AN INJECTION OF REASON: CRITICAL ANALYSIS OF THE *RESPECT FOR COMMUNITIES ACT* (Q&A)

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The *Respect for Communities Act* undermines the rights of people who use drugs to access life-saving and health-protecting services. Read more about supervised consumption services in Canada and internationally, and their positive impact on individuals and communities.

WHAT IS THE *RESPECT FOR COMMUNITIES ACT*?

The *Respect for Communities Act*, enacted by Parliament in 2015, makes it more difficult for health authorities and community agencies to offer supervised consumption services for people who use drugs.

In Canada, in order to operate safely, supervised consumption services need to seek an exemption from provisions of the *Controlled Drugs and Substances Act* (CDSA) from the federal Minister of Health. Without such an exemption, clients and staff members would be at risk of criminal prosecution under the CDSA for illegal possession of controlled substances that are covered by the law. By adding Section 56.1 to the CDSA, the *Respect for Communities Act* created a new, specific regime for exemptions specifically related to supervised consumption sites.

This new regime requires applicants to submit an onerous amount of information to the federal Minister of Health before the Minister *may even consider* an application for an exemption. The law says explicitly that the Minister "may consider an application… only after" all the legally required information has been submitted; until that happens, the Minister has no legal authority to grant an exemption. Moreover, and contrary to the spirit of a recent decision by the Supreme Court of Canada, the Act also says that exemptions will be granted only in "exceptional circumstances."

The *Respect for Communities Act* was first introduced by the then federal government in June 2013 as Bill C-65. It died on the order paper when the government prorogued Parliament in September 2013 but was quickly reintroduced as Bill C-2 in a new session of Parliament in October 2013 and was eventually passed, without any changes, by the then majority government in June 2015. At least two provincial governments — Quebec and British Columbia — have been critical of the law and have called for it to be changed.[1]

> A government truly committed to public health and safety would work to enhance access to prevention and treatment services—instead of building more barriers.
>
> Barb Mildon, President, Canadian Nurses Association

WHAT ARE SUPERVISED CONSUMPTION SERVICES?

Supervised consumption services (sometimes called supervised injection sites, safer consumption services or drug consumption rooms) are health services that provide a safe, hygienic environment where people can use pre-obtained drugs under the supervision of trained staff.

Supervised consumption services are part of a broader harm reduction approach to substance use which promotes safety, health and dignity. Many people who use drugs are unable or unwilling to stop using drugs at any given time, despite the strongest efforts to prevent the initiation or continued use of drugs.[2] Supervised consumption services, like other harm reduction services (e.g., needle and syringes programs), are a pragmatic, necessary and compassionate response to this reality. By offering a safe place for people to use drugs with sterile equipment, and to connect with care and other social services without fear of arrest or harassment, supervised consumption services can provide some protection to the most marginalized whose social, physical and mental health–related needs are rarely met.[3] Supervised consumption services aim to:

1. reduce health risks that can be associated with drug use, such as the transmission of infectious diseases through the sharing of used injection equipment, and overdose-related deaths;
2. improve access to health, treatment and social services for the most vulnerable groups of people who use drugs; and
3. contribute to the safety and quality of life of local communities by reducing the impact of open drug scenes (e.g., reducing the amount of discarded needles or other materials).[4]

Supervised consumption services are only one aspect of what should be a comprehensive health approach to drug use. They are not exclusive of measures to prevent problematic drug use or of drug treatment programs; they are complementary. Treatment will not work for everyone, as some people are not in a position to stop using drugs, and some people who wish to stop using will sometimes relapse. This is why a comprehensive range of services is needed and why supervised consumption services have been integrated into harm reduction programs in the last 20 years in Western Europe, Australia and Canada.

"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.[5]

Harm Reduction International

HOW DO SUPERVISED CONSUMPTION SERVICES WORK?

