association with a "criminal organisation" <p>MMS = 2 years prison IF:</p> <ul style="list-style-type: none"> • you involved in a minor in committing the offence, or • you committed the offence in or near a school, school grounds, or other place where minors usually are, or • you committed the offence in or on the grounds of a prison or a correctional facility 	<p>Max = Life</p> <p>MMS =1 year prison IF:</p> <ul style="list-style-type: none"> • within the last 10 years, you were found guilty of, or in prison for, any CDSA offence except for 4(1), or you used or threatened to use violence or a weapon in committing the offence, or • you committed the offence in association with a "criminal organisation" <p>MMS = 2 years prison IF:</p> <ul style="list-style-type: none"> • you involved in a minor in committing the offence, or • you committed the offence in or near a school, school grounds, or other place where minors usually are, or • you committed the offence in or on the grounds of a prison or a correctional facility 	<p>IO: max = 10 years</p> <p>SO: max = 18 months + 5000\$</p>	<p>IO: max = 3 years</p> <p>SO: max = 1 year + 5000\$</p>

POSSIBLE SENTENCES ACCORDING TO CERTAIN OFFENCES OF THE CDSA

OFFENCE	DRUG LISTED IN SCHEDULE 1	DRUG LISTED IN SCHEDULE 2	DRUG LISTED IN SCHEDULE 3	DRUG LISTED IN SCHEDULE 4
<p>IMPORTING AND EXPORTING</p> <p>or</p> <p>POSSESSION FOR THE PURPOSE OF EXPORTING</p> <p>Ss. 6(1) and (2) CDSA</p>	<p>Max = Life</p> <p>MMS = 1 year prison IF the amount is LESS than 1 KG AND:</p> <ul style="list-style-type: none"> • you committed the offence for the purpose of trafficking, or • you "abuse a position of trust or authority" while committing the offence, or • you had access to an area restricted to authorised persons and used this access to commit the offence <p>MMS = 2 years prison IF the amount is MORE than 1 KG</p>	<p>Max = Life</p> <p>MMS =1 year prison IF:</p> <ul style="list-style-type: none"> • you committed the offence for the purpose of trafficking, or • you "abuse a position of trust or authority" while committing the offence, or • you had access to an area restricted to authorised persons and used this access to commit the offence 	<p>IO: max = 10 years</p> <p>SO: max = 18 months + 5000\$</p>	<p>IO: max = 3 years</p> <p>SO: max = 1 year + 5000\$</p>
<p>Courts have repeatedly stated that importing drugs is a more serious offence than trafficking and that people found guilty should serve long sentences, often 10-15 years. In very exceptional cases, young people with no priors have received sentences as low as 5 years, but the range of sentences goes up to 25 years.</p>				

POSSIBLE SENTENCES ACCORDING TO CERTAIN OFFENCES OF THE CDSA

OFFENCE	DRUG LISTED IN SCHEDULE 1	DRUG LISTED IN SCHEDULE 2	DRUG LISTED IN SCHEDULE 3	DRUG LISTED IN SCHEDULE 4
<p>PRODUCTION OF A SUBSTANCE S. 7(1) CDSA</p>	<p>Max = Life</p> <p>MMS = 2 years prison in ALL cases</p> <p>MMS = 3 years prison IF:</p> <ul style="list-style-type: none"> • you used a building that belongs to someone else to commit the offence, or • the production created a potential security, health or safety hazard to minors who were in the location of the offence or the immediate area, or • the production created a potential safety hazard in a residential area, or • you allowed for a trap, device or other thing that is likely to cause death or bodily harm in the location where the offence was committed or in the immediate area 	<p>Max = Life</p> <p>MMS = 1 year prison IF</p> <ul style="list-style-type: none"> • you committed the offence for the purpose of trafficking <p>MMS = 18 months prison IF:</p> <ul style="list-style-type: none"> • you committed the offence for the purpose of trafficking, AND • you used a building that belongs to someone else to commit the offence, or • the production created a potential security, health or safety hazard to minors who were in the location of the offence or the immediate area, or • the production created a potential safety hazard in a residential area, or • you allowed for a trap, device or other thing that is likely to cause death or bodily harm in the location where the offence was committed or in the immediate area 	<p>IO: max = 10 years</p> <p>SO: max = 18 months + 5000\$</p>	<p>IO: max = 3 years</p> <p>SO: max = 1 year + 5000\$</p>

POSSIBLE SENTENCES ACCORDING TO CERTAIN OFFENCES OF THE CDSA

OFFENCE	DRUG LISTED IN SCHEDULE 1	DRUG LISTED IN SCHEDULE 2	DRUG LISTED IN SCHEDULE 3	DRUG LISTED IN SCHEDULE 4
POSSESSION, SALE, ETC. FOR USE IN PRODUCTION OF TRAFFICKING S. 7.1(1) CDSA	IO: max = 10 years SO: max = 18 months + 5000\$	IO: max = 10 years SO: max = 18 months + 5000\$	IO: max = 10 years SO: max = 18 months + 5000\$	IO: max = 3 years SO: max = 1 year + 5000\$

CHAPTER 10

CANNABIS ACT (CA)

Criminal offences and
possible sentences

There is a lot of misinformation about the “legalization” of cannabis in Canada and particularly in Quebec.

IN CANADA, although some people can now legally buy, produce and sell cannabis:

- **If you do not have government authorisation to produce, sell or distribute cannabis, doing so remains a criminal offence.**
- **Possession of cannabis that you obtain from an unauthorized source (not by the government) remains a criminal offence.**
- These are criminal offences and have criminal consequences (detention, criminal record, possibility of imprisonment, etc.).
- These criminal offences are listed in the [Cannabis Act \(CA\)](#).

IN QUEBEC, there are additional prohibitions and fines AND they are more restrictive than the federal rules.

- The Quebec cannabis law is a provincial “regulatory/penal” law, the [Cannabis Regulation Act \(Loi encadrant le cannabis \(LEC\)\)](#).
- The main consequence of a LEC offence is a ticket/FINE (fines range from 100\$ to 500 000\$).
- **The LEC is NOT a criminal law** (does not lead to a criminal record), **BUT if the fine/ticket is not paid or dealt with, it could eventually lead to a warrant for imprisonment for non-payment.**

The Quebec penal law (LEC) prohibits activities that are NOT illegal under the federal law (CA):

- E.g. The CA allows you to cultivate 4 plants at home, but the LEC prohibits the cultivation of ANY plant in your home.
- E.g. The CA allows people 18 years and older to do the same things, but the LEC specifically prohibits people 18-21 to do certain things allowed under the CA.

Parts of the LEC have been challenged in court and they were struck down, meaning these parts of the law were found to be unconstitutional (e.g. growing 4 plants at home). The case is now at the Court of Appeal and so it is unclear what the final law will be in Quebec. If you grow pot at home, ask about the most current version of the law.

Usually, cannabis products are not illegal because of their chemical composition, but because of how they were obtained (e.g. who produced and sold them, and how you bought them). Meaning the same product is ONLY legal if you buy it from a government-authorized source, whether you buy it in person or online.

The following intends to clarify which cannabis-related activities are criminal activities under the Cannabis Act (CA) and the maximum possible sentences for these offences. Almost all cannabis products are now regulated by the CA, but some synthetic cannabis products remain in [SCHEDULE II of the CDSA](#).

USUALLY, CANNABIS PRODUCTS ARE NOT ILLEGAL BECAUSE OF THEIR CHEMICAL COMPOSITION, BUT BECAUSE OF HOW THEY WERE OBTAINED.

DEFINITIONS OF TERMS

“ILLICIT CANNABIS” (ILLEGALLY OBTAINED)

Cannabis products that are sold, produced, or distributed by a person prohibited by law. In other words, by a person who does not have government authorization. “Illicit Cannabis” is the term that is used in the CA, but we refer to illegally obtained cannabis.

LEGALLY OBTAINED CANNABIS

Cannabis products that you got from a person/source that is legally authorised by the Federal government (Health Canada) to give it to you.

“30 GRAMS OF DRIED CANNABIS”

Certain pot offences are based on whether you have more or less than 30 grams of dried cannabis “or the equivalent”. SCHEDULE III of the CA describes the equivalent quantities for other types of products (e.g. dried, fresh, seeds, non-solids, concentrates).

“DISTRIBUTION”

This is a separate offence from selling and includes the act of administering, giving, transferring, transporting, sending, delivering, providing or making available—even indirectly—or to offer to do these things. This definition covers a very broad range of activities (like the definition of “trafficking” in the CDSA).

“SALE”

It is **illegal to sell cannabis in any context unless the government authorises** you to do so. The offence is very broad and includes **“offer for sale, expose for sale and have in possession for sale.”** The offence does not require the sale to take place or the receipt of anything or money in return (similar to the definition of “trafficking” in the CDSA).

MINOR

Person less than 18 years of age. Age plays an important role in the CA. There are specific possession and distribution offences for minors, as well as additional offences and harsher sentences for adults who involve or work with minors in cannabis-related activities.

PUBLIC PLACE

Any place to which the public has access AND any vehicle located in a public place or public view.

RESIDENCE

The CA uses the term “dwelling-house” and we use the term “residence” to refer to **any part of a building or structure** that you keep or occupy as a permanent or temporary residence AND, **for the production offence it includes LAND** attributed to your residence.

ORGANISATION

A public body, corporation, society, company, firm, partnership, trade union or municipality OR an association of persons created for a common purpose that has an operational structure and presents itself to the public as an association of persons.

LEGEND (TERMS USED IN THE TABLE)

IO	if the offence is prosecuted as an "indictable offence"
SO	if the offence is prosecuted on "summary offence"
Adult	person 18 years or older
Minor	person under 18 years of age

See pages 45 and 54 for more information on the above terms.

SECTION OF THE CA / CRIMINAL OFFENCE	UNLESS AUTHORIZED BY THE GOVERNMENT, IT IS ILLEGAL:	MAXIMUM SENTENCE IF FOUND GUILTY
<p>POSSESSION</p> <p><u>S. 8(I)</u></p>	<p>For an adult to possess:</p> <ul style="list-style-type: none"> • more than 30g* of legally obtained dried cannabis (or equivalent) in a public place OR • ANY cannabis that you know is illegally obtained ("illicit cannabis") <p>For a minor to possess: more than 5g* of dried cannabis</p> <p>For anyone (of any age) to possess:</p> <ul style="list-style-type: none"> • more than 4 plants that are NOT budding/flowering OR • ANY budding/flowering plant in a public place <p>For an organization to possess: ANY cannabis</p>	<p>ADULT</p> <ul style="list-style-type: none"> • IO: 5 years • SO: \$5,000 and/or 6 months <p>MINOR</p> <ul style="list-style-type: none"> • IO or SO: sentenced by the <i>Youth Criminal Justice Act</i>. <p>ORGANIZATION</p> <ul style="list-style-type: none"> • IO: a fine (court determines amount) • SO: \$100,000

SECTION OF THE CA / CRIMINAL OFFENCE	UNLESS AUTHORIZED BY THE GOVERNMENT, IT IS ILLEGAL:	MAXIMIM SENTENCE IF FOUND GUILTY
<p>DISTRIBUTION <u>S. 9(1)</u></p> <p>POSSESSION FOR THE PURPOSE OF DISTRIBUTING <u>S. 9(2)</u></p>	<p>For an adult to distribute:</p> <ul style="list-style-type: none"> • more than 30g* of legally obtained dried cannabis (or equivalent) OR • ANY cannabis that you know is illegally obtained (“illicit cannabis”) OR • ANY cannabis to a minor OR • ANY cannabis to an organization <p>For a minor to distribute:</p> <ul style="list-style-type: none"> • more than 5g* of dried cannabis (or equivalent) OR • ANY cannabis to an organization <p>For anyone (of any age) to distribute:</p> <ul style="list-style-type: none"> • ANY budding/flowering plant OR • more than 4 plants NOT budding/flowering) OR <p>For an organization to distribute ANY cannabis</p> <p>* REMINDER: “Distribution” is a very broad offence and includes administering, giving, transferring, transporting, sending, delivering, providing or otherwise making available—even indirectly—or offering to do any of these things.</p>	<p>ADULT</p> <ul style="list-style-type: none"> • IO: 14 years • SO for distributing to a minor OR possession for the purpose of distributing to a minor: \$15,000 and/or 18 months • SO for all other distribution or possession for distribution offence not related to a minor: \$5,000 and/or 6 months <p>MINOR</p> <ul style="list-style-type: none"> • IO or SO: sentenced by the <i>Youth Criminal Justice Act</i> <p>ORGANIZATION</p> <ul style="list-style-type: none"> • IO: a fine (court determines amount) • SO: \$100,000
<p>SELLING <u>S. 10(1)</u></p> <p>POSSESSION FOR THE PURPOSE OF SELLING <u>S. 10(2)</u></p>	<p>For anyone (of any age):</p> <ul style="list-style-type: none"> • to sell cannabis, or any substance represented to be cannabis, to anyone (to an adult, a minor, or an organization) OR • to possess it for the purpose of selling it to anyone (to an adult, a minor, or an organization) <p>* REMINDER: It is ILLEGAL to sell cannabis—or to possess it for the purpose of sale—in any context UNLESS the government has authorized you to do so.</p>	<p>ADULT OR MINOR (any age)</p> <ul style="list-style-type: none"> • IO: 14 years • SO for selling OR possession for the purpose of selling to a MINOR: \$15,000 and/or 18 months • SO for all other selling or possession for selling offence NOT related to a minor: \$5,000 and/or 6 months <p>ORGANIZATION</p> <ul style="list-style-type: none"> • IO: 14 years • SO: \$100,000

SECTION OF THE CA / CRIMINAL OFFENCE	UNLESS AUTHORIZED BY THE GOVERNMENT, IT IS ILLEGAL:	MAXIMIM SENTENCE IF FOUND GUILTY
<p>IMPORTING AND EXPORTING S. 11(1)</p> <p>POSSESSION FOR THE PURPOSE OF EXPORTING S. 11(2)</p>	<p>For anyone (of any age): to import or export cannabis OR to possess it for this purpose</p> <p>*If you are leaving Canada with a cannabis-product: You need to know what the law is in the country that you are entering. The fact that it may be legal for you to have the product in Canada is irrelevant when you cross a border into another country. You may be considered to be committing an offence in a country where cannabis possession is illegal.</p>	<p>ADULT OR MINOR (any age)</p> <ul style="list-style-type: none"> • IO: 14 years • SO: \$5,000 and/or 6 months <p>ORGANIZATION</p> <ul style="list-style-type: none"> • IO: 14 years • SO: \$300,000
<p>PRODUCTION Ss. 12(1) and 12(2)</p>	<p>For an ADULT or MINOR:</p> <ul style="list-style-type: none"> • to obtain—or offer to obtain—cannabis by any process (e.g. manufacturing, synthesis, altering chemical/physical properties) <p>*But you can alter the properties of cannabis that you legally obtained (obtained through a government authorised source).</p> <p>E.g. grinding your weed and turning into an oil.*</p>	<p>ADULT</p> <ul style="list-style-type: none"> • IO: 14 years • SO: \$5,000 and/or 6 months <p><i>(Adults can be found guilty of s. 12(1), 12(4), 12(5) and/or 12(6)).</i></p> <p>MINOR</p> <ul style="list-style-type: none"> • IO or SO: sentenced by the <i>Youth Criminal Justice Act</i>
<p>CULTIVATE / HARVEST S. 12(4)</p>	<p>For an ADULT to cultivate/harvest or offer to cultivate/harvest:</p> <ul style="list-style-type: none"> • ANY plant from an illegally obtained (“illicit”) seed/plant OR • more than 4 plants at a time in their residence/land 	<p><i>(Minors can only be found guilty of s. 12(1) and/or (7) cultivation offences)</i></p> <p>ORGANIZATION</p> <ul style="list-style-type: none"> • IO: 14 years • SO: \$100,000
<p>CULTIVATE / HARVEST S. 12(5)</p>	<p>For 2+ ADULTS who ordinarily live at the same residence/land:</p> <ul style="list-style-type: none"> • to cultivate/harvest more than 4 plants at a time 	<p><i>(Orgs. can only be found guilty of s. 12(1) and/or (7) cultivation offences)</i></p>
<p>CULTIVATE / HARVEST S. 12(6)</p>	<p>For an ADULT to cultivate/harvest or offer to cultivate/harvest:</p> <ul style="list-style-type: none"> • ANY cannabis at a place that is NOT their residence/land 	
<p>CULTIVATE / HARVEST S. 12(7)</p>	<p>For a MINOR or ORGANIZATION to cultivate/harvest or offer to cultivate/harvest:</p> <ul style="list-style-type: none"> • ANY cannabis 	

SECTION OF THE CA / CRIMINAL OFFENCE	UNLESS AUTHORIZED BY THE GOVERNMENT, IT IS ILLEGAL:	MAXIMUM SENTENCE IF FOUND GUILTY
<p>POSSESSION, SALE, ETC. FOR USE IN PRODUCTION, SALE OR DISTRIBUTION</p> <p>S. 13(1)</p>	<p>For an ADULT or ORGANIZATION: To possess, produce, sell, distribute or import anything with the intention that it will be used to produce, sell or distribute "illicit" (non-authorized) cannabis</p>	<p>ADULT</p> <ul style="list-style-type: none"> • IO: 7 years • SO: \$5,000 and/or 6 months <p>ORGANIZATION</p> <ul style="list-style-type: none"> • IO: 7 years • SO: \$100,000
<p>INVOLVING A MINOR</p> <p>S. 14(1)</p>	<p>For an ADULT or ORGANIZATION:</p> <ul style="list-style-type: none"> • to involve/use the services of a minor in ANY of the CA offences 	<p>ADULT</p> <ul style="list-style-type: none"> • IO: 14 years • SO: \$15,000 and/or 18 months <p>ORGANIZATION</p> <ul style="list-style-type: none"> • IO: 14 years • SO: \$100,000

SENTENCING FACTORS

If you are found guilty of ANY of these offences, **the judge will consider “aggravating factors” when determining the sentence,** including:

- If you carried, used or threatened to use a weapon OR you used or threatened to use violence, when committing the offence.
- If you sold or distributed cannabis, or possessed it for this purpose, in or near a school or public place usually frequented by youth.
- If you were previously found guilty of CA or CDSA (Controlled Drugs and Substances Act) offence.

