

CMA Submission to the study of Bill C-37
An Act to amend the Controlled Drugs and Substances Act
and to make related amendments to other Acts

**Submission to the Senate Standing Committee on Legal and
Constitutional Affairs**

April 6, 2017

The Canadian Medical Association (CMA) is the national voice of Canadian physicians. Founded in 1867, the CMA's mission is helping physicians care for patients.

On behalf of its more than 86,000 members and the Canadian public, the CMA performs a wide variety of functions. Key functions include advocating for health promotion and disease/injury prevention policies and strategies, advocating for access to quality health care, facilitating change within the medical profession, and providing leadership and guidance to physicians to help them influence, manage and adapt to changes in health care delivery.

The CMA is a voluntary professional organization representing the majority of Canada's physicians and comprising 12 provincial and territorial divisions and over 60 national medical organizations.

Introduction

The Canadian Medical Association (CMA) provides this brief for consideration as part of the Senate Committee on Legal and Constitutional Affairs' study of Bill C-37, *An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts*.¹

The CMA is deeply concerned with the opioid crisis in Canada, with unprecedented levels of harms, including overdose deaths. The crisis is taking a toll on individuals, families and communities, as well as first responders and health professionals at the front lines. The most recent BC Coroner's Report indicates there were about 3.6 illicit drug overdose deaths per day in February 2017, an increase of 72.9% over the number of deaths in February of last year.² Other provinces are also facing critical situations.

The CMA welcomes the introduction of Bill C-37, proposed by the Minister of Health to address various portions of the Controlled Drugs and Substances Act (CDSA), among other changes.^{*} We are particularly appreciative, given that this is part of a new federal strategy that promises to “replace the existing National Anti-Drug Strategy with a more balanced approach (...) and restores harm reduction as a core pillar of Canada's drug policy, alongside prevention, treatment and enforcement and supports all pillars with a strong evidence base.”³ This is necessary to ensure a public health approach to drug use and addiction.

This proposed legislation includes various objectives, including “to prohibit the unregistered import of pill presses, and remove the exception currently placed on border officers to only open mail weighing more than 30 grams,” (...) to “make it a crime to possess or transport anything intended to be used to produce controlled substances, allow for temporary scheduling of new psychoactive substances, and support faster and safer disposal of seized chemicals and other dangerous substances.”⁴

CMA is supportive of actions by the federal government that advance the work at national, provincial and local levels to address the opioid crisis.

^{*} For further discussion of CMA's position on addiction, harm reduction and supervised consumption sites, as well as terminology, such as supervised consumption sites or supervised injection sites, see CMA's submission to the Senate Standing Committee on Legal and Constitutional Affairs. *Bill C-2 An Act to amend the Controlled Drugs and Substances Act (Respect for Communities Act)*. May 14, 2015. Retrieved from: <https://www.cma.ca/Assets/assets-library/document/en/advocacy/submissions/cma-brief-c2-respect-for-communities-act-senate-committee-may-14-2015-english.pdf>

Application for a Supervised Consumption Site

The objective of Bill C-37 that CMA would like to provide recommendations for is the one that seeks to “simplify the process of applying for an exemption that would allow certain activities to take place at a supervised consumption site, as well as the process of applying for subsequent exemptions.”⁵

The Bill proposes to repeal the 26 requirements to apply for an exemption to the CDSA, in Section 56.1, established by the *Respect for Communities Act* (former Bill C-2⁶). The CMA supports the repeal, as we have repeatedly called for the withdrawal of the amendments made by former Bill C-2, and their replacement with “legislation that recognizes the unequivocal evidence of benefits of supervised consumption sites, that was accepted by the Supreme Court. Legislation would enhance access to health services, which include prevention, harm reduction and treatment services in communities where the evidence has shown they would benefit from such health services.”⁷

Bill C-37 proposes to replace those 26 requirements with the five elements cited in the 2011 Supreme Court of Canada unanimous ruling on Insite⁸, Vancouver’s supervised injection site. These elements are, “evidence, if any, on:

- the impact of such a facility on crime rates,
- the local conditions indicating a need for such a supervised injection site,
- the regulatory structure in place to support the facility,
- the resources available to support its maintenance and
- expressions of community support or opposition.”⁹

These elements are proposed to reduce the unnecessary obstacles and burdens on local health departments and community organizations that would deter the creation of new supervised consumption sites, even when the health and safety benefits have been clearly established.

Because of this cumbersome process, the BC Ministry of Health recently authorized the creation of “overdose prevention sites” in various locations where there are concerning numbers of overdose deaths, while the ministry “wait(s) for Health Canada approval of supervised consumption services”.¹⁰ This was after the creation of unsanctioned pop-up sites by community groups in the downtown eastside.¹¹ Only Insite and the Dr Peter Centre operate with approved exemptions to date, with Montreal having recently

received approval for three sites.¹² Many other applications have been submitted for sites in Vancouver, Victoria, Toronto and Ottawa, and others are in preparation.

Although a welcome reduction to only five elements, the CMA believes that these elements require more clarity, as they can be subject to interpretation, and undue influence, and could still demand unnecessary and significant time and resources on the part of provincial and local agencies. As well, the present crisis would require an expedited process that would not delay local responses to the crisis.

Hence, our first recommendation is that there be provisions for an expedited review, at the request of provincial or territorial ministries of health, for situations in which there is an immediate need for such sites.

Further, CMA recommends that the elements required for an application for opening a supervised consumption site proposed in Bill C-37 be more clearly defined and simplified in order not to require unnecessary and extensive resources and funding by local public health authorities and community agencies.

The central element to be considered is that of “the local conditions indicating a need for such a supervised injection site”. Local health authorities and community organizations struggle with the issues related to drug use, including rising rates of infections, overdoses and deaths, and this is the fundamental reason to open a supervised consumption site.