Supervised consumption services are often located in areas of concentrated drug scenes, although other approaches to delivering this health service are also needed and used to reach people where such a concentrated scene may not exist. They are staffed by nurses, counsellors, peer workers and others who provide sterile equipment, education on ways to minimize health risks when using drugs (e.g., safer injecting practices), as well as supervision and emergency help to prevent complications and to intervene in case of overdose. Staff may also provide primary health care, including treatment for wounds and skin infections, immunization, screening for sexually transmitted and blood-borne infections (STBBIs), and counselling. In most instances, clients bring pre-obtained drugs into the facility; none are provided by staff.[6] Depending on the local context, supervised consumption services may be limited to injecting drug use or include other drug use such as inhalation. While supervised consumption services are often embedded in either health units or community-based agencies where other services are available, they may also be offered in stand-alone sites, or through mobile outreach. Different models for delivery will be needed to reach different populations of service users in different settings. Supervised consumption services are usually closely linked to complementary health and social services (e.g., drug treatment, housing, social assistance).

WHERE ARE SUPERVISED CONSUMPTION SERVICES OPERATING?

The first supervised consumption sites opened in Switzerland, Germany and the Netherlands in the 1980s and early 1990s in response to the emerging HIV and hepatitis C epidemics, increasing open drug scenes and overdose-related deaths. Over 90 supervised consumption services currently operate. With the exception of Canada and Australia, all supervised consumption sites are located in Western Europe.[7]

Canada currently has two supervised injection services operating under a federal ministerial exception from the CDSA; both are located in Vancouver. Insite opened in 2003 in Vancouver's Downtown Eastside — reaching some of the most vulnerable people in Canada, as the Supreme Court of Canada has recognized.[8] It operates under a legal exemption that was originally granted by the federal Minister of Health to the Vancouver Coastal Health Authority on the condition that the program be rigorously evaluated. In 2016, after multiple shorter-term renewals — and litigation against the former government right up to the Supreme Court of Canada — Insite's exemption was renewed in March 2016 for a four-year term.

Insite is the result of collaboration between the Downtown Eastside community, the not-for-profit organization that runs the site (PHS Community Services Society), and local, provincial and federal authorities. It has 12 injection booths where clients inject pre-obtained drugs under the supervision of nurses and health care staff. If an overdose occurs, the team is available to intervene immediately. Nurses at Insite also provide other health care services, such as wound care and immunizations. Addictions counsellors, mental health workers and peer staff can connect clients to community resources such as housing, addiction treatment and other supportive services. Since 2007, the staff has also been able to refer Insite's clients to "Onsite," a detox centre located above Insite.[9] Finally, the third floor of the site provides some transitional housing as a further means of supporting people seeking to stop using drugs.

The second supervised consumption site in Vancouver is integrated within the Dr. Peter Centre. The Centre offers an HIV/AIDS day health program and a 24-hour nursing care residence for people living with HIV, especially for patients who have multiple medical conditions, including drug dependence, and who face various social barriers.[10] The Dr. Peter Centre began offering this health service in 2002 without any exemption from the CDSA, taking the position that supervising injections to promote safety was within the legally authorized scope of nurses' practice. In January 2014, before Bill C-2 was enacted, the Dr. Peter Centre applied for an exemption from the federal Minister of Health. In January 2016, it was granted a two-year exemption.

WHAT HAS BEEN THE IMPACT OF SUPERVISED CONSUMPTION SERVICES?

Studies from around the world have documented the positive impact of supervised consumption services and there is longstanding experience with their successful operation. Canada's Insite has been particularly thoroughly evaluated; since 2003, more than 30 articles on Insite have been published in the world's leading peer-reviewed scientific and medical journals. Existing research clearly indicates that Insite has many beneficial outcomes both for people who use drugs and the community as a whole:

- Insite is being used by the people it was intended to serve. Frequent users are people most at risk for overdosing or becoming infected with HIV or hepatitis C because of their high-intensity injection practices. They are also more likely to be homeless and inject in public places.
- Insite has reduced HIV risk behavior such as needle sharing.
- Insite has increased the number of people entering treatment.
- Insite has reduced overdose risk and prevented overdose-related deaths.
- Insite has provided safety for women who use drugs.
- Insite has also improved public order by reducing the number of public injections and the amount of injection-related litter near the facility.[11]

> Insite saves lives. Its benefits have been proven. There has been no discernable negative impact on the public safety and health objectives of Canada during its eight years of operation.[12]
>
> Supreme Court of Canada, 2011

Studies seeking to identify potential harms of the facility found no evidence of negative impact. Insite has not encouraged drug use, nor has it deterred people from quitting injecting drugs or seeking addiction treatment.[13] Moreover, Insite has not led to any increase in drug-related crimes. These findings are echoed by evaluations conducted in Australia and Europe.[14]