A judge may delay sentencing while you participate in a treatment program approved by the prosecutor, such as a drug treatment court program.

PART 2:

INTERACTING

WITH POLICE

CHAPTER 11

INTRODUCTION TO PART 2

PART 2 provides legal information to assist you in knowing your legal rights and the legal limits of police powers in different contexts. Although officers will often do what they want to, there are some legal limits to their powers. The info and questions in this document may help you deal with these situations and evaluate possible risks and harms involved in dealing with law enforcement.

For many reasons, there is usually no simple or single answer to questions like whether something an officer did is or isn't legal, or what someone's rights are in various situations. The answer to these questions usually depends on the context. Also, officers have an enormous amount of "discretionary power." This means the law gives them a lot of decision-making power about what they can do. Also, in reality people are not all treated equally by law enforcement officers or other legal actors.

YOUR RIGHTS AND OBLIGATIONS MAY VARY

The law is not neutral and your legal rights and obligations depend on certain factors. For example:

- **The context and location you are in.** E.g., different laws and law enforcement powers apply when we are in public space, at a border control, in a car, in a detention center, in a private residence, in a bar, etc.
- **If your activities are criminalised.** E.g., if you are involved in a criminal activity like sex work or possessing drugs, police have additional powers to detain you, ask you questions, enter your space, etc.
- **Other aspects of your legal and social status** may also determine what laws apply to you and what powers law enforcement have when you deal with them. E.g. your immigration status, your health status, if you are under 18, if you have children.

Your legal rights are often violated, even when those rights are recognized in law.

- Law enforcement officers treat people differently, and people face different levels of risk depending on many factors (e.g., if you are profiled for not being white, being trans, being known to police, having precarious immigration status or a criminal record).
- Interactions with police can be violent and even deadly. Lots of factors can play into this, including an officer's beliefs and values, mental health issues, mood, ideas of power and inadequacy, quotas, etc.
- You give your lawyer the mandate to represent you. You are the client. You decide what is in your best interest. Your lawyer usually can't work miracles but it is their job to fight for your interests and take your instruction.

DIFFERENT LAW ENFORCEMENT POWERS IN DIFFERENT CONTEXTS

What law enforcement officers can legally ask you to do or say may depend on several factors, including:

- the **location and context** of the interaction (e.g. where you are, why the cops are there). This document provides information about law enforcement powers and your rights in different contexts and locations.
- your **legal status** (e.g. if you are incarcerated, if you don't have citizenship, if you are a minor). The scope of this document does not address all of the different realities that people face based on their legal status, but it is essential to consider additional legal

problems and barriers that you or other members of your community may face based on your/their legal status.

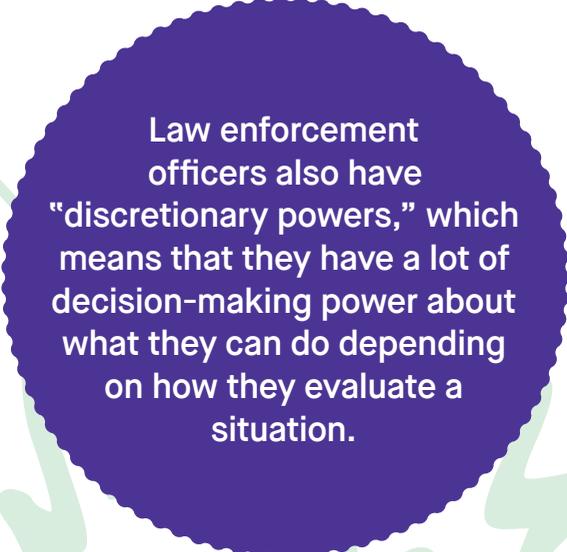
- the **type of officer** (e.g. police officer, immigration officer, city inspector, public transit inspector, private security guard, youth protection agent). This document refers to "law enforcement officers" to refer to all of these types of officers. Different officers have different powers ("jurisdictions"), and this can be confusing to navigate, particularly when they often take advantage of this confusion to manipulate people. E.g., police officers generally cannot stop someone to ask about their immigration status, but this is something they may do to manipulate a migrant into making a statement and providing evidence; city inspectors have no power to engage in criminal or immigration investigations, but they may still decide to ask questions about criminal activities or immigration status during a health and safety or licensing inspection.

- **All of these factors may impact where, when and what a law enforcement officer can legally do, or ask you to do something, including** whether you have the legal obligation to:
 - ~ give them your name and address (e.g. at the hospital, on the street)
 - ~ let them enter a room or building (e.g. apartment, workplace, hotel lobby)
 - ~ let them search your belongings (e.g. bag, cell phone)

Law enforcement officers get their legal powers from different sources, including:

- **Laws and policies** (e.g. the *Criminal Code*, the *Immigration and Refugee Protection Act* and its *Regulations*, the *Controlled Drugs and Substances Act*, the *Cannabis Act*, the *Youth Protection Act*, the *Youth Criminal Justice Act*)

- **Some previous court decisions** (e.g. decisions that courts have made in the past about when police can search your phone or your car). Note that not all previous decisions may change the law or apply to your province.
- **Authorisations that a judge can give** upon request (e.g. authorising warrants to arrest someone or to search their home)
- Law enforcement officers also have **“discretionary powers,”** which means that they have a lot of decision-making power about what they can do depending on how they evaluate a situation.



Law enforcement officers also have “discretionary powers,” which means that they have a lot of decision-making power about what they can do depending on how they evaluate a situation.

WHAT POLICE OBTAIN MAY NOT BE ADMISSIBLE IN COURT

Sometimes police manage to get incriminating evidence by illegal means (e.g. illegally entering or searching a location or a car, threatening and coercing you to make a statement). And sometimes the evidence they obtain (e.g. drugs, money) is not legally admissible in court (can’t be used against you in your case). For example, if you can prove that your legal rights were violated in the process (e.g. illegal search, unlawful or abusive detention), the evidence they got may not be admissible.

Although you may not be able to prevent police from doing something illegal, it is important to try to keep a clear head and ensure you don’t give incriminating evidence to police. **Try to stay in control, and after, take detailed notes of everything that happened (e.g. names of officers, what they did, where they went, what they said, what they took, what they did to your property) as this may inform your defense.** See pages 84 and 91 on documenting information related to police interactions.

SOME LIMITS ON CHARGING SOME PEOPLE FOR “SIMPLE” POSSESSION IN SOME CONTEXTS

There has been a lot of talk over the last few years about “decriminalizing drugs” and “decriminalizing possession” (see pages 128-132).

But NONE of the drug offences listed in the CDSA (*Controlled Drugs and Substances Act*) have been changed or removed from the law. See pages 22-31 for a list of CDSA offences.

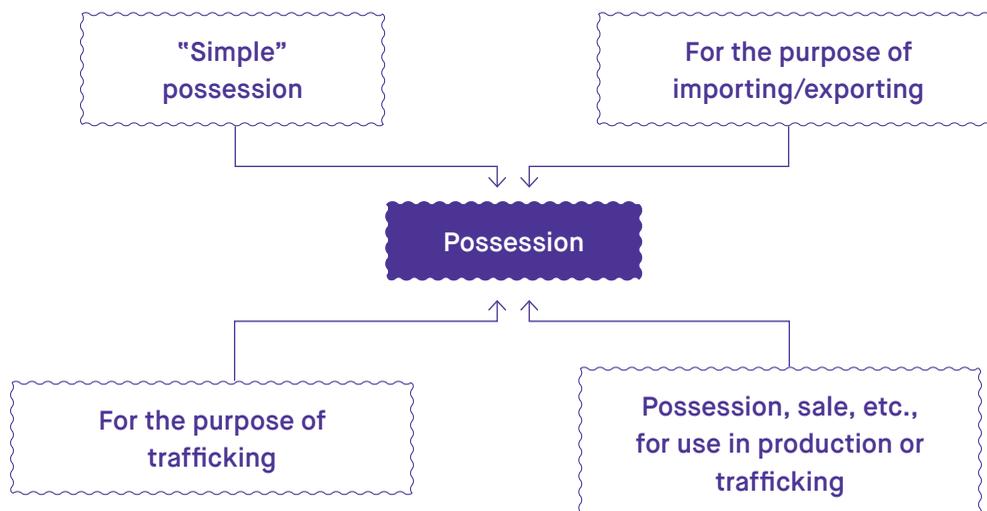
- **All of the same CDSA drug offences are in force and police can still arrest people for all of them, including for “simple” possession.**
- Although some people who are stopped by police with drugs on them may be released without any charges, others continue to be charged for drug offences, as well as for other criminal offences (e.g. obstruction, assaulting a police officer, money laundering, procuring, weapon charges, breach of conditions).
- Drug offences remain one of the main tools police use to profile, monitor, interrogate, search, detain, arrest and deport people who use drugs and people who associate with them.

Although ALL of the drug offences remain in effect, the following may impact charges for simple possession:

- ~ The Federal government created the Good Samaritan Drug Overdose Act “Good Sam Law” (see pages 99-101)
- ~ The Federal government created some exceptions for **people inside an SIS** Supervised Injection Site (see pages 114-116) but usually they don’t apply outside of SIS or the surrounding area.
- ~ Some guidelines for police and prosecutors may limit the number of simple possession charges in some areas and contexts
- ~ In some contexts and areas, police decide to displace drug users instead of arresting them.

***** These limits ONLY apply to “simple” possession charges and ONLY apply in some contexts. *** In ALL cases, they provide no protection from any other criminal charge, including all other types of possession charges.**

TYPES OF CRIMINAL OFFENCES RELATED TO DRUG POSSESSION



CHAPTER 12

INTERACTING WITH LAW ENFORCEMENT

**REMEMBER:
WHAT YOU SAY MAY
CONTRIBUTE TO
THE HARMS RESULTING
FROM POLICE
INTERACTIONS**

ANY TIME YOU SPEAK TO POLICE YOU ARE MAKING A STATEMENT

No matter where you are and no matter what legal exceptions may apply, **ANY TIME YOU SPEAK TO POLICE YOU ARE MAKING A STATEMENT. THIS STATEMENT IS EVIDENCE that can be used to ACCUSE and to PROSECUTE YOU and OTHER PEOPLE** (e.g. people you live with, a dealer/seller, a client, a partner, members of your community or family). This evidence could be used in your trial or someone else's trial. It could also be used by the Crown to influence someone to plead guilty or to provide information.

The police will try to make you talk. They know how to provoke you and make you talk. They are trained for it. Among other things, they will try to convince you that it is in your best interests to speak, or that

it is your obligation to do so. They can use tactics developed by experts to take advantage of the stress and vulnerability related to being detained. **They are legally allowed to lie to you in order to get you to talk.** Even if you are prepared for the situation, the pressure and risks of interacting with the police can catch you off guard. **If you do not want to make a statement, it is essential that you do not react to their questions, comments, or behaviours. Try to maintain control over yourself, avoid conflict, and remain silent.**

Remember: WHAT YOU SAY MAY CONTRIBUTE TO THE HARMS RESULTING FROM POLICE INTERACTIONS (e.g. lead to a criminal or immigration charge, involvement in an investigation, evidence against you or your community members). **Your silence cannot incriminate you, but your statement might.**

GENERAL RULES

NOT SPEAKING TO POLICE (RIGHT TO REMAIN SILENT)

The general rule is that you have no obligation to answer any questions, unless an exception applies (see next sections).

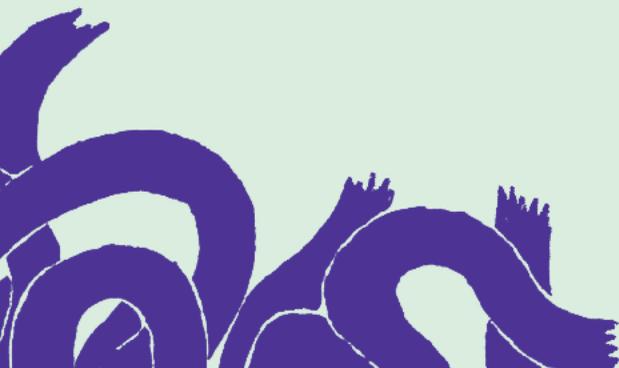
Ideally, the best thing to do when facing the police is to remain silent. However:

- **Some people may not have the privilege of staying quiet when questioned by the police.** Even in contexts where someone may have the legal right to not talk to police, sometimes staying silent may escalate a situation in a way that causes additional harms. For many reasons, refusing to respond to the police could worsen the situation for some people. Whether or not police have the legal authority to do so, refusing to respond to them may lead to your detention by the police or immigration, to a charge of obstruction or breach of conditions, to a search of your belongings, to increased aggression and violence, etc. How different people decide to exercise their right to silence may depend on their situation and which risks and possible consequences are most important for them to try to avoid (see pages 94-98).

- **Some people panic and talk to police because they fear staying silent makes them look guilty.** But in fact, your silence cannot incriminate you (create evidence against you), whereas your statement to an officer might.
- **Some people may also feel pressured to speak to police because they may think they have an obligation to help police, or they may think it is necessary to help other people.** This may be because of ideas you were taught when you were young, things people in your community tell you, or it may be because of pressure police are putting on you to talk to them. E.g. you may have previously contacted police for help or protection, and although you may no longer need or want to be in contact with them, they may still be contacting you to make a statement or cooperate with police in some other way. But in fact, generally, you have the right to not speak with police, and you never have an obligation to work for them (e.g. give them statements, provide them with evidence). If police try to pressure you, harass you and guilt you into cooperating with them, contact someone you trust for support.

Interacting with law enforcement may lead to less harm if you try to remain in control of yourself.

This is difficult if you are stressed or if you fear for your safety, and particularly if the police are profiling you, making racist, transphobic or anti-sex work comments, questioning you about your immigration status, etc. But if you **plan in advance what you would and would not say** to law enforcement in various contexts, it may be a bit easier to stay in control of yourself and reduce the possible risks and consequences of the situation if it arises.



IDENTIFYING YOURSELF TO THE POLICE

The general rule is that you have no obligation to identify yourself to the police. However, you are legally required to identify yourself (your legal name AND address AND date of birth) in some situations, including if:

- ~ You are told you are being arrested for a crime (e.g. drug possession, breach of a condition)
- ~ You are stopped and ticketed for breaking another type of law, like a municipal or metro by-law, provincial highway code or public health regulation (e.g. being in a park at night, jaywalking, COVID-related provincial orders)
- ~ You are driving a car (passengers are not obliged to identify themselves)
- ~ The police suspect you are a minor and you are in a place that serves alcohol

If you don't identify yourself in these situations, police can detain you until they are able to verify your identity. But you have NO legal obligation to answer any other questions. Police may expect you to speak with them, and may even tell you that you need to. However, you have the right to say nothing else. Even if you are arrested, you have the right to say nothing more until you speak with a lawyer.

