CANADIAN NURSES ASSOCIATION

Legislation to Amend the *Controlled Drugs and Substances Act* to Allow Exemptions for Supervised Injection Services

Brief for Parliament

November 2013

This document has been prepared by CNA in the pursuit of CNA's mission, vision and goals.

The information presented in this document does not necessarily reflect the views of the CNA board of directors.

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Issue

In response to the 2011 Supreme Court of Canada (SCC) ruling on Insite, requiring the federal government to enable access to supervised injection services, the government introduced Bill C-65 (now Bill C-2), an act to amend the *Controlled Drugs and Substances Act* (CDSA). The proposed bill, entitled the Respect for Communities Act, sets out criteria for exemptions to section 56 of the CDSA when applying to offer supervised injection services (where users bring pre-obtained controlled substances) for "a medical or scientific purpose or [a reason that] is otherwise in the public interest."

There are two dominant policy approaches to reducing the harms of illegal drugs: (1) a prohibitionist approach that uses law enforcement to criminalize drug possession and use, and (2) a public health approach that seeks to reduce the harms to health and improve well-being by providing health services that mitigate the hazards of illegal drug use. A review of the international, national, provincial and municipal policy context highlights tensions between these prohibitionist and public health approaches to illegal drug use. Provincial and international policies have increasingly shifted toward harm reduction, whereas Canadian federal drug policy continues to rely on a law enforcement approach — despite the lack of evidence that such approaches are effective. Such tensions produce a policy schism in which registered nurses are caught between evidence, ethics and policy.

The Canadian Nurses Association (CNA) believes that healthy public policy must be founded on evidence and be responsive to public needs — particularly for those most vulnerable. In our view, there are at least three ways in which Bill C-2 does not effectively meet these criteria. First, the prohibitionist (and moral) approach contained in the legislation is not in line with the SCC ruling, which emphasizes the importance of ensuring that people who use drugs have access to effective health services. Second, substantial empirical evidence supports the public health and safety benefits of harm reduction strategies, as well as the associated cost savings to health, social and correctional systems. Third, the legislation introduces ethical concerns related to its process as well as its potential to further marginalize an already vulnerable population.

The negative public health and social effects of injection drug use in Canadian communities reinforce the need for evidence-based policy interventions on this issue. And the evidence on illegal drug use clearly shows that a harm reduction approach, which promotes safety and access to health services while preventing death and disability, is the most effective method of intervention during periods of active or decreasing drug use. Harm reduction connects drug users with health and support services that ultimately reduce the health risks associated with illegal drug use and can be the first step in engaging people in treatment.

In CNA's opinion, the government should withdraw this legislation and develop a new bill that

- improves access to prevention and treatment services;
- is founded on the key principles of harm reduction; and
- is developed in consultation with stakeholders, including injection drug users, public health experts, health-care providers and communities.

Background

What is harm reduction?

The term "'harm reduction' refers to policies, programmes and practices that aim primarily to reduce the adverse health, social and economic consequences of the use of legal and illegal psychoactive drugs without necessarily reducing drug consumption. Harm reduction benefits people who use drugs, their families and the community" (p. 1).[1] It is a pragmatic public health approach to reducing the negative consequences of risky behaviours and is commonly used for legal substances (e.g., alcohol, with safe drinking guidelines, restricting sales to minors) as well as illegal substances.

Harm reduction focuses on promoting safety and preventing death and disability for those challenged by addictive disorders, without adding conditions such as requiring that substance use be discontinued. "Harm reduction emphasizes the importance of treating all people with respect, dignity and compassion regardless of drug use. This is particularly relevant given the stigma associated with illegal drug use and the societal judgments often experienced by those who use illegal drugs" (p. 14).[2]

People who use drugs frequently experience physical and mental health problems. Many lack permanent housing, do not have access to treatment services and are socially marginalized.[3] Women, youth and aboriginal people are highly vulnerable to the harms of drug use, including HIV infection and violence.[4] People experiencing problematic substance use or addiction have often experienced higher rates of trauma such as physical or sexual abuse (during childhood or adulthood), and increased rates of drug use have been reported for women who have experienced domestic violence.[5] Higher rates of substance use have been observed in impoverished neighbourhoods; however, the relationship between substance use and poverty or homelessness is complex. For example, although drug use may precede homelessness, some researchers have found that drug use follows homelessness because individuals begin to use drugs as a means of coping with adverse living conditions and stress.[6] Drug use can be understood as a coping response, addiction as a means to adapt to desperately difficult situations.[7]

