

April 28, 2017

The Honourable Jane Philpott
Minister of Health
70 Colombine Driveway
Postal Location: 0906C
Ottawa, ON K1A 0K9



Dear Minister:

Re: Senate committee amendments to Bill C-37, *An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts*

I write on behalf of the Canadian HIV/AIDS Legal Network, which works to promote the human rights of people living with, at risk of or affected by HIV or AIDS, in Canada and internationally. For many years, we have analyzed legal issues related to safer consumption services (SCS) and have advocated, on both public health and human rights grounds, for greater access to these life-saving, health-protecting services.

We write to share with you our concerns regarding the current state of Bill C-37, now at “report stage” in the Senate following review by the Standing Committee on Legal and Constitutional Affairs. **With respect, we urge you to reject the amendments adopted by the Senate committee.**

As a matter of logic and principle, any legal regime for exempting SCS from the criminal prohibitions of the *Controlled Drugs and Substances Act* (CDSA) must provide an effective and timely means of securing such an exemption. It should also be a given that such a mechanism must be non-discriminatory (to comply with the equality guarantee of the *Canadian Charter of Rights and Freedoms*) and that, to avoid being arbitrary, decisions should be based on evidence. While, in our view, there is room for further streamlining of the regime originally proposed in Bill C-37 — as we and other organizations proposed in our submissions to Parliament — it nonetheless represents a very substantial improvement over the current legislative framework.

However, rather than improve Bill C-37, the Senate committee has adopted three amendments to Bill C-37 (specifically Clause 42) that would present significant barriers to the establishment and operation of SCS, are not based on evidence of need or effectiveness, and constitute unacceptable barriers to realizing access to an essential health service, particularly in the context of the ongoing crisis of opioid overdose deaths in Canada. In doing so, the amendments contradict the very spirit and purpose of the bill, which is to *remove* unnecessary hurdles to securing a ministerial exemption to operate SCS.

Repeal committee amendment #1: A minimum public comment period is a means of causing delay

Clause 42 of Bill C-37 would add a new section. 56.1(4) to the CDSA ensuring that, should the Minister choose to give notice to the public of an application for a SCS, any period for public comment would not exceed 90 days. Instead, **the Senate committee has replaced this maximum 90-day period with a minimum 45-day notice period.** Such an amendment only builds in unnecessary further delay to operating SCS, directly contradicting the original legislative intention of imposing a 90-day maximum to avoid unnecessary delay. As you know, the evidence to be included in an application for an exemption will already require substantial time and resources to

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assemble, including “information, if any, related to expressions of community support or opposition.” Imposing additional time for public comment is unnecessary, particularly when there is already evidence of the location conditions indicating a need for SCS.

Indeed, there is a constitutional right to not have one’s access to health services such as SCS impeded by the state’s over-extension of the criminal law, as the Supreme Court of Canada ruled in *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 (the Insite case). It is, therefore, already troubling enough that Bill C-37 contemplates that a Minister’s decision about whether to permit the operation of such a health facility could be contingent upon whether a community, or certain elements of a community, support or oppose a proposal, given the considerable degree of stigma and prejudice against people who use drugs. 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. Public opinions about SCS that are not necessarily based on evidence are unjustifiable requirements. Given this reality, and particularly given the emergency situation currently observed with the epidemic of fatal overdoses, it is disturbing that the Senate committee has chosen to amend Bill C-37 to build in the possibility of a statutorily mandated minimum period of delay, prolonging the period during which such public opposition to an application could be sought (or even encouraged by a government itself hostile to SCS).

Repeal committee amendment #2: Citizen advisory committees set up to enable stigma

The second Senate committee amendment to Bill C-37 would add a new section 56.2 to the CDSA. This provision would allow the Minister to establish, for each SCS, **a voluntary “citizen advisory committee”** tasked with advising those in charge of the SCS on matters related to its operation and “public concern about the presence of the site in their community, including with respect to public health and safety.”

While working with local communities can contribute to better acceptance of a facility, thereby improving its functioning, the establishment of such committees with such broad advisory powers is unjustified and excessive. There is no equivalent requirement for health services for people who do not use drugs, and municipal governments already have in place zoning processes that include various forms of community consultation. The fact that SCS are meant to serve people who use drugs seems to be the only reason for such exceptional oversight, with a more burdensome standard. This is of particular concern because people who use drugs are a stigmatized and often marginalized population. We know already from experience with services such as needle and syringe programs or methadone clinics that such services sometimes run into community opposition, often based on misinformation and prejudice — opposition that has sometimes prevented services from being located where they are needed and accessible. Given the ongoing stigmatization and demonization of people who use drugs, it would be unwise to add the possibility of a citizen advisory committee to the legislative framework governing this vital health service.