NOTE: If you have a legal obligation to give your name and you refuse to, some police officers could decide to search your pockets to look for ID (identity document).

Sometimes when you have no legal obligation to identify yourself, **police may abuse their power** and detain you or even charge you with an offence. E.g., if the police suspect that you are involved in criminalized activity but have no grounds to detain or arrest you, even if you aren't legally required to give your name, they may arrest you for "obstructing" police work for refusing to identify yourself; or if you are loud and/or intoxicated in public, the police may arrest you for "causing disturbance." When there is no legal duty to identify yourself, it is your decision whether or not to do so.

If you are not sure whether you have a legal obligation to identify yourself:

- ~ You may want to ask the officer directly if you have a legal obligation to do so. They may respond truthfully, be vague, or even lie.
- ~ If they say you do, you may want to ask on what basis (e.g., are you being detained? if so, what for?). See table on pages 90-92.
- ~ Some police officers will give you a hard time if you refuse to hand over your ID, refuse to tell them your name, or if you want to know your rights. But some may respond professionally and respectfully and may respect your legal right not to identify yourself.

Even if you do give your name to police, they may still ask to see your ID (identity documents):

- ~ In general, you have no legal obligation to give the police your ID, except for certain situations (e.g. you are driving a car).
- ~ If asked to show your ID, you may decide to tell them that you don't have ID on you at the time. Different factors may influence your decision whether or not to provide your ID (e.g., you have precarious immigration status and are worried the police will report you to immigration law enforcement).
- ~ **If you don't have ID on you**, you should be able to just provide your information. But if you are under arrest and the police have reason to believe that you are lying about your identity, they can detain you until they confirm your identity.

Note that lying or withholding information about your LEGAL name to a police officer may result in a criminal charge for obstruction.

Some people may choose to provide a fake name and risk being charged with obstruction. This may be because they know there is a warrant for their arrest (e.g. related to a criminal charge or their removal from Canada) and the risk of being identified is greater than the risk of being charged with obstruction.

Some people may give an alternative address (e.g. where they receive their mail yet may not live, a community organization, a shelter). One of the reasons that the police are asking for your address is to be able to send you court documents by mail.

If the police claim that your legal documents and your appearance or your identity are not the same (e.g., your chosen name, your gender, etc.), you may be subject to further scrutiny or prolonged detention. If your identity is not the same as your legal documents (e.g., if you are trans or non-binary, if you are Indigenous and your traditional name isn't legally recognized) you may choose to offer an explanation, such as, "My legal name is _____ but everybody calls me _____."

**THE GENERAL
RULE IS THAT YOU
HAVE NO OBLIGATION
TO IDENTIFY
YOURSELF TO
POLICE.**

**HOWEVER,
YOU ARE LEGALLY
REQUIRED TO IDENTIFY
YOURSELF (YOUR LEGAL
NAME, ADDRESS, DATE
OF BIRTH) IN SOME
SITUATIONS.**

RECORDING LAW ENFORCEMENT INTERACTIONS

There is nothing in the law that prohibits you from filming police interactions with the public.

But police may apply a variety of tactics to try to prevent you from doing so, including abusing their power. E.g., police might:

- ~ lie (e.g. say that you are not allowed to film)
- ~ order you to do something that they have no legal authority to do (e.g. tell you to erase the recording)
- ~ threaten you with a criminal charge (e.g. obstruction) or claim you are breaking a rule (e.g. privacy or confidentiality policy)
- ~ threaten to take (seize) your phone
- ~ actually take (seize) your phone

Usually, the law enforcement have no legal authority to prevent you from filming, demand that you erase a recording, or take your phone. But there are some limitations as to when you have the legal right to record law enforcement interactions with the public, such as:

- ~ If shooting the video actually does interfere with an active police investigation
- ~ If you are on private property and there are legal restrictions enforced by the property owners about what people are allowed to do on the premises

As always, asserting or attempting to assert your rights with police may help protect you, but it may also escalate the situation and increase the risk of police violence and other abuse of power.

Although the police will rarely have the legal authority to seize your phone simply for recording an interaction with the public, they may do so anyways (e.g. they may claim that it now has evidence related to the event that they need for their investigation).

If you are planning on filming an interaction with law enforcement, you might want to consider:

- ~ Is my phone password protected?
- ~ Can I immediately forward the recording to someone, another contact, etc., in case my phone is seized or the recording is deleted?
- ~ Depending on the situation, would I live stream or preserve the evidence for later? If I do that, is there any evidence from the footage that could implicate me or others in a criminal offence?
- ~ In what contexts would I be willing to risk having my phone seized if I try to record the event?
- ~ If my phone were seized, is there evidence on the phone (images, texts, etc.) that could implicate me or others in a criminal offence? Is there other information on the phone about me or others that I would not want police to have (e.g. contact information, info about someone's health status, sex work status)?
- ~ If police tell me they need to seize my phone to have the recording as evidence, am I willing to tell them that I will not give them my phone but will provide them with the recording? Am I willing to give them contact information to follow-up? From what phone number or email address would I send the recording/photo?

**THERE IS NOTHING
IN THE LAW THAT
PROHIBITS YOU FROM
FILMING POLICE
INTERACTIONS WITH THE
PUBLIC.**

FRISKING, PATTING DOWN, OR SEARCHING YOU

The general rule is that the police cannot search you without a warrant, BUT:

- **IF you have been arrested** the police have the right to frisk you and search your pockets and belongings IF they:
 - ~ have reason to believe you have a **“dangerous” item on you (something that they think could be used as a weapon, e.g. a syringe)** and pose a serious and immediate **threat to someone’s safety** (e.g. officer, public); or
 - ~ are **preserving or discovering evidence** related to the crime you are arrested for. The extent of the search depends on the offence, type of evidence, context of the arrest, etc. For example, if they have reason to arrest you for drug charges, they may search you for drugs.
- **IF you have not been arrested but are being questioned** (temporarily detained) the police have the right to frisk you or pat you down IF they have reason to believe you have a **“dangerous” item on you** and pose a serious and immediate **threat to someone’s safety** (e.g. officer, public).
- **IF you give them permission to search (you, your bag, etc.), then they have the authority to do it, no matter what the context. If you don’t consent to the search, it is important to clearly and loudly say that you do not consent:** “I do not consent to being searched” or “I do not consent to the search.” Because many officers may only speak French and/or may be additionally discriminatory towards non-francophones, learn to say it in French and to project your voice so that they can’t claim that you did not refuse to consent to the search, or that they did not hear you or understand you. (« Je ne consens pas à une fouille »—JEH NEH KON-SEHN PAH AH OON FOO-YEH)

The “threat to safety” exception is often misused as an excuse to search or frisk people.

- If the police claim this is the reason for the search or pat down, **they are only supposed to look for a dangerous item (“weapon”). They are not legally authorized to search for other things** (e.g. drugs, tattoos, money) **or through things** (e.g. cell phones, notebooks).
- It may be in your best interest to try to stay physically calm with police, so that they can’t use anything you do or say as an excuse to claim that they “feared that you were armed and dangerous.”
- The police often argue that a needle/syringe is a dangerous weapon, and that “checking for needles” is the reason they searched someone that they suspected to be a drug user. It might be best to warn them if you have anything sharp on you before they find it.

WHEN POLICE CAN TAKE (SEIZE) YOUR THINGS

Police may seize (take) items that are included in a warrant.

- If they have a search warrant: **ASK TO SEE and READ THE WARRANT.**
- If the warrant is to enter and search a location, it must include the specific address. It may also include the specific area that they are allowed to search. It must also list the specific things they're searching for (e.g. computers, cell phones and their data, drug manufacturing equipment, or other types of evidence).
- If your property is seized with a warrant, you can ask the officer to provide you with a copy of a report identifying the property seized and where it is being held.

Police may also seize items without a warrant if they have reason to believe they are connected with a criminal offence. This may include:

- ~ **Items that may have been used in a criminal offence** (e.g. drugs, weapons)
- ~ **Items that may provide evidence of an offence** (e.g. note books, cell phones, scales).
- ~ **Items that you obtained through a criminal offence/activity** (e.g. money obtained through sex work or selling drugs).

Police can seize something in the context of an investigation, even if they have not yet arrested someone.

Police do not have the right to seize property where there are no grounds for believing that it is connected with an offence. Still, **law enforcement officers may illegally seize and search property such as a cell phone, often while you are temporarily detained.**

Take detailed notes of everything that was taken, when, by whom and where you were at the time.

- If you record this information while the police are still there, be careful to do this without "getting in their way" or the situation could escalate and they could charge you with "obstruction" of police work.
- Record the officer's name, patrol car number, badge number or other information that might identify them if possible.
- Knowing what area of town you were in at the time will be helpful information if you try to track down your things later.
- If the item is considered evidence related to an ongoing case, you may not get it back until the end of the case.
- If the item is considered "proceeds of a crime" (obtained through a criminal activity) you may never get it back.
- If drugs are seized (and you do not have legal prescription for them) you will not get them back.

**TAKE DETAILED
NOTES OF EVERYTHING
THAT WAS TAKEN,
WHEN, BY WHOM AND
WHERE YOU WERE
AT THE TIME.**

If you are taken into detention your possessions will be temporarily seized, including your phone.

- If you need to access your phone for a number to contact a friend, relative, outreach worker, you can try to ask a guard or your lawyer.
- But **often you will NOT be able to access your phone**, so it is very important to **memorize the phone numbers** of potential sureties (individuals who can assist with bail, see page 125) and other key contact information **of people you may need to call** if you are detained.
- If you are able to access your phone, keep in mind that an officer is often present and may see the content on your phone.

In all cases, it is important not to have any images or communications that could result in criminal liability on your phone.

IT IS IMPORTANT TO
NOT HAVE ANY
INCRIMINATING IMAGES
OR COMMUNICATIONS
IN YOUR PHONE.

POSSESSING AND DISTRIBUTING DRUG USE EQUIPMENT

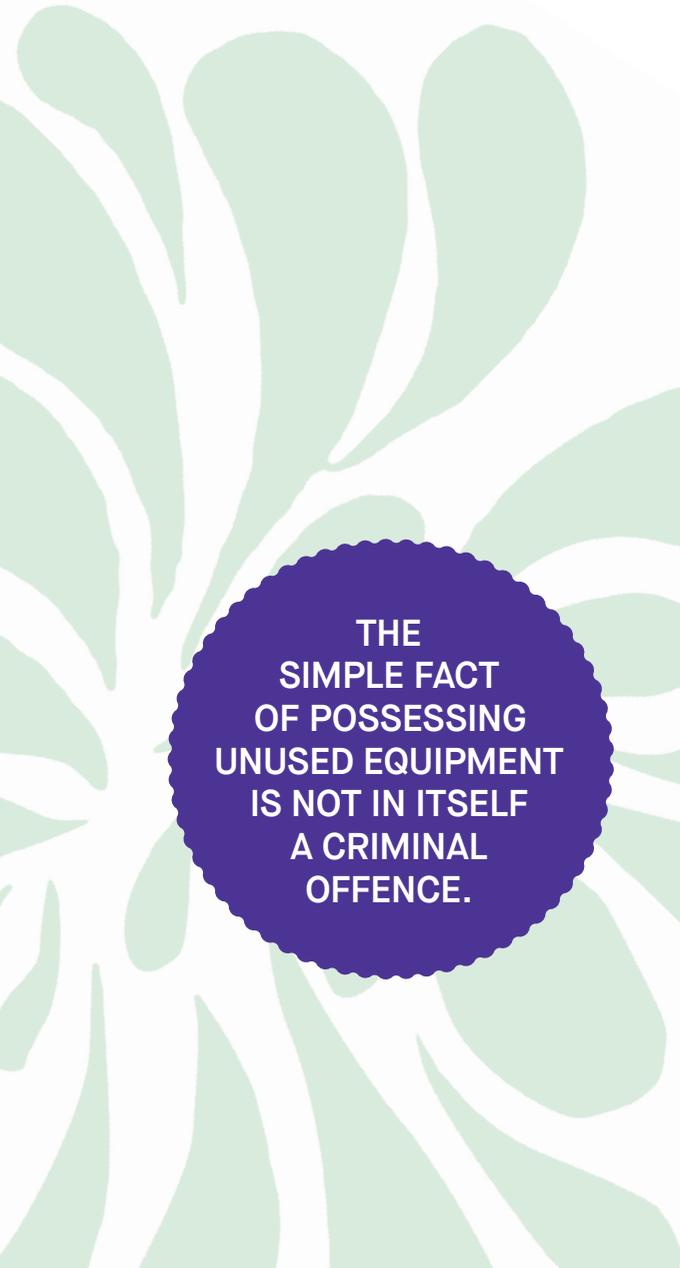
It is **NOT** a criminal offence to **ONLY** possess or distribute **UNUSED/sterile** drug use equipment (e.g. needles, pipes, filters). **BUT**

- If you have illegal drugs in your possession and/or you are at risk of being charged with an existing drug offence (see pages 22-31 for CDSA drug offences), having equipment can be used as evidence related to a drug offence.
- If you have **USED** equipment on you, it is possible that this can lead to a criminal drug charge if there is a measurable amount of drug residue (trace amounts) on the equipment.

In certain contexts, the equipment may be prohibited (banned) based on different policies, and it may be seized by staff or security in certain contexts (e.g. inside or when entering a prison or a school, crossing a border). **But it is not a criminal offence** in Canada simply to possess or provide someone with unused/sterile equipment.

Members of the community and outreach workers still may fear distributing sterile equipment in certain settings (e.g. bringing them to someone who is hospitalized). And before 2018 there actually was a *Criminal Code* offence related to “manufacturing, promoting or selling instruments or literature for illicit drug use” (s. 462.2 of the *Criminal Code*). **BUT THIS OFFENCE NO LONGER EXISTS.** It was repealed (removed from law) in 2018.

However, if the person you are distributing material to has illegal drugs in their possession and/or is at risk of drug offences, it is important to consider in advance whether you may be searched. Because if you are searched and they find equipment, even if you are not at risk of being charged with a drug offence, this could lead to them questioning or even searching the person you are going to see, and they could be at risk of drug charges.



**THE
SIMPLE FACT
OF POSSESSING
UNUSED EQUIPMENT
IS NOT IN ITSELF
A CRIMINAL
OFFENCE.**

KNOWING IF YOU ARE BEING ARRESTED OR ARE BEING DETAINED

If the police stop you and ask you questions, it is important to know if you are being:

- ~ **detained**
- ~ **stopped and questioned (often without any legal grounds)**
- ~ **arrested**

Depending on which is happening, you have different legal obligations and capacity to refuse to answer questions, to stop, and to walk away. It also affects whether police have the right to physically restrain you and/or search you and your belongings.

BEING DETAINED

As soon as police restrict your liberty (freedom to walk away from the situation/location) you are being detained.

- This includes being detained by physical means (e.g. cuffed, placed in back of car, told to sit and stay).
- This also includes psychological means (e.g. you are not explicitly told that you can't leave, but the circumstances and police behaviours lead you to believe that you are not free to leave and that you have to do as they say).

Police can detain you without a warrant for different reasons, including when they have reason to believe:

- ~ You committed a crime, or you were involved in or connected to a crime.
- ~ You have information about a crime (e.g. you were a "witness"). This includes being a "victim" of a crime. E.g., if the police arrest your client, you could be temporarily detained as you are "involved" as a "victim" of the crime of purchasing sexual services.
- ~ You are breaking a municipal or metro by-law, or highway code (e.g. Being in a park at night, jaywalking).

Police can detain you if there is a warrant issued for your arrest anywhere in Canada.

- In theory, the police can detain you no matter which Canadian province or city the warrant is from, and then transfer you there.
- Whether they decide to do so may depend on different factors (e.g. how far you currently are from that region, whether the city you are in frequently transfers detainees to that area, the seriousness of the offence related to the warrant). In other words, it is at their discretion (decision) whether or not to detain you.

The law is complex and unclear about whether or when you have to provide your identity when you are temporarily detained.

