BRIEF

CANADIAN NURSES ASSOCIATION®

BILL C-37: AN ACT TO AMEND THE CONTROLLED DRUGS AND SUBSTANCES ACT AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS

Brief for the Standing Committee on Legal and Constitutional Affairs

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CNA is the national professional voice of over 139,000 registered nurses and nurse practitioners across Canada. CNA advances the practice and profession of nursing to improve health outcomes and strengthen Canada's publicly funded, not-for-profit health system.

Canadian Nurses Association
50 Driveway
Ottawa, Ont. K2P 1E2
CANADA

Tel.: 613-237-2133 or 1-800-361-8404
Fax: 613-237-3520
Website: www.cna-aiic.ca

Background

This brief was prepared by the Canadian Nurses Association (CNA) for consideration by the standing committee on legal and constitutional affairs with regard to its study of Bill C-37, An Act to amend the Controlled Drugs and Substances Act and to Make Related Amendments to Other Acts. It will highlight the importance of removing procedural barriers to opening supervised consumption sites (SCSs)

Registered nurses (RNs) and nurse practitioners (NPs) have a responsibility to provide appropriate, non-judgmental care to individuals (and their families) who may be affected by substance use, regardless of the setting and a person's income, age, gender or ethnicity. Because they are often the primary point of access to health care for individuals who use illegal drugs, the care RNs and NPs provide serves to decrease some of the other harms of drug use.

CNA views harm reduction as an essential part of a comprehensive health-care response. Because this approach complements abstinence, prevention and treatment strategies,[1] CNA has advocated for the re-introduction of harm reduction as the fourth pillar of the National Anti-Drug Strategy.[2] We therefore applaud its inclusion in the government's new Canadian Drugs and Substances Strategy.

Harm reduction services, including SCSs, are effective at reducing overdose-related deaths. In Canada, these services enable people to consume "pre-obtained drugs safely with sterile equipment under the supervision . . . of registered nurses."[3] The benefits of SCSs (and the absence of drawbacks) are recognized internationally[4] and are well documented in such leading scientific periodicals as the *Lancet*, the *British Medical Journal* and the *New England Journal of Health*. SCSs allow RNs and NPs to provide care in a safe environment. When safe sites are not available, RNs and NPs must resort to providing care "in back alleys and/or housing facilities where people often stay in unsanitary and crowded conditions."[5]

Over many years, CNA has been vocal about the need to use an evidence-based harm reduction approach for policies aimed at decreasing negative health outcomes for

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[1] (Canadian Nurses Association [CNA], 2012)

[2] (CNA, 2013)

[3] (CNA, 2013, p. 3)

[4] (Carter & Ka Hon Chu, n.d.)

[5] (Canadian Association of Nurses in HIV/AIDS Care, 2014, p. 4)

marginalized individuals and their communities. In response to the current opioid epidemic, CNA has taken a number of steps that support such an approach:

- In our joint statement of action at the November 2016 Opioid Conference and Summit, CNA committed to developing educational resources for provincial and territorial nursing associations and colleges that provide current, evidence-based information to support RNs, NPs, clinical nurse specialists and licensed practical nurses in their practice.
- As part of a new coalition of health professions, CNA helped evaluate the most common reasons for opioid prescribing in primary care settings and develop recommendations for prioritizing clinical alternatives to diminish reliance on opioids. These recommendations aim to reduce the number of new opioid users and lessen the future extent of Canada's opioid crisis.
- CNA was a partner in a nationwide coalition of nursing associations that was granted intervenor status in an application before the Ontario Superior Court of Justice to make clean needles and syringes available in prisons.

Due to the urgency of the opioid epidemic, CNA supports the current version of Bill C-37,[6] but we believe additional amendments must be considered to prevent delays in opening SCSs in Canada.

Concerns with Bill C-37

CNA's proposed amendments focus on exemption requirements for SCSs under section 56 of the *Controlled Drugs and Substances Act* (CDSA).