> In Canada, the implementation of supervised consumption services is supported by numerous health experts and agencies, including the following: the Canadian Medical Association; the Canadian Nurses Association; the Canadian Association of Nurses in AIDS Care; the Registered Nurses' Association of Ontario; l'Ordre des infirmières et infirmiers du Québec; the Canadian Public Health Association; the Health Officers Council of British Columbia; the Urban Public Health Network; Public Health Physicians of Canada; the Toronto Board of Health; the Toronto Chief Medical Officer of Health; Vancouver Coastal Health ; l'Institut national de santé publique du Québec; the Expert Advisory Committee on Supervised Injection Site Research, established by the federal Minister of Health; Médecins du Monde Canada; Association des médecins spécialistes en santé communautaire du Québec; and l'Association des intervenants en toxicomanie du Québec.

WHY IS IT SAFER TO INJECT DRUGS AT A SUPERVISED CONSUMPTION SERVICE FACILITY?

Health risks associated with injecting drug use are made worse by poor conditions and stressful environments. Homelessness, the need for an immediate fix and fear of police can lead people to inject hurriedly in alleys or other public spaces. In these situations, people do not have time to control the amount of drugs they are injecting and they are more likely to miss a vein and develop abscesses as a result. When people are alone, in a hotel room or a back alley, they might not be able to receive any medical help in case of an overdose. Lack of access to sterile injecting equipment is associated with increased syringe sharing and a higher risk of acquiring HIV or hepatitis C. Unsanitary conditions for injecting (or inhaling) drugs can also result in infections. Supervised consumption services can offer a "low-threshold" way for people to connect with care and other services that may lead to an overall improvement in their health, particularly people who often face stigma, discrimination and multiple other barriers to health care.

> In our view, Bill C-2 [now the *Respect for Communities Act*] fails to recognize that supervised injection sites allow registered nurses to provide care in a safe environment. When safe spaces are not available for people to connect with registered nurses, nurses have to go out in the community and provide care on the streets, in back alleys and/or housing facilities where people often stay in unsanitary and crowded conditions.
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> Canadian Association of Nurses in HIV/AIDS Care

ARE SUPERVISED CONSUMPTION SERVICES COST-EFFECTIVE?

Yes. Evidence indicates that supervised consumption services are cost-effective because they can reduce the risks of HIV and hepatitis C infections,[15] and because they can lessen the pressure on emergency services and hospitals by providing on-site care in case of overdose, connecting people to care and reducing the risks of infections associated with unsafe conditions.[16] Research has shown that by preventing new cases of HIV infections, Insite and its syringe exchange program can be associated with CDN$17.6 million dollars in health care cost-savings, which greatly exceeds the operating costs of the facility.[17]

DO SUPERVISED CONSUMPTION SERVICES CREATE OR ATTRACT PUBLIC NUISANCE?

Contrary to common fears expressed by local communities, there is no evidence that supervised consumption services attract more people who use drugs to the host communities. In fact, research has found that people will only travel short distances to use drugs.[18] Supervised consumption services are logically located where there is a need (e.g., in locations where there is already a concentration of people who use drugs and sometimes a more public drug-use scene); they are also often integrated into existing services that work with people who use drugs. While local communities may legitimately have concerns that the opening of a new health or social facility might attract noise, litter or other kinds of nuisances, the evidence shows that a health response to drug use that includes supervised consumption services improves conditions in neighborhoods. Specifically, supervised consumption services have been associated with increased public order, reduced public injection and litter associated with injecting, as well as a reduction in the number of syringes being found in public spaces.[19] Temporary gatherings of individuals around a facility providing supervised consumption services are more likely to arise when the capacity or hours of operation do not meet local needs (and thus this need should be addressed at a planning level). Cooperation between police and supervised consumption services, as well as local political and community support, can also help reduce any risks of nuisance.[20]

Because supervised consumption services are also beneficial to the larger community, opposition sometimes observed from some local residents tends to diminish over time, with more positive attitudes coming from the community.[21] In Vancouver, local police are playing an important role in supporting Insite.[22]

DO SUPERVISED CONSUMPTION SERVICES INCREASE LOCAL CRIME?