There are **many different reasons that someone may be detained** by police (e.g. whether you are being detained as a potential suspect, as a possible witness to an accident in a public crowd, as someone who is profiled and arbitrarily detained, as a victim of a crime that is being investigated, as someone present during a raid/investigation), and there are **many different locations and contexts where this may take place** (e.g. public space, public venue, police car, residence, hotel).

Whether you have a legal obligation to provide your identity is a “grey area” in law and will depend on the specific context and facts involved.

In contexts where you **do not have a legal obligation to identify yourself, the police might threaten to arrest you for something** (e.g. obstructing police work) **if you do not provide your identity**. This way they can detain you until they can verify your identity.

It is up to you to decide what is the safest and best way to respond to a situation. If you do decide to identify yourself to police, remember you do not have to answer any other questions. Remember not to make any incriminating statements (see pages 16-19).

IF YOU DO DECIDE TO IDENTIFY YOURSELF TO POLICE, REMEMBER YOU DO NOT HAVE TO ANSWER ANY OTHER QUESTIONS.

BEING STOPPED AND QUESTIONED (THIS CAN HAPPEN WITH OR WITHOUT ANY LEGAL GROUNDS)

When police stop and question you, it may be difficult to know if they have any legal grounds to do so.

E.g. they may confirm that you fit a detailed description of someone who just committed an offence in the area (color of your hat and jacket, your height, assumed gender, etc.). If these facts are true, this would be a context where the police have reason to believe that you were involved in a criminal offence and legally they have the right to stop (temporarily detain) and question you.

On the other hand, it is not legal for the police to stop and question you simply because you are located in an area where a crime took place, or when you do not actually fit a specific detailed description of a suspect. In every case, **the police may or may not be making up the reason** they claim to stop you and you wouldn't be able to know for sure.

Remember, as soon as police restrict your liberty (freedom to walk away from the situation/ location) you are being detained. This includes being detained by physical means OR by psychological means. Meaning that you don't have to be physically restrained (e.g. in handcuffs) to be detained.

In contexts where you **do not have a legal obligation to identify yourself, the police might threaten to arrest you for something** (e.g. obstructing police work) **if you do not provide your identity**. This way they can detain you until they can verify your identity.

It is up to you to decide what is the safest and best way to respond to a situation. If you do decide to identify yourself to police, remember you do not have to answer any other questions. Remember not to make any incriminating statements (see pages 16-19).

BEING ARRESTED

If the police decide to arrest you (with or without a warrant) they must identify a criminal offence, and they must tell you what you are being arrested for.

If you are arrested, legally you must provide your name, address and date of birth. Then, they will either:

- **Let you go, with an "appearance notice"** (FR: "citation à comparaître"). This document that they give you outlines the charge(s) and your next court date, which is usually in several months. It MAY also include conditions* that you are to respect until your next court date; OR
- **Let you go, and tell you that you will receive a "summons" document in the mail** (FR: "sommation"). This document will include your charges and your next court date; OR
- **Take you into detention, and keep you detained in custody until you appear before a judge**, which may be the next day or in a few days.
 - ~ If you miss your next court date, the judge can issue a warrant for your arrest.

*** CONDITIONS:** You may attempt to negotiate the conditions (e.g. explain to the police that you can't have a "quadrilatère" (red-zone) that prohibits you from accessing an area where you live, access health services, methadone, etc.). If you breach any of your conditions, this leads to new criminal charges, and if you are arrested for breach of conditions, you'll likely be detained in custody until your next court date. Discuss your conditions with your lawyer BEFORE your appearance.

See page 117 for more information on procedures after being arrested.

Depending on your situation, if you are arrested you may need additional legal support. As well as needing a criminal defence lawyer:

- **If you have children and/or a youth protection worker**, you may also need to contact a youth protection or family law lawyer, as the criminal charge could impact you and your children's rights.
- **If you do not have Canadian citizenship**, it is very important to also speak with an immigration lawyer or expert, as the criminal charge could impact your immigration status and ability to stay in Canada.

IF POLICE QUESTION YOU OR TELL YOU TO GO WITH THEM: ASK “AM I UNDER ARREST OR BEING DETAINED?”

It is often difficult to know if you are being officially detained or arrested, or if you can leave. Particularly as police often refuse to clearly tell you.

IF THEY DON'T CLEARLY ANSWER YOUR QUESTION

You could:

- ~ Ask again: "Am I being arrested or detained? Am I free to leave?"
- ~ Say that you understand you are free to leave and that you want to leave, and try to walk away

IF THEY SAY NO

You could:

- ~ Stay calm and try to walk away
- ~ Say that you understand you are free to leave and that you want to leave, and try to walk away

IF THEY SAY YES, YOU ARE UNDER ARREST

- ~ The officer is obliged to tell you what you are being arrested for.
- ~ They can't arrest you without identifying an offence they are arresting you for.
- ~ If they don't tell you what for, you have the right to ask: "What am I being arrested for?"
- ~ If you are arrested, legally you must provide your name, birthdate and address. BUT you have to right to not answer any other questions.
- ~ If you refuse to provide your identity, they can detain you until they are able to verify your identity.
- ~ You have the right to ask to speak to a lawyer and to speak to one.

IF THEY SAY YES, YOU ARE BEING DETAINED

- ~ The officer is obliged to tell you why.
- ~ If they don't tell you why, you have the right to ask: "Why am I being detained?"

Depending the context and reason you are being detained (e.g. police suspect you of being involved in a criminal offence, you are or police assume you are a witness to a criminal offence or accident, you are or police assume you are a victim of an offence), you may or may not have a legal obligation to provide your identity.

In some situations, even if you do not have a legal obligation to identify yourself, the police might threaten to arrest you for something (e.g. obstructing police work) if you do not provide your identity. This way they can detain you until they can verify your identity.

You may decide to speak to police and give them your name and an address if you think it will be safer (e.g. result in your release from temporary detention, prevent you from being searched or arrested, de-escalate violence or other abuse from police). But you do not have to answer any other questions.

REMINDER

Simply being, or being perceived as, a sex worker or a drug user is not a criminal offence and is not a valid reason for arrest or detention.

Some officers think it's OK to force someone to speak to them or to go somewhere (e.g., shelter, treatment) because they think they are "helping" the person. **BUT "Making sure you are alright" or "Helping you" is never a valid reason to detain you or otherwise violate your rights.**

Lying to police (e.g. giving a false identity) could lead a criminal offence (e.g. "obstruction").

All police officers are required to wear a badge with their name and badge number and they are **obliged to identify themselves if you ask them to.**

Even if there are legal grounds to detain or arrest you, this does not mean that everything the police did or said was legal (e.g. If they were verbally abusive, threatened you, were physically violent beyond what is allowed by law, performed an illegal search, detained you in unsafe conditions).

Abusive interactions with police can be traumatic and you may try to block out or forget what happened. But you may also want to try to remember carefully what happened as this may inform your defense. For example:

- Where and when did the event take place? Were you taken or held anywhere? If so, where? What were the conditions?
- Who were the officers (names, numbers on the car)? What did they say or do?

- What was searched? When/where/how did it occur? What did they take? Was anything damaged?
- Was any person searched? How were they searched and where? By who (e.g. type of officer, gender, badge number, name)?
- Was anyone injured? If anyone was injured, or if anything was damaged, take photographs.
- Was anyone detained? If so, and they don't speak the language of the officer(s), were they offered an interpreter?

If you record this information while the police are still there, be careful to do this without "getting in their way" or the situation could escalate and they could charge you with "obstruction of police work."

Contact a community organisation or outreach worker if you want support and help documenting this information.

Make sure you give all of this important information to your lawyer as soon as possible. It could help your case.

Remember to try to maintain control of your reaction as much as possible, as the police can try to arrest you for something (e.g., "causing a disturbance" for being loud or drunk in public, "assaulting an officer" for raising your arm as you try to break loose from their grip or as you try to leave).

Depending on your legal and personal situation, where you are, what you are doing, and who you are with, you may adapt how you respond to police in different situations.

Some people may decide that it is not worth speaking to police. They may evaluate that the potential consequences of being temporarily detained or taken into custody are less harmful than those related to trying to convince police that their rights should be respected. They may decide that speaking to police is not worth the risk falling into their traps and incriminating themselves or other people from their community.

However, some people may not have the option of staying silent or not trying to talk their way out of situation. E.g., if they fear for their safety when they encounter police and need to interact in order to protect themselves from violence or other police abuse; if there is a deportation order in their name and they know if they are detained, they will be transferred to Immigration who will not release them before sending them to another country.

See pages 94-98 for things to think about (in advance) when dealing with police.

→ CASE STUDY

A few sex workers work at an apartment together. They're robbed at gunpoint, and a neighbour calls the police to come because they heard someone screaming. Police show up, and Monique answers the door. The police push their way in saying they're entering the home because they received a 911 call about someone being in danger. Once in the apartment, the police notice that there are massage tables in several rooms, numbers on all of the doors to the rooms and several bowls of condoms around the apartment. They take each woman into a separate room and question them.

CHANEL

This isn't Chanel's first rodeo. When police ask her for her ID under the guise of making sure that she's not a minor, she asks if she is being detained.

At first, she is not provided a clear response. But after asking again whether she is being detained, the officer eventually replies "No."

She then states that she would like to leave, takes her belongings and exits the apartment.

MONIQUE

When cornered alone in her room with the police, Monique refuses to identify herself and gets angry.

The police start to look around the room and see what appears to be a baggie of drugs on the table. They arrest her for possession.

They also see a cellphone by the drugs, which they search. They find text messages between her and clients, including clients that she scheduled for Kelly and Chanel. Eventually they also arrest her for procuring others for sexual services.

KELLY

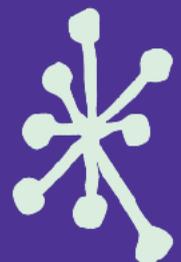
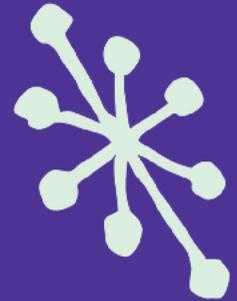
Kelly is still crying from the traumatic incident and is having trouble thinking clearly. She explains that there was an armed robbery and that she was the one who had to open the safe at gunpoint. Police verify her ID and take a picture of it, claiming that they need it for the case.

She talks to the police about what happened, but they keep asking her questions about herself and the other women in the apartment: Has she been working here for a while? Is she using drugs? Who is the landlord? Where is he? Does she have a pimp? Do her parents know that she's here? Have there been other incidents of violence here in the past?

Police explain that they will let her go and not press any charges against her, and that they will be able to help her, if she provides information about who brought her to work here. Kelly keeps crying, and eventually she tells them that she doesn't want to talk right now. The police give her their card, say that they will be in touch, and leave the apartment.

SOME THINGS TO THINK ABOUT (IN ADVANCE) WHEN DEALING WITH POLICE

THINK IN ADVANCE about how you may decide to RESPOND TO POLICE if you have to deal with them, and how different strategies may play out: e.g., if you stay silent, speak with police WITHOUT PROVIDING ANY INCRIMINATING STATEMENTS, cry, stay calm, are unable to engage with their questions because of a panic attack. Different strategies often lead to different outcomes depending on many factors, including your social, racial or gender identity, your economic, health or immigration status, language barriers, being considered intoxicated or not, and whether you are known to police or have a criminal record.



Things to consider include:

○ **Am I—or is someone I am with—engaging in an illegal activity (e.g., sex work, drug use/sale, breaking a bylaw) that authorises the police to ask me questions?**

○ **If I'm with a client or a friend, and we are stopped by police, what do we plan to do?**

- Do we plan to give the police the same info?
 - Do we plan to refuse to speak to the police?
-

○ **Are the cops here because:**

- they targeted me personally?
 - The location I'm in?
 - Someone else? How might this impact how I respond to the situation (e.g., leave, stay silent, contact someone)?
-

○ **Are the police focussing on me right now, or on someone else?**

- Are they speaking to me yet, or can I just walk away?
-

○ **Where do I like to get high? And with who? (e.g., friend, dealer/seller, client, neighbour)?**

- Are they or the location particularly monitored or targeted by police?
 - Is there someone else I may want to use with to minimize my chances of having to deal with police?
-

○ **If I'm going to be in public space, what areas are safer for me?**

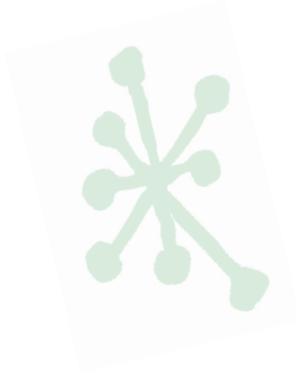
- Where is there more police surveillance?
 - Where do the police leave people alone more and not harass them as much?
-

○ **Do I have ID on me?**

- Does my ID reflect my actual identity or the name I plan to give them?
-

○ **If the police have no legal authority to ask me for my identity in this context, what do I plan to say if they ask me?**

- Do I have a different plan if this cop knows me?
-



○ **Is there is an outstanding criminal warrant in my name?**

- If so, is it from the city I'm in?
- A city close by?
- Another province?



○ **Is there is an outstanding immigration warrant in my name?**

○ **Is Youth Protection involved with my children and my family life?**

- If Youth Protection is involved, or could become involved, how may this impact how I respond to police considering police may share information with them?

○ **Do I have a different plan for responding to police if my kids are with me or not at the time?**

○ **Am I currently in breach of any court conditions (e.g. criminal, immigration, family law)?**

○ **Do I have items on me or in my bag that I can be arrested for (e.g. drugs, weapon)?**

- Do I know what I want to say if police ask to look in my bag?

○ **Where do I keep items that may incriminate me or lead to a search (e.g. drugs, residue, drug use equipment, scales)?**

- Do I keep any of them in "plain view" (that police can see from the front door, from the car window, etc.)?

○ **Do I know how to clearly say "I do not consent to a search" in French so that the officer can't pretend they did not hear/understand me? (« Je ne consens pas à une fouille »—JEH NEH KON-SEHN PAH AH OON FOO-YEH)**

○ **Do I have anything on me that police could claim is a "dangerous item/weapon" (e.g. scissors, syringe, knife, pepper spray)?**

- If they try to search me, do I want to tell them in advance?

○ **What do I need or want to avoid the most?**

- What possible consequence concerns me the most?
- What outcome would be the most harmful to myself or my situation (e.g., not paying rent, not picking up my kids on time, detention, a criminal record, deportation)?



○ **What am I willing to risk/gamble to avoid this harm?**

○ **Do I have something to film the interaction?**

- Do I plan on filming if something happens?
- If so, depending on the situation, would I live stream or preserve the evidence for later?
- In what contexts would I be willing to risk having my phone seized (e.g. as evidence) if I try to record the event?

○ **Do I know how to clearly say in French:**

- "If I am being arrested, please tell me what for?" = « Si je suis arrêtée, SVP me dire pour quelle infraction ? » (SEE JEH SWOO-EE AR-EY-TAY, SEEL-VOO-PLEH MEH DEER POOR KEL IHN-FRAK-SHEE-OHN)
- "If I am detained and not free to go, please tell me why?" = « Si je suis détenue et je ne peux pas partir, SVP me dire pourquoi. » (SEE JEH SWOO-EE DAY-TEH-NOO EH JEH NEH PEH PAH PAR-TEER, SEEL-VOO-PLEH MEH DEER POOR-KWA)
- "I want to leave now" = « Je veux quitter maintenant » (JEH VEUH KI-TAY MAH-TE-NAH)

○ **Depending on my personal situation, where I am, what I'm doing, who I am with, and what I have on me: if I evaluate the risks, what may I plan to do or say if police question me?**

- Give them my identity but otherwise only say "I wish to exercise my right to remain silent, thank you for respecting my rights" (« Je souhaite exercer mon droit au silence, merci de respecter mes droits » - JEH SOO-ATE EX-ER-SAY MOH DRAW OH SEE-LENCE, MER-SEE DEH RES-PEK-TAY MEH DRAW)? Do I know how to give them my identity in French?
 - ~ "My name is X" « Mon nom est X » (MOH NOH EH ___)
 - ~ "My date of birth is Y" = « Ma date de naissance est Y » (MAH DAT DEH NEH-SAH-SSE EH ___)
 - ~ "My address is Z" = « Mon adresse est Z » (MOH NA-DRESS EH ___)
- Respond to a few of their questions to de-escalate the situation but ensure that I do not say anything incriminating?
- Ask if I am being arrested or detained, and if they say yes, explain that I want to speak to a lawyer first (« Je veux parler à un avocat » = JEH VEH PAR-LAY AH UHN AH-VO-KAH)? Or if they say no, tell them I want to leave? (« Je veux quitter maintenant » = JEH VEUH KI-TAY MAH-TE-NAH).

