

January 13, 2025

To Whom It May Concern,

Re: Submission on Bill 242, An Act to enact the Restricting Public Consumption of Illegal Substances Act, 2024 and to amend the Trespass to Property Act respecting sentencing (Short title: *The Safer Municipalities Act, 2024*)

Please accept these comments further to the public consultation on Bill 242, the tabled *Safer Municipalities Act, 2024*. While we recognize the importance of addressing both the affordable housing and drug toxicity crises in our communities, the measures outlined in this bill are punitive, harmful, and counterproductive to achieving meaningful solutions.

Criminalization of Vulnerable Populations

The *Safer Municipalities Act* effectively criminalizes individuals experiencing houselessness and substance use, and will disproportionately impact people with disabilities, as well as those already criminalized on the basis of racism.¹

Under this legislation:

- Police are empowered to penalize individuals based on “reasonable grounds” of suspected substance use, even without direct evidence of use.
- People will have a meagre 24 hours to vacate their encampment once a trespass notice is issued, without sufficient opportunity to accommodate disability-related needs, and without anywhere else to go. The City of Toronto Ombudsman found that there is a high duty of fairness owed to those living in encampments because of their deep marginalization; focusing on enforcement to clear various encampments in 2021 was done poorly, traumatizing the individuals involved and violating their human rights.²
- Fines of up to \$10,000 and incarceration for up to six months will further marginalize vulnerable individuals who lack the means to comply with such penalties.

Unpaid fines and criminal records have a detrimental impact on the social determinants of health and prevent people from being able to move forward by posing barriers to activities such as obtaining employment, getting a driver’s licence, and receiving citizenship.

Insufficient Alternatives and Overburdened Systems

The proposed solutions, such as police “escorting” individuals to community services, fail to account for the chronic underfunding and overcapacity of these services:

¹ R. v. Morris, 2021 ONCA 680 (CanLII), <<https://canlii.ca/t/jjhd9>>, retrieved on 2025-01-13. Also see 8573123 *Canada Inc. (Elias Restaurant) v. Keele Sheppard Plaza Inc.*, 2021 ONCA 371

² [Ombudsman Toronto Report: Investigation into the City’s Processes for Clearing Encampments in 2021, dated March 24, 2023](#)

- Shelters and drop-in centers in our jurisdiction operate near capacity and most calls for a bed are unsuccessful. Many individuals, including those who are LGBTQ+, Indigenous, and disabled persons, avoid these spaces due to legitimate safety concerns.
- Temporary and permanent housing programs have extensive waitlists.
- Many Community Workers' jobs will become less safe as outreach will have to be conducted in more isolated and hidden locations.
- Further, closing supervised consumption services (SCS) removes one of the most effective harm reduction strategies for those most affected, leaving individuals with few safe spaces to use substances and greater difficulty accessing low-barrier healthcare.
- Police "escorting" people who are suspected of having recently used drugs into local agencies places an even higher burden on community services and is very disruptive to the clients accessing these services who have experienced trauma during police interactions and justice system engagement.

Impact on Community Safety and Public Health

By criminalizing public substance use and dismantling SCS, the bill will:

- Drive people to use substances in more dangerous, isolated settings, increasing the risk of overdose and other health crises.
- Exacerbate tensions between vulnerable populations and businesses, since individuals will have no choice but to resort to using substances in public or semi-private spaces like restrooms.
- Result in reduced access to and utilization of harm reduction measures, including new syringes, since carrying them may provide "reasonable grounds" of suspected substance use.
- Increase the risk of fatal consumption after police seizures. A 2023 study reported that more than two thirds of people who use drugs who had their drugs seized by police immediately obtained new drugs after the incident.³ Police interactions increases the risk of community members interacting with the unregulated drug market.
- Increase the risk of fatal overdose after being detained. A 2021 study found that people who are released from custody are at a marked risk of increased fatal overdose within the first two weeks after their release.⁴

Escalation of Legal System Burdens and Related Health Harms

³ [Hayashi et al, "Police seizure of drugs without arrest among people who use drugs in Vancouver, Canada, before provincial 'decriminalization' of simple possession: a cohort study" \(2023\) 20:117 Harm Reduction J 1 at 8.](#)

⁴ [Stuart A. Kinner, Wenqi Gan & Amanda Slaunwhite, "Fatal Harm Reduction overdoses after release from prison in British Columbia: a retrospective data linkage study" \(2021\) 9:3 cmaj Open E907 at E907.](#)