No. There is absolutely no evidence that supervised consumption services increase local crime. Evidence shows that Vancouver's Insite has had no impact on drug trafficking, assaults or robberies in the neighborhood.[23] Similar observations have been made in Europe and Australia.[24]

> Expectations towards [supervised consumption services] need to be realistic, as they cannot address all the key variables of drug-related harm . . . They are, however, an effective public health intervention providing a 'safer environment' to reduce risks inherent in public drug use; they are unique in their capacity to develop individually tailored health education that achieves sustainable behavioural change among the most vulnerable populations; and the facilities provide clear benefits by increasing drug users' access to health and social care, and in reducing public drug use and associated nuisance.[25]
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> European Monitoring Centre for Drugs and Drug Addiction 2010 report

WHAT IS THE CURRENT CONTEXT FOR SUPERVISED CONSUMPTION SERVICES IN CANADA?

In 2008, the federal Minister of Health chose not to extend Insite's exemption (under section 56 of the CDSA) despite evidence that Insite was an effective response to the dramatic spread of infectious diseases such as HIV and hepatitis C, and to the high rates of drug-related overdose in Vancouver's Downtown Eastside. Proponents of the site, including the PHS Community Services Society (which operates Insite under contract with the Vancouver Coastal Health Authority), the Vancouver Area Network of Drug Users (VANDU) and two individual Insite clients challenged this refusal all the way to the Supreme Court of Canada. In September 2011, the Supreme Court ordered the federal Minister of Health to grant the exemption, which stands today. According to the Court, the decision to deny an exemption violated Insite's clients' rights to life, liberty and security of the person in a way that was both "arbitrary" and "grossly disproportionate" (the right to security of the person is engaged where a law creates a risk to health by preventing access to health care),[26] rights that are guaranteed by the *Canadian Charter of Rights and Freedoms*.[27] In early 2016, Health Canada granted Insite a four-year exemption to continue operating. Currently, several cities across Canada are considering implementing supervised consumption services, but the *Respect for Communities Act* creates unreasonable barriers to their implementation.

WHAT DID THE SUPREME COURT OF CANADA SAY ABOUT SUPERVISED CONSUMPTION SERVICES AND FUTURE EXEMPTIONS?

According to the Supreme Court, the Minister of Health must exercise his or her discretion to grant an exemption, in accordance with the Charter which guarantees the rights to life, liberty and security of the person (section 7).

The government cannot deprive people of any of these rights "except in accordance with the principles of fundamental justice." Regarding Insite, the Supreme Court ruled that the then Minister's refusal to grant an exemption was not in accordance with the principles of fundamental justice because it was both arbitrary and grossly disproportionate, as it undermined the objectives of public health and safety of the *Controlled Drugs and Substances Act*.[28] Furthermore, the effect of denying clients Insite's life-saving and health-protecting services "[was] grossly disproportionate to any benefit that Canada might derive from presenting a uniform stance on possession of narcotics." [29]

For future exemptions, the Minister must strike the appropriate balance between both objectives of the CDSA: achieving public health and public safety. Importantly, the Supreme Court ruled that:

> "Where, as here, the evidence indicates that a supervised injection site will decrease the risk of death and disease, and there is little or no evidence that it will have a negative impact on public safety, the Minister should generally grant an exemption." [30]

The Court outlined five broad factors to be considered by the Minister of Health in making a decision about whether to issue a CDSA exemption:

> "…The factors considered in making the decision on an exemption must include evidence, *if any*, on the impact of such a facility on crime rates, the local conditions indicating a need for such 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." [31] [emphasis added]

These factors for consideration are meant to prevent any future decision from being arbitrary or creating a grossly disproportionate harm to people by impeding their access to necessary health services. The Supreme Court did not rule that an application for an exemption could be reviewed or an exemption granted only if all five factors had been addressed and/or satisfied. The Court simply said that *if* there is evidence about these factors, then such evidence must be taken into consideration. The Court did not say that any of these factors are necessarily determinative.

ARE SUPERVISED CONSUMPTION SERVICES IN CONFORMITY WITH INTERNATIONAL LAW?