Concern 1. Barriers still exist on opening SCSs as part of a public health emergency response

While the current version of the bill removes legislative barriers to opening SCSs, amendments are needed to provide for a more immediate response to overdose epidemics. Recognizing that the proposed legislation reduces the exemption criteria from 26[7] to five, a change that decreases barriers to obtaining an exemption to operate an SCS, the application process will still require significant time and resources. This added step leaves health service providers with two unreasonable options: either (1)

[6] As passed by the House of Commons on February 15, 2017.

[7] As listed in Bill C-2, *An Act to Amend the Controlled Drugs and Substances Act* (passed in 2015).

delay the provision of life-saving services while an application is underway or (2) proceed without the exemption and face possible criminal charges.

Concern 2. The criteria for exemptions remain excessive

The five proposed criteria for SCS applications in Bill C-37 continue to be onerous. Certain requirements, such as the need to specify a site's impact on crime rates, assume links that have not been established by evidence-based research. These criteria bear no relation to the tenets of harm reduction, the principle by which this legislation is said to be governed. The only criterion that should be required in light of our current public health crisis is for the applicant to demonstrate the need for an SCS.

Recommendations

Recommendation 1. Give provincial/territorial ministers authority to grant temporary exemptions

This proposed amendment reflects the recommendations (related to section 56.1) set forth in the Pivot Legal Society's Bill C-37 brief to the standing committee on health.[8]

To be more responsive during developing situations such as the current opioid crisis, CNA recommends that Bill C-37 be amended to include a provision that would allow provincial or territorial ministers to grant temporary exemptions to SCSs. Although Parliament's ability to delegate such authority may be limited, it can do so "by way of administrative inter-delegations."[9]

Recommendation 2. Amend the existing exemption requirements under section 56.1 (2)

PROPOSED AMENDMENT

> 56.1 (2) An application for an exemption under subsection (1) shall include evidence, submitted in the form and manner determined by the Minister, of the local conditions indicating a need for the site.

As noted, the five proposed criteria for SCS exemptions are a marked improvement from the existing legislation's 26 requirements. That being said, the five criteria can still pose barriers to opening an SCS. At present, potential SCSs must use a significant portion of their (often minimal) resources to apply for an exemption, resources that

[8] (Pivot Legal Society, 2017, p. 4)

[9] Ibid.

would otherwise be directed to preventing overdoses and related harms, particularly during emergency situations.

With the current national public health crisis, CNA's position is that, of the five proposed requirements, the sole criterion that needs to be considered is 56.1 (2) (b): "the local conditions indicating the need for the site." This proposal aligns with the federal government's recent commitment to treating drug use as a public health issue rather than a criminal justice issue. It also reinforces the role of harm reduction as a key component of Canada's new federal drug strategy.

CNA believes that, if 56.1 (2) (b) is met, the minister may then consider whether the regulatory structure, under 56.1 (2) (c), and resources, under 56.1 (2) (d), are in place to support the site. Still, an absence of regulatory and resource requirements should not invalidate the application. Rather, it should only serve to indicate the community's potential need for support in meeting them and assist in government planning.

Further, it is CNA's position that (56.1(2) (a), "the impact of the site on crime rates," and 56.1 (2) (e), "expressions of community support or opposition," should also be removed. As noted, such requirements are not supported by evidence and, as such, would be contradictory to the government's intention under the Canadian Drugs and Substances Strategy that drug policy decisions be rooted in a strong evidence base.

Conclusion

As CNA recently said, "a government truly committed to public health and safety would work to enhance access to prevention and treatment services — instead of building more barriers."[10] While the current Bill C-37 dramatically reduces previous legislative barriers (Bill C-2) to opening SCSs, barriers nonetheless remain.

Removing these barriers is essential if we are to adequately support those being affected by substance use. By ensuring prevention, overdose first-aid and a linkage to health and recovery services, SCSs will alleviate some of the burden on first responders and acute care facilities, whose resources can instead be used for the health needs of the rest of the population. Eliminating all unnecessary barriers to addressing the current opioid crisis is a solution that benefits everyone and is a necessary component of a comprehensive strategy on substance use in Canada.

