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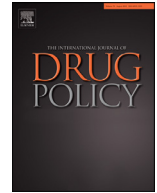
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## A highly charged field: Mapping energies, currents and desires for reform in Canadian expert responses to drug law

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### ABSTRACT

While many experts consider major changes to legal approaches to drug use necessary, achieving such change has proven to be difficult. The political process is often seen as integral to bringing about change, largely due to orthodox understandings of the 'nature' of law, in which law is made by parliaments and capable of revision in only limited instances. In recent years, theorists such as Bruno Latour (2009, 2013), Andreas Philippopoulos-Mihalopoulos (2015) and Serge Gutwirth (2015) have taken a more expansive view of the nature of law and its effects. According to these theorists, law also emerges from outside the political process, including through various *practices* such as those of professionals working within legal systems, and those engaged in resistance, navigation and subversion (Seear, 2020). This article explores these processes using Karen Barad's (2015) work on lightning. As we will explain, Barad presents lightning as a 'queer', non-linear, uncertain and indeterminate phenomenon, using it to understand causation in new ways. Along with Barad's ideas, the article draws on interview data ( $N = 35$ ) collected for two research projects in Canada. These interviews were conducted with senior drug use-related policy makers, service providers, advocates and lawyers based in British Columbia and Ontario, Canada. The interviews explore how key Canadian experts view drug law, debates about law and policy and whether they support reform. We also explore how these experts navigate the criminalisation of drugs and whether any insights can be drawn from their practices, including their attempts to navigate, subvert or change the law. First we consider experts' concern about current prohibitionist legal frameworks, finding it widespread, along with appetite for change. Second, we examine experts' accounts of strategies used for working around or challenging punitive frameworks. We find that change, like lightning, is complicated and messy; simplistic approaches to changes are not always possible, and may in fact make matters worse. There are multiple, unpredictable effects in engaging and resisting law, and thus difficulty in tackling criminalisation in any clear and simple way. Practices and processes of responding to and resisting drug-use criminalisation can thus be understood in terms that reflect the 'queer', indeterminate, unpredictable and multidirectional nature of Barad's lightning. In concluding, we note that this way of understanding legal processes and resistance has implications for the future of Canadian drug policy, including debates about whether it is possible to work within a framework of overarching criminalisation.

Not a trail from the heavens to the ground but an electrifying yearning for connection that precedes this and that, here and there, now and then.

(Karen Barad, 2015: 388)

### Introduction

With the United Nations recently making a statement in support of the need for reform to international drug laws (United Nations Chief Executives Board for Coordination, 2019), legal change is now the subject of intense debate globally. Such debates are multifaceted but focus on issues such as whether reform is necessary, and how best to achieve it. For some, the political process is seen as integral to bringing about such reforms. Change, that is, depends on politicians being prepared to reform the laws that prohibit use, possession and supply of drugs. This view is based on an orthodox understanding of the 'nature' of law, one in which law is made by parliaments and capable of revision in only limited instances. In recent years, however, theorists such as Latour (2009, 2013),

Philippopoulos-Mihalopoulos (2015) and Gutwirth (2015) have challenged such orthodoxies, noting that law is complex and diffuse, with multiple origins, including origins outside the political process. Such origins include *practices* undertaken by professionals working within legal systems, and those engaged in resistance, navigation and subversion of those systems (Seear, 2020), as well as other affective human and non-human forces.

This article explores these various dynamics and their significance to debates about law reform, drawing on interviews ( $N = 35$ ) collected for two research projects in Canada. Interviews were conducted with senior policy makers, service providers, advocates and lawyers based in British Columbia and Ontario, Canada to explore how drug use-related experts view drug law and debates about law and policy and whether they support reform. As we will demonstrate, many identify the need for change, and for support and advocacy across sectors, as well as for clarity about how best to effect such change. Given these needs, there is value in understanding more about how those who work within these fields navigate the criminalisation of drugs and whether any insights can be drawn from their practice for the future of legal approaches to

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drugs, since these dynamics and forces also constitute law and its effects, including unanticipated and problematic effects. We thus explore how these experts navigate the criminalisation of drugs and whether any insights can be drawn from their practices, including their attempts to navigate, subvert or change the law.

Overall we find widespread appetite for change and varying strategies for working around or challenging existing punitive frameworks. To understand these processes, we turn to Karen Barad's (2015) work on lightning. Based in her influential 'posthumanist performativity' approach, Barad's piece presents lightning as a 'queer', non-linear, uncertain and indeterminate phenomenon, using it to understand causation in new ways. We find that practices and processes of resisting criminalisation are similarly 'queer', indeterminate, unpredictable and multidirectional. What emerges in expert practices, we argue, is less rational, intentional or controllable than we might assume, and can generate or exacerbate problems in unforeseen ways. There are, in other words, multiple, unpredictable effects in engaging and resisting law, and thus difficulty in tackling criminalisation in any clear and simple way. This way of understanding legal processes and resistance has implications for the future of Canadian drug policy, including debates about whether it is possible to work within a framework of overarching criminalisation.

## Background

Like most countries, Canada is a signatory to international conventions requiring countries to prohibit the use of specific substances (e.g. [Conference for the Adoption of a Single Convention on Narcotic Drugs, 1962](#)). Its approach has long comprised elements of both criminalisation – through the *Controlled Drugs and Substances Act 1996* – and harm reduction ([Boyd, 2017](#); [Boyd & Norton, 2019](#)). In the past, Canada's drug policy differed from that of many other Western nations, with governments embracing abstinence and rejecting drug maintenance, and resisting publicly funded drug treatment until much later than some other countries ([Boyd & Norton, 2019](#); [Strang, Groshkova, & Metrebian, 2012](#)). Later, however, such programs slowly became part of Canada's drug policy ([Boyd & Norton, 2019](#)). In 2003, a supervised injecting facility (known as 'Insite') was established in Vancouver. It was the first such facility in North America ([Boyd, MacPherson, & Osborn, 2009](#)), and operated under specific legal exemptions. The future of the service itself and harm reduction in general came under threat some years later, however, with the election of Conservative Party politician Stephen Harper as Prime Minister, and the emergence of a more conservative turn ([Wodak, 2008](#)) in Canada's drug strategy. In 2007, for instance, the Harper government introduced a new national drug policy known as the *National Anti-Drug Strategy*. Although it took neither a consistently 'liberal' nor 'conservative' approach ([Fraser, valentine, & Seear, 2018](#)), the strategy was controversial for its removal of 'harm reduction' as an avowed policy focus, moving instead to prioritise prevention of drug use, treatment and law enforcement. Seventy per cent of the total budget for the *National Anti-Drug Strategy* was allocated to law enforcement ([DeBeck, Wood, Montaner, & Kerr, 2009](#)). Importantly, the *National Anti-Drug Strategy* is only one component of Canadian drug policy. In 2007, for instance, the Harper-led government supported punitive sanctions for cannabis possession, trafficking, cultivation, and importing and exporting and various other punitive law and order initiatives of relevance to people who use drugs (see [Boyd & Carter, 2014](#)). During this period, the Federal Minister for Health decided not to grant further legal exemptions to Insite, raising fears that the facility would be closed down. Proponents and consumers initiated a lawsuit, eventually considered by the Supreme Court of Canada in *Canada (Attorney General) v PHS Community Services Society* (2011) 3 SCR 134; also known as the *Insite* case (see [Lessard, 2011](#)). The legal challenge was ultimately successful and Insite remained open, but major concerns about the direction and future of Canadian drug policy continued to grow.