Access to supervised consumption services is required under not only the Charter but also international human rights law, which recognizes harm reduction as inherent in the right to health (contemplated by numerous instruments binding on Canada, including the *International Covenant on Economic, Social and Cultural Rights*).[32] Indeed, there is overwhelming international consensus that full realization of the right to health demands access to harm reduction services.[33] Some have claimed in years past that international anti-drug conventions prohibit the implementation of supervised consumption services.[34] But such rigid interpretation of international anti-drug conventions is rejected by most experts[35] and numerous countries that have implemented such services. The UN's own legal advisory body on drug control issues, the Legal Affairs Section of the UN Office of Drugs and Crime (UNODC), concluded more than a decade ago that supervised consumption services are not contrary to the conventions.[36]

HOW, EXACTLY, DOES THE *RESPECT FOR COMMUNITIES ACT* AFFECT THE EXEMPTION PROCESS?

The *Respect for Communities Act* creates a restrictive exemption regime under the CDSA specifically designed for supervised consumption services. Under this regime, an exemption may only be granted for a "medical purpose." (Recall that Insite was originally granted an exemption for "scientific purposes" and other kinds of exemptions from the CDSA may also be granted if it is "in the public interest.")

The *Respect for Communities Act* codifies a repressive context that allows for no flexibility or room to facilitate the implementation of supervised consumption services; the federal Ministry of Health is not even allowed to examine an application for exemption *unless* and *until* it has received the 25 different categories of information listed in the Act — several of which including multiple items. (The most significant of these are described below.) As a further, catch-all requirement, the Act says that the application must include "any other information that the Minister considers relevant to the consideration of the application." It also gives the federal Cabinet the power to adopt regulations that prescribe yet additional required information beyond what is already stated explicitly in the Act.

Furthermore, an exemption to operate a supervised consumption service without risk of criminal prosecution may only be granted in "exceptional circumstances," and only after the Minister has considered a number of principles set out in the Act. Several of the principles stated in the Act, such as the declarations that "organized crime profits from the use of illicit substances," are irrelevant to the operation of such a health service and were clearly intended by the drafters to provide some statutory language that a government hostile to such services could invoke in front of a court to defend its refusal if its decision were so challenged.

Instead of enhancing access to critical health services, as recognized by the Supreme Court of Canada, the *Respect for Communities Act* makes it unnecessarily difficult for public health and community agencies to apply for an exemption. And for those who manage to provide all the excess information required by the Act, there is no guarantee that the application will even be considered or that an exemption will be granted if all criteria are met, especially if a hostile government is in power.

ISN'T IT FAIR TO ASK LOCAL COMMUNITIES, POLICE AND OTHER AUTHORITIES FOR THEIR OPINION BEFORE IMPLEMENTING A SUPERVISED CONSUMPTION SERVICE?

The *Respect for Communities Act* requires an application for an exemption to be accompanied by an excessive, unnecessary amount of information:

- This includes evidence of extensive consultations with "a broad range" of local community groups, and a report setting out steps to be taken to address "any relevant concerns" raised during those consultations.
- The application must also include letters from various authorities and bodies with their "opinion" on the proposed supervised consumption service, including the following:
    - the local municipal government — which, given the wording of the Act, could be interpreted as requiring a majority vote of support by the municipal council;
    - the provincial minister of health;
    - the lead public health official of the province;
    - the provincial minister of public safety; and
    - the head of the police force providing policing services for that area.
- The application must include a description of any measures that will be taken to address "any relevant concerns" raised by the local municipal government or head of the local police force.
- It must also include a report of consultations with the provincial licensing authorities for physicians and nurses (i.e., the College of Physicians and Surgeons, the College of Nurses). This report must include the opinion of each of those bodies regarding the proposed supervised consumption site.

While working with local communities, governmental authorities and local police can contribute to a better acceptance of the facility, thereby improving its functioning, making their input a legal requirement for getting or even applying for an exemption is unjustified and excessive. There is no equivalent requirement for other health services for people who do not use drugs. Local residents and police forces should have no right to decide who can access health care services. "Opinions" that are not necessarily based on any evidence are unjustifiable requirements. The fact that supervised consumption services are meant to serve people who use drugs seems to be the only reason for such exceptional treatment. This is of particular concern because people who use drugs are a stigmatized and often marginalized population, and local opposition to the implementation of drug-related services is likely to be based on misconceptions, fear and unfounded assumptions about drugs, people who use them, and harm reduction programs.