[10] (CNA, 2015, para. 2)

References

Canadian Association of Nurses in HIV/AIDS Care. (2014). Bill C-2: *Legislation to amend the Controlled Drugs and Substances Act to allow exemptions for supervised injection sites (and services): Brief – Standing committee on public safety and national security*. Retrieved from http://www.canac.org/Members/Advocacy/BILL%20C-2_Brief_CANAC_FINAL.pdf

Canadian Nurses Association. (2013). *Legislation to amend the Controlled Drugs and Substances Act to allow exemptions for supervised injection services – Brief for Parliament*. Retrieved from https://www.cna-aiic.ca/~/media/cna/files/en/legislation_amend_cdsa_e.pdf?la=en

Canadian Nurses Association. (2015, March 23). Canadian Nurses Association disappointed with short-sighted Respect for Communities Act [Media release]. Retrieved from http://www.newswire.ca/en/story/1506551/canadian-nurses-association-disappointed- with-short-sighted-respect-for-communities-act

Canadian Nurses Association, Canadian Association of Nurses in HIV/AIDS Care. (2012). *Harm reduction* [Position statement]. Retrieved from http://www.cna-aiic.ca/~/media/cna/page-content/pdf-en/jps_harm_reduction_2012_e.pdf?la=en

Carter, C., & Ka Hon Chu, S. (n.d.). Safer consumption services in Canada: Backgrounder. Canadian HIV/AIDS Legal Network & Canadian Drug Policy Coalition. Toronto and Vancouver: Authors.

Eggertson, L. (2015). Legislation jeopardizes safe injection sites. *CMAJ*. Retrieved from http://www.cmaj.ca/site/earlyreleases/24march15_legislation-jeopardizes-safe-injection- sites.xhtml

Jeffrey, A. (2015, March 24). Editorial: Safe injection clinics don't bring disrespect to communities. *The Gateway*. Retrieved from https://thegatewayonline.ca/2015/03/editorial-safe-injection-clinics-dont-bring-disrespect-to-communities/

Kazatchkine, C., Elliott, R., & MacPherson, D. (2014). An injection of reason: Critical analysis of Bill C-2 (Q&A). Canadian HIV/AIDS Legal Network and Canadian Drug Policy Coalition. Retrieved from http://www.aidslaw.ca/site/wp- content/uploads/2014/10/C2-QA_Oct2014-ENG.pdf

Kendall, P., Daly, D., & Carsley, J. (2015, March 31). Vancouver's drug users need compassion, not Tories' contempt. *Globe and Mail*. Retrieved from http://www.theglobeandmail.com/globe-debate/vancouvers-drug-users-need- compassion-not-tories-contempt/article23701851/

Pivot Legal Society. (2017). *Brief to the standing committee on health on Bill C-37: An act to amend the Controlled Drugs and Substances Act and to make related amendments to other acts*. Retrieved from http://www.parl.gc.ca/Content/HOC/Committee/421/HESA/Brief/BR8746137/br-external/PivotLegalSociety-e.pdf

Public Health Physicians of Canada. (2013). *Support for supervised injection sites: Proposed federal Bill C-65 Respect for Communities Act, 2013* [Position statement]. Retrieved from http://nsscm.ca/Resources/Documents/ECAC%20Docs/PHPC%20SIS%20Position%20Statement_Final.pdf

Smith, A. (n.d.). Legal issues with Bill C-2: Pivot Legal Society submission to the standing committee on public safety and national security. Retrieved from https://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/733/attachments/original/1415051899/PLS_Bill C2sub.pdf?1415051899

Supreme Court of Canada. *Canada (A.G.) v. PHS Comm. Serv. Soc.* (2011), (2011) 3 S.C.R. 134. Retrieved from http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7960/index.do