Substantial empirical evidence supports harm reduction in terms of public health and safety benefits, as do organizations such as the United Nations Office on Drugs and Crime, UNAIDS and the World Health Organization.[8] However, according to the Canadian Centre on Substance Abuse, "the initial clarity and simplicity of the phrase 'harm reduction' has evolved into an emotion-laden designation that has polarized groups with a common goal and is interfering with opportunities to engage high-risk populations and the implementation of a range of substance abuse services and supports" (p. 2).[9]

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[1] (International Harm Reduction Association, 2010)

[2] (Canadian Nurses Association [CNA], 2011)

[3] (Fischer et al., 2005)

[4] (Health Canada, 2008; McInnes et al., 2009; Wood, et al., 2008)

[5] (Liebschutz et al., 2002)

[6] (Johnson & Fendrich, 2007)

[7] (Alexander, 1990; Maté, 2008)

[8] (WHO, UNODC, & UNAIDS, 2009)

[9] (Bierness, Jesseman, Notarandrea, & Perron, 2008)

Supervised injection services, also known as supervised consumption sites, are "legally sanctioned, medically supervised facilities where intravenous drug users are allowed to inject pre-obtained drugs in a more protected, hygienic and less stressful environment compared with most other private and public settings" (Canadian Centre on Substance Abuse, 2005, p. 1)

The aim of such services is "to reach and address the problems of specific, high-risk populations of drug users, especially injectors and those who consume in public. These groups have important health care needs that are often not met by other services and pose problems for local communities that have not been solved through other responses by drug services, social services or law enforcement" (Hedrich, 2004, p. 8).

What are supervised injection services?

Supervised injection services (SISs) are an important strategic element in harm reduction. These services enable people to inject pre-obtained drugs safely, with sterile equipment under the supervision, in Canada, of registered nurses.

Health professionals working with people experiencing addiction know that treatment is challenging, and success rates are very low in the short term. Users frequently experience relapse before becoming abstinent while some will not achieve abstinence but will reduce their usage. Due to the nature of addictive disorders, many users go to traditional health-care services only when their condition is severe. When they do, it is through emergency rooms or hospitalization, where treatment is frequently interrupted prematurely.

Health services that have a harm reduction approach are client-centred, "low-threshold" (i.e., have few requirements for admission) and provide a supportive, non-judgmental environment. They seek to minimize the consequences of drug use. Not only do SISs offer a safe place to inject — with sterile equipment, education and supervision to prevent complications and death — they are closely linked to addictions counselling, treatment services, housing and other health and social services.

Nurses and health providers working in SISs are able to build trusting relationships with users, in part because they recognize that successful treatment includes acknowledging the difficulties of reaching marginalized groups with complex physical and mental-health issues. These groups are at the highest risk for overdose and blood-borne infections.

Supervised injection services, which have been extensively researched, have been shown to offer a number of benefits (summarized on page 4). Insite, for example, has prevented 12 overdose deaths per year on average while fatal overdoses within 500 metres have decreased by 35 per cent.[10]

[10] (Marshall et al., 2011; Milloy, 2008)

Benefits of supervised injection services, according to research:

- Reduction of fatal and nonfatal overdoses
- Reduction of transmission of blood-borne viruses (HIV, HCV)
- Reduction of risk behaviours for the transmission of blood-borne viruses
- Increase of access to health and social services for hard-to-reach populations through connections with health-care professionals
- Reduction of public disorder, including reducing discarded needles, public injecting and open drug dealing
- Increased use of detox and addiction treatment services
- Cost-savings to the health-care system
- Do not contribute to increased crime in the area surrounding the service (CNA, 2011, p. 3)

Research shows that SISs can facilitate the use of addiction treatment services and promote the cessation of drug use. The opening of Insite was associated with a 30 per cent increase in detox service use and an increase in rates of access to long-term addiction treatment.[11] As one element in a comprehensive drug strategy that includes prevention, treatment and enforcement, harm reduction services are essential to addressing the issue of addictions.

