New Brunswick Women's Council | Conseil des femmes du Nouveau-Brunswick

Feedback on the proposed *Compassionate Intervention Act*

About the New Brunswick Women's Council

The New Brunswick Women's Council is an independent advisory body for study and consultation on matters of importance, interest, and concern to women and their substantive equality. Its objectives are:

a) to be an independent body that provides advice to the Minister on matters of importance to women and their substantive equality;

b) to bring to the attention of government and the public issues of interest and concern to women and their substantive equality;

c) to include and engage women of diverse identities, experiences and communities, women's groups and society in general;

d) to be strategic and provide advice on emerging and future issues; and

e) to represent New Brunswick women.

In delivering on these objectives, the Women's Council may conduct or commission research and publish reports, studies, and recommendations. The Women's Council is directed by an appointed volunteer membership that includes both organizations and individuals. The work is executed by a small staff team.

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Proposed legislation

In the 2023 throne speech,[1] government shared that it intends to "empower judges and hearing officers to order treatment for Severe Substance Abuse Disorder through the new *Compassionate Intervention Act*." The throne speech explained:

> This legislation is to help, in extreme cases, those individuals who are struggling with addiction and unable to meet their own basic needs. To help them, an intervention is required, one that includes a compassionate approach, and this legislation would set out the parameters on how it takes place.[2]

The throne speech also committed to improving adult treatment by adding 50 new residential beds which "will provide four to six months of detox and rehabilitation programming and has the potential to serve 100 to 140 individuals each year depending on length of stay."[3] The speech indicated that adding these beds will be "doubling the capacity for drug rehabilitation."[4]

This announcement was included in the "Safe communities" portion of the speech that also focused on policing and corrections and the Minister of Public Safety, Kris Austin, has led public discussion on the Act to date. Minister Austin has made statements to the media that explain treatment orders as life-saving interventions that would apply to extreme cases and bolster community safety.[5] Minister Austin has said that the legislation must set a high threshold for orders (such as "their life is in danger and they are a safety risk to those around them"[6]) with clear parameters, checks, and balances.[7]

This submission outlines the Women's Council's concerns with treatment orders. It concludes with an account of why this is an issue relevant to women's equality as well as recommendations.

Please note: Throughout this submission, the Women's Council assumes that the *Compassionate Intervention Act* will address severe instances of Substance Use Disorder (SUD), a category of diagnoses in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5). "Severe Substance Abuse Disorder" as referenced in the throne speech is not a category or diagnosis in the DSM-5.

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[1] New Brunswick, Legislative Assembly, *Speech from the throne, Third Session of the 60th Legislative Assembly of New Brunswick* (October 17, 2023), p. 12.

[2] P. 12.

[3] P. 12.

[4] P.12.

[5] Aidan Cox, "N.B. pursuing legislation that could see drug users subject to involuntary treatment" (Canadian Broadcasting Corporation, September 8, 2023).

[6] Aidan Cox (2023).

[7] Barbara Simpson, "N.B. searches for location for new 50-bed drug rehab facility" (Telegraph-Journal, November 7, 2023).
and
Aidan Cox (2023).

Efficacy of treatment orders in addictions recovery

There is no convincing proof that involuntary treatment is an effective means of addressing SUD. In a 2023 Canadian review of studies on the outcomes of forced treatment in various countries,[8] researchers found that "the data on involuntary treatment for adult nonoffenders with SUD suggests that voluntary treatment outperforms involuntary treatment. In addition, involuntary treatment gains are often lost at a greater rate after treatment completion than those seen for voluntary treatment[.]"[9]

Government's intended purpose for the *Compassionate Intervention Act* may not be to support individuals in achieving long-term recovery but rather to prevent immediate harm or death. Involuntary treatment is not necessarily going to meet that goal either, as the 2023 review found that "involuntarily treated patients with SUD are at a higher risk of overdose after treatment."[10] This is because after treatment individuals are often returned to the environment and circumstances in which they consumed substances. If they resume substance use once they have lost their tolerance, they are more likely to overdose. Another study[11] that followed 22 patients after being discharged from a hospital directly into involuntary commitment for SUD in Massachusetts found that in the year after involuntary commitment "all patients had relapsed to substance use and had at least one emergency department visit while 78.6% had at least one admission" and that "two patients, representing nearly 10% of our study population, died within a year of involuntary commitment."[12] The study states that "These findings suggest that patients discharged to involuntary commitment directly from the hospital universally relapsed and experienced significant medical morbidity during the first year following their release."[13]