○ If I think it may be strategic to pretend to respond to a couple questions before walking away, so that they think I'm being cooperative and lose interest in me, what are some things I would say that would in no way be incriminating?

○ If I or the people I am with are criminalized (e.g., people I use with, or do sex work with), do we ever talk about what we would say if the police approached us together?

○ Do I know someone I can role play with?

○ Although it may be stressful to think about it, might it be useful to think this through in advance?



REMEMBER

No matter what your situation, anytime you say anything to police you are making a statement that can be used to investigate, arrest and prosecute you or other people. Just because police ask you a question, this does not mean you have a legal obligation to answer.

The following sections provide info to help determine when you do—and do not—have a legal obligation to respond, and how you may plan to navigate the situation so that you don't panic and say more than necessary.

IN THE CONTEXT OF AN OVERDOSE: THE GOOD SAMARITAN DRUG OVERDOSE ACT (GOOD SAM LAW)

In May 2017, the federal government passed the Good Samaritan Drug Overdose Act (Good Sam law). The government states this law is intended to reduce fear of calling the police in the event of an overdose, and to encourage people to stay with the person who is having the overdose to help them while waiting for medical assistance. However, both in law and in reality, it offers extremely limited legal protection against the harms of various forms of criminalization.

THE GOOD SAMARITAN DRUG OVERDOSE ACT (GOOD SAM LAW)

This law* prohibits police that show up on the site of an overdose to arrest you for:

- ~ "simple" possession
- ~ breach of conditions (parole or probation)
ONLY IF the conditions are related to a "simple" possession offence

* Sections 4.1 (2) and (4) of the CDSA.

This law DOES NOT offer any protection against:

- an arrest/charge for ANY OTHER criminal offence, such as possession for the purpose of trafficking, trafficking (e.g. selling or sharing drugs), obstruction, procuring, weapon possession
- an arrest/charge for breach of conditions that are linked to ANY OTHER criminal offence except "simple" possession (e.g. conditions related to possession for the purpose of trafficking, theft, sex work, assault, fraud)
- an arrest connected to a warrant issued in Canada (e.g. for having missed your court date)

Who does this law apply to? Anyone who requests emergency help in the event of an overdose (including the person who is overdosing) regardless of whether they stay or leave the premises before help arrives AND anyone who remains on the scene when help arrives.

However, members of the community report that the police remain a real and constant threat in the context of an overdose. While this law provides certain limits, the laws criminalizing the possession, sharing and administration of drugs allow police to frame an overdose context as a crime scene (police do not need to have arrested someone in order to consider an area or place a crime scene). This increases police powers to enter a place, interrogate people present, seize items, etc. Also, the police often abuse their power (e.g. illegal searches, forcing people to make statements). In this way, the Good Sam Law can give people who use drugs a false sense of protection which can be very harmful.

Things you might want to consider if you call for assistance:

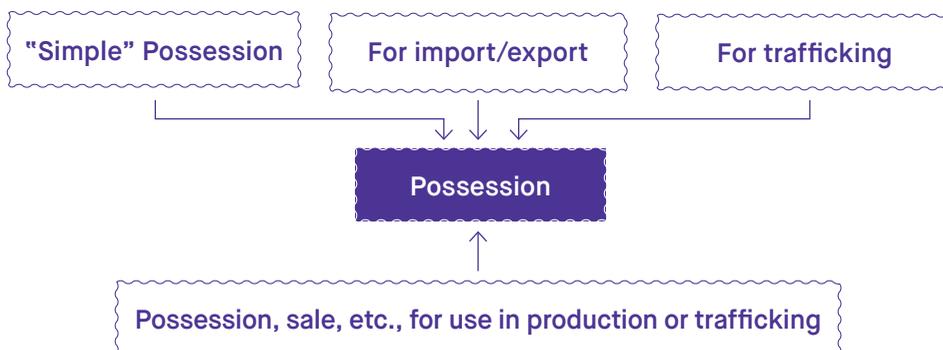
- Should I stash or dispose of my drugs and related evidence?
- Should I tell anyone else at the scene that I have called 911 so they can leave if they need to?
- Should I tell emergency dispatch that the environment is safe/secure and specify that only medical assistance is require? This might help reduce the chances that police are dispatched along with the ambulance/paramedics, but remember that this does not guarantee that police won't also arrive.
- If I'm in a public space, even though the Good Sam Law exists, do I want to stand at a distance to keep an eye on the situation?
- If I can't stay (e.g. if there is a warrant in my name), am I able to leave a note for paramedics with key information (e.g. what they took, how much, medical conditions)? Or am I able to ask someone else to stay to provide this information to the paramedics?

REMINDER

The GOOD SAM LAW applies ONLY to "simple" possession or breach of condition related only to simple possession. And it ONLY applies in the context of an overdose.

It offers no protection against any other criminal charge, including all other types of possession charges, and it offers no protection against "simple" possession charges in any other context.

TYPES OF CRIMINAL OFFENCES RELATED TO DRUG POSSESSION



Remember: this law provides a legal defense only if you are arrested in an overdose situation for "simple" possession OR a breach of condition related to a "simple" possession offence.

Other resources:

- ~ Comic: No Police at Overdoses (Good Samaritan Drug Overdose Act), HIV Legal Network, October 2020
- ~ Good Samaritan Drug Overdose Act Wallet Cards, HIV Legal Network, December 2017
- ~ The Good Samaritan Drug Overdose Act: What You Need to Know, PIVOT, July 2017

→ CASE STUDY

Remember that Nathalie brought coke to an outcall appointment at a motel, at her client's request. After doing a few lines, the client starts to turn blue and stops breathing, so she calls 911. The ambulance and paramedics show up, as well as the police. She lets all of them enter the hotel room (see page 110 re. police entering an hotel room).

Once her client is taken to the hospital by ambulance, she is questioned by police about what happened:

- ~ Whose drugs are those? Is he the one who gave you these drugs?
- ~ Was this man your pimp? Was he your trafficker? Where is your pimp?
- ~ Did you drug your john and plan to rob him? Did you force him to do more drugs to get more money out of him?
- ~ Where did you buy the drugs? Who sold you the drugs (their name)?

The police take advantage of the fact that Nathalie doesn't know about the Good Sam Law (see pages 99-101 for more info) and threaten to arrest her for possession, as well as trafficking.

Under pressure, and not knowing that she doesn't have to answer their questions, Nathalie tells them that she brought the drugs because he asked her to. She assumes that either way she will be charged with possession for personal use. She thought that telling them that he asked her to bring the drugs, and that she just gave them to him (she didn't sell them) was a good idea, and would show that she didn't do anything wrong.

Later, her lawyer tells her about the "Good Sam" law, but her statement to police has already been sent to the Crown. In the end she is charged and found guilty of trafficking for having brought and shared the drugs with her client (see pages 26-27 for offences related to trafficking).

PATROLLERS, SECURITY GUARDS, PUBLIC TRANSIT OFFICERS

Some publicly accessible locations are monitored differently and this may also impact your rights (e.g. if you are in a parking lot, a school yard, a public bathroom). Although the place may be accessible to the public, it might also be partly private or commercial property and **you might have to deal with private security guards and other types of officers, as well as police.**

SECURITY GUARDS

Security guards are not government law enforcement officers, and legally they do not have as much legal power.

They are personnel that are hired by private companies and you do not have a legal obligation to speak with them.

If a security guard **asks you to go with them**, you can refuse, but if they are accusing you of a crime that they say they witnessed and they are attempting to make a “citizen’s arrest,” they may legally attempt to forcefully physically detain you until the police come.

If you are being accused of stealing something, unless you consent to the search, they cannot search you and must wait until the police arrive. But again, if they are accusing you of a crime, they may attempt to physically restrain and detain you until the police arrive.

If you are trying to enter a building or controlled area (e.g., store, courthouse, outdoor festival) and there is a sign that warns being searched is a condition to enter, you can refuse to be searched, but they can also refuse to let you in.

If you’re in a building and they ask you to leave, if you don’t they may accuse you of “loitering” or “causing a “disturbance,” and legally can “use reasonable force” to remove you from the building.

Some public housing units may also hire their own security personnel.

POLICE

As discussed on pages 78-81 and 90-91, police can approach you when you are in public, but **just because they ask you a question this does not mean you have a legal obligation to answer.**

Remember, the police can detain you if you do not identify yourself in the certain situations, including:

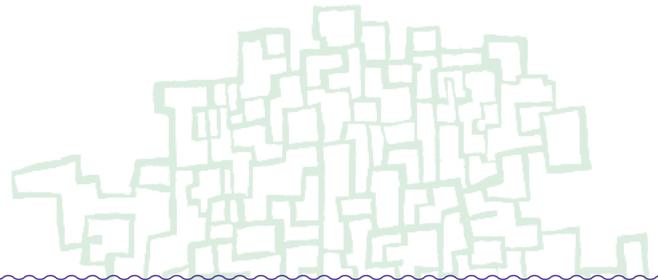
- You are arrested for a crime (e.g. drug possession, breach of a condition)
- You are stopped for breaking a municipal or metro by-law, highway code, public health regulation (e.g. being in a park at night, drinking in public space, jaywalking, covid-related order like curfew)

If you are not being detained or arrested you have the right to walk away (see pages 87-91 for more info).

In situations where **you do not have the legal obligation to respond to their questions or identify yourself**, it does not mean that they won't abuse their power (e.g. temporarily detain you in their car, charge you with some random ticket, report you to immigration).

Depending on your legal and personal situation, where you are, what you are doing, and who you are with, you may adapt how you respond to police in different situations (e.g. whether the cops are there to target you personally, language barriers, the location you are in, if you are known to police).

See pages 94-98 for "Things to think about when dealing with police."



PUBLIC TRANSIT OFFICERS: SOCIÉTÉ DE TRANSPORT DE MONTRÉAL (STM) OFFICERS

Since July 2021, STM inspectors (public transit inspectors in Montreal) can become "special constables" after they do a few days of training.

STM "special constables" can now detain and arrest people suspected of criminal activity on STM property (instead of having to wait for police to show up).

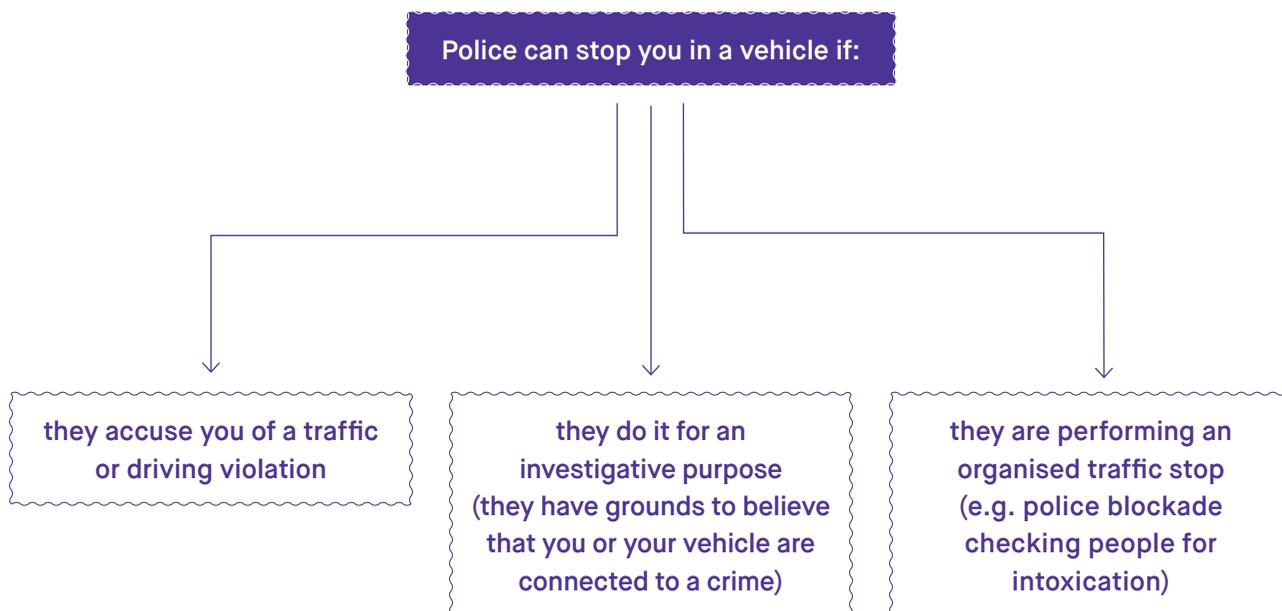
In 2019 the STM asked the Montreal Police (SPVM) to give them new powers, including the power to detain people who are committing a criminal offence, and the power to access police databases. Before 2021, STM inspectors could only ask you for ID and issue tickets/fines related to STM regulations.

All public transit officers can give you a ticket for breaking a transit bylaw (e.g. sleeping on the bench, taking the transportation without having paid). If they decide to give you a ticket, you have a legal obligation to identify yourself (name, birthdate and address).

Other cities may have different types of officers who patrol public transit and they may have different types of powers.

WHEN YOU ARE DRIVING A VEHICLE

Laws provide police with an enormous amount of power when they stop people who are inside a vehicle. Legally, when you are driving a car there is a lower expectation of privacy, and cops are authorised to question you and ask you to do things that they would not legally be allowed to do if you were not in a vehicle (e.g. ask for your ID, require a breathalyser tests). In addition to the Criminal Code, other regulations like the Highway Safety Code also give police these powers.



Police might pull you over **WITH** "reasonable grounds" to do so (legally): e.g. the licence plate was reported as stolen or involved in a crime, the police intend to arrest a person in the car, you committed a traffic violation (e.g. speeding, you ran a red light, your licence plate is expired, your lights are out at night).

Police might pull you over **WITHOUT** "reasonable grounds" to do so (illegal or arbitrary detention): e.g. while patrolling an area where there have been several break-ins, they pull someone over without any information linking the car or its occupants to the break-ins.

Whether police pull you over legally or illegally, they may also:

- ~ notice something in the car "in plain view" (e.g. drug residue, a knife)
- ~ decide there is something "suspicious" about your behaviour or appearance (e.g. "shaky hands," "eyes having pink colour," the smell of alcohol or cannabis smoke)
- ~ know other people in the car (e.g. known to police as a drug dealer, "gang member," "pimp/proxénète")

In general, the police can search your VEHICLE if:

- ~ the search is "INCIDENT" to ARREST (meaning its right after the arrest) AND the reason is related to the arrest (e.g. they see drugs in plain view, they arrest you for possession and they search the car for drugs); OR
- ~ the search is "INCIDENT" to DETENTION (meaning during your detention) AND it is for SAFETY reasons (e.g. you're wearing a bullet proof vest; after providing your name the police see in their system that it is associated with a safety alert related to weapons); OR
- ~ they have reason to fear IMMINENT (immediate) loss of EVIDENCE
- ~ they have reason to fear an IMMINENT (immediate) threat to someone's SAFETY

The legal limits to when police can search YOU (e.g. pat you down, search your pockets) are somewhat more limited than when they can search the vehicle itself.

- There may be a greater chance that police ask you to open a bag in your car, rather than empty your pockets.
- But if police have reason to believe that you are armed and dangerous (e.g. you have a weapon and you pose a serious and immediate threat to someone's safety), they have legal authority to frisk you or pat you down.

See page 83 for more info on police power to search.

PASSENGERS

Legally only the driver has to identify themselves when police pull over a car for a traffic stop. However, the moment police turn the stop into an investigation, they may expect all passengers to provide their identity. If you don't identify yourself, they may come up with something to arrest you for (e.g. obstruction) in order to detain you until they can verify your identity.

If you or the people you are with are criminalized, do you ever talk about what you would say—and not say—if the police pulled you over? For example, if you are with a driver, other sex workers on the way to work, client, dealer/seller, friend, migrant without status, and together you are stopped by police, what do you plan to do? Do you plan to give the police the same info? Do you plan to refuse to speak to them? Does your identity or legal status impact who decides to drive? Does it impact how you drive, with how many people in the car, where and at what time?