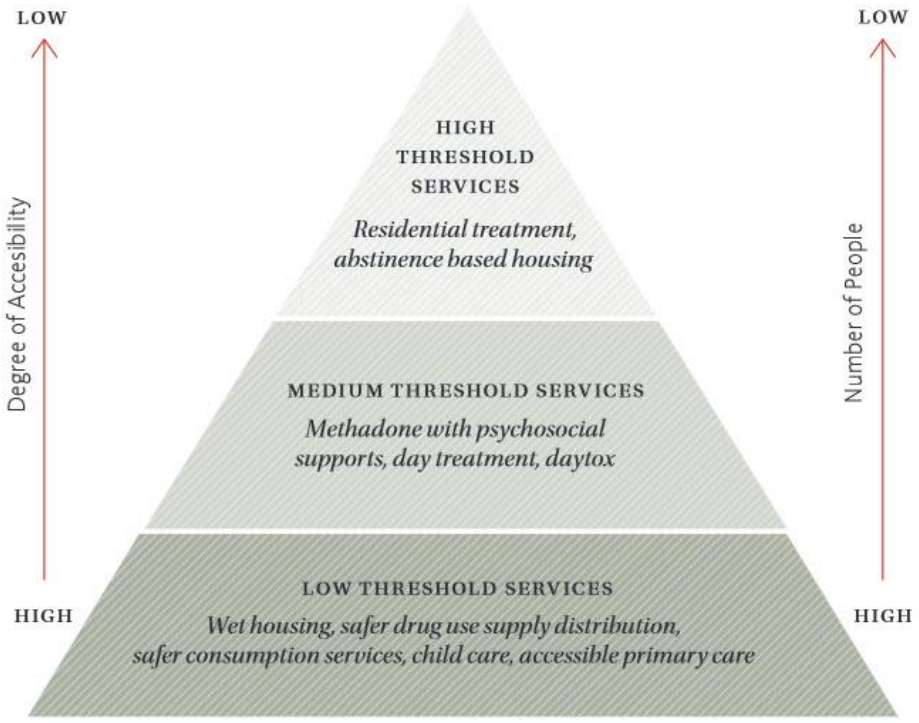
Overall, supervised injection services are effective when used as part of a continuum of treatment, that is, as part of a range of services and supports for people with addictions. The following diagram (Continuum of Services and Supports for People with Addictions) is based on the experience of Switzerland, which, in the 1980s, saw high rates of HIV and overdose deaths, along with public safety issues such as open drug use. Because only high-threshold services were available (i.e., where abstinence and other requirements for entry created barriers to access), thousands of people were left without access to services that addressed drug use and its consequences (traditional health-care and social systems were unable to attend to these issues effectively).

When low- and medium-threshold services, based on harm reduction principles, were added to the system, many more people had immediate access to health, social and other services. Such services were delievered by professionals who understood addictions and were able to build relationships that led to more stability, housing, reconnection with families and many other positive changes. Insite's presence, along with other health and social services, in Vancouver's Downtown Eastside is an example of this model, one which has the support of the local business community, police and other organizations.[12]

[11] (DeBeck et al., 2011; Vancouver Coastal Health, 2013; Wood, Tyndall, Zhang, Monanter, & Kerr, 2007)

[12] (Canadian Drug Policy Coalition, 2013; Kendall, 2011)

Continuum of Services and Supports for People with Addictions



Source: Canadian Drug Policy Coalition. (2013). *Getting to tomorrow: A report on Canadian drug policy.* Retrieved from http://drugpolicy.ca/progress/getting-to-tomorrow/

Concerns with Bill C-2

1. Bill C-2 fails to emphasize access to health services

The 2011 Supreme Court of Canada (SCC) decision on Insite has led to the following result: that exemptions under *the Controlled Drugs and Substances Act* (CDSA) for SISs should be generally granted where evidence demonstrates that a site stands to decrease death and disease without negatively affecting public safety. The ruling states:

> On future applications, the Minister must exercise that discretion within the constraints imposed by the law and the *Charter*, aiming to strike the appropriate balance between achieving public health and public safety. In accordance with the *Charter*, the Minister must consider whether denying an exemption would cause deprivations of life and security of the person that are not in accordance with the principles of fundamental justice.[13]

The criteria outlined in Bill C-2, in our view, do not aim to strike such an "appropriate balance." Instead, they emphasize the perception of public safety over public health. Historically, such 'tough-on-crime' approaches have only increased the problems associated with drug use as, for example, in the increased risk of HIV and hepatitis C transmission associated with incarceration.[14]

The SCC's specific direction to grant or deny an exemption for supervised injection services based on evidence is limited to the following five criteria:

1. The impact of such a facility on crime rates
2. Local conditions indicating a need for such a supervised injection site
3. The regulatory structure in place to support the facility
4. The resources available to support its maintenance
5. Expressions of community support or opposition.[15]

The SCC decision further stipulated that these five preconditions must be assessed in a particular way: by respecting the charter rights of people who need access to health facilities and services that reduce the risk of dying from overdose and the transmission of blood-borne infections.

