CANADIAN NURSES ASSOCIATION

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

Brief to the Ministers of Health

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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 requiring the federal government to enable access to supervised injection services, the government introduced Bill C-65, an act to amend the *Controlled Drugs and Substances Act*. The proposed bill, entitled the Respect for Communities Act, sets out application criteria for opening and maintaining supervised injection services. Yet, because it is founded on a prohibitionist approach to drug use, this new legislation is inadequate. Not only does the bill overlook the positive public health and safety outcomes achieved by harm reduction programs, it also impedes the establishment of necessary prevention and treatment services to support Canadians struggling with substance use and addiction.

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 increase safer use of illegal drugs and reduce harms to health and well-being. 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 embrace a law enforcement approach — despite the lack of evidence that such approaches are effective. Such tensions produce a policy schism in which registered nurses may be 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. In our view, Bill C-65 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 injection drug users 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 benefits tied to preventing infectious diseases. Third, the legislation introduces ethical concerns related to 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 illicit 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 drug use or decreasing use. Harm reduction connects drug users with health and support services that ultimately reduce the health risks associated with illicit drug use.

In CNA's opinion, the government should withdraw this legislation and, in consultation with health experts and those struggling with drug addictions themselves, 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 such as alcohol (e.g., safe drinking guidelines, restricting sales to minors).

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 has 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, including decreased HIV risk behaviours and overdose deaths and increased access to drug-treatment services. Evaluations of this approach have demonstrated a reduction of public disorder. Safe injection services have lowered the frequency of publicly discarded needles, public injecting and open drug dealing and have also been shown to be cost effective.

[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)

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" (CCSA, 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"(Henrich, 2004, p. 3).

What are supervised injection services?

Supervised injection services (SISs) are an important strategic element in harm reduction, whose ultimate public health and safety goal is to reduce injection drug use. These services enable people to inject pre-obtained drugs safely, with sterile equipment under the supervision 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. 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.

Harm reduction services recognize this reality and seek to minimize the consequences of drug use. Not only do SISs offer a safe place to inject, with sterile equipment and supervision to prevent complications and deaths, 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.

Benefits of supervised injection services

- 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

(CNA, 2011)

Concerns with Bill C-65

CNA has identified the following problematic aspects of Bill C-65:

1. Bill C-65 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 are 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.[8]

The criteria outlined in Bill C-65, 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 transmission associated with with incarceration.[9]

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

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.

Essentially, the SCC recommended that the federal government take a "health-first" approach when considering applications for exemptions from CDSA.

In light of SCC's direction, CNA is concerned that Bill C-65 is now proposing 26 criteria for exemptions from CDSA while emphasizing the fifth criterion: expressions of community support or opposition. By doing so, the bill makes people's access to necessary health services dependent on feelings and perceptions rather than on reliable, empirical evidence (as presented in the previous section).

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

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

Although community consultation is important, it is unclear how decisions will be made. Will voices of dissent be prioritized and opponents to harm reduction showcased? Opposition to SISs is based largely on unfounded assumptions about addictions, drug treatment and public health interventions. Such opposition is not required to support its views with robust 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.

Bill C-65's onerous criteria would effectively prevent the establishment of SISs, and thus deprive individuals of vital health services.

2. Proven economic arguments for harm reduction

The evidence on the cost-saving benefits of SISs shows that they are economically prudent for Canada's health-care system.[10] They reduce unnecessary health-care costs by both preventing the transmission of diseases and infections that can lead to emergencies (ambulance calls and hospital admissions) and costly chronic conditions such as HIV and hepatitis C. The estimated lifetime direct health-care savings for treating someone with HIV is $200,000 to $300,000.

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.[11]

The *Toronto and Ottawa Supervised Consumption Assessment Study*[12] estimates that SISs would save $323,496 per HIV infection in Toronto, $66,358 per HIV infection in Ottawa. For hepatitis C, the estimated cost-savings are $47,489 per infection in Toronto, $18,591 per infection in Ottawa.

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

3. Ethics and stigma

SISs are a proven public health intervention for addressing addictions and injection drug use. Insite and other SISs have been extensively evaluated, and numerous publications have been accepted in respected, peer-reviewed journals. Refusing the provision of such evidence-based services is ethically unsound given the proven public health and safety benefits.

Access to health services are an important human right. The Insite Supreme Court of Canada 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."[13] Further, negating an exemption for SISs could violate Canada's human rights obligations under international human rights law. Provincial and

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

[11] (Andreson & Boyd, 2010; Bayoumi & Zaric, 2008)

[12] (Bayoumi et al., 2012)

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

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).[14]

As a public-health strategy, prohibition is a failed policy. Abstinence-only models simply do not work for all individuals.[15] Alternatively, supervised injection services are effective when used as part of a continuum of treatment for addictions. Research shows that SISs can facilitate the use of addiction treatment services and promote the cessation of drug use.[16] As one element in a comprehensive approach, supervised injection services are essential, in conjuction with prevention, treatment and enforcement, to addressing the issue of addictions.

In terms of nursing professional and ethical standards, they are aligned with harm reduction principles, since "nurses are required to use the best evidence available in their practice" (p. 3).[17] Providing users with evidence-based information for self-administration of injections is 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).[18] 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.

Bill C-65'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 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 (e.g., observational prospective cohort studies), the prospect of over-studying vulnerable groups (due to the exemption period of only one year) raises ethical concerns. It is unethical to conduct randomized controlled trials on study populations when the benefit of a health-care service is already proven. Nor should people be denied effective health services, as is required for randomized controlled trials.

[14] (Elliott, Malkin, & Gold, 2002)
[15] Ibid.
[16] (Wood, Tyndall, Zhang et al., 2006)
[17] (CNA, 2011)
[18] (CNA, 2008)

Recommendations

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

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 services.

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

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

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 public health interventions.

Attachment

Appendix A — Recommended essential elements for legislation governing supervised injection services.

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Appendix A

Recommended essential elements for legislation governing 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, including observational prospective cohort studies.
5. Weigh voices of opposition to supervised injection services with evidence on the public health and public safety impact.
6. Consider evidence of cost-savings to Canada's health-care, social and justice systems.
7. Enable hard-to-reach populations to access health and social services.
8. Respect and not restrict nurses' scope of practice by providing appropriate opportunities for nurses to offer essential health-care services.
9. Allow exemptions to the *Controlled Drugs and Substances Act* to last five years.
10. Integrate SISs into existing health-care services, when feasible, and ensure access to provincial/territorial funding for health-care delivery.
11. Include a comprehensive evaluation plan of measurable indicators (within the implementation plan) that feeds into a quality-control plan for supervised injection services.