In 2015, Canada elected a new government, led by Liberal Party politician Justin Trudeau. Trudeau's government initially administered the *National Anti-Drug Strategy*, replacing it with a new strategy on the 1st of April 2017. Known as the *Canadian Drugs and Substances Strategy*, it is described as a 'comprehensive, collaborative, compassionate and evidence-based approach to drug policy', and comprises prevention, treatment, harm reduction and enforcement. In this way, an approach including harm reduction was restored. Across this period, two major developments in the Canadian drug landscape unfolded. The first involved the legalisation of cannabis for non-medicinal purposes, subject to certain limits, through the *Cannabis Act 2018*. Some heralded this as evidence of a significant progressive turn in Canadian drug policy. At the same time, however, a major opioid overdose crisis had emerged, with 14,700 Canadians experiencing apparent opioid-related deaths within three years ([Special Advisory Committee on the Epidemic of Opioid Overdoses, 2020](#)). The reasons for this crisis are complex but include the appearance of fentanyl – a synthetic pain medicine many times more potent than heroin – in the illicit drug market ([Brown & Morgan, 2019](#)). The emergence of this crisis was seen by some as indicating that Canada's reputation as making progress on drug issues is both overstated and unwarranted. Overall, these developments raise important questions about how best to understand or characterise Canada's approach to drug policy. Subject to instability and flux, marked by tension, progress and tragedy, it is clear that the Canadian drug policy landscape cannot be described using simplistic labels (e.g. 'progressive', 'conservative'). Rather, it is dynamic and unstable, marked by occasional ground-breaking reforms, as well as major crises and conservative turns.

All of these developments raise questions about how Canadians understand their approach to illicit drugs, the strengths and weaknesses of existing approaches, and whether and in what ways existing approaches might be improved. Some research has already been conducted on related issues, typically taking the form of survey-based public opinion research. For instance, Canadian researchers have written about public attitudes towards: the regulation of alcohol ([Macdonald, Stockwell, & Luo, 2010](#)); public health approaches to illicit drugs and decriminalisation ([Ipsos, 2018](#)); and specific initiatives such as supervised injecting facilities ([Bardwell, Scheim, Mitra, & Kerr, 2017](#)). Research on the views of expert stakeholders such as policymakers, service providers, advocates and lawyers is much less common. Where it has been undertaken, some of this research has been limited in scope, leaving unquestioned key notions of 'the public' or 'publics' in accounts of public policy and the law (see [Fraser et al., 2018](#)). Very little research has also been done on how people working within these systems actually respond to changes and developments of the kind we have described here. How do those who work within these contexts view Canada's shifting approach to drugs? How do they work within or respond to a changeable and changing context? And what is their overall view on the criminalisation of drugs, given it remains dominant in Canada? Over the course of some of the major events described above (2014–2018), we explored these questions across two research projects that examined alcohol and other drug policy, service provision and law in Canada. Although conducted separately, both projects shared several concerns, including an interest in the experiences and views of those working in Canada and in how Canada's approach to alcohol and other drugs compared to other countries (Australia and Canada, and for one project, Sweden). As the findings from those other countries has been documented elsewhere, we do not report on them here. Instead, this article focuses on how key stakeholders working in policy, service provision, advocacy and legal practice viewed and experienced drug policy and practice. The research we report here coincided with the aforementioned change in federal government, the shift from the *National Anti-Drug Strategy* to the *Canadian Drugs and Substances Strategy*, the legalisation of cannabis and the emergence of the overdose crisis. Our projects also coincided with major legal challenges to aspects of Canadian drug policy, including a case in the Supreme Court of British Columbia (*Providence Health Care Society*

v Canada) in which plaintiffs sought access to heroin-assisted treatment (HAT). We were interested in gaining an understanding of how experts in the field viewed Canada's approach to drugs broadly, and how they reacted to specific developments and challenges of the kind we have described here. In addressing these questions, participants we interviewed described a range of actions and strategies for anticipating, navigating, challenging and sometimes circumventing existing legal conditions around drug use. Participants also expressed several concerns about the implications of their attempts to work around existing legal regimes. For reasons that will become clearer as this article progresses, these descriptions have implications for how we think about the future of drug policy and law. Thus, it is necessary to first explain how we conceptualise the legal framework within which these experts were operating, and to provide an overview of recent theoretical developments on the nature and meaning of law.

### Theoretical approach: The 'nature' of law

In common law systems, law is traditionally conceptualised as emerging from two main sources: parliaments, who make the laws, and courts, who interpret, refine and revise them. When law is viewed in this way – through what we will call the 'orthodox' approach – it is understood to be capable of revision and refinement only in limited circumstances, by specific individuals. In recent years, scholars have revised and problematised the orthodox approach, however, reimagining what the law is, how it is made (or adapted) and who does such work. Several scholars have considered these questions, working from diverse perspectives including legal anthropology and geography, criminology, sociology and feminist theory (e.g. Latour, 2009, 2013; McGee, 2015; Davies, 2008). The specific interests and approaches of these scholars differ, but a common thread runs through much of this work: it challenges the orthodox account of the 'nature' of law as we have described it. For instance, science studies theorist Gutwirth (2015) draws a distinction in his work between 'two modes' of law – what he calls Law1 and Law2. Law1 comprises the 'formal sources' of law such as legislation, regulations and case law. Law2 comprises the *work done* by individuals such as judges and lawyers in producing these formal sources, and thus describes 'law as a practice, which again and again, case by case, is reactivated to produce, state or "draw" the *vinculum iuris* [a bond of law]' (2015: 132; original emphasis). In this sense, a paradox exists between law as something that seems to be both 'already there' and 'not yet stated'. In Gutwirth's view, discussions about law are characterised by 'incessant switching' between these two modes. This has the effect of 'blurring our understanding' of how law is made and sustained and what it produces. Gutwirth's emphasis, in other words, is on *law as a practice*, constituted and sustained by specific figures (lawyers and judges), shaped by processes such as anticipation. In this, Gutwirth shares something with Bruno Latour, who has turned his attention to the law in recent years. Latour also emphasises practices, noting that the essence of law 'does not lie in a definition but in a practice' (2009: x).