In light of the SCC's direction, CNA is concerned that Bill C-2 is now proposing 26 criteria that must be met in any application for a Section 56 exemption. These new criteria place undue emphasis on the fifth criterion: "expressions of community support or opposition." By doing so, access to necessary health services becomes dependent on feelings and perceptions rather than on reliable, empirical evidence (as presented in the previous section).

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[13] (Canada v. PHS Community Services Society, 2011)

[14] (Small, Wood, Jurgens, & Kerr, 2005; Werb et al., 2008)

[15] (Canada v. PHS Community Services Society, 2011)

Although community consultation is important, it is unclear how decisions will be made. Opposition to SISs is based largely on unfounded assumptions about addictions, drug treatment and public health interventions. Such opposition should be required to support its views with robust and rigorous evidence — that is, with observational prospective cohort studies or randomized controlled trials. The proposed bill also brings with it the potential to pit the will of the general population against drug users and health and addictions professionals.

After examining the impact of SISs on public safety, researchers in Canada, Australia and some European countries have found a decrease in public drug use and discarded drug use supplies and no increase in drug crime, violent crime or property crime.[16] The majority of local residents, service providers, business owners and police did not notice any such increases, and there is no evidence that SISs add to drug use rates in the community. Studies show that people who inject drugs will only travel short distances to use health services, so sites must be located where drug use has previously been problematic.[17] Bill C-2's onerous criteria would effectively prevent the establishment of SISs, and thus deprive individuals of vital health services.

2. Bill C-2 fails to recognize evidence on the cost-effectiveness of supervised injection services

Besides reducing human suffering, the evidence on cost-saving benefits of SISs shows that they are economically prudent for Canada's health-care system.[18] They reduce unnecessary health-care costs by preventing the transmission of diseases and infections that can lead to emergencies (911 calls, paramedics and emergency hospital admissions) as well as costly chronic conditions such as HIV and hepatitis C. Approximately 70 per cent of new hepatitis C infections in Canada are attributable to injection drug use and needle sharing.[19]

The estimated lifetime direct health-care costs for treating each person with HIV infection, for example, are about $200,000 to $300,000.[20] Research on Insite's cost benefits shows that it has prevented 35 new cases of HIV and three deaths per year on average, a savings of $6 million per year. With an annual operating cost of $3 million, Insite's prevention of HIV transmission alone is estimated to save Canadians more than $5 million each year and $17.6 million in total health-care cost savings.[21]

Hospital admissions are also higher when supervised injection services are not used. A Frankfurt, Germany, SIS study found that admissions were 10 times more likely to occur for overdoses on the street in comparison to those in an SIS, where immediate intervention is more simple and effective.[22]

In addition to reducing health-care costs, SISs also have cost-saving benefits for Canada's social and correctional systems.

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[16] (Health Canada, 2008; Petrar et al, 2007; Wood et al., 2004; Wood, Tyndall, Lai et al., 2006)

[17] (Health Canada, 2008)

[18] (Andresen & Boyd, 2010; Health Canada, 2008; Toronto Drug Strategy, 2013)

[19] (Canadian Centre on Substance Abuse [CCSA], 2011)

[20] (Bayoumi et al., 2012)

[21] (Andresen & Boyd, 2010; Bayoumi & Zaric, 2008)

[22] (Kimber, Dolan, & Wodak, 2005)

3. Bill C-2 presents ethical concerns

SISs are a proven public health intervention for addressing addictions and injection drug use. Insite and other SISs in Europe and Australia have been extensively evaluated, and numerous publications have been accepted in respected, peer-reviewed journals. In fact, SISs are among the most well-studied public health interventions.[23] Health Canada has also confirmed the benefits of SISs after commissioning a review of the research by an Expert Advisory Committee in 2008.[24] Refusing the provision of such evidence-based services is ethically unsound given the proven public health and safety benefits.