→ CASE STUDY

As discussed on page 58, David gets pulled over for speeding. As the cops walk up to his car, they see that he was reaching into a bag in the back seat. The police suspect that he may have been trying to hide something. The police ask him for his license and registration, and David gives it to them. They also ask him where he's coming from. David's not sure what to do, he mumbles something incoherent and starts to get agitated. The police then decide that David is acting suspicious, and may pose a risk to their safety (e.g. might have hid a weapon in the bag in the back seat earlier). They ask him to get out of the car. **The situation escalates, and in the end, the police look in the bag in the back seat. Police find Schedule 1 and 3 substances (speed, GHB, MDMA and shrooms) in large quantities in the bag. The police arrest David on various drug offences and proceed to search the rest of the car (e.g. trunk, other compartments).**

When speaking with his lawyer later on, David is told that the legality of the search depends on the facts. David knows there are limits to when a cop can search a vehicle, so he made sure to remember and write down all of the details of the interaction: Where and when the stop took place, who the officers were (number on the car), what they said to him after pulling him over, what they did, what was searched and how, how he was detained (where, how long, in what conditions), etc.

It is important to be specific about what happened and share all of the information with your lawyer. It may be useful for your case.

The police may end up searching you and your vehicle.

- The search may or may not be legal, and you might challenge the search later in court. Whether the search is legal or not will depend on the specific factors of each individual case. Whether or not the search is legal, if the police find drugs, money, weapons, etc., this may lead to arrest for criminal charges.
- The legality of an arrest may depend on the legality of the search: if an illegal search leads to the drugs, the drug charges may be withdrawn.
- The legality of a search may depend on the legality of the arrest: if the arrest was unlawful (e.g. arbitrary, abusive) the search incident to arrest may also be unlawful.

Often drug charges result from people falling asleep at the wheel of their parked vehicle.

- E.g. someone calls police because you are blocking traffic; police drive by and see your car is illegally parked; police see you asleep in a parking lot and wake you up to check on you.
- When police wake the person, **if they decide that they were previously driving while under the influence of alcohol or drugs**, this can lead to arrest, and in some cases, to a search of the vehicle. In some of these cases the police found drugs in the car, which led to further investigation and search (often of their cell phone), which led to arresting the person for drug trafficking.
- If you are at risk of falling asleep in your car, **make sure the keys are not in the ignition**. If you know you are going to sleep, take the keys out of the ignition and when possible, **sleep in the back seat of the car**. This may minimize the chance of the police claiming they are investigating a criminal charge (e.g. related to impaired driving) and the consequences that can result from a criminal investigation or arrest.
- Depending on where your car is located, you may get a traffic ticket, which means you legally would have to provide your name, address and birthdate.

IN THE CONTEXT OF AN INVESTIGATION

Investigations begin for various reasons, e.g.:

- ~ tips from confidential informants
- ~ an anonymous call from someone who claims that "(name) who lives at (address) is selling drugs"
- ~ politically driven and funded initiatives

The scope of investigations can vary dramatically (e.g. watching someone or a location for a short amount of time, investing a lot of money and months of resources ("filature"), tapping phones and locations and recording conversations, video surveillance, etc.

If police begin to investigate you or a location related to you, they may note and document patterns, such as:

- ~ watching dozens of cars stopping by your house for very short time periods
- ~ following you and watching you deliver bags, place them into other people's vehicles, bring them home, etc.
- ~ following you and watching you regularly visit the same warehouses and locations

This type of information can then be given to a judge as evidence of trafficking, and can also be used to get a warrant to search certain locations, seize certain property, and arrest people for trafficking, production, organized crime, etc.

A search or an arrest may or may not be legal, and you might challenge it later in court. Whether the search is legal or not will depend on the specific factors of each individual case.

- The legality of an arrest may depend on the legality of the search: if an illegal search leads to the drugs, the drug charges may be withdrawn.
- The legality of a search may depend on the legality of the arrest: if the arrest was unlawful (e.g. arbitrary, abusive) the search incident to arrest may also be unlawful.

See pages 22-31 and 68-71 for information on drug offences that may lead to an investigation.

IN A RESIDENTIAL LOCATION

There are many different types of residential locations. On one hand, the law associates the greatest right to privacy to private residential property (e.g. your home, condo, apartment). But on the other hand, residential locations that are abandoned or where the owner is unknown, or that are frequented by many marginalized people, are often frequently invaded by police (e.g. crack houses, trap houses, squats).

POLICE POWERS TO ENTER

The general rule is that police cannot enter your residence without a warrant, BUT there are exceptions:

- IF the **person who answers the door agrees (consents)** to let them enter
- IF the police have reason/grounds to believe that:
 - ~ **Someone inside is committing, or about to commit, a criminal offence**
 - ~ **Someone they are in the process of trying to arrest has fled inside your residence**
 - ~ **The life or safety of the public or an occupant (someone inside) is threatened.** E.g. they may say that an anonymous neighbor called 911 and said they heard someone screaming for help. If they believe an occupant's safety is in immediate danger, they can force their way in.

If you do **NOT** consent to them entering, make sure you say this clearly. (« *Je ne consens pas à ce que vous rentrez* » JEH NEH KON-SEN PAH AH SEH KEH VOO REHN-TRAY)

In some situations, **even if you do not have a legal obligation to identify yourself, the police might threaten to arrest you for something** (e.g. obstructing police work) **if you do not provide your identity.** This way they can detain you until they can verify your identity.

You're not obliged to answer any other questions they might ask.

Police or bailiffs could also show up to execute a search based on other laws (e.g. on behalf of Revenu Quebec, for debt related to unpaid municipal or provincial tickets).

POLICE POWERS TO SEARCH

Unless police have a warrant to search the residence, they rarely have the authority to do so. BUT there are exceptions:

- ~ If someone is being arrested in the residence and police think an occupant's **safety is in IMMEDIATE (immediate) danger** because of something on the person or in the place
- ~ Police have reason to fear **IMMEDIATE loss of evidence**
- ~ **Medical emergencies** (e.g. search for medicare card, suicide note)

IF THEY SEE SOMETHING "IN PLAIN VIEW" they can legally seize it if they have reasonable grounds to believe it is related to a criminal offence (e.g. drugs, scales, packaging equipment, large sums of cash, weapons). **This may also permit them to search further.**

- "In plain view" means they can see the object in front of them (e.g. from the front door of the house, from inside if they have legal grounds to enter or if you agreed to let them in).
- "In plain view" does NOT include going into drawers or cupboards, rifling through things or moving things around, travelling to other parts of the house.

IF THEY HAVE A WARRANT—ASK TO SEE and READ THE WARRANT.

- **If they have a search warrant:** It must specify the address and the specific things (evidence) that they plan to search for. See pages 83-85 for more info on when police can search you and when they can seize (take) things.
- **If they have an arrest warrant:** It must specify the name of the person that they intend to arrest. An arrest warrant on its own is not a warrant to search the location, but in some rare cases, a search of the place following the arrest may be legal. Also, they may have both (an arrest warrant and a search warrant).

IN A MOTEL OR HOTEL

If the police stop you in the motel/hotel bar or lobby, you are in a publicly accessible place, and the general rules apply (pages 78-92).

If the police try to come to your motel/hotel room, you are not in a public space and legally you have the right to a certain expectation of privacy. Generally, the same laws apply regarding police power to enter and search, as those in a residential location (see pages 108-109).

However:

- **The law takes the privacy of someone's home much more seriously than the expectation of privacy associated with a motel/hotel room.**
- Police tend to prioritize authorisation from motel/hotel staff (not guests) for permission to enter individual rooms.
- They are sometimes able to obtain a key from the front desk.
- They may just bang on the door and tell you that you have to answer/open up.
- They may say that the housekeeping staff (who legally had the right to come in) saw something that provides grounds for investigating (e.g. weapon, drugs, multiple boxes of condoms).

If the police come to the door of your motel/hotel room:

- Ask them why they are there. You may find it strategic to seem polite and calm.
- You have the right to an expectation of privacy in your room, and you have the right not to be disturbed.
- You have no obligation to let them in unless they have a warrant or unless one of the exceptions apply (see pages 108-109).
- If the police have a warrant or force their way into the room: You have no legal obligation to identify yourself, and it is your choice whether or not to do so (see pages 80-81 on identifying yourself to police).
- **Lying to police could lead a criminal offence** (being charged with "obstruction").
- If you choose to identify yourself (legal name, birth date and an address), you may say nothing else.
- If they arrest someone else in the room, they may temporarily detain you as a "witness" to or "victim" of the crime.
- "Helping you" or "Making sure you're alright" is never a valid reason to detain you.

HOUSEKEEPING

REMEMBER THEY HAVE AUTHORITY TO ENTER YOUR ROOM WHEN YOU ARE NOT THERE.

If they see things (e.g. drugs or drug material, lots of condoms, sex work/er or drug user publications) they may contact police.

There is an increasing trend for hotel staff to be trained to spot sex work/ers and report them to police under the guise of human trafficking training and funding.

Women who use drugs may also be profiled as sex workers or "trafficked victims" by staff who assume or are explicitly trained to assume all marginalized women, and in particular marginalized racialized women, are potential victims of trafficking who must be saved by law enforcement.

AT THE HOSPITAL

People sometimes fear going to the hospital to get medical attention or to accompany a friend, even in emergency situations, because they fear abusive treatment, stigma, discrimination and disrespect from medical staff. In some instances, they may fear that law enforcement may be contacted and may show up at the hospital.

In all cases, medical professionals and their staff have an obligation to prioritise every patient's health, safety and medical privacy. They will not usually provide medical information to police without a warrant to do so.

However, just as police have a lot of discretionary power, so do medical professionals and other staff members. This means that they have a lot of power in the context of their work to make decisions. E.g., if someone comes to the hospital for care, and they think they have been involved in a crime (as a suspect or as a victim), medical and administrative staff may or may not decide to immediately contact law enforcement.

They have a legal obligation to contact law enforcement if someone's safety is in imminent danger in a way that they are unable to control, but this does not mean that they have to contact law enforcement in other circumstances. But sometimes police are contacted for other reasons (e.g. based on an individual's personal beliefs, institutional policy, private security officers who witnesses the situation). Also, police are often contacted when 911 is contacted for medical emergencies, and they may decide on their own to show up to investigate. There are many reasons why police may end up at the hospital or follow up after you've been to the hospital.

Hospitals have very low tolerance for arguments, raised voices, gatherings, disruptions or any situation that is escalating. They are likely to ask people to leave, to become hostile and to stop cooperating with you if they feel you are being disruptive. Hospital staff, just like everyone else, have biases, prejudice and preconceived notions that can play a role in who they see as a "problem."

IF YOU ARE THE PERSON RECEIVING MEDICAL CARE

The health care provider has an obligation to protect your medical privacy, health and safety.

This may include refusing to let people (including police) into your hospital room, talk to you or question you, or otherwise bother you if it is detrimental to your health.

Note that when you are admitted into hospital, you may be undressed, and in this process belongings that are on your person may be discovered. Also, some hospitals may have security measures that involve additional scanning of items entering the hospital.

If the police intend to arrest you (with or without a warrant):

- ~ they may have greater influence on the medical staff's decision to let them speak with you, handcuff you, and monitor your room until you are released from the hospital.
- ~ you still have the right to adequate and complete medical care; usually, legally the police cannot take you until this care is provided.
- ~ other than providing your name, birthdate and address, you have NO obligation to say anything else, even if you or someone else's health is at risk.

If you are the victim of a crime:

- ~ you may or may not want to talk to the police
- ~ you do not have an obligation to speak to them about what happened. They may, however, pressure you to talk to them.

Remember no matter who you are or why you are at the hospital, anything you say to police is a statement that can be used as evidence to arrest and prosecute you or someone else.

Depending on the seriousness of the situation, if they are investigating, they might try to get your contact information from the medical or administrative staff. Even if staff do not give them this information directly, they can attempt to get it by trying to peek at medical charts, your bracelet, etc.

IF YOU ARE ACCOMPANYING SOMEONE WHO IS RECEIVING MEDICAL CARE

You have no obligation to provide any information to medical or other staff simply because you accompany someone to the hospital. However, in certain situations (e.g. during the COVID-19 pandemic), there may be specific measures in place that require people entering the hospital to provide ID at the entrance. And in some contexts, in order to enter, you may need to explain why your presence is necessary for the person you are accompanying or visiting to access adequate medical attention or some other essential service or item. But remember to never provide information about the person without first obtaining their informed consent to do so.

The medical staff may ask you what your relationship is to the patient, their emergency contact, or to better understand the situation.

If the police arrive at the hospital:

- If you are under arrest, other than providing your name, birthdate and address, you have NO obligation to say anything else, even if you or someone else's health is at risk.
- If you are not under arrest, but the police are there to investigate, they may pressure you to talk to them. In this situation you have NO obligation to give them any information whatsoever.

Depending on the seriousness of the situation, if they are investigating, they could attempt to:

- monitor who picks you up, if you have a car outside, if you're making phone calls, etc.
- get your contact information from the medical or administrative staff. Staff likely will not have a lot of information about you, but they may be more comfortable sharing it as you are not their patient. Think about what contact information you want to provide to the hospital.

HAVING SOMEONE WITH YOU WHO CAN ADVOCATE FOR YOUR RIGHTS, TAKE NOTES AND SERVE AS INTERMEDIARY CAN BE HELPFUL.

VALUE OF HAVING A WITNESS WHEN ACCESSING MEDICAL CARE

In some urgent situations, people who are criminalized may fear bringing someone from their community with them to the hospital as it may increase chances of surveillance, interrogation and detention by police. Yet having someone with you (witness) may ensure that you receive more adequate care, and help minimize the risk of stigma and mistreatment.

Having someone with you who can advocate for your rights, take notes and serve as intermediary can be helpful. For some people, this can be a support person who is not known to police, can keep a low profile, and keep the situation calm. Make sure this person knows not to share information about you without your consent.

INSIDE A SUPERVISED INJECTION SITE (SIS)

Certain organizations (e.g. a harm reduction agency) are allowed to operate Supervised Injection/Consumption Sites (SIS). The federal government has created certain “exemptions” that apply to people **INSIDE** an authorized site. These exemptions define certain contexts and activities for which a person cannot be charged with certain drug-related criminal offences (exemptions provide “immunity” from criminal charge/prosecution).

Examples of the type of « immunity » from criminal charges associated with a SIS:

- People who go to an SIS and who bring their drugs to use on the site cannot be charged for “simple” possession inside the site (note that the law specifies that the possession has to be for the purpose of personal consumption/self-administration).
- Staff and personnel (people who work at the SIS) cannot be charged with trafficking for having provided a space or material facilitating the use of drugs inside the site.
- People who go to an SIS and staff/personnel cannot be charged with trafficking for possessing, producing or transferring substances if it’s for the purpose of drug-checking.

These exemptions DO NOT INCLUDE IMMUNITY from criminal charges for people AROUND THE SIS and do not protect people around the site from police harassment.

The law does not provide any immunity as soon as you leave the building (exit the door). That said, if ever you were arrested for “simple” possession on

your way to or from an SIS, let your lawyer know as this may help your case. There are very few SIS locations, and people have no choice but to travel with their drugs on them in order to access an SIS.

The existing lack of clarity about whether or how exemptions apply to people near an SIS, and government and law enforcement refusal to publicly take a clear legal position on protecting the rights of people in the areas around the SIS, allow police to continue to do what they want on a case-by-case basis. This is not surprising considering that these policies were never part of a comprehensive plan to uphold the rights of drugs users.

Different SIS and different provinces will have different rules about what is and isn’t allowed within the SIS. Note that providing injection assistance, providing a “safe supply”, and splitting / sharing your drugs or medication is not always allowed. **Also, some assistance may be allowed by some people but not others.** For example, peers who accompany someone to an SIS (a third party) and are not staff/personnel may be allowed to assist with injection, while staff/personnel may be prohibited from doing so).

*Note that the law is currently unclear regarding the legal responsibility of a third party who administers (injects) drugs to another person at an SIS.

Rules and exemptions are changing very quickly. Ask someone working at the SIS for the latest regulations related to that service.

Exemptions do not offer any protection to people who can't or don't want to use in a supervised or formal space.

Exemptions are not a sufficient legal response to uphold people's rights, or to address the harms of criminalization and the overdose crisis.