The regulatory structure and the resources available to support a supervised consumption site’s maintenance are issues that local health authorities deal with regularly for any health service, given the need to provide care with reduced risk of liability.

The impact of a facility on crime rates is difficult to quantify before such a site is created. Further, the government must consider the experience of the many sites both in Canada and internationally, where law and order have improved in the areas surrounding those sites. The Supreme Court stated that there has been “no discernible negative impact on the public safety and health objectives of Canada during its [Insite’s] eight years of operation.”¹³ As well, the crime rate is not only influenced by the existence or not of a site, but by many other factors, such as unemployment and enforcement resources. A site would necessarily be located where there are high rates of drug use, for the very purpose of offering people who use drugs much needed harm reduction and support services.

The last element, expressions of community support or opposition, should not represent a burden to applicants. As stated in our brief on Bill C-2, “although public opinion might initially be against the introduction of such facilities, public acceptance of supervised consumption sites is considerably high in most of the locations where they have been

established, in both Vancouver sites and in European countries.”¹⁴ Communities, neighbourhoods and local authorities are usually involved in the good functioning of the facilities through cooperation and communication.¹⁵

Bill C-2 is an example of how this element could be interpreted. There was an extensive list of letters of opinion required, including from representatives of local police and local and provincial governments (ministers of health and public safety), chief public health officer, professional licensing authorities for physicians and for nurses, as well as reports from community consultations.¹⁶ Such a requirement represented a cumbersome and unnecessary burden.

The CMA looks forward to continued collaboration with the federal government and other organizations in the development of further action as part of the much needed comprehensive approach to address the opioid crisis.

Recommendations

1. The CMA recommends that there be provisions for an expedited review, at the request of provincial or territorial ministries of health, for situations in which there is an immediate need for such sites.
2. The CMA recommends that the elements required for an exemption application to the CDSA to open a supervised consumption site, proposed in Bill C-37, be clearly defined and simplified in order not to require unnecessary and extensive resources and funding by local public health authorities and community agencies.

¹ *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/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=8769825>

² British Columbia Coroners Service. Coroners Report. *Illicit Drug Overdose Deaths in BC: January 1, 2007 – February 28, 2017.* Retrieved from: <http://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/death-investigation/statistical/illicit-drug.pdf>

³ Health Canada “*Government of Canada announces new comprehensive drug strategy supported by proposed legislative changes*”. News release. December 12, 2016. Retrieved from: <http://news.gc.ca/web/article-en.do?nid=1168519>

⁴ Health Canada “*Government of Canada announces new comprehensive drug strategy supported by proposed legislative changes*”. News release. December 12, 2016. Retrieved from: <http://news.gc.ca/web/article-en.do?nid=1168519>

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- ⁵ *Bill C-37, An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts. Legislative Summary.* Retrieved from: <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?billId=8689350&Language=E&Mode=1&View=8>
- ⁶ *Bill C-2, An Act to amend the Controlled Drugs and Substances Act.* <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=8056955&Language=E&Mode=1&File=24#1>
- ⁷ *Bill C-2 An Act to amend the Controlled Drugs and Substances Act (Respect for Communities Act).* CMA submission to the Senate Standing Committee on Legal and Constitutional Affairs. May 14, 2015. Retrieved from: <https://www.cma.ca/Assets/assets-library/document/en/advocacy/submissions/cma-brief-c2-respect-for-communities-act-senate-committee-may-14-2015-english.pdf>
- ⁸ Supreme Court of Canada (2011) *Canada (A.G.) v. PHS Comm. Serv. Soc.* Retrieved from: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7960/index.do>
- ⁹ Supreme Court of Canada (2011) *Canada (A.G.) v. PHS Comm. Serv. Soc.* supra. p.192-3
- ¹⁰ Vancouver Coastal Health. News release. *Further overdose response action to include BC Mobile Medical Unit and new overdose prevention sites.* December 8, 2016. Retrieved from: <http://www.vch.ca/about-us/news/news-releases/further-overdose-response-action-to-include-bc-mobile-medical-unit-and-new-overdose-prevention-sites>
- ¹¹ CTV. *'Pop-up' injection sites aim to combat overdoses in Vancouver.* November 20, 2016. Retrieved from: <http://www.ctvnews.ca/health/pop-up-injection-sites-aim-to-combat-overdoses-in-vancouver-1.3169397>
- ¹² Woo, A. & Perreux, L. *Health Canada approves three supervised consumption sites for Montreal.* Globe and Mail. February 6, 2017. Retrieved from: <http://www.theglobeandmail.com/news/politics/federal-government-approves-three-supervised-injection-sites-in-montreal/article33914459/>
- ¹³ Supreme Court of Canada (2011) *Canada (A.G.) v. PHS Comm. Serv. Soc.* supra. p.192-3
- ¹⁴ *Bill C-2 An Act to amend the Controlled Drugs and Substances Act (Respect for Communities Act).* CMA submission to the Senate Standing Committee on Legal and Constitutional Affairs. May 14, 2015. Retrieved from: <https://www.cma.ca/Assets/assets-library/document/en/advocacy/submissions/cma-brief-c2-respect-for-communities-act-senate-committee-may-14-2015-english.pdf>
- ¹⁵ Schatz, E. & Nougier, M. (2012) Drug consumption rooms: evidence and practice. International Drug Policy Consortium Briefing Paper. (p.20) Retrieved from: http://www.drugsandalcohol.ie/17898/1/IDPC-Briefing-Paper_Drug-consumption-rooms.pdf
- ¹⁶ *Bill C-2, An Act to amend the Controlled Drugs and Substances Act.* <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=8056955&Language=E&Mode=1&File=24#1>
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