The criminalization of homelessness and substance use will create unnecessary strain on Ontario's legal and correctional systems. Where fines are laid, we know that individuals will not be eligible for legal aid (certificates are only issued when the Crown is seeking jail time). For those who are arrested and detained, there will likely be further overcrowding in our prison system. It is not uncommon for our clients to be subject to unfair lockdowns in local correctional facilities on the basis of short staffing and to face extensive pre-trial jail time due to backlogs in the judicial system. Most importantly, there is significant risk of death in custody^{5,6} and as mentioned above, within the period immediately after release.⁷

The expansion of provincial jails, announced in July 2024,⁸ raises concerns about the government's long-term intent to increase incarceration rates for non-violent offenses. This approach does nothing to address root causes and perpetuates cycles of poverty, trauma, addiction, and incarceration.

Municipalities' efforts to clear encampments have been struck down by Ontario courts (and elsewhere across the country) when there are inadequate alternative options, with the Ontario Superior Court finding that, "*The ability to provide adequate shelter for oneself is a necessity of life that falls within the right to life protected by s. 7 of the Charter.*"⁹ The Ontario government's threat to use s. 33 of the Charter, the notwithstanding clause, to effect encampment clearances in the face of a housing and affordability crisis, is unconscionable. The notwithstanding clause was never intended and should never be used to weaken the basic human rights of marginalized and vulnerable people.

Further, we are deeply concerned about Bill 242's provision that a mere suspicion of use of an illicit substance can justify a criminal charge. This flies in the face of the presumption of innocence and the onus on the Crown to prove the elements of an offence beyond a reasonable doubt.

For all of these reasons, the *Safer Municipalities Act* is ill-conceived; it will be struck as unconstitutional and this government will set a dangerous precedent by using the notwithstanding clause to uphold its repugnant and cruel approach to the housing and drug toxicity crises. All of this will distract from the real and urgent work required.

Recommendations

Instead of punitive measures, we urge the government to prioritize evidence-based solutions, including:

⁵ <https://ccla.org/wp-content/uploads/2022/12/Ontario-Deaths-in-Custody-on-the-Rise-2022-8.pdf>

⁶ <https://www.cmajopen.ca/content/cmajo/4/2/E153.full.pdf>

⁷ [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(24\)00344-1/abstract](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(24)00344-1/abstract)

⁸ <https://news.ontario.ca/en/release/1004694/ontario-building-more-capacity-in-provincial-jails>

⁹ The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained, 2023 ONSC 670 (CanLII), <<https://canlii.ca/t/jv6dc>>, retrieved on 2025-01-13 (at para. 96) and The Corporation of the City of Kingston v. Doe, 2023 ONSC 6662 (CanLII), <<https://canlii.ca/t/k1cr4>>, retrieved on 2025-01-13 (at para. 137)

- Increase social assistance rates and other income support programs, which continue to leave people well below the poverty line.
- Invest in accessible and affordable housing and supportive services, such as mental health and addiction treatment.
- Expand supervised consumption services and other harm reduction programs.
- Implementing trauma-informed, culturally sensitive training for police and community workers.
- Increase collaboration between health and social services to facilitate a comprehensive, supportive approach to addressing the health issues underlying and caused by houselessness, poverty and substance use.
- Work with stakeholders, including individuals with lived experience and front line workers, to co-design policies that address houselessness and substance use, based on evidence and compassion.

Conclusion

The *Safer Municipalities Act* represents a step backward in Ontario's approach to addressing houselessness and substance use. We **strongly oppose** this legislation and urge the government to adopt measures that reflect a commitment to human rights, public health, and community well-being.

Sincerely,



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About the Health Justice Program

The Health Justice Program (HJP) is an embedded legal service in the St. Michael's Hospital Academic Family Health Team (SMHAFHT). This partnership within a large urban primary care team, launched in late 2014, is the first in the country to adopt a poverty law and social justice lens through its collaboration with community-governed legal aid clinics: Neighbourhood Legal Services, Aboriginal Legal Services, ARCH Disability Law Centre, and the HIV and AIDS Legal Clinic Ontario (HALCO).

Each organization involved in the program has complementary expertise working with marginalized populations. We address the legal issues of low-income patients related to the social determinants of health. We help to stabilize clients' health and social circumstances, in an effort to prevent cascading problems.