WHAT ABOUT THE OTHER INFORMATION REQUIRED BY THE *RESPECT FOR COMMUNITIES ACT?*

In addition to all the opinions described above, which must be solicited and submitted with an application for an exemption, the *Respect for Communities Act* requires yet additional information to be submitted — and all of these opinions and information must be on file before the Minister is legally authorized to make a decision of whether to grant an exemption. This additional required information includes the following:

- A "financing plan" that shows that the "feasibility and sustainability" of the site.
- The application must include any available law enforcement research or statistics about crime or public nuisance near the site, public consumption of drugs near the site and in the municipality, drug-related litter near the site and in the municipality, as well as any "relevant information" on loitering that *may* be related to "certain activities" involving illegal drugs (which activities are not defined) and "minor offence rates" near the site.
- Even before an exemption is issued — or can legally be issued by the Minister — the application for the exemption must include the name, title and resumé of the proposed "responsible person in charge" of the site (i.e., the person responsible for ensuring any conditions attached to an exemption, if issued, are followed). The same information must also be included about the *alternate* responsible persons, and each one of the other proposed "key staff members" (i.e., the staff who will directly supervise the consumption of drugs at the site).
- For each of these staff, the application for an exemption must also include a document with a police background check going back 10 years, from either a Canadian police force or, if the person has lived in another country during that time, the police force of that other country.

In other words, before the federal Health Minister can legally exercise the authority to grant (or refuse) an exemption that would allow a supervised consumption site, the health service provider wishing to operate such a service must secure financing, look for law enforcement statistics of various kinds, identify specific potential staff members and get police background checks on them. As a practical matter, these further requirements for information, which must be provided *before* any decision can be made the application, create extra logistical challenges.

WHAT HAPPENS ONCE AN APPLICATION FOR AN EXEMPTION IS FINALLY COMPLETE?

Once all the required information is submitted to the Minister, the Minister *"may consider"* the application. The Minister "may only grant an exemption… in exceptional circumstances and after having considered" the various principles set out explicitly in the Act. The Act also authorizes the Minister to notify the public that an application for an exemption for a supervised consumption site has been filed and invite public comment for 90 days. There is no firm timeline specified in the Act for the Minister to make a decision on an application; an applicant may be left waiting for months or years.

INJECTING REASON: WHY IS THE *RESPECT FOR COMMUNITIES ACT* HARMFUL?

The *Respect for Communities Act* is a flawed, mean-spirited and ineffective piece of legislation that only serves to marginalize our most vulnerable residents and criminalize people suffering from addiction. It was a deliberate attempt … to create barriers that block people from accessing life-saving harm reduction services and medical care. … The Act is in no way based on health science and should be repealed by your government as soon as possible.

Letter to federal Health Minister Jane Philpott from Vancouver Mayor Gregor Robertson, B.C. Health Minister Terry Lake and others (30 August 2016)

The *Respect for Communities Act* is harmful because it undermines the rights of people who use drugs to access life-saving and health-protecting services. In particular:

The *Respect for Communities Act* fuels misinformation about supervised consumption services.

The Act does not recognize the well-established benefits of supervised consumption services to reduce health and social harms often associated with the use of drugs. It does not even mention that supervised consumption services can prevent overdose-related deaths and decrease the number of new HIV or hepatitis C infections. The Act also ignores comprehensive research demonstrating that supervised consumption services are in fact beneficial for public order and safety. The Act only focuses on the risks associated with illegal drug use, as if supervised consumption services were exacerbating such risks when evidence clearly show they do the exact opposite.

The *Respect for Communities Act* is in complete contradiction with the spirit of the Supreme Court of Canada's 2011 decision.

By touting "public safety" at the expense of public health, the Act runs counter to the Court's emphasis on striking a balance between public safety and public health. By making it even more difficult to implement supervised consumption services, the *Respect for Communities Act* ignores the Supreme Court of Canada's assertion that these services are vital for the most vulnerable groups of people who use drugs and that preventing access to these services violates human rights.

The *Respect for Communities Act* imposes an excessive application process that would not be, and is not, required in the case of other health services.[37]

Applicants must provide extensive information and documentation before an application can even legally be examined by the Minister, including letters from authorities who might change positions during a lengthy process or who might be opposed for political or ideological reasons to such harm reduction services.

The *Respect for Communities Act* disproportionately considers "opinions" regarding access to critical health services.