Valverde (2003) has also considered these issues, although from a slightly different perspective. As Valverde (2003: 5) explains, parties to a case 'can be said to *constitute* knowledge in the very process of "using" it'. The ontology of law is produced in part by these processes, including the work of parties to a case, and by the connections they articulate and forge (see Matthews & Veitch, 2016). In the work of Gutwirth, Latour and Valverde, we see an emphasis on law and legal 'truths' as dynamic, fluid, fragile and emergent (see also McGee, 2015). This emphasis on fragility is not to suggest, of course, that the formal sources of law (such as statutes) have no force or meaning, but, rather, that seeing law as only this is limiting. Law is a material-discursive phenomenon; its content is not pre-determined or stable. Law can be generated outside the political (or parliamentary) process, and these practices can bring into being other realities, including new ways of being and new subject formations (Seear, 2020). In recent times, critiques of the orthodox approach to law have been taken even further, particularly in the work of legal

theorist Andreas Philippopoulos-Mihalopoulos. He argues for an even more expansive reading of law, influenced by the 'spatial turn' and by philosophers such as Baruch Spinoza and Gilles Deleuze, as well as the more recent feminist philosophy of Moira Gatens, Elizabeth Grosz and Rosi Braidotti. At one point, Philippopoulos-Mihalopoulos (2015: 68) explains that for him, 'Although law production is a prescribed process, the law itself is not'. From here he introduces a theoretical innovation that he calls 'the lawscape': a notion designed to capture the dynamic, 'tautological', posthuman, spatiotemporal and relational aspects of the law, and the role that human, nonhuman, inanimate bodies and objects play in its constitution. In this sense, Philippopoulos-Mihalopoulos departs from Latour's work (the specifics of which are not relevant to the argument we make here), and appears to go much further than even Gutwirth and Valverde in his rendering of whom law constitutes, and who constitutes law itself. As he (2015: 69; original emphasis) puts it:

*Every body lawscapes.* The law in the lawscape emanates from every body, without one discernible origin. In that sense, human, natural, artificial bodies come together in determining and being determined by the law. For this reason, I would talk about the law as an expansive *institutional affect* that permeates the formal and the informal, the abstract and the material.

Little work has been done to date to adapt ideas such as these to the study of drug law and policy. One recent example is work done by this article's first author, Seear (2020), on 'addiction' and the law. Drawing insights from the work of Latour (2009, 2013), McGee (2014, 2015) and Gutwirth (2015), amongst others, Seear argues that practices of lawyering actively constitute law and the legal subjects (such as 'addicts') and other phenomena usually understood to pre-exist legal processes (such as, for example, violence against women). This work identifies an array of stabilising practices implicated in the constitution of law, including: legal strategies, processes of anticipation, articulation, connection, expression, hailing, hesitation, veridiction, binding and un-binding, linking and de-linking, forged through associations and assemblages. A key conclusion of this work is thus that legal practices of the kind noted above 'do not simply describe or address pre-existing realities but actively participate in constituting them' (2020: 172), and that we must take 'seriously the notion that what becomes in the world through legal practices is a profoundly political and ethical problem. These becomings are not limited to final legal outcomes, judgments, verdicts or resolutions, but encompass realities generated, exacerbated and stabilised, along the way' (2020: 172). Importantly, this work focuses on the role of lawyers and judges in the constitution of legal truths, and thus does not go quite as far as Philippopoulos-Mihalopoulos (2015) does in its consideration of how else law might be constituted. As we will explain in the sections to follow, policymakers, service providers, advocates and lawyers describe themselves (and others) as playing central roles in re-constituting or reconfiguring law and the subjects of law. These processes have significant implications for how we understand the diversity, fragility and mutability of law, and for our understandings of the limitations of fragmentary attempts to 'resist' or remake it.

In order to understand why and how these attempts might be limited, and to better figure the dynamics of instability, uncertainty and anticipation that characterise the operations of law, we turn to the work of feminist science studies theorist Karen Barad, whose work on matter and becoming we consider especially useful for reconceptualising legal practices. In a 2015 article, Barad writes about the phenomenon of lightning, describing it as 'a reaching toward, an arcing dis/juncture, a striking response to charged yearnings' (2015: 387). The production of a lightning bolt, put simply, is not a 'straightforward resolution of the buildup of a charge difference between the earth and a storm cloud' (Barad, 2015: 398). Rather, as Barad explains in describing the process as depicted in a documentary:

The first inklings of a [lightning bolt] path have a modest beginning, offering no indication of the lightning bolt to come. [According to the



documentary,] “It begins as a small spark inside the cloud five miles up. A spurt of electrons rushes upwards, travels a hundred meters then stops and pools for a few millionths of a second. Then the stream lurches off in a different direction, pools again, and again. Often the stream branches and splits. *This is not a lightning bolt yet*” (my emphasis). These barely luminous first gestures are called stepped leaders. But the buildup of negative charges (electrons) in the lower portion of the cloud does not resolve itself by a direct channel of electrons making their way to the earth in this fashion. Instead, *the ground* responds next with an upward signal of its own. “When that step leader is within ten or a hundred meters of the ground, the ground is now *aware* of there being a big surplus” of charge, and “certain objects on the earth respond by launching little streamers up toward the stepped leader, weakly luminous plasma filaments, which are trying to connect with what’s coming down.” This is a sign that objects on the ground are attending to the cloud’s seductive overtures. When it finally happens that one of the upward responses is met by a downward gesture, the result is explosive: a powerful discharge is effected in the form of a lightning bolt. But even after a connecting path has been playfully suggested, the discharge does not proceed in a continuous fashion: “The part of the channel nearest the ground will drain first, then successively higher parts, and finally the charge from the cloud itself. So the visible lightning bolt moves up from ground to cloud as the massive electric currents flow down.” (Barad, 2015: 397–398)

Ultimately, then, the ‘path that lightning takes not only is not predictable but does not make its way according to some continuous unidirectional path between sky and ground’ (2015: 398). Instead, lightning’s becoming is a ‘decidedly queer’ phenomenon (Barad, 2015: 408): one that ‘has always danced on the razor’s edge between science and imagination’ (2015: 389), emerging via complex and unpredictable entanglements of action and anticipation in intra-action. It can be both ‘already there’ and ‘not yet stated’. Barad uses the figure of lightning in an experimental way: to understand social and political issues such as the treatment of trans and gender diverse bodies, and to rethink the ‘nature’ of materiality. As Barad explains it, the pathway between clouds and the earth – that area in which lightning bolts form – is a ‘highly charged field’: one that ‘crackles with desire’. It is a dance, of sorts, between multiple forces that are errant, indeterminate and unpredictable in their intra-action (Barad, 2007).

The ‘nature’ of law might also be understood in this way, in that it too is not straightforwardly predictable or linear. Shaped by practices and human and nonhuman bodies and inanimate objects in intra-action, law – like lightning – does not follow a continuous and unidirectional path. Rather, it is characterised by strange and unpredictable lines of causation, guided by charges from multiple directions that generate, and operate through, anticipation, desire, and by the meeting of upward and downward gestures. In considering the figure of lightning, this much becomes apparent in the accounts of the participants we interviewed, and in their explanations of how they attempt to circumvent criminalisation, and what is brought into being along the way. In the analysis to follow, we explain how law’s unpredictability unfolds, also asking how law may be worked with and revised in a context that sees its operations as so laden with anticipation, circuitry and desire.