Repeal committee amendment #3: Mandating repeated offers of pharmaceutical therapy a barrier to SCS

Finally, the third Senate committee amendment to Bill C-37 would add a new section 56.3 to the CDSA, requiring a person who directly supervises the consumption of controlled substances at a SCS to **offer a person using the site “alternative pharmaceutical therapy” before that person consumes an illegally obtained controlled substance**. This amendment may be motivated by a well-intentioned desire to increase access to pharmaceutical therapies to help treat opioid or other substance dependence, as an alternative to continued injection of illegally acquired substances. The Legal Network has repeatedly called for measures to increase access to various methods of opioid dependence treatment, including with the prescription, as clinically indicated, of methadone, hydromorphone or diacetylmorphine — all of which have a solid evidentiary

foundation. However, the Senate committee amendment is unlikely to have this effect, and instead creates a further barrier to access to the SCS and its benefits.

The success of SCS is due in large part to a relationship between the service provider and the client that is non-judgmental and based on trust and respect for a client's ability to gauge their own readiness to participate in treatment. Mandating a service provider to offer treatment to a client, and to persist with this offer each and every time a client visits a SCS irrespective of the service provider's or client's views on their readiness to partake in treatment, is likely to corrode the important relationship that a client has with an SCS service provider, and ultimately drive clients away from an urgently needed health service and contribute to additional disease, injury and death.

For the reasons we have noted, we urge you to oppose and remove the Senate committee's three amendments to Bill C-37, as they are contrary to the spirit and purpose of the bill, creating unnecessary mechanisms for delay in determinations regarding exemptions for SCS and reflecting an ongoing stigmatization surrounding people who use drugs and the health services they need.

Alternative amendments to strengthen and improve Bill C-37

Instead, as we have outlined in greater detail in our submission to both House and Senate committees, **we would encourage two key amendments to Bill C-37 that would in fact streamline and strengthen it**, in keeping with its stated objective: "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." The two amendments we propose are as follows:

- (1) **Multiple pathways to an exemption:** In order to enable the rapid granting of an exemption to respond to local health needs (including an emergency situation), Bill C-37 should authorize the federal Health Minister also to rapidly grant an exemption upon the basis of a duly-motivated request by a provincial/territorial health minister, a chief public health officer of a province/territory, or a local medical officer of health (and the ability of the federal Minister to attach a condition to such an exemption that the requesting provincial/territorial or local health official confirm the intention and ability to secure resources to support the site). In addition, as an alternative pathway, Bill C-37 should delegate authority to any one of these provincial/territorial or local health officials, who are legally responsible for taking measures to address public health needs in their jurisdiction, to issue an exemption permitting the operation of a supervised consumption site in their area of jurisdiction without risk of criminal prosecution.
- (2) **Streamline information required in an application:** In order to ensure that decisions regarding an application for an exemption are based on relevant evidence, Bill C-37 should require some evidence of the local need for a site and of its intended health benefits. Bill C-37 should not incorporate considerations about "impact on crime rates" (as this is not a suitable measure for assessing the need for and benefit of health services) or "community support or opposition" (as this simply enables misinformation, stigma and prejudice to taint what should be an evidence-based decision). The Minister should be allowed to consider the regulatory structure in place to support the site and the question of resources for its operation — but the legislation should be worded flexibly so as not, in practice, to make the existence of financing a pre-condition to granting an exemption.

Against the backdrop of a national crisis of deaths from opioid overdose, when SCS desperately need to be scaled up, we urge you to reject the proposed amendments of the Standing Senate Committee on Legal and Constitutional Affairs, which will statutorily entrench unnecessary barriers to SCS and add needless and deadly delay to the establishment of SCS and impede their eventual operation.

Furthermore, to ensure the legislative framework for securing exemptions from the CDSA is simple, straightforward and expeditious, we also urge you to consider advancing amendments to Bill C-37 that would create additional pathways to an exemption and simplify the information required for an exemption, in the manner described above. This would be in keeping with the government's stated commitment to harm reduction and to evidence-based policy, and best reflect a new Canadian Drugs and Substances Strategy that treats problematic drug use primarily as a health issue rather than a matter for criminal justice.

We would be pleased to discuss these proposals with you in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Elliott', with a stylized flourish extending to the right.

Richard Elliott
Executive Director

Cc: The Honourable Peter Harder, Government Representative in the Senate
The Right Honourable Justin Trudeau, Prime Minister