The 2023 review did find that "some exceptions exist where some patients receiving involuntary treatment with severe SUD can significantly improve and may not access treatment otherwise."[14] These positive outcomes, however, would require treatment "that addresses many of the social determinants of health (eg, housing, finances, medical care, psychiatric care)… and have highly supportive and planned after care."[15]

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[8] Emily Cooley, Anees Bahji and David Crockford, "Involuntary Treatment for Adult Nonoffenders With Substance Use Disorders?" (the Canadian Journal of Addiction, 14, 2, June 2023).

[9] P. 29.

[10] P. 29.

[11] John C. Messinger, Lisa Vercollone, Scott G. Weiner, William Bromstedt, Carol Garner, Jacqueline Garza, Joshua W. Joseph, Leon D. Sanchez, Dana Im, and Alice K. Bukhman, "Outcomes for Patients Discharged to Involuntary Commitment for Substance Use Disorder Directly from the Hospital" (Community Mental Health Journal, 59, March 2023), p. 1 300.

[12] P. 1 304.

[13] P. 1 300.

[14] Cooley et al., p. 29.

[15] P. 29.

Overall, the review's conclusion was that:

> Evidence suggests limited benefits for some involuntarily treated patients, but voluntary treatment outperforms involuntary treatment. The use of involuntary treatment for SUD would likely require special legislation, the development of designated treatment sites, increased staffing, and extensive aftercare programming. Given the limited evidence and potential major ethical and legal issues, it may be difficult to justify the costs of such changes. Resources should first be directed toward expanding voluntary treatment options before considering involuntary treatment approaches in Canada.[16]

If involuntary treatment is pursued, the review was clear about "the need for coordinated aftercare, especially immediately after leaving involuntary treatment, to reduce relapse and overdose risk"[17] and emphasized aftercare that addresses "potentially modifiable social determinants of health and other causal factors contributing to the SUD."[18] It notes that even routine aftercare often does not occur, let alone robust aftercare, and cautions that "Without these in place, any potential gains from involuntary treatment would likely be quickly lost with heightened overdose risk [.]"[19] The review also identified the need for "significant safeguards required to ensure that already vulnerable or racialized minorities are not at risk of further discrimination or trauma."[20]

Similar concerns about the efficacy and risks of involuntary treatment have already been shared with government, notably via a letter[21] signed by front-line workers, health care providers, and researchers from New Brunswick and the Atlantic region with relevant expertise. Minister Austin's response to these concerns has been to position the *Compassionate Intervention Act* as the only alternative to ignoring or giving up on the issue, leaving people on the streets, and ultimately allowing them to die.[22] In an interview, Minister Austin said "All of these quote unquote experts that seem to think that things like incarceration, and you

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[16] P. 25.

[17] P. 29.

[18] P. 30.

[19] P. 30.

[20] P. 29.

[21] Aidan Cox, "Criticism mounts over N.B. public safety minister's plan to force drug users into rehab" (Canadian Broadcasting Corporation, September 18, 2023).

[22] Aidan Cox, "N.B. pursuing legislation that could see drug users subject to involuntary treatment" (Canadian Broadcasting Corporation, September 8, 2023).

and

Barbara Simpson, "N.B. searches for location for new 50-bed drug rehab facility" (Telegraph-Journal, November 7, 2023).

know, recovery facilities are not effective, what I would say is, you know what we're doing now is not effective—keeping people on the streets."[23]

This policy is not evidence-based. There may be a limited number of occasions where involuntary treatment could be helpful if there is comprehensive material support to the individual's broader life circumstances during and after treatment. This would require the kind of social safety net that New Brunswick does not already provide. If government plans to make such supports available to individuals in involuntary treatment, it has not shared this publicly.