## Methods

As noted above, this article draws on work undertaken for two large studies funded by the Australian Research Council. The first was an Australian Research Council Future Fellowship, held by the second author [FT120100215]. This project was designed to explore the ideas and assumptions shaping the work of professionals within the alcohol and other drug field. It gathered data internationally as a means of casting widely and looking for ideas and practices able to illuminate responses in all settings. In total the project collected 80 qualitative interviews

with senior government and non-government AOD policymakers, service providers and advocates, spread across three national sites: Australia ( $n = 40$ ), British Columbia, Canada ( $n = 20$ ), and the Stockholm region, Sweden ( $n = 20$ ). This article draws on those interviews conducted in Canada. We use the term ‘advocates’ here to describe those working within drug user unions and peer-run services, many of whom have lived experience of drug use. We use that term as a way of acknowledging that other terms such as ‘peer’ or ‘person with lived experience’ are the subject of debate in Canada and other parts of the world (e.g. CRISM PWLE National Working group, 2019; Madden, 2019). The interviews were collected between 2014 and 2015 by a team of interviewers (see Acknowledgments for a list of interviewers). All interviewers were trained by the lead investigator (second author of this article) to maximise consistency. The interviews used an open-ended interview schedule in which participants were asked about the nature of their work, the issues they deal with in their daily activities, their understanding of key concepts in the field such as addiction, drug use and recovery, and the approaches, tools and models they rely on as well as those they consider unhelpful. The interviews were on average approximately an hour in duration and were transcribed and coded thematically using NVivo. Coding was conducted by the lead investigator and three other researchers knowledgeable in the field. These researchers were trained in the coding by the lead investigator. This collaborative process allowed the introduction of different perspectives on the codes and consideration of important points of interpretation that might have been missed by a sole coder. Coding themes were identified using a combination of methods: some themes arose from the literature, and some were derived from the interviews themselves. This article explores the theme of ‘legal and criminal justice issues’. The analytical process was iterative and open to changes in interpretation as the interview process progressed. Revisions in understandings of the significance and substance of the texts under analysis occurred continually as the researchers read, discussed, and wrote. The project was granted ethics approval by the Curtin University Human Research Ethics Committee.

The second was an Australian Research Council Discovery Early Career Researcher Fellowship, held by the first author, examining conceptualisations of ‘addiction’ in Australian and Canadian law [DE160100134]. For this project, qualitative, in-depth interviews were conducted with Australia and Canadian lawyers and Australian legal decision makers (judges, magistrates and other statutory decision makers such as tribunal members and members of parole boards) ( $N = 48$ ). Of these, 15 interviews were with Canadian lawyers, and these 15 interviews were analysed for this article. The lawyers worked across a range of areas including discrimination law, civil liberties and human rights, housing, criminal law, family and civil law. Recruitment was conducted via similar processes to those described above. Interviews were conducted by the first author, using an interview schedule in which participants were asked about: the nature of their work, how alcohol and other drug issues featured in their work, how they conceptualised ‘addiction’, their legal strategies for dealing with alcohol and other drugs, the challenges they and their clients face in legal systems and the strengths and weaknesses of existing approaches to alcohol and other drugs. The interviews were also coded and analysed using NVivo software. The project was granted ethics approval by the Monash University Human Research Ethics Committee. All interviews across the two studies were confidential, digitally recorded and transcribed verbatim. In order to preserve participant anonymity, all participants were given a pseudonym. Our approach to interpreting our interview data is unconventional, and takes inspiration from Barad’s aforementioned work on the attributes of lightning. In particular, we note that conventional research often views participants as bounded and stable individuals. We instead approach discourse as akin to a current, and our interviewees as the conduits that afford politics and meaning. In the analysis that follows, our aim is to explore interviewee accounts as currents, following Barad (2015), and to emphasise impulses and trajectories of action, thought and resistance, rather than individual acts and sentiments.

*Interviews with senior policy makers, service providers, advocates*

In interviews with senior service providers, policy makers and advocates, a range of actions and strategies were described relating to engaging with, navigating and challenging existing legal conditions around drug use. One participant (Doug), for example, explained the legal proceedings underway in relation to a planned research project, known as Study to Assess Longer-term Opiate Medication Effectiveness (SALOME), which aimed to investigate the provision of diacetylmorphine (the active ingredient in heroin) and hydromorphone, a highly regulated legal pain medication (for a discussion, see [Boyd & Norton, 2019](#); [Oviedo-Joekes et al., 2016](#)). This work followed on from a previous trial known as the North American Opiate Medication Initiative (NAOMI), which involved access to hydromorphone for the research participants as part of a trial ([NAOMI Study Team, 2008](#)). As Doug (senior health administrator) explains,

[We are now addressing] research participants exiting the [SALOME] trial [...So] the Attorney General is back in court. You know, there are a lot of parallels with the *Insite* case, and we've basically become like a ... we think of the team of the Attorney General like an extension of our branch, even though they are another ministry. We work so much with them, and a lot of that relates to the constitutional arrangements in Canada, who holds responsibilities for which parts of legislation and all that kind of stuff, and it's just ugly, and it's going to stay ugly for a while because, you know, there is a very clear difference between the political agenda federally and provincially.

Discussing the same legal proceedings and treatment issue, Edmund (director of large health NGO) explains:

We're waiting now for the decision while we're proceeding with the constitutional challenge, [which is] that we believe it's impeding their access [to treatment] according to the law [...] So it was assigned to the Chief Justice, and we're now awaiting his decision. So when I talked about ... we sometimes know the evidence that is clear and, even in this case, you know, our research supported what has been demonstrated in a number of trials around the world in different countries, but the ability then to put it into practice and give the best treatment becomes caught up in politics and philosophies that aren't borne out in evidence.

In Doug and Edmund's interviews, considerable attention was paid to advocating for the provision of a specific substance under specific conditions, using the legal system to establish this access. At the same time, the interviews emphasised the uncertainty inherent in such approaches, the potential for matters to turn 'ugly' or for confusion around 'evidence' to arise. There is also a sense that, as conditions of debate shift and political developments emerge in related areas, new and unanticipated trajectories take shape.

