

Exploring the Federal and Provincial Governments' Legal Responsibility in the Opioid Crisis

Summary Report

Introduction

Opioid addiction among First Nations is considered an epidemic by First Nation leaders in Manitoba. The emotional and social toll it has on an individual, the family and community is huge and is not publicized enough due to the stigma. It is also a Canadian societal problem that must be dealt with at each government levels, federal, provincial, municipal including First Nation governments. There are approximately 5,000 deaths per year in Canada and a substantial number are First Nations. There were an overall 4,500 deaths in 2018.

There are many types of opioids and the most common are Fentanyl, OxyContin and Vicodin. Heroin is also an opioid. There are commonly known as painkillers and when they are indigested the [drug produces intense feelings of euphoria](#). Most of the opioid are prescribed or administered by doctors to patients with chronic pain.

The illegal trafficking of these drugs is out of control in First Nations that includes street manufactured opioids that are more potent than morphine, e.g., Fentanyl. The related overdoses and deaths related to the consumption of these drugs is common. They are highly addictive and the more tolerance an addict has on these drugs leads to more consumption.

Purpose of the Report

The purpose of this document is to research and explore the federal and provincial government's responsibility in the opioid crisis. The paper identifies both level of government's legal responses, responsibilities, and the strategies they impose to curb this societal crisis.

Health Jurisdiction

First, it is important to look at the division of powers between the federal and provincial governments on health. The federal government has jurisdiction, in what they term, "health" while the provinces have jurisdiction on "health care", the delivery of health services. The federal health jurisdiction addresses the criminal element on drugs such as drug offenses and penalties.

Who is responsible for health care on-reserve? The jurisdiction relates to the British North America Act in which section 91(24) states the federal government has legal authority over Indians and lands reserved for Indians which includes the provision of health services on reserve via the Indian Act.

The federal government provides health funding to First Nations through First Nation and Inuit Health Branch (FNIHB) including non-insured benefits and among other things, special funding for mental health and

addictions. Over the years Health Canada has provided and supported community-based opioid agonist treatment sites in First Nations. As part of their responsibilities, the Canada website also relates that they continue to improve [access to naloxone](#) (a drug that reverses the negative effects of opioids) including to remote communities and isolated First Nations. It would be worthwhile to determine how successful these programs are.

Federal legal response to the Opioid Crisis

More recently, the federal government has enacted two legislation that addresses the opioid crisis but the *Controlled Drugs and Substances Act* (CDSA) continues to be the main drug-control legislation in Canada. The legislation has criminal offenses involving possession, production, and illegal of opioids, including cocaine, heroine, amphetamines, and other drugs. Other than CDSA other drug related offenses can be found in the criminal code and the Food and Drugs Act.

As mentioned, the federal government's legal response to the opioid crisis is found in two key pieces of legislation, that is, Bill C-37, which amended the *Controlled Drugs and Substances Act* (CDSA); and the *Good Samaritan Drug Overdose Act* (GSDOA). Bill C-37 provides a supervised consumption sites which is a part of the government's *Canadian Drugs and Substances Strategy* to provide an entry point to treatment and social services for users looking to address substance usage. The GSDOA provides some

legal protection for people who seek emergency help during an overdose.

Class action suits against pharmaceutical companies

While United States pursues civil and criminal actions against physicians and pharmacies to address inappropriate prescribing and dispensing of opioids, several lawsuits have been filed against opioid manufacturers and distributors in Canada.

For example, the statement of claim filed in Ontario Superior Court by former doctor Darryl Gebien seeks more than \$1.1 billion in various damages from companies such as Apotex, Bristol-Myers Squibb, Johnson and Johnson, and the Jean Coutu Group.

The provinces have also filed statement of claims and class action suits against pharmaceutical manufacturers. The class action suits are similar to that of the litigation that were launched against tobacco companies.

The provinces are also part of the more than 600,000 claimants listed in documents filed against Purdue Pharma in the U.S. Bankruptcy Court for the Southern District of New York. The provinces have filed a \$67.4-billion claim against OxyContin producer Purdue Pharma.

For Manitoba, The *Opioid Damages and Health Care Costs Recovery Act* was introduced in 2020 which allowed Manitoba to join the class action lawsuit launched in August 2018 against Purdue Pharma in United States.

Conclusion

If the class action suit is successful, a victim-claimant who has been affected by OxyContin or any other opioid will be able to claim a settlement if he or she fits the class.

The federal and provincial governments are seen to address the opioid crisis but falls short for First Nations where it seems more programs and intervention on opioid addiction are required due to the epidemic.