As the Supreme Court of Canada has indicated, access to health services is an important human right. The SCC Insite decision states that, under the *Canadian Charter of Rights and Freedoms*, the government must consider whether "denying an exemption would cause deprivations of life and security of the person that are not in accordance with the principles of fundamental justice."[25] Further, negating an exemption for SISs could violate Canada's human rights obligations under international human rights law. Provincial and territorial governments may also "be held liable for negligence or for failing to discharge their constitutional obligations" of providing access to essential health and social services (p. iii).[26]

Nursing professional and ethical standards are aligned with harm reduction principles, since "nurses are required to use the best evidence available in their practice" (p. 3).[27] Establishing a therapeutic nurse-client relationship, assessing and managing health-care needs, health teaching, disease prevention and health promotion are all within registered nurses' scope of practice. According to the *CNA Code of Ethics for Registered Nurses*, "nurses, to the extent possible, provide persons in their care with the information they need to make informed decisions related to their health and well-being" (p. 11).[28] At the professional level, nurses working in an SIS are also able to offer primary care services, such as wound treatment and immunizations, as well as overdose prevention, counselling and referral to health and social services. SISs offer the space to establish a therapeutic relationship with hard-to-reach populations, which is the first step to engaging people in longer term treatment.[29] Ultimately Bill C-2 does not support nursing practice, as nurses are caught between the best public health evidence on one side and Canada's limited approach to illegal drug use and addictions on the other.

Bill C-2's proposed application process also raises several ethical concerns, including the risk of further marginalizing vulnerable groups by pitting the general population against drug users. When public consultations are not well-conducted, voices of dissent based on ideology or NIMBYism (not in my backyard) could prevent appropriate evidence from being heard. The risk of amplifying marginalization

[23] (CCSA, 2013; Schatz & Nougier, 2012; Toronto Drug Strategy, 2013; Wood, Tyndall, Montaner, & Kerr, 2006)

[24] (Health Canada, 2008)

[25] (Canada v. PHS Community Services Society, 2011)

[26] (Elliott, Malkin, & Gold, 2002)

[27] (CNA, 2011)

[28] (CNA, 2008)

[29] (Lightfoot et al., 2009)

and dissent does not seem necessary, especially when we see the local business community supporting Insite and SISs in other countries because of improvements to public safety.

In addition, aside from the critical question as to whether high-quality evidence standards will be used in examining applications, the prospect of over-studying vulnerable groups (due to the exemption period of only one year) raises ethical concerns. It is simply unethical to conduct randomized controlled trials on study populations when the benefit of a health-care service is already proven. While underway, these trials would further require the denial of effective health services to a portion of the population.

Recommendations

The federal government has the opportunity to create policy founded on the best scientific evidence, while reducing costs to taxpayers, supporting vulnerable members of society, providing essential disease-prevention services and encouraging access to addiction-treatment.

Given the numerous benefits of SISs to public health and safety, CNA recommends

1. that the proposed legislation governing Section 56 amendments to CDSA be withdrawn; and
2. that it be replaced by legislation that creates favourable conditions for the minister to grant exemptions in communities where evidence indicates that an SIS stands to decrease death and disease.

This legislation must

- recognize access to health services as a human right for vulnerable groups;
- be based on the principles of harm reduction;
- be founded on evidence-based practices in public health;
- be developed in consultation with relevant stakeholders, including people who use injection drugs;
- consider the cost-savings benefits of SISs to the Canadian health-care system; and
- provide for reasonable establishment and evaluation periods prior to renewal.

In addition, CNA recommends that harm reduction be reinstated as a fourth pillar in Canada's National Anti-Drug Strategy. CNA recommends that the auditor general review Canada's National Anti-Drug Strategy every 10 years. Doing so will not only ensure that the strategy is modified if it is not meeting public health objectives, it will also allow the strategy to integrate recent, effective, evidence-based public health interventions.

Please see Appendix A for a complete list of CNA's recommended essential elements for legislation governing supervised injection services.

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Appendix A

Recommended essential elements for legislation governing applications for supervised injection services

Legislation should:

1. Be based on a comprehensive addictions strategy that includes the following four pillars: prevention, treatment, harm reduction, enforcement.
2. Be developed in consultation with relevant public health, public safety and community stakeholders, including injection drug users.
3. Reflect the direction of the Insite Supreme Court of Canada commentary: to generally allow exemptions for SISs if there was a public health benefit and little or no impact on public safety.
4. Require that both support and opposition to proposed supervised injection services be justified with robust evidence on the public health and public safety impact.
5. Consider evidence of cost-savings to Canada's health-care, social and justice systems.
6. Enable hard-to-reach populations to access health and social services.
7. Respect and not restrict nurses' scope of practice by providing appropriate opportunities for nurses to offer essential health-care services.
8. Allow exemptions to the *Controlled Drugs and Substances Act* to last five years.
9. Integrate SISs into existing health-care services, when feasible, and ensure access to provincial/ territorial funding for health-care delivery.
10. Require a comprehensive evaluation plan for supervised injection services for quality control.