Other participant accounts similarly emphasise broader service provision issues. For example, Yvonne (senior administrator for a regional health authority) discussed a range of efforts to manage drug issues through health avenues and in the process draw the focus away from law enforcement:

We have been fortunate that we've had very progressive thinkers working not only in public health but politicians and others here that have understood that addiction is a health issue and I count amongst those our mayors and not just the current mayor but mayors of all political parties going back a couple of decades, our police chief [... and senior policy and public health administrators], have a deep understanding of this, and I actually say that, in order to have good public policy around addictions, it's not even a public health [issue alone] because public health people get – it [also involves] like, people like politicians and others. So in Vancouver, a couple – maybe 20 years ago, maybe not that long ago now, we developed the 'four pillars' approach to illicit drug use, the four pillars being

prevention, harm reduction, treatment and then enforcement. And that's really given us permission to develop policies around, for example harm reduction. We have a progressive policy because it is recognised that even though our federal government keeps talking about "we want to spend money in prevention treatment, not harm reduction", there was recognition here that you need to do all of it, that all these things are important because we don't have a vaccine that can prevent addiction; we don't have a magic pill that can treat it. So while we are always trying to improve prevention and treatment, there are going to be people who use drugs, and we don't want them to suffer harm from drugs, so getting the politicians to understand that gave us the landscape in which we could develop policy and then provide funding for it. So our ministry of health provides funding for all of our harm reduction programs. They give us the money that funds our supervised injection site [and] that funds all the needle exchange programs in the province. So I always give credit to the elected officials who get that and that mindset doesn't exist everywhere in Canada.

In another example of very specific efforts to anticipate, circumvent and counter the constraints introduced by the criminalisation of drugs, Denise (senior advocacy professional) described setting up and running an informal safer injecting facility before *Insite* had been established in Vancouver:

We just wanted to make sure it's safe [to inject], so there would be some people who are doctors, but sometimes they weren't around, and so sometimes we just did the best we could with whoever was here [...] You know, we had an OD protocol and everybody followed it, and if anybody sounded the alarm we'd all run and see what needed, and the rest of the people would be asked to leave and we'd call the ambulance always right away and they would come and they would go "Oh, what's going on?". They'd all be interested in, well you know, what's going on in here, and they would see that it was something that was kind of a set-up, but they were happy that we kept the person alive till they got there, and the person was usually in good shape, and all they had to do was take the person to the hospital. And sometimes the person would be revived enough that they just had to stay here for a little bit and make sure they didn't need another hit because sometimes they need a double hit of naloxone.

In Yvonne's account, ideas about harm reduction encounter newly created anticipation amongst politicians which then generates streamers to engage the charge in the atmosphere. Similarly, in Denise's account, the emergence of the informal safer injecting facility resonates with Barad's depiction of lightning's path. There are stepped leaders (articulated through individuals, nurses and doctors doing 'the best we could with whoever was here'), in a charged atmosphere, with positive streamers arising elsewhere to forge connections. In these cases, specific strategies emerged through collaboration and debate for reorienting responses to people who consume drugs, in some cases in ways that do more than follow the letter of the law. Ruby's (senior NGO policy analyst) comments take an even broader approach, focussing on drug criminalisation and its effects as a whole:

The criminalisation thing, I think it makes a big difference. I think in terms in how these things play out for people. Being sort of incited to measure your waistline is very different than actually having a prison sentence. Those are very different impacts.

Drug law is, in other words, a particular circuit incited in a uniquely charged field. William (senior treatment provider) also directly challenged the criminalisation of drug use, invoking the idea that, contrary to popular perception, people who consume drugs have human rights:

... drug users are humans too – human beings too. We have an organization here in Victoria called 'SOLID' and it's a counterpart, rough counterpart to another one called VANDU in Vancouver. Vancouver

Area Network of Drug Users. SOLID is the Society of Living Intravenous Drug Users. You know, just that people have rights and I mean this is all flies in the face of the common way of organizing our thinking around substance use, which is the legal 'slash' moral model and you know, cops are paid to uphold the law, so they're just mostly doing what they're supposed to do. Some of them with consideration and concern and some of them with you know, the usual lack of consideration and concern. The problem really lies with the law makers...

These descriptions remind us of Philippopoulos-Mihalopoulos' (2015: 69) earlier observation that multiple 'bodies come together in determining and being determined by the law', and that the 'law in the lawscape emanates from every body, without one discernible origin'. In these extracts we can also see a considerable amount of energy, commitment and resourcefulness as participants work to improve the circumstances under which consumers of illicit opioids must act to navigate society, and the support and services available to them. These energies spark new and different connections, jolting new ways of doing drug policy into being. In the next section we explore the perspectives of lawyers in Canada, who also, in different ways, work in circumstances where the rights, welfare and, in the case of criminal proceedings, liberty, of consumers of illicit opioids are in question. As we shall see, however, these accounts emphasise impulses and trajectories of action that do not always lead to straightforward, predictable or satisfactory outcomes.

#### Interviews with lawyers

As with the participants described in the previous section, lawyers raised multiple concerns with existing approaches to drug use in Canada. These concerns related to current prohibitionist approaches to drugs, existing systemic failings and shortcomings with regards to harm reduction, policing practices (especially of marginalised populations) and inconsistent approaches to alcohol and other drug use in the courts. They also expressed concerns about what emerged through legal practices, including well-intentioned attempts to circumvent the impact of criminalisation. These accounts underscore, following Barad, the mutability and unpredictability of legal trajectories. Importantly, following on from Barad, these accounts also point to the role of anticipation in the production of change.

Generally, most lawyers disagreed with existing prohibitionist approaches to drugs, although the reasons they offered varied. Amy described the approach at the time of her interview as the 'pointlessness of conservative government's prohibition on use when it's – like, you are not helping anyone by making heroin illegal. It doesn't help'. She also explained that in her experience, many of those most directly affected by prohibition were people who were already marginalised. She noted, for example, that prohibitionist approaches often compounded intergenerational trauma for First Nations people. It was also often ineffective, in her view, insofar as it was underpinned by flawed thinking. To her, it was:

funny when you think about deterrence as a sentencing principle, because it absolutely doesn't work for this category of people when, you know, gaol is just normal.

Here, prison time may appear 'normal' even as it is shaped by police profiling and colonial practices. Lawyers' perceptions of existing approaches were very much shaped by the human rights protections available in Canada, and by the ways human rights principles had been mobilised in the past to advocate for people who use drugs. Unlike some other jurisdictions, such as Australia, Canada has a robust human rights framework which permits citizens to make human rights arguments in a bid to secure protections and rights, or to challenge legislation. For some lawyers, human rights principles had emerged as a bulwark against prohibitionist approaches and the problems it generated, especially during

the period of the former conservative Harper government. The well-known and widely celebrated decision to open the Vancouver supervised injecting facility, the *Insite* case, was frequently cited as a useful example of the way that human rights mechanisms could be leveraged to secure harm reduction services and to push back against the putatively harsh outcomes of criminalisation. Cases such as those brought in support of *Insite* and another case Ontario (*Disability Support Program*) v. Tranchemontagne, 2010 ONCA 593 ("*Tranchemontagne*") were understood by lawyers as establishing that alcohol and other drug 'addiction' was a disability, thus opening up opportunities for certain accommodations and rights in areas including health, housing and employment. As Helena explained:

So I think that has maybe redefined how we think about in some circles addiction, and so now it's seen as a human rights issue, and because it's seen as a disability. The other question is how you accommodate in whether it's housing or employment or what have you, or access to disability benefits is another issue. And I think there's a lot to be thought about in terms of the construction of this as a human rights issue. It's quite complex.