The Act requires letters of "opinion" from at least five different bodies, including police and governmental authorities. Applicants must also conduct consultations with a "broad range of [local] community groups" and submit a detailed report summarizing the "opinions" of consulted groups. While support from local authorities, communities and police can facilitate the implementation of supervised consumption services, legally requiring their opinions does nothing to build constructive cooperation. This requirement only allows for decisions to be based on unjustified, misinformed and/or politically-oriented positions, which may be contrary to the constitutional rights of people who use drugs.

The *Respect for Communities Act* effectively gives certain authorities unilateral veto power to the implementation of supervised consumption services.

Because an application for an exemption cannot be examined unless certain authorities have submitted a letter of opinion, the exemption process can easily be delayed or blocked.

As with other life-saving health services, the implementation of supervised consumption services should not be dependent upon whether, for example, the local government, police forces or the Ministry in charge of public safety feel they are warranted.

The *Respect for Communities* Act does not provide sufficient certainty or protection against arbitrariness.

There is no guarantee that an application will be approved by the federal Minister of Health, even if all the required information has been submitted; there is also a risk that additional information might be requested and the process delayed even further. According to the *Respect for Communities Act*, the Minister can require "any other information [she] considers relevant to the consideration of the application." Additional requirements may also be imposed through regulations. Finally, the Act does not indicate what level of information, research, opposition or support would result in an application being accepted or denied. At no point does it capture the direction from the Supreme Court's ruling that "the Minister should generally grant an exemption" when evidence "indicates that a supervised injection site will decrease the risk of death and disease, and there is little or no evidence that it will have a negative impact on public safety." On the contrary, the Act indicates that exemptions "may only" be granted "in exceptional circumstances."

The *Respect for Communities Act* creates unjustified opportunity for public opposition and discrimination against people who use drugs.

The Act provides the federal Minister of Health with the possibility to give notice to the public of any application for an exemption. Members of the public have 90 days to provide the Minister with comments. It is unclear how comments from random members of the public, across the country, would help the Minister of Health strike the right balance between public health and public safety. By calling for comments from the general public, without any guarantee that such comments will be informed by evidence and understanding of the challenges associated with addiction, the Ministry only creates a legitimate platform for stigmatizing and discriminatory comments against people who use drugs. It is irresponsible to subject the life-saving health needs of a highly marginalized population to the whim of undefined "members of the public."

It is estimated that 4.1 million Canadians have injected drugs at some point in their life.[38]

- 11% of people who inject drugs in Canada are HIV-positive. 59% of people who inject drugs had evidence of either current or past hepatitis C infection.[39] 58% of the estimated new HIV infections in Indigenous people in Canada are attributable to injection drug use.[40]
- According to a study in Toronto, 54% of people who inject drugs injected in a public place such as a washroom or stairwell and 46% injected on the street or in an alley in the six months prior to being interviewed.[41]
- In the summer of 2014, the Agence de la santé et des services sociaux de Montréal investigated 83 cases of severe overdoses, 25 of which were fatal.[42]
- Canada is in the midst of an ongoing crisis of deaths and injuries related to opioid overdose — circumstances similar to those that led eventually to the opening of Insite in Vancouver in the first place. In B.C. alone, there were more than 550 reported overdose deaths in first nine months of 2016.[43]
- Insite clients in Vancouver are 70% less likely to share needles than those who do not use the facility.[44]
- Insite may have prevented as many as 48 overdose deaths over a four-year period.[45]
- The opening of Insite was associated with a 33% increase in detox service use and an increase in rates of access to long-term addiction treatment.[46]

Recommendation

Given the harmful impacts of the *Respect for Communities Act,* we call for its immediate repeal.

References and Notes

[1] In February 2014, the four Quebec ministers responsible for health and social services, Canadian intergovernmental affairs, public safety and justice sent a letter to the federal Health Minister in which they expressed the Government of Quebec's disapproval of the *Respect for Communities Act* (then Bill C-2). This information is available in *Rapport du comité d'experts sur les interventions fédérales dans le secteur de la santé et des services sociaux de 2002 à 2013 remis au gouvernement du Québec* (Direction des communications du ministère de la Santé et des Services sociaux, 2014), p. 74. In August 2016, the Vancouver mayor and B.C. health minister wrote to the federal Health Minister requesting that the law "be repealed as soon as possible": Mayor G. Robertson et al., Letter to Hon. J. Philpott, 30 August 2016. Available at https://www.scribd.com/document/322699242/Letter-to-Minister-Philpott-Respect-for-Communities-Act.