**REMEMBER:
IN ALL CASES,
EXEMPTIONS NEVER
PROVIDE PROTECTION
FROM NON-DRUG-
RELATED CRIMINAL
OFFENCES OR ARREST
WARRANTS.**

LEGAL IMPLICATIONS IF SOMEONE'S HEALTH OR SAFETY IS IN DANGER AT THE SIS

In these cases, paramedics and/or police may be contacted.

Paramedics may be called because of a "health emergency": a life-threatening situation that staff at the site are not able to handle as the person needs to receive greater medical care and/or be hospitalised.

Police may be called because staff determines they must do so to ensure the safety and security if:

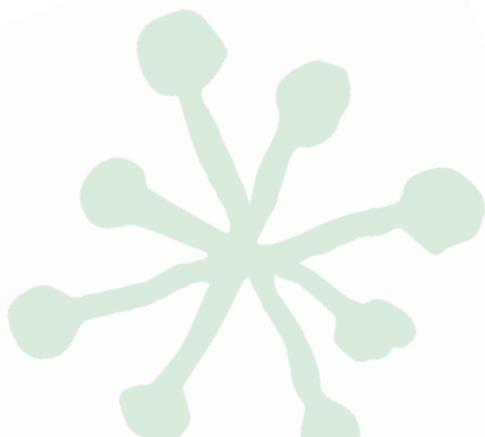
- ~ someone is having a "mental health crisis" and staff decide they are a threat to themselves or to staff or people frequenting the site;
- ~ someone is experiencing psychosis and/or "agitated delirium" and requires acute medical care or risks death;
- ~ if someone becomes violent and staff are unable to de-escalate the situation.

When paramedics are contacted, police often arrive as well, even if staff specifies that their presence is not required and not wanted (e.g. because managing police can be a problem when staff need to focus on working with paramedics and the person in distress).

IF THERE IS A CRIMINAL INVESTIGATION OR IF AN INVESTIGATOR TRIES TO COMMUNICATE WITH YOU

- Take their information and do not say anything else.
- Find a lawyer and **arrange a meeting with both your lawyer and the organization who runs the SIS** where the incident they are investigating occurred.

The law is currently unclear about the legal responsibility of a third party who administers (injects) drugs to another person at an SIS. The organisation who runs the SIS will provide essential information about their protocols and practices to your lawyer. They may provide contextual and legal information that can impact your rights, possible charges, your defence or possible sentence.



When you access an SIS you usually need to register. Usually when you register:

- There is no need to provide identity documents.
- You may be asked for your name, birth date and address, but you can provide a pseudonym (fake name that is not connected to you).
- You may want to remember the name you provide so that you can use it at a future visit if you don't want to register again.
- You may also consider what alternative birthdate and address you want to provide.
- Some people may give their real/legal information if they have medical issues. If you become unconscious at the site, the ambulance will be called and you will be taken to the hospital. If they have your legal identity/information, they would be able to access your medical file (e.g. to see if you have a condition, allergies, emergency contact).

SIS LOCATIONS IN MONTRÉAL:

- ~ **CACTUS Montreal:** 1244 Berger street; Tel.: 514-847-0067
- ~ **Dopamine:** 4205 Ontario Street East; Tel.:514-251-8872
- ~ **L'Anonyme (Mobile SIS):** Tel.: 1 844-381-2455
- ~ **Spectre de rue:** 1280 Ontario Street East; Tel.: 514-528-1700
- ~ <https://santemontreal.qc.ca/en/public/support-and-services/supervised-injection-services/>

Check out Health Canada's website for information about SIS sites in other parts of Canada: <https://health.canada.ca/en/health-canada/services/drugs-medication/opioids/responding-canada-opioid-crisis/map.html>

CHAPTER 13

PROCEDURES AFTER ARREST



THE RIGHT TO STAY SILENT –RESISTING POLICE TACTICS TO MAKE YOU TALK

No matter where you are and no matter what legal exceptions may apply, **ANY TIME YOU SPEAK TO POLICE YOU ARE MAKING A STATEMENT.**

This statement is **EVIDENCE** that can be used:

- ~ **To accuse and prosecute you.**
- ~ **To accuse and prosecute other people** (e.g. people you live with, a dealer/seller, a client, a partner, members of your community or family). This evidence could be used in your trial or in someone else's trial.
- ~ **By the Crown to influence someone to plead guilty or to provide information.**

IF YOU ARE ARRESTED, other than providing your name, birth date and address, you have the right to STAY SILENT and not answer any other questions.

Once you ask to speak to a lawyer you have the right to be silent, and the **police are legally required to stop asking you questions until you speak with your lawyer.** But they may keep talking at you, even though they are not supposed to. It is important to try to stay focused and remember your right to silence.

After you speak to a lawyer (even if this is just a short phone call), **they have the right to question (interrogate)** you again. They may ask the same questions over and over again. Try to stay focused. You still have the right to be silent.

Police **know how to provoke you and are trained to try to convince you that it is in your best interests to speak them, and that it is your obligation to do so.** They can and will use tactics developed by experts to take advantage of the stress and vulnerability related to being arrested and detained.

They will often first ask you a lot of random and invasive questions to try to build trust (e.g. about your personal life, your sexuality or gender identity, your interests) before they start asking you questions related to their investigation. They may also make certain promises or claim to help you if you talk to them, often including things they have no power to do (e.g. help you obtain a certain immigration status).

They are legally allowed to lie to you in order to get you to talk. This includes inventing stories and information about:

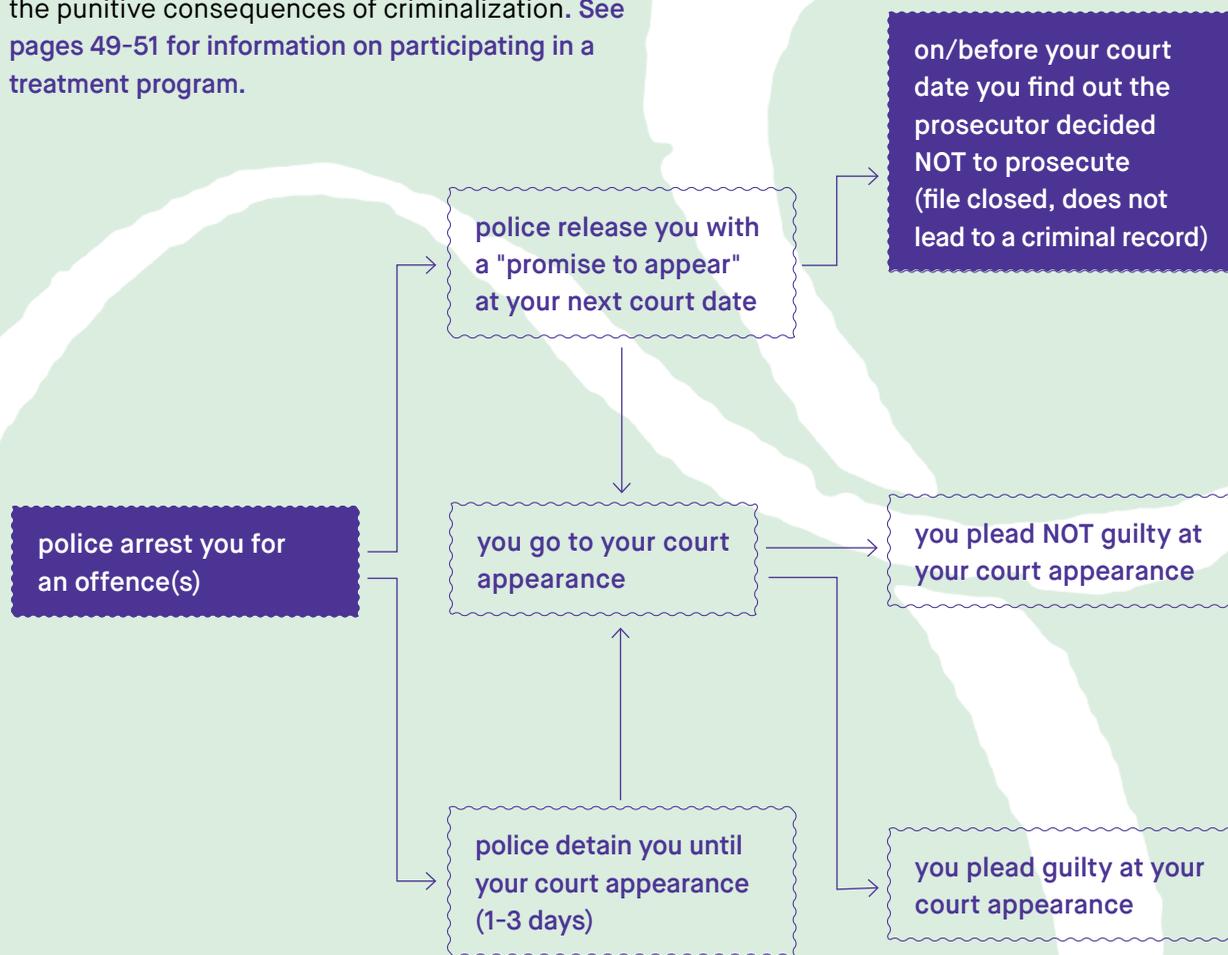
- physical evidence that they don't have (e.g. "we found 'this or that' at your apartment")
- other people making statements and informing them of things when no one has (e.g. "your partner told us that you did 'so and so'")
- "procedures" that don't actually exist in law (e.g. "if you leave now we can't help you later," "as soon as you walk out this door 'so and so' will happen")
- making misleading or false promises (e.g. "if you cooperate now, you will get a more lenient sentence"). Even if it is possible, this is often something that police don't have control over or that would be decided by a judge or prosecutor.

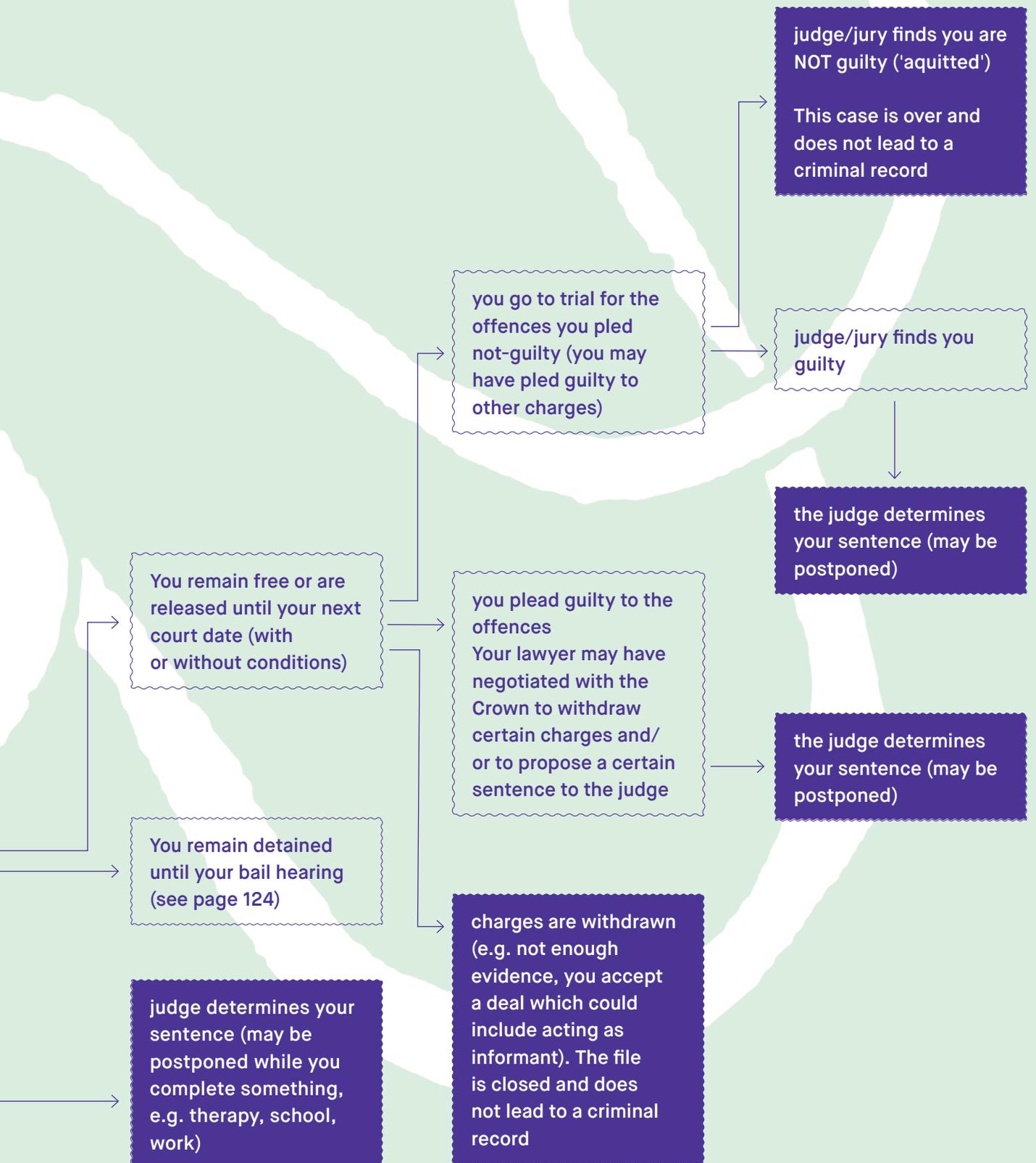
Even if you are prepared for the situation, the pressure and risks of interacting with the police can catch you off guard. **If you do not want to make a statement, it is essential that you do not react to their questions, comments and behaviors. Try to maintain control over yourself, avoid conflict, and remain silent.**

STAGES INVOLVED IF YOU ARE ARRESTED FOR A CRIMINAL OFFENCE

Participating in a treatment program is often a way to delay some of these legal proceedings and/or obtain a less punitive outcome. **This may include participating in a treatment program regulated by the court (a "specialised tribunal/drug treatment court"), but it may also include a treatment program that you have selected yourself.**

People who use drugs may or may not want to undergo treatment/rehab, and may or may not want to use treatment/rehab as a way to minimize the punitive consequences of criminalization. **See pages 49-51 for information on participating in a treatment program.**





APPEARING BEFORE A JUDGE

If you are arrested and detained you will appear before a judge the next day. But it may be a couple days if it's the weekend or a holiday depending on what city/region you are in.

This is when you enter a plea of "not guilty" or "guilty."

Ask to speak to your lawyer so they can be at Court to represent you. If you do not have a lawyer or a referral to contact, a legal aid lawyer should be present at the court house.



**THESE
PROCEDURES
APPLY TO QUEBEC
AND MIGHT BE
DIFFERENT ACROSS
CANADA**

IF YOU PLEAD "NOT GUILTY"

The prosecutor will decide either that:

- You are released with conditions* until your next court date
OR
- You are detained until your bail hearing. You have the right for your bail hearing to be the next day (or a bit later if it's the weekend), and you will be detained until then. But you may also decide with your lawyer to schedule your bail hearing at a later date, so that you can organize your release/exit plan first which might increase your chances of making bail.

IF YOU PLEAD "GUILTY"

Depending on the seriousness of the offence, your lawyer may:

- Try to negotiate a sentence with the prosecutor. If they come to an agreement that you accept, it may be presented to the judge right away. If you are released, it will be with conditions*
- Postpone your sentence to a later date. You may or may not be detained until that time, depending on the offence and your personal situation.

See page 37 for info on pleading guilty.

* CONDITIONS

Discuss the possible conditions (of your release or sentence) with your lawyer BEFORE they are decided by a judge.

Tell your lawyer which conditions are most problematic and discuss possible options and alternatives.

You may try to negotiate one condition for another (e.g. a curfew, going to the police station once a week/month to sign something).

Breaching any of your conditions can lead to new criminal charges (“breach of conditions” is a criminal offence).

In the future, your lawyer can also try to modify your conditions if your circumstances or needs change.

- **One type of condition is not to be allowed in certain areas (“quadrilatère / redzone”).** Tell your lawyer what areas of town you need to access for treatment, medical appointments, community support, etc., and try to avoid restrictions on areas you need to access. If this is not possible, try to limit the restricted area or seek an exemption so that you can access the services you need.
- **One type of sentencing condition is a fine:** courts still give fines to people who can’t pay them. In some contexts, unpaid fines can result in another charge for “breach of conditions.” If you do get a fine, some organizations may be able to help you negotiate a payment plan (around 10\$/month) that is not available to people otherwise.
- **One type of sentencing condition is “community service/travaux communautaire”:** you may be ordered to do this by the court, or in some cities, you may get an arrangement that allows you to pay off your fines by doing community work.