Janine saw human rights approaches as a counterpoint to traditional criminal justice ones, arguing that:

the whole criminal justice system is entirely flawed. Like, I think the human rights law is sort where it's at, by recognising it as a disability that needs to be accommodated. But criminal law is just punishing people for their disability basically and not looking at it in terms of treatment and rehabilitation, but in terms of punishment and protection of society.

Here, Janine touches on a key issue in the reflections of lawyers: that human rights approaches had helped to stabilise conceptions of drug use as a health, rather than criminal, issue. Some lawyers agreed with this way of thinking about drug use. Amy, for instance, explained that:

I have always felt that drug use is a health question and in no case is it appropriate to handle health issues with gaol. We do apprehend people who are mentally ill and it violates the Charter.

At the same time, most lawyers believed that the use of human rights mechanisms had introduced new problems for people who use drugs. Such discourses can shape how subjects come to understand themselves and how they come to be understood by others (see Seear, 2020), with implications for how they move in and through the world. These accounts speak to the indeterminate nature of law and its effects, underscoring the inability of legal actors to 'control' what becomes in and through law. Thus Dana described human rights approaches as helping to bring into being 'pathologising' approaches to people who use drugs:

Because, A, I don't like labels and I don't think anybody should be labelled and defined by whatever their disability is, but, B, accepting a label in one instance is going to open up doors that it wouldn't otherwise.

As Dana argued, conceptualising drug use as addiction and addiction as a disability had not removed moral judgments about drug use:

There's just this moral underpinning that doesn't exist anywhere else. And if it's a real disability, why should the moral underpinning matter? And I recognise that there's a conflict even in my own [thinking]. I have the same sort of, 'Look, if it's that bad, don't you want to get assistance?' Sometimes I have that mentality. But when you take a step back and you look at disability and you look at critical disability thinking, you're going to say to yourself, that attitudinal barrier is one that would be unacceptable in any other discussion about disability. Why are you applying that here?

In these accounts, human rights processes had generated new 'indeterminacies in action' (Barad, 2015: 387) regarding drugs, through unpredictable and unforeseen pathways through which the charge of



desire for change meets the streamers sent up from different sites in a highly charged field.

A related area of discussion was the potential for the forces that position people who use drugs as addicts to thereby produce them as sick, non-agentive or irrational. As Barry explained, lawyers often sought to circumvent the punitive aspects of law by positioning their clients as disabled ‘addicts’. While these processes were well-intentioned, lawyers could not then control the path that these arguments took, nor what materialised in its wake:

*Barry:* What’s lacking [in law] is the holistic approach you know and the just the terminology, you know the designation of an illness, an addiction. That’s pathologising. It gets in the way.

*Kate:* What does it get in the way of, do you think, Barry?

*Barry:* It gets in the way of the person. They become identified as the label, you know, so their humanity gets lost. And the assumption in all of those designations is that something is wrong. In my perspective, these are actually indications something is right. Like these [drugs] are how people deal with their lives, there is a value in what they are doing and to eliminate it without replacing it with something, is I think like it’s too moralistic. [Drug use] serves a purpose, right?

According to Barry, when making disability arguments in court, anticipating the perspectives of decision-makers in a process that risks becoming ‘tautological’, lawyers not only participated in a practice that sometimes enacted clients as sick and irrational but did so without sufficient attention to the impact of those practices on people.

Further, lawyers said that they could not always control what emerges through advocacy. As Erica observed, for instance, human rights arguments may actually help initiate or concretise barriers to harm reduction and health care. Speaking about the *Insite* decision, she explained:

You know the idea that addiction is an illness and causes compulsion is central, like that decision would not have succeeded without that concept, and the result is that there is a harm reduction facility available to people that saves hundreds of lives a year. So without that concept that wouldn’t exist. But then you have a notion that only people who are compelled enough should be able to have harm reduction and that’s not necessarily helpful. So that you’re kind of, you know, there is always a sense of like trying to make sure you’re not undermining something that you’re really trying to enforce. Like, are you undermining the dignity of people who are really suffering to say that they, you know, that they really can’t do anything else?

Just as lightning strikes when stepped leaders and positive streamers connect in a highly charged field, and just as lightning’s strike remains unpredictable amongst many sites of anticipation, so, too, is it with the law. Erica’s account highlights this, as it does the ‘tautological’ dimensions of these legal processes.

Beyond the use of human rights-based arguments and mechanisms in cases for individual consumers of drugs, their use in creating broader change was considered by some excessively time consuming and inefficient as a method for achieving reform. As Yannick explained (talking about the *Tranchemontagne* case):

so the whole thing took about 10 years. So much for the quick way of doing it by challenging [the law].

This way of conceptualising drug use could also generate new trails and paths, leading to paternalism and forced treatment. As Yannick again explained, speaking in the wake of the *Tranchemontagne* case:

Then the government argued, aside from the jurisdiction issue, basically that the provisions were for the people’s own benefits, that part of the thing was also there was going to be mandatory treatment in order to get even basic social assistance.

In this sense, the argument that drug use was a disability might backfire – or in Barad’s terms, spark new possibilities from within the highly charged field – leading to new and differently punitive ways of governing and controlling the lives of people who use drugs. Things did not proceed in a linear or predictable fashion, therefore, instead taking unanticipated directions.

Some lawyers also expressed scepticism about the claim that the idea of addiction as a disability was now widely accepted in Canadian law. There was a sense amongst some lawyers that lower courts and tribunals had been resistant to those ideas or that they might be less willing to view drug use in such ways. As Helena explained:

First of all, I think what the Supreme Court of Canada does, there isn’t really the trickle down. I think it’s a huge challenge to get the tribunals that are involved in adjudicating matters like housing, welfare, disability, human rights – although human rights guys might be better – to accept that this is a disability. I think that’s a big challenge. I know a lawyer [...] that will not be named who rails and rails about the *Tranchemontagne* decision because it’s like ‘What next, what now?’ If we’re to accommodate an employee who is an alcoholic because that’s a disability and – so I think these are important judgments, they’re important initiatives [...] but it is a hard sell on the ground I think.

In other words, even where new pathways emerged in law (as with decisions such as that in *Tranchemontagne*), there was no guarantee that pathway would be followed a second time. Just as a ‘lightning stroke explodes and shatters the darkness’ (Barad, 2015: 408) on one occasion, and may strike again in the same location some day, or not, law was unpredictable. It remains indeterminate, fragile and mutable, unstably articulating and enacting a highly charged field.