[2] International Harm Reduction Association (now Harm Reduction International), *What is harm reduction? A position statement from the International Harm Reduction Association*. Available at http://www.ihra.net/files/2010/08/10/Briefing_What_is_HR_English.pdf.

[3] D. Hedrich, *European report on drug consumption rooms*, European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), 2004.

[4] Toronto Drug Strategy, *Supervised Injection Services Toolkit*, 2013, a report prepared by the Toronto Drug Strategy's Supervised Injection Services Working Group; E. Schatz and M. Nougier, *Drug consumption rooms. Evidence and practice*, briefing paper, International Drug Policy Consortium (IDPC), 2012.

[5] International Harm Reduction Association (now Harm Reduction International), *supra*.

[6] Of course, in those settings where heroin or other opioids are medically prescribed for people with opioid dependence, the drug is supplied on-site along with the sterile equipment.

[7] D. Hedrich, T. Kerr and F. Dubois-Arber, "Drug consumption facilities in Europe and beyond" in *Harm reduction: evidence, impacts and challenges*, EMCDDA, 2010. For an overview of existing supervised consumption services globally, see E. Schatz and M. Nougier, *supra*.

[8] *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, at para. 4.

[9] Information available at http://supervisedinjection.vch.ca/services/services.

[10] A. Krusi et al., "An integrated supervised injecting program within a care facility for HIV-positive individuals: a qualitative evaluation," *AIDS Care* 21(5), 2009: pp. 638–644.

[11] For a two-page summary of research findings about Insite, see Urban Health Research Institute, BC Centre for Excellence in HIV/AIDS, *Insight into Insite*, 2010. Available at http://www.cfenet.ubc.ca/sites/default/files/uploads/docs/insight_into_insite.pdf. For a more in-depth overview of research studies (including many of the studies cited in this document), see BC Centre for Excellence in HIV/AIDS, Vancouver Coastal Health and Urban Health Research Institute, *Findings from the evaluation of Vancouver's Pilot Medically Supervised Safer Injecting Facility – Insite*, revised in 2009. Report available at http://uhri.cfenet.ubc.ca/images/Documents/insite_report-eng.pdf.

[12] *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, at para. 133.

[13] *Ibid*. See for instance, E. Wood et al., "Attendance at supervised injecting facilities and use of detoxification services," *New England Journal of Medicine* 354(23), 2006: pp. 2512–2514; T. Kerr et al., "Impact of a medically supervised safer injection facility on community drug use patterns: A before and after study," *British Medical Journal* 332(7535), 2006: pp. 220–222; T. Kerr et al., "Circumstances of first injection among illicit drug users accessing a medically supervised safer injection facility," *American Journal of Public Health* 97(7), 2007: pp. 1228–1230.

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[20] EMCDDA, 2010, *supra*.

[21] *Ibid.*, citing research conducted in Europe and Australia, p. 318.

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[24] EMCDDA, 2010, *supra*.

[25] EMCDDA, 2010, *supra*, p. 322–323.

[26] *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, at para. 93.

[27] *Ibid.*

[28] *Ibid.*, at para. 131.

[29] *Ibid.*, at para. 133.

[30] *Ibid.*, at para. 152.

[31] *Ibid.*, at para. 153.

[32] *International Covenant on Economic, Social and Cultural Rights*, 1966, article 12.

[33] See, for example, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Report to the UN General Assembly)*, UNGAOR, 65th Sess., UN Doc A/65/255, 2010 which specifically mentions supervised consumption services.

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WHO WE ARE

The **Canadian HIV/AIDS Legal Network** promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research and analysis, advocacy and litigation, public education and community mobilization. The Legal Network is Canada's leading advocacy organization working on the legal and human rights issues raised by HIV/AIDS.

The **Canadian Drug Policy Coalition (CDPC)** is a coalition of over 70 organizations from across Canada that envision a safe, healthy and just Canada where drug policies and legislation as well as related institutional practice are based on research and best practices, human rights, social inclusion and public health.

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