IMMIGRATION STATUS

Make sure you discuss your immigration status with your lawyer. If you do not have citizenship, pleading guilty could result in loss of status and deportation. If you are applying for permanent residency or plan to do so in the future, try to avoid a criminal record of any kind. Consult an immigration lawyer or expert before agreeing to plead guilty to any charges.

REMEMBER

You give your lawyer the mandate to represent you. You are the client. You decide what is in your best interest. Your lawyer can’t work miracles but it is their job to fight for your interests and take your instruction.



**YOUR LAWYER
CAN'T WORK
MIRACLES BUT IT IS
THEIR JOB TO FIGHT
FOR YOUR INTERESTS
AND TAKE YOUR
INSTRUCTION.**

BAIL HEARING

If you are arrested and detained and the prosecutor does not release you at your first court APPEARANCE, you will have a bail hearing.

You then go before the judge who decides whether you will be released or detained during the legal proceedings.

You have the right to a bail hearing within three days. Only with your consent can the bail hearing be held later than 3 days after your appearance.

You may also decide with your lawyer to schedule your bail hearing at a later date, so that you can organize your release/exit plan first. This might increase your chances of making bail.

For offences that are considered less serious, the law generally favours that you are released at your bail hearing with conditions.

AT YOUR BAIL HEARING, THE PROSECUTOR MAY ARGUE THAT YOU SHOULD NOT BE RELEASED, BECAUSE:

- You will likely not come back to court for your next court date; or
- You pose a risk to the safety of the general public or to a specific victim or witness; or
- You risk committing another crime; or
- The public will lose faith in the criminal justice system because the offence you are charged with, and the context in which it was committed, is considered very serious.

BUT if you are accused of certain specific offences—including trafficking, possession for the purpose of trafficking, production—the law favours that you are detained until you can prove why you should be released.

If you are charged with one of these offences you will be detained until your bail hearing, and at your bail hearing you will need to prove to the judge why you should be released, or else you will be detained until trial (weeks or months). If you are at risk of being charged with one of these CDSA offences (see pages 26–30 and 34), it is important to prepare in advance a plan for requesting bail (“plan de sortie”).



**THESE
PROCEDURES
APPLY TO QUEBEC
AND MIGHT BE
DIFFERENT ACROSS
CANADA**

If the prosecutor convinces the judge not to release you, you will be detained until your trial date.

You have the right to a trial as soon as possible, but the date depends on the court’s availabilities. The trial date could be in weeks or months.

AT YOUR BAIL HEARING, YOUR LAWYER WILL ARGUE THAT YOU SHOULD BE RELEASED BECAUSE YOU:

- **Do not pose a risk to anyone's safety**
- **Will not commit a crime**
- **Can provide a fixed address:** It may have to be somewhere other than your usual residence, if your conditions prevent you from returning to your residence. If you do not have a place to live, you will have to live with someone (friend, family member, etc.). It is possible, but very rare, to be released with the address of a shelter.
- **Will respect your bail conditions,** which usually prohibit you from seeing certain people, going to certain areas, having a cell phone, using the internet, leaving you home, etc. Discuss possible conditions with your lawyer before they are decided by a judge. Tell your lawyer which conditions are most problematic and what areas of town you need to access. They may be able to negotiate the conditions.

Other factors that may help you be released include:

- **Depositing a large sum of money ("bail"), or signing a document ("recognizance") that says you would pay a large sum of money,** that the court would keep if you violate your conditions. Or, having someone (a surety) provide these funds. If the person (the surety) can't come up with the money right away, ask them to bring proof that they would be able to. If possible, ask someone who does not have a criminal record and/or has proof of legal income.

- **Show that your situation is "stable".** Explain that you have routines (e.g. job, school, medical follow-up, other activities).
- **Show that you have ties to the community** (e.g. family, legal job, studies, community engagements).
- **Someone who can testify to your stability and reliability.** Ask someone—if possible, someone who does not have a criminal record (e.g. outreach worker, family member, colleague)—to come to court and testify that they will ensure you respect your conditions and come back for your next court date.
- **Show proof of how you will support yourself and meet your needs** if released (access to legal income), or who will support you and how.
- **Going to rehab or seeking medical treatment for drug use.** Simply telling the court that you will go to rehab may not get you released, but if someone (e.g. your lawyer, outreach worker, friend) can reserve you a spot in a formal rehab center, this may convince the court to release you or transfer you to a full-time rehab residence.

IF YOU ARE INDIGENOUS: The judge has a legal obligation to consider the present and historical injustice and overrepresentation of Indigenous peoples within the criminal legal system, as well as your personal circumstances (e.g. personal, family and/or community history, current circumstances), when making a decision about your release. See page 47 for information on *Gladue* principles and court decisions.

If the judge decides to release you, you will be released with conditions until your next court date.

If the court orders you to deposit a passport as a condition of your bail, photocopy the important pages of the passport.

GUIDELINES FOR PROSECUTORS AND POLICE

DIFFERENT POWERS DEPENDING ON DIFFERENT GOVERNMENTS AND REGIONS

The Controlled Drugs and Substances Act (CDSA) and the Cannabis Act (CA) are criminal laws. Criminal laws are federal laws (like criminal offences related to sex work). Like any federal law, these offences are the same across Canada: they apply in all provinces and territories. In contrast, the powers of prosecutors who prosecute criminal charges are often provincial, and police strategies and directives often depend on municipal, regional or provincial authorities. **In short, the application of these laws can change from one city or region to another.**

GUIDELINES

Prosecution Directors, Police Forces and Police Departments can create formal set of rules that all of their employees (prosecutors or police officers) are supposed to follow consistently.

These are NOT law and they do NOT change the law itself (amendment/reform).

They are not an adequate response to a need for law reform.

They do not remove an activity from the realm of criminal law (decriminalize) and they do not remove the harms of criminalization from the living and working conditions of the people directly affected by a criminal law.

PROSECUTORIAL GUIDELINES

The federal government has the power to create and change (amend) federal laws, including the CDSA and the CA. Legislators and judges can change laws. Prosecutors (Crown) do not have the power to change them, but they have the power to enforce them, and to decide when not to enforce them. Prosecutors use their individual discretionary power every day when they decide which individual cases to prosecute. The Crown's Director (boss) also create "prosecutorial guidelines" about how the law should be enforced (what cases should or should not be prosecuted). These guidelines then apply to all of the prosecutors who work for that department. Prosecutors are supposed to consider these guidelines when exercise their individual discretionary powers that they use on a case-by-case basis.

Prosecutorial guidelines may intend to reduce punishment (e.g. instruct prosecutors not to prosecute if certain criteria are met), or they may intend to maintain or increase punishment (e.g. instruct prosecutors to argue for a sentence that includes incarceration when someone is convicted of selling a certain type of drug).

Federal and Provincial Crowns' Directors can create guidelines. These guidelines can change over time.

POLICE DIRECTIVES

Police do not have the power to change the law, but they have the power to enforce them. Police have enormous discretionary power and make decisions every day about who they do and do not arrest and when. Sometimes the Head of a police force or police department may also develop guidelines or directives that apply to their officers. These guidelines can change over time.

Which Director produces a guideline determines which prosecutors it applies to. This can create confusion across the country, and even within provinces, about where and which guidelines do and do not apply.

- **There is a different provincial Director in each province, and their guidelines ONLY apply to the provincial prosecutors of that province.** In Québec, the Director is the DPCP (Directeur des poursuites criminelles et pénales du Québec).
- **There is only ONE Federal Crown Director, the PPSC (Public Prosecution Service of Canada).** However, how the PPSC guidelines apply depends on the province. It may also depend on which police department made the arrest.
~ E.g., in 2020 the PPSC released some guidelines related to the prosecution of "simple" possession. However, the PPSC guidelines do not apply in Québec and New Brunswick (NB) in the same way that they apply in other provinces and territories. In Québec and NB, the Federal prosecutors only prosecute CDSA charges related to those investigated by the RCMP. Whereas in other provinces and territories, the PPSC is responsible for all CDSA charges, regardless of whether a municipal, provincial or federal police were responsible for the arrest.

Also, different types of police officers can work in the same area (e.g. the SPVM, SQ and RCMP can all arrest people in Montreal). This can create confusion across the country, and even within provinces, about where and which guidelines do and do not apply.

DECRIMINALIZATION AND ADVOCATING FOR LAW REFORM



For us, at Stella, our views on drug laws are similar to our views on sex work laws: decriminalization is a necessary first step towards supporting and protecting the human rights and well-being of people in our communities.

Despite a lot of agreement in our communities about the harms of laws criminalizing drugs, we do not yet have in Canada a collective and clear list of demands for law reform. It is often unclear what legal change is being sought or proposed, notably as there is no shared definition of many of the terms we use when it comes to drug law reform (e.g. decriminalization, legalization, regulation, safe supply, harm reduction, addiction, health).

Also, there are sometimes various—and different—definitions circulating across different communities. Our demands, or how we frame them, are also often based on strategic considerations or compromises.

The term “decriminalization” is used more and more frequently by people outside of criminalized communities (e.g. public health professionals, politicians, police, sex work prohibitionists, health care providers, academics). As this happens, more narrow and problematic representations and definitions of decriminalization are getting more air time and visibility, and are potentially influencing law and policy reform. The lack of clarity and consensus across community organizations around what law reform we want and need—and specifically what is and what is not decriminalization, and what it does and does not aim to achieve—also contributes to others being able to co-opt, appropriate, and confuse our messages.

We need to be clearer and more careful about how we define “decriminalization” to ensure that laws, policies and enforcement practices that are developed in the name of “decriminalization” don’t maintain and reproduce the harms that we are attempting to mitigate and prevent.

Decriminalization alone cannot feed our families, end stigma, or dismantle the systems of oppression that control our lives, but it is still an essential part of how we can establish and access supports and protections. **For us, at Stella, our views on drug laws are similar to our views on sex work laws: decriminalization is a necessary first step towards supporting and protecting the human rights and well-being of people in our communities.**

Here are some questions to ask ourselves to help determine if something is coherent with our values (e.g. proposed law reform, a campaign message, internal organizational policies, a public health initiative, a specialized court):

- Does it create barriers, harms or impacts similar to those caused by criminal law?
- Does it allow people who use drugs to access a safe supply, to make decisions about which substances and quantities to consume, and to do so with autonomy and minimal barriers?
- Does it reflect and uphold the rights and agency of the people it directly affects?
- Does it recognize the expertise and value, as well as the economic and labour rights, of individuals and communities who produce or distribute drugs or who have been historically targeted because of drug laws?
- Does it specifically reduce harmful impacts experienced by Black, Indigenous and other racialized communities?
- Does it reinforce the harmful idea that drug use is always an “illness” or a “problem”?
- Does it reinforce the harmful idea that abstinence is ultimately the best outcome?
- Does it allow people who do want support in connection with drugs to do so in way that is non-stigmatizing and accessible?
- Does it reinforce the idea that drug sellers and producers are “bad people,” or create or rely on categories of “good” and “bad” people involved in the production, distribution, sale and use of drugs?

WHAT IS CRIMINALIZATION?

We understand and experience criminalization as the existence of laws that prohibit and punish, as well as associated enforcement practices.

This includes criminal laws that make certain activities criminal offences (e.g. criminalizing drug possession, sale and production; criminalizing the selling and buying of sexual services; and criminalizing facilitation of the sale of sexual services).

This also includes other coercive or punitive laws and policies used to target marginalized and criminalized communities, including municipal by-laws, public health, immigration, and human trafficking laws, policies and practices.

This also includes law enforcement practices to apply those laws, as well as more general police practices targeting certain people and communities (e.g. even after one specific criminal offence is repealed, cops will often simply find other offences or law enforcement initiatives to target the same people).



WHAT IS DECRIMINALIZATION? HOW CAN WE ENSURE THE HARMS PRODUCED BY CRIMINALIZATION ARE NOT MAINTAINED?

In the same way that criminalization refers to making an activity illegal (a “criminal offence”) via criminal law, **decriminalization means removing a certain activity from the realm of criminal law.**

Once something is no longer a criminal offence, it can still be regulated in other ways. If drugs were decriminalized, governments could still control activities related to drugs by using other forms of regulation to determine who can produce and sell them, what quality control is needed, etc.

A human rights and harm reduction approach to decriminalization requires that *all* accompanying law and policy reform ensure that:

- People who do not follow drug regulations would no longer face criminal and punitive charges.
- Police would no longer be mandated to eradicate drug-related activity or substances.

WHAT IS NOT A RIGHTS-BASED APPROACH TO “DECRIMINALIZATION”?

MODELS OF “DECRIMINALIZATION” THAT DENY PEOPLE’S AGENCY, AND REPRODUCE THE HARMS OF CRIMINALIZATION INCLUDE:

- Laws or law reform that **replace the usual criminal punishment with an alternative punishment**, such as forced rehab, fines, etc. This can include:
 - ~ Changes to the *Criminal Code*, drug laws or criminal procedure that expand the use of mandatory rehab instead of prison.
 - ~ Maintaining the same criminal offences, but changing the associated sentences (e.g. removing a mandatory minimum sentence for a drug offence while still criminalizing the activity).
 - ~ The Portugal model, for example, where drug possession remains illegal and police still have the mandate to intervene and eradicate drugs, but people who use drugs are regulated by an administrative process when they possess less than a certain quantity.
- Laws and law reform that **criminalize part of an activity or related activities**. This can include:
 - ~ Forms of “legalization,” like the *Cannabis Act* where, for example, there is now legal and illegal cannabis, and people who buy, grow, distribute or sell it outside of government regulations can still be arrested and imprisoned.
 - ~ Other legal frameworks under which drug possession (for personal use) might be decriminalized but drug trafficking would remain a criminal offence. This means the person buying drugs would still be participating in a criminal activity when accessing drugs and may still face many of the harms of criminalization even if she is no longer at risk of being arrested for that specific offence. These harms may include police surveillance, unwanted contact with police or immigration officials, youth protection involvement, trouble with her landlord, searches or investigations leading to other criminal charges, a reduction in the quality of available drugs, etc.
- Maintaining the same criminal offences, but with **some change to police or prosecutors’ enforcement practices** (sometimes called “de facto decriminalization”). This can include:
 - ~ Municipal, provincial or federal police departments that create formal or informal policies to no longer arrest people for “simple” possession under certain circumstances.
 - ~ Prosecutorial guidelines or other situations where certain prosecutors decide to no longer lay charges if certain criteria are met.

Some of these models that deny people's agency can still be an improvement to current human rights violations despite not being ideal or adequate. It can also be hard to imagine a world where police and criminal courts are completely out of our lives or to think about what regulations would be acceptable once decriminalization is achieved, or we might not have room to imagine this when we are constantly responding to proposals from politicians or to emergencies in our communities. A lot of progress has been made to recognize the need to better respect the human rights of people who use drugs. However, when we articulate what decriminalization means to us, **we need to ensure we also think about state violence and human rights abuses experienced by all community members, including people who produce, distribute, sell and share drugs.**



As an overdose crisis continues to decimate us and our friends, people who use drugs and people who care about our communities struggle to create individualized and community responses. Part of dealing with a crisis fueled by criminalization and a lack of safe supply of drugs means knowing how to protect ourselves from the daily repercussions of criminalization. To do that, we need to know what the laws around drugs are and how they are applied, how they are weaponized against our communities, and what our rights are in the face of law enforcement.

This document provides legal information for people who use, share and sell drugs to better understand the laws that criminalize substances and related activities, as well as their legal rights in different contexts. It also provides practical information on law enforcement, including police powers, evidence, prosecution, sentencing and court procedures.

Whether you are a person who uses drugs; someone who sells, trades, produces, or transports them; a friend or family member who wants to help; or an advocate, this document was designed to help you protect yourself and those you love and resist the harms of criminalization. *Read Between the Lines* assists readers to avoid making incriminating statements and to prepare for potential encounters with law enforcement and the criminal legal system.

Educating ourselves and striving to be in solidarity with all communities that are targeted by drug laws allows us to focus on our human rights and strive to create a world where those rights, rather than criminalization and other repressive approaches to drugs, are placed at the forefront.