The potential for limited benefits to a few individuals is far outweighed by the risk that will be posed to others, as well as the potential violation of the *Canadian Charter of Rights and Freedoms*. Additionally, pursuit of this policy will divert resources from more promising interventions and cause downstream issues (which are explored in the following sections of this brief).

The approach government has taken to introducing treatment orders to the public is also concerning. The throne speech not only misnamed SUD, it used out-of-date and harmful language by referencing "Severe Substance Abuse Disorder."[24] The file is not being led by the Department of Health or the Department of Social Development but rather the Department of Justice and Public Safety. Minister Austin's response to justified criticism of the policy has been to dismiss experts' subject-matter knowledge and incorrectly suggest that their proposed alternative is to leave people to die. This approach does not engender confidence that the *Compassionate Intervention Act* will address SUD in an evidence- or equity-based way or that it will centre the needs of the vulnerable people that it is said to support.

Barriers to services and increased surveillance

Treatment orders are likely to increase barriers to social and health care services for several populations.

People with SUD who are struggling to meet their needs may fear treatment orders and therefore avoid reaching out for services, even for issues unrelated to substance use. This would, among other negative impacts, close off potential paths to voluntary treatment. People with SUD who also experience racism, ableism, homophobia and transphobia, classism, etc. in service settings may be particularly likely to avoid accessing support due to concern that existing discrimination could increase their chances of being ordered into treatment.

Fear of treatment orders may extend beyond those who would be eligible for them. People who are visibly homeless, living in poverty, or living with mental illness experience social exclusion, social profiling, and

[23] Aidan Cox, "Criticism mounts over N.B. public safety minister's plan to force drug users into rehab" (Canadian Broadcasting Corporation, September 18, 2023).

[24] This is further explored in the "Increased stigma" section of this submission.

criminalization of their social status.[25] If treatment orders become available, these populations are likely to be subject to even greater monitoring and scrutiny, which could lead to increased harassment and marginalization. These populations may avoid seeking services because they are wary of treatment orders, increased surveillance, or harassment. Within these populations, people who are also navigating racism and other oppressions in service settings will likely be the most impacted.

Finally, the conditions of increased mistrust and surveillance in service settings that are likely to be caused by treatment orders may also increase barriers to health care for populations who are often perceived as drug-seeking even if they are not struggling with SUD. This includes people who are living with chronic pain[26] and people who are racialized.[27]

Increased stigma

Treatment orders will increase stigma around SUD. This will impact people with SUD, as well as people who are often assumed to be struggling with SUD (e.g., people who are visibly homeless, living in poverty, or living with mental illness).

Stigma is "a powerful social process that is characterized by labeling, stereotyping, and separation, leading to status loss and discrimination, all occurring in the context of power."[28] The impact of stigma is significant. According to the Public Health Agency of Canada,

> Stigma blocks access to health services, negatively affects both mental and physical health, and exposes people to violence and trauma. It also keeps people away from the resources they need to live a healthy life, such as having housing, an income and accessible health services.[29]

[25] Bill O'Grady, Stephen Gaetz and Kristy Buccieri, Can I See Your ID? The Policing of Youth Homelessness in Toronto (JFCY and Homeless Hub, 2011).

[26] Lise Dassieu, Angela Heino, Élise Develaya, Jean-Luc Kaboréa, Gabrielle Pagé, Gregg Moor, Maria Hudspith, and Manon Choinière, "They think you're trying to get the drug': Qualitative investigation of chronic pain patients' health care experiences during the opioid overdose epidemic in Canada" (Canadian Journal of Pain, 5, 1, 2021).

[27] Astha Singhal, Yu-Yu Tien, and Renee Y. Hsia, "Racial-Ethnic Disparities in Opioid Prescriptions at Emergency Department Visits for Conditions Commonly Associated with Prescription Drug Abuse" (PLoS One, 11, 8, 2016).