According to Barad,

Lightning is an energizing response to a highly charged field. The buildup to lightning electrifies the senses; the air crackles with desire. (2015: 397)

Lawyers, like policymakers and service providers, desire change. These desires unfold within and also form part of a highly charged field, crackling with possibility. Lawyers offered a range of views on how change might eventuate within this field: a field within which the law is both already there and not yet stated, as Gutwirth (2015) reminds us. Lawyers identified the need for legislative reforms and a move away from prohibitionist models and from stigmatising language and concepts, and towards more harm reduction services. Given the range of problems articulated by lawyers, especially regarding the ability of legal actors to single-handedly initiate straightforward, predictable changes, a multifaceted approach to change was needed. Ideally, lawyers wanted a move away from prohibition and towards either decriminalisation or legalisation. Crucially, however, given the ubiquity of drug issues across different areas of law and the deeply entrenched nature of stereotypes and approaches – through language and more – other changes were also needed. To this end, lawyers called for a greater role for peer organisations in reforms and legal strategies.

Participants also described a range of other steps needed to improve the collaborative processes involved in advocating for change. Dana argued for a thinktank or roundtable combining lawyers and people who use drugs. She explained:

I think there should be a sort of round table thinktank on just talking about addictions and how other people – because we’re kind of alone in this field, really, except for the medical health profession. And I don’t want to medicalise this. So, I’d love to see a table of lawyers or paralegals or somebody sitting around and just talking openly about what do we think, why do we think it, how would we put this in practice, and then can there be a public legal education component to it, can there be a law reform component to it. I mean,



we've handled litigation, but it's really changing the mindsets of people and addressing the attitudinal barriers of the stereotypes rather than addressing the disability itself.

Of course, we must not overstate the capacity or agency of any one entity (e.g. lawyers) to control law and the pathways forged through legal practices, given that these are indeterminate and wandering. This is because, as we noted earlier, legal practices may generate new lawscapes, more diffuse and pervasive than existed before (Philippopoulos-Mihalopoulos, 2015: 107). Dana's call thus brings to mind Barad's vivid account of lightning's 'promiscuous', inventive, 'agential wanderings', its 'agential capacities for imaginative, desiring, and affectively charged forms of bodily engagement' and its 'charged yearnings' that may spark 'new imaginaries' (Barad, 2015: 387–388), both good and bad. Lightning, like law:

is an energizing play of a desiring field. Its torturous path is an enlivening exploration of possible connections. Not a trail from the heavens to the ground but an electrifying yearning for connection that precedes this and that, here and there, now and then. (2015: 388)

## Conclusion

In Canada, participants in all our groups expressed concerns with existing approaches to drug use, especially prohibitionist approaches. amongst service providers, policy makers and advocates, a common focus was the extensive campaigning surrounding the establishment of the Insite facility, and the two heroin-assisted treatment trials under discussion at the time. Their interviews also offered detailed insights into their views on the current legal conditions surrounding drug use in general, opioids in particular, and also on the role of human rights in challenging the status quo. In our analysis we found:

- A considerable degree of concurrence in approaches to illicit drug use and how it should be addressed;
- Differences in perspectives and approaches but a common emphasis on the importance of working to mitigate the counterproductive effects of the criminalisation of drug use, often with a focus on opioid use, and for some, an explicit agenda of law reform;
- A substantial level of expertise and commitment that may be tapped into to progress changes to current prohibitionist frameworks.
- amongst lawyers, serious concerns about criminalisation were also expressed. Lawyers were of the view that criminalisation was counterproductive and unhelpful and that a new approach was necessary. Reflecting the nature of legal work, lawyers focussed on the use of strategic human rights litigation to circumvent criminalisation, and the various methods deployed to secure housing, employment, welfare supports and other basic services (such as harm reduction services) for people who used substances, including illicit drugs, in particular. In this part of our analysis we found:
 

Accounts of the counterproductive effects of criminalisation and calls to address those effects;
- Different views on the value of human rights and litigation as counterpoints to criminalisation, particularly insofar as they are risky and slow, and because they can result in further, counterproductive conceptualisations of drug use as 'sickness' or 'disability';
- Calls for multiple systemic reforms, ranging from ending prohibition, to tackling stereotypes (including those held by lawyers themselves), reforming language and the concepts that underpin it, and improving legal education. Many felt these processes should be guided by local drug user organisations whose expertise was insufficiently harnessed and respected.

Overall, concern about the problems associated with current prohibitionist legal frameworks was widely articulated amongst groups with expert knowledge of, and experience within, them. These included the

establishment of covert, unsanctioned and possibly unlawful safer injecting facilities (under the previous Harper-led government), the use of strategic human rights litigation to advance people's interests, and the associated mobilisation of discourses of 'disability' and 'sickness' in order to secure piecemeal but meaningful gains in the lives of people who use drugs. There was a clear consensus that these strategies carried risks and flaws and that they could introduce new problems. These strategies and techniques might ordinarily be thought of as forms of 'resistance' to criminalisation. In this article, following the work of theorists of law and social change, we argue for a different approach. Policymakers, service providers, advocates and lawyers talk about their own work in ways that suggest they play a vital role in the constitution of law and legal subjects, but in ways that they often found flawed or unsatisfactory, difficult to control or influence in predictable, linear ways. Following Barad's (2015) work on lightning, we examined the iterative effects of anticipating, engaging and resisting law, and the difficulty in getting beyond criminalisation in some clear and simple way. The process of resisting criminalisation is as unpredictable and multidirectional as lightning. It, too, is a 'queer communication' between inanimate objects, human and nonhuman forces, entangled in intra-action, that may spark here or there, this or that. In keeping with Barad's influential 'posthuman performativity' approach to causality, therefore, we argue that key stakeholder efforts to circumvent drug law should be understood in relation to the non-human, non-rational complexities of law's ontology, and should eschew simplistic notions of 'cause' and 'effect' in law. Key actors, that is to say, may not be able to intentionally effect hoped-for changes from within existing prohibitionist systems, given the number, instability and complexity of forces at play. Importantly, in pointing to these multiple forces, we do not suggest that drug law itself or its effects are trivial or easily dismissed. Our point, to reiterate, is that it is both powerful *and* fundamentally unstable. As with the stepped leaders that 'mark out the traces of (what might yet) be-coming' (Barad, 2015: 407), as well as what might never come, we cannot predict what will become in and through law, including attempts to resist it. This is perhaps why our participants articulated so strongly the importance of more substantive drug law reform at the political level.

