



LIBRARY of PARLIAMENT  
BIBLIOTHÈQUE du PARLEMENT

## LEGISLATIVE SUMMARY



### **Bill C-65: An Act to Amend the Controlled Drugs and Substances Act**

**Publication No. 41-1-C65-E  
15 August 2013**

**Martha Butler  
Karin Phillips**

Legal and Social Affairs Division  
Parliamentary Information and Research Service

Library of Parliament **Legislative Summaries** summarize government bills currently before Parliament and provide background about them in an objective and impartial manner. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations. Legislative Summaries are revised as needed to reflect amendments made to bills as they move through the legislative process.

Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

© Library of Parliament, Ottawa, Canada, 2013

*Legislative Summary of Bill C-65*  
(Legislative Summary)

Publication No. 41-1-C65-E

Ce document est également publié en français.

# CONTENTS

1	BACKGROUND.....	1
1.1	Overview of Supervised Injection/Consumption Sites .....	1
1.2	The <i>Controlled Drugs and Substances Act</i> .....	2
1.3	Insite's Exemption under Section 56 of the <i>Controlled Drugs and Substances Act</i> .....	2
1.4	The Supreme Court of Canada's 2011 Judgment Regarding Insite .....	4
2	DESCRIPTION AND ANALYSIS .....	5
2.1	Interpretation (Clause 5) .....	5
2.2	Inspectors' Powers (Clauses 2 and 3) .....	6
2.3	Regulations under the <i>Controlled Drugs and Substances Act</i> (Clause 4) .....	7
2.4	Applications for Exemptions (Clause 5) .....	7
2.4.1	Ministerial Exemptions (Section 56.1(2)).....	8
2.4.2	Information to be Provided (Section 56.1(3)) .....	8
2.4.2.1	Data .....	8
2.4.2.2	Letters.....	9
2.4.2.3	Procedures .....	9
2.4.2.4	Information About Proposed Staff .....	10
2.4.2.5	Consultation Reports and Additional Information .....	11
2.4.3	Subsequent Applications (Section 56.1(4)) .....	11
2.4.4	Principles (Section 56.1(5)) .....	11
2.4.5	Notice (Section 56.1(6)).....	12
2.5	Coming Into Force (Clause 6).....	12
3	COMMENTARY .....	12



# LEGISLATIVE SUMMARY OF BILL C-65: AN ACT TO AMEND THE CONTROLLED DRUGS AND SUBSTANCES ACT

---

## 1 BACKGROUND

Bill C-65, An Act to amend the Controlled Drugs and Substances Act (short title: Respect for Communities Act),<sup>1</sup> was introduced in the House of Commons on 6 June 2013 by the Honourable Leona Aglukkaq, who was Minister of Health at the time.

Bill C-65's most noteworthy amendments are to section 56 of the *Controlled Drugs and Substances Act* (CDSA).<sup>2</sup> Section 56 deals with the conditions under which the Minister of Health may consider granting an exemption from the application of any provisions of the Act or its regulations for medical or scientific purposes or any other purpose in the public interest. The amendments to section 56 focus specifically on exemption requirements for the operation of supervised consumption sites in Canada. The term "supervised consumption site" will be used throughout this paper when referring to the bill (this term is defined in new section 56.1(1) of the CDSA – see section 2.1, "Interpretation (Clause 5)" of this legislative summary). Other sources referred to in this paper, including the Supreme Court of Canada, instead use the term "supervised injection site" or "safe/safer injection site."<sup>3</sup>

### 1.1 OVERVIEW OF SUPERVISED INJECTION/CONSUMPTION SITES

According to the Canadian Centre on Substance Abuse,

safer or supervised injection sites are specialized facilities that provide injection drug users with a clean, safe, unhurried environment. Sterile injection equipment is provided and health care and social service professionals are available to deal with health issues, provide counselling, and facilitate access to detoxification and treatment programs [available on site or elsewhere]. Supervision is provided by health professionals trained in low-risk injection techniques and overdose intervention.<sup>4</sup>

Organizations in other jurisdictions, including the European Union's European Monitoring Centre for Drugs and Drug Addiction, refer to supervised injection sites as drug consumption rooms, which they define as "professionally supervised healthcare facilities where drug users can use drugs in safer and more hygienic conditions."<sup>5</sup> Drug consumption rooms aim to address the public health and community problems associated with specific populations of drug users; in particular, injectors who consume in public or other high-risk situations.<sup>6</sup>