[28] Laura Nyblade, Melissa A. Stockton, Kayla Giger, Virginia Bond, Maria L. Ekstrand, Roger Mc Lean, Ellen M. H. Mitchell, La Ron E. Nelson, Jaime C. Sapag, Taweesap Siraprapasiri, Janet Turan, and Edwin Wouters, "Stigma in health facilities: why it matters and how we can change it" (BMC Medicine, 17,2019).

[29] Public Health Agency of Canada, Government of Canada, Addressing stigma in Canada's health system is critical for improving health outcomes (2019).

SUD is already extremely stigmatized. A 2017 review of studies on stigma toward people with SUD among the general public in various countries found that:

> the public holds very stigmatizing views towards SUDs. Individuals with SUDs were likely to be seen as dangerous and unpredictable, unable to make decisions about treatment or finances, and to be blamed for their own condition. Heightened stereotyping can lead to negative emotional reactions, consistent with the reactions seen towards individuals with SUDs, e.g., pity, anger, fear, and a desire for social distance.[30]

In health care, stigma contributes to people who use substances experiencing negative attitudes from providers, lower quality of care, and the withholding of services.[31] Stigma poses a barrier to accessing treatment for substance use; it also makes treatment less effective when it is accessed.[32]

Treatment orders will increase stigma by sending the message that people struggling with substance use deserve to be forcibly removed from community and subjected to medical care that they did not consent to, is unlikely to work, and may increase their risk of death. This will, in turn, validate the increase in monitoring and scrutiny that treatment orders are likely to cause in service settings.

Government has not demonstrated that it has plans to mitigate the increases in stigma that the *Compassionate Intervention Act* will create. Instead, it has already upheld SUD stigma through the language used in the throne speech (i.e., misnaming SUD as "Severe Substance Abuse Disorder"). Using non-stigmatizing language is not a matter of being euphemistic for the sake of politeness or delicacy but part of the work of creating conditions that effectively support people with SUD.[33] It is concerning that such a basic practice was overlooked by government when it introduced the possibility of treatment orders to the public.

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[30] Lawrence Yang, Liang Y. Wong, Margaux M. Grivel, and Deborah S. Hasin, "Stigma and substance use disorders: an international phenomenon" (Curr Opin Psychiatry, 30, 5, 2017).

[31] James D. Livingston, "Structural Stigma in Health-Care Contexts for People with Mental Health and Substance Use Issues, A literature review" (Mental Health Commission of Canada, 2020).

and

Leonieke C van Boekel, Evelien P M Brouwers, Jaap van Weeghel, and Henk F L Garretsen, "Stigma among health professionals towards patients with substance use disorders and its consequences for healthcare delivery: systematic review" (Drug Alcohol Dependence, 1, 2013).

[32] Anne C. Krendl and Brea L. Perry, "Stigma Toward Substance Dependence: Causes, Consequences, and Potential Interventions" (Psychological Science in the Public Interest, 24, 2023).

[33] Janet Zwick, Hannah Appleseth and Stephan Arndt, "Stigma: how it affects the substance use disorder patient" (Substance Abuse Treatment, Prevention, and Policy, 15, 2020).

Community safety

The policy logic of treatment orders as a community safety measure is presumably that once an individual with SUD completes treatment, they will either abstain from or struggle less with substance use and thus be more likely to meet their basic needs and less likely to commit bylaw or criminal offenses.

Treatment orders are unlikely to have the desired effect on individuals with SUD, though, and may instead entrench substance-related challenges that individuals and communities face by increasing stigma and driving people away from services.

Given this, examining what treatment orders are likely to accomplish reveals the policy's actual logic.

In the immediate term, treatment orders are likely to result in individuals who are visibly struggling with SUD to the point that they are not meeting their needs being removed from community and relocated, at least temporarily, to a residential treatment facility. There, they will be subjected to health care that they did not consent to, is unlikely to support them in recovering from SUD, and may increase their risk of death upon release. Longer-term, treatment orders will further stigmatize SUD, making it increasingly difficult for people with SUD to access recovery support and other social and health care services.