In the final stages of undertaking this research, the COVID-19 pandemic began to unfold. The pandemic helped inaugurate important (but temporary) changes to some aspects of Canadian drug policy, and reinforce, in our view, some of the central themes and concerns of this article. For example, the pandemic has helped usher in new prescribing guidelines in British Columbia, driven by federal policy shifts announced via Health Canada. These guidelines allow for an array of legal drugs to be made available to people 'with substance use disorder' so that they can 'self-isolate or social distance and avoid risk to themselves and others' (British Columbia Centre on Substance Use, 2020: 5). The initial prescription is for 23 days and all drugs are delivered to the person. Drugs include hydromorphone, methadone, dexedrine, benzodiazepines, nicotine replacement drugs and more. Legal heroin is not included. In other words, after many years of advocating for 'take home' privileges (rather than daily pick up), fears about contagion and further drug-related harms have unexpectedly prompted an important shift in drug policy. Like the other examples we have discussed in this paper, the new prescribing guidelines represent a change, sparked by unanticipated elements and forces. Although these guidelines are an important new development in the legal/policy landscape, they also exacerbate problems, instantiating ideas about people who use drugs as pathological. In any event, our key point is that such developments underscore the importance of thinking about change and the forces of change differently. Change, like lightning, can be unpredictable, complicated and messy; simplistic approaches to changes are not always possible, and may in fact make matters worse. All that said, forces of anticipation and becoming also exist. These are hard to predict, but they point to the in-controvertible dynamics of change. Here lies optimism, and the value in thinking about multiple dimensions of change and action.

## Cases and legislation

*Canada (Attorney General) v PHS Community Services Society* [2011] 3 SCR 134 ('*Insite*').

*Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.*

*Providence Health Care Society v. Canada* 2014 BCSC 936 ('*the HAT case*').

*Ontario (Disability Support Program) v. Tranchemontagne*, 2010 ONCA 593 ('*Tranchemontagne*').

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## CRedit authorship contribution statement

**Kate Seear:** Conceptualization, Methodology, Formal analysis, Investigation, Writing - original draft, Funding acquisition. **Suzanne Fraser:** Conceptualization, Methodology, Formal analysis, Investigation, Writing - review & editing, Funding acquisition. **Susan Boyd:** Writing - review & editing.

## References

- Barad, K. (2015). Transmaterialities: Trans\*/Matter/Realities and Queer Political Imaginings. *GLQ: A Journal of Lesbian and Gay Studies*, 21(2-3), 387–422.
- Barad, K. (2007). *Meeting the universe halfway: Quantum physics and the entanglement of matter and meaning*. Durham: Duke University Press.
- Bardwell, G., Scheim, A., Mitra, S., & Kerr, T. (2017). Assessing support for supervised injecting services among community stakeholders in London, Canada. *International Journal of Drug Policy*, 48, 27–33.
- Boyd, S. (2017). *Busted: An illustrated history of drug prohibition in Canada*. Halifax: Fernwood Publishing.
- Boyd, S., & Carter, C. (2014). *Killer Weed: Marijuana Grow Ops, Media, and Justice*. Toronto: University of Toronto Press.
- Boyd, S., MacPherson, D., & Osborn, B. (2009). *Raise shit! Social action saving lives*. Halifax: Fernwood.
- Boyd, S., & Norton, A. (2019). Addiction and Heroin-Assisted Treatment: Legal Discourse and Drug Reform. *Contemporary Drug Problems*, 46(3), 265–281.
- Risk mitigation: In the context of dual public health emergencies (pp. 1–25). (2020). British Columbia Centre on Substance Use: British Columbia.
- Brown, R., & Morgan, A. (2019). *The opioid epidemic in North America: Implications for Australia, Trends & Issues in crime and criminal justice*. Canberra: Australian Institute of Criminology.

- Conference for the Adoption of a Single Convention on Narcotic Drugs. (1962). *Single convention on narcotic drugs*. New York: UN.
- CRISM PWLE National Working Group. (2019). *"Having a voice and saving lives:" A survey by and for people who use drugs and work in harm reduction*. Vancouver, Canada: BC Centre on Substance Use.
- Davies, M. (2008). Feminism and the flat law theory. *Feminist Legal Studies*, 16, 281–304.
- DeBeck, K., Wood, E., Montaner, J., & Kerr, T. (2009). Canada's new federal 'National Anti-Drug Strategy': An informal audit of reported funding allocation. *International Journal of Drug Policy*, 20(2), 188–191.
- Fraser, S., valentine, k., & Seear, K. (2018). Emergent publics of alcohol and other drug policymaking. *Critical Policy Studies*, 12(1), 61–81.
- Gutwirth, S. (2015). Providing the missing link: Law after Latour's passage. In K. McGee (Ed.), *Latour and the Passage of Law* (pp. 122–159).
- Ipsos Public Affairs. (2018). *Community dialogue on a public health approach to drug policy: Report*. Toronto: Ipsos.
- Latour, B. (2013). *An Inquiry Into Modes of Existence: An Anthropology of the Moderns*. Cambridge, Massachusetts: Harvard University Press.
- Latour, B. (2009). *The Making of Law: An Ethnography of the Conseil D'Etat*. Cambridge, United Kingdom: Polity Press.
- Lessard, H. (2011). Jurisdictional justice, democracy and the story of *Insite*. *Constitutional Forum*, 19(3), 93–112.
- Macdonald, S., Stockwell, T., & Luo, J. (2010). The relationship between alcohol problems, perceived risks and attitudes towards alcohol policy in Canada. *Drug and Alcohol Review*, 30(6), 652–658.
- Madden, A. (2019). The consumer voice. In *Presentation at The South Australian Network of Drug and Alcohol Services Symposium*, 24<sup>th</sup> September.
- Matthews, D., & Veitch, S. (2016). The limits of critique and the forces of law. *Law Critique*, 27, 349–361.
- McGee, K. (2015). *Latour and the passage of law*. Edinburgh: Edinburgh University Press.
- McGee, K. (2014). *Bruno Latour: The Normativity of Networks*. Oxfordshire: Routledge.
- North American Opiate Medication Initiative Study Team. (2008). *Reaching the hardest to reach – Treating the hardest-to-treat: Summary of the primary outcomes of the North American Opiate Medication Initiative (NAOMI)*.
- Oviedo-Joekes, E., Guh, D., Brissette, S., Marchand, K., MacDonald, S., Lock, K., Harrison, S., Janmohamed, A., Anis, A., Krausz, M., Marsh, D., & Schechter, M. (2016). *JAMA Psychiatry*, 73(5), 447–455.
- Philippopoulos-Mihalopoulos, A. (2015). *Spatial justice: Body, lawscape, atmosphere*. Abingdon: Routledge.
- Seear, K. (2020). *Law, drugs and the making of addiction: Just habits*. London: Routledge.
- Special Advisory Committee on the Epidemic of Opioid Overdoses. (2020). *National report: Apparent opioid-related deaths in Canada (January 2016 to March 2019)*. Ottawa: Public Health Agency of Canada.
- Strang, J., Groshkova, T., & Metrebian, N. (2012). *New heroin-assisted treatment: Recent evidence and current supervised injectable heroin treatment in Europe and beyond*. Luxembourg: Insights, European Monitoring Centre for Drugs and Drug Addiction.
- United Nations Chief Executives Board for Coordination. (2019). *Summary of deliberations*. New York: United Nations.
- Valverde, M. (2003). *Law's dream of a common knowledge*. Princeton: Princeton University Press.
- Wodak, A. (2008). Going soft on evidence and due process: Canada adopts US style harm maximization. *International Journal of Drug Policy*, 19(3), 226–228.