The establishment of supervised sites for injection drug users arose from concerns in the 1980s regarding the rapid spread of blood-borne pathogens such as HIV and hepatitis C among injection drug users.<sup>7</sup> The sites reflect a harm-reduction approach to drug abuse, which focuses on interventions that seek to reduce or minimize the adverse health and social consequences of drug use without requiring an individual to discontinue drug use. The harm-reduction approach to drug abuse sees many drugs users as being unwilling or unable to abstain from drug abuse at any given time and, consequently, there is a need to provide them with options that minimize the harm and/or risks caused by their continued drug use. These risks include

overdose, infections, the spread of communicable diseases and contaminated litter. It is also important to note that harm-reduction approaches do not exclude abstinence-based approaches that focus on the discontinuation of drug use. Rather, they aim to serve as a bridge to treatment and rehabilitation services.

## 1.2 THE *CONTROLLED DRUGS AND SUBSTANCES ACT*

The CDSA came into force 14 May 1997. It replaced the *Narcotic Control Act*,<sup>8</sup> and repealed portions of the *Food and Drugs Act*.<sup>9</sup> The Supreme Court of Canada has held that the CDSA has a dual purpose: that of protecting public safety and protecting public health.<sup>10</sup>

The CDSA prohibits the possession of illegal drugs, which are listed in extensive schedules to the Act. Under the current section 56, the Minister may consider granting an exemption from the application of any provisions of the Act or its regulations for medical or scientific purposes or any other purpose in the public interest. In the case of a supervised consumption site, such an exemption is necessary to protect staff and others on site from charges of possession or trafficking under the CDSA. Although section 56 of the CDSA permits the Minister to grant exemptions, the CDSA currently does not set out any requirements as to the form or content of an application for an exemption.

## 1.3 INSITE'S EXEMPTION UNDER SECTION 56 OF THE *CONTROLLED DRUGS AND SUBSTANCES ACT*

In September 2003, Insite, a supervised injection site located in Vancouver's downtown East Side, was granted a three-year conditional exemption by the Minister under section 56 of the CDSA, establishing it as the first legally sanctioned supervised injection site in Canada. After being granted an exemption, Insite opened in 2003 with operational funding provided by British Columbia's Ministry of Health Services.<sup>11</sup> Insite is operated by Vancouver Coastal Health, a regional health board, and the Portland Hotel Society (PHS) Community Services Society, a not-for-profit housing society that provides supportive living space and advocacy for people in the downtown East Side. Insite has 12 injection booths where clients, under the supervision of nurses and health care staff, inject illicit drugs that they obtained themselves prior to entry into the facility. Insite provides clean injection equipment such as syringes, cookers, filters, water and tourniquets. Nurses are trained to intervene in the case of an overdose, as well as to provide other health care services such as wound care and immunizations. Insite also staffs addiction counsellors, mental health workers and peer staff who connect clients to community resources such as housing, addictions treatment and other supportive services. In addition, Insite users have access to a withdrawal management program called Onsite, a clinically supervised detoxification program that is also located at Insite.

As Insite was granted a legal exemption for both medical and scientific purposes, research was to be conducted by the British Columbia Centre for Excellence on HIV/AIDS to evaluate the services offered by the supervised injection site.<sup>12</sup> Funding for this research was initially provided by Health Canada and then by other sources, because more time was needed to complete the evaluation. The British Columbia Centre for Excellence on HIV/AIDS published its findings in the *Canadian Medical Association Journal* in November 2006.<sup>13</sup>

In December 2006, the federal Minister of Health appointed an Expert Advisory Committee to evaluate the impact of Insite in relation to its objectives of increasing access to health and addiction care for drug abusers, reducing overdose fatalities, reducing the transmission of blood-borne viral infections and other injection-related infections, and improving public order. The review examined research on Insite, as well as research on supervised injection sites in other jurisdictions, including Australia and Europe.<sup>14</sup> The findings of the Expert Advisory Committee, published in 2008, are outlined in Table 1.

Table 1 – Findings of the Expert Advisory Committee  
Examining Research on Supervised Injection Sites

Formally Stated Objective of Insite	Findings of the Expert Advisory Committee
Increasing access to health and addiction care	<ul style="list-style-type: none"> <li>• Insite encourages users to seek counselling, detoxification and treatment, which resulted in an increased use of detoxification services and increased engagement in treatment.</li> <li>• Insite facilitated the immunization of injection drug users in Vancouver's downtown East Side during an outbreak of pneumococcal pneumonia in 2006.</li> </ul>
Determining impact on overdose fatalities	<ul style="list-style-type: none"> <li>• Insite staff have successfully intervened in over 336 overdose events since 2006 and no overdose deaths have occurred at the service.</li> <li>• Mathematical modelling suggests that Insite saved about one life a year as a result of intervening in overdose events, though the committee suggested that the validity of these findings should be treated with caution.</li> </ul>
Reducing the transmission of blood-borne viral infections and other injection-related infections	<ul style="list-style-type: none"> <li>• Self-reports from users of Insite's services and users of supervised injection sites in other countries indicate that needle sharing decreases with increased use of these sites.</li> <li>• However, no direct evidence exists that supervised injection sites reduce the rates of HIV infection.</li> </ul>
Determining impact on public order	<ul style="list-style-type: none"> <li>• Self-reports indicate that there was a reduction in the number of people injecting in public in the downtown East Side, as well as in the vicinities of supervised injection sites located in other jurisdictions. However, the committee cautioned that these sites do not have the capacity to accommodate all or most injections that might otherwise take place in public.</li> <li>• There was no evidence of increases in drug-related loitering, drug dealing or petty crime in areas around Insite, or other supervised injection sites located in other jurisdictions. One supervised injection site was closed in Europe due to littering and loitering.</li> <li>• There were no changes in rates of crime recorded by police during the first three years of Insite's operations.</li> <li>• There is no evidence that supervised injection sites influence rates of drug use in the community or increase relapse rates among injection drug users.</li> </ul>
Determining cost-benefits/effectiveness	<ul style="list-style-type: none"> <li>• Cost-benefit studies showed that one dollar spent on Insite provided a savings of between \$0.97 and \$2.90 to the health care system, reflecting potential cost savings associated with preventing HIV infections and overdoses.</li> <li>• However, the committee noted that these results should be treated with a degree of caution because of limitations in the validity of the data used in the analysis.</li> </ul>

Source: Table prepared by the authors using data obtained from Health Canada, "[Vancouver's INSITE service and other Supervised injection sites: What has been learned from research? Final report of the Expert Advisory Committee](#)," *Reports & Publications*, 31 March 2008.

#### 1.4 THE SUPREME COURT OF CANADA'S 2011 JUDGMENT REGARDING INSITE

After the expiry of its initial exemption under section 56 of the CDSA, the federal government granted Insite temporary extensions in 2006 and 2007 to complete the evaluative research of the facility. However, in 2008, the Minister of Health decided not to extend Insite's exemption from the operation of the CDSA.<sup>15</sup> Consequently, the PHS Community Services Society, the Attorney General of British Columbia, the Vancouver Area Network of Drug Users and other claimants brought an action against the Government of Canada, arguing that Insite was exempt from federal criminal laws that prohibit the possession and trafficking of drugs, either because Insite is a health facility within the exclusive jurisdiction of the province, or because the application of the criminal law would violate the claimants' section 7 rights under the *Canadian Charter of Rights and Freedoms* – namely, the “right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”<sup>16</sup>

The case reached the Supreme Court of Canada, which rendered its decision in *Canada (Attorney General) v. PHS Community Services Society* on 30 September 2011.<sup>17</sup> First of all, the Court found that Insite was not exempt from the application of the CDSA on the grounds of provincial jurisdiction, because it was of the view that the core provincial power over health care could neither be explicitly defined based upon current jurisprudence, nor could it be considered immune from federal interference, as federal criminal law can and does apply to health matters in certain cases.

Secondly, the Court found, based upon the evidence (including the findings of the federal Expert Advisory Committee), that the services provided by Insite were necessary to reduce the health risks associated with injection drug use. Consequently, it concluded that the denial of access to these services under section 4(1) of the CDSA, which deals with offences related to the possession of illegal drugs under the Act, would threaten the health of the claimants and would therefore constitute a limitation of the section 7 Charter rights of the claimants. Though the Court determined that section 4(1) of the CDSA engages the section 7 Charter rights of the claimants, it did not consider the CDSA, when viewed in its entirety, to be in violation of the Charter because the CDSA grants the Minister the power to grant exemptions from the Act under section 56 on the basis of health.