By laying out the likely outcomes of treatment orders, it becomes clear that the logic of the *Compassionate Intervention Act* is not to effectively treat individuals with SUD and thus increase community safety by reducing offenses. Rather, the logic is that community safety demands the removal of certain individuals from community and treatment orders are how this can be done outside of existing systems (i.e., the criminal justice system or the *Mental Health Act*). Even the increased stigma that treatment orders will create fits into this logic: the more people struggling with SUD are stigmatized, the more their removal from community will be viewed as defensible or even desirable, regardless of the harm it causes or the potential *Charter* violation. The Department of Justice and Public Safety's leadership on the file also fits into this logic, as does Minister Austin's reference to incarceration when defending treatment orders.[34]

The letter to government signed by a number of experts has already flagged that this is the likely outcome of the *Compassionate Intervention Act*. The signatories explained that treatment orders will be punitive and a form of "medicalized incarceration."[35]

[34] Aidan Cox, "Criticism mounts over N.B. public safety minister's plan to force drug users into rehab" (Canadian Broadcasting Corporation, September 18, 2023).

[35] Open Letter Opposing Legislated Forced Abstinence & Medicalized Incarceration of People Who Use Drugs in New Brunswick

Impact on the substantive equality of women

The *Compassionate Intervention Act* will impact the well-being and possibly violate the *Charter* rights of women who will be subjected to treatment orders. It will impact all women living with SUD as they will experience increased stigma and thus access to treatment will be more challenging. It will likely impact women who are visibly homeless, living in poverty, and living with mental illness regardless of whether they are struggling with SUD by increasing surveillance, stigma, and barriers to services. It is likely to disproportionately impact any of these women who are 2SLGBTQIA+, racialized, or disabled.

Treatment orders are a risk to women's equality in that they use institutionalization as a public policy response to marginalized and stigmatized populations in need of support. Institutionalization involves removing people from family and community, placing them in congregate living situations and denying them control over daily activities. The rationale for institutionalization is ostensibly to provide care for those who cannot care for themselves; in reality, it is often used to disappear a specific population from community. Institutionalization is stigmatizing, isolating, and has historically led to significant harm.[36] Increased use of institutionalization is a threat to the well-being and equality of marginalized groups who have historically been pathologized—this includes women, especially those who are 2SLGBTQIA+, racialized, disabled, or living in poverty. The *Compassionate Intervention Act* will both expand and further normalize institutionalization in New Brunswick.

Finally, the Women's Council is concerned that the approach to policy-making and governing that is being demonstrated in the *Compassionate Intervention Act* poses risks for women's equality.

Advancing women's equality requires policy that is evidence- and equity-based and that centres the people who are the most marginalized and impacted. It requires policy that is co-created with relevant experts, including researchers, people with lived experience, and service providers. The *Compassionate Intervention Act* meets none of these requirements.

Instead, the *Compassionate Intervention Act* will advance a policy that is likely to hurt, at both and individual and systemic level, the very people it is said to support. There has been no transparency on the logical end point of the Act, which is the creation a new form of detention under the guise of healthcare. In the face of criticism that named what the likely outcome of the Act will be, government's response has been to imply that relevant subject matter experts are not experts at all and to misrepresent their proposed alternatives.

This is an approach to policy-making and governing that is likely to undermine people's trust in government as an institution. This is extremely concerning at this time of rising far-right extremism. The Women's Council has previously provided government with advice on far-right extremism, and its unique impacts on women, in its Submission to the Commissioner on Systemic Racism and its brief The rise in organized anti-2SLGBTQIA+ activities in New Brunswick.

[36] Truths of Institutionalization: Past and Present

Recommendations

On the *Compassionate Intervention Act* specifically, the Women's Council recommends that government:

- halt the development of this legislation;
- engage with experts on SUD (individuals with lived experience, community-based service providers, health care professionals, and researchers) to co-create evidence- and equity-based policies to support people struggling with SUD; and
- invest in social infrastructure to address the root causes of SUD.

More broadly, the Women's Council recommends that government:

- support marginalized populations through evidence- and equity-based policy, gender-based analysis, and co-creation with experts;
- refrain from baselessly undermining subject-matter experts when they challenge government's preferred policies; and
- refrain from misrepresenting critiques and alternatives that subject-matter experts propose in response to government's preferred policies.