However, as the Minister refused to grant Insite an exemption under section 56, the Court found that the Minister's decision constituted a violation of the claimants' section 7 Charter rights related to life, liberty or the security of the person. Furthermore, the Court also found that the Minister's decision was not in accordance with the principles of fundamental justice, as it undermined the purposes of the CDSA, including public health and safety, and created a risk of disease and death for drug users that outweighed any possible benefit.<sup>18</sup>

As a result, the Court ordered the Minister to grant Insite an exemption, but left decisions regarding future applications for exemptions for Insite or other supervised injection sites or other premises up to the discretion of the Minister. However, the



Court did provide guidance to the Minister in granting an exemption, including articulating that the Minister must exercise his or her discretion in accordance with the Charter and the principles of fundamental justice.<sup>19</sup> Furthermore, the Court said that in determining whether to grant an exemption for a supervised injection site, the Minister should also consider evidence related to the impact of such a facility on crime rates, the local need for a facility, the regulatory structure in place to support the facility, the resources to support its maintenance, and expressions of community support or opposition.

In response to the Supreme Court of Canada's decision, the Government of Canada introduced Bill-65, the Respect for Communities Act, which seeks to define the criteria that the Minister must consider when assessing whether to grant an exemption under the CDSA.<sup>20</sup>

## 2 DESCRIPTION AND ANALYSIS

As mentioned earlier, the most significant amendments that Bill C-65 makes to the CDSA are to section 56 of the Act, which deals with ministerial exemptions. The bill also amends the regulation-making authorities set out in section 55 of the Act, and grants some additional powers to inspectors with respect to supervised consumption sites.

### 2.1 INTERPRETATION (CLAUSE 5)

Among other things, Clause 5 of Bill C-65 contains definitions that are integral to the entire bill. As such, they are addressed here. The remainder of clause 5 is discussed later in this paper. The definitions that the bill adds to section 56.1(1) of the CDSA apply specifically to supervised consumption sites. The CDSA defines a “controlled substance” as any of the hundreds of substances set out in Schedules I to VIII of the Act. Bill C-65 defines an “illicit substance” as a controlled substance obtained in a manner that is not authorized under the Act. A “supervised consumption site” is a facility specified in a ministerial exemption under section 56 of the CDSA that, for medical purposes, permits the use of illicit substances in a controlled environment.

The bill sets out definitions relating to staff at supervised consumption sites in three categories. A “responsible person in charge” is the person identified by the applicant for the ministerial exemption as the individual who must, while present at the safe consumption site, ensure that all persons and classes of persons exempted for a medical purpose comply with the CDSA, its regulations and the terms of the exemption when they are at the site. The language of the bill indicates that there may only be one such person, but the applicant for the exemption may identify multiple “alternate person[s] in charge” who would assume the responsibilities of the responsible person in charge when that person is absent. Finally, “key staff members” are the individuals identified by the applicant who will directly supervise the use of illicit substances at the site.

The bill defines “designated criminal offence[s]” and “designated drug offence[s]” that are relevant to reporting requirements that will be discussed further in this paper. Designated criminal offences are defined as the following:

- financing terrorism;
- committing fraud, fraudulently manipulating stock exchange transactions and using mails to defraud;
- laundering proceeds of crime;
- participating in activities of a criminal organization, commissioning an offence for a criminal organization and instructing the commission of an offence for a criminal organization; and
- committing conspiracy or attempting to commit conspiracy, being an accessory after the fact to, or counselling, any of the previous offences.

Designated drug offences are defined as the following:

- committing any offence under the CDSA except that of possession;
- committing certain offences under the *Food and Drugs Act* that were repealed with the enactment of the CDSA, including trafficking in controlled substances, possession for the purpose of trafficking, possession of property obtained by trafficking and laundering proceeds of crime;
- committing certain offences under the repealed *Narcotic Control Act*, including trafficking or possession for the purposes of trafficking, importing or exporting narcotics, cultivation of the opium poppy or marihuana plants, and possession of or laundering proceeds of crime; and
- committing conspiracy or attempting to commit conspiracy, being an accessory after the fact to, or counselling, any of the previous offences.

Finally, Bill C-65 defines “local government” and “municipality” in the usual manner, except that local government includes “band” councils and “band” governments (with band defined as under the *Indian Act*), and municipality includes reserve and designated lands (as defined under the *Indian Act*) as well as lands subject to comprehensive self-government agreements.

## 2.2 INSPECTORS’ POWERS (CLAUSES 2 AND 3)

Inspectors’ powers are set out under sections 30 to 32 of the CDSA. Section 31 of the Act allows an inspector to enter any place the inspector believes, on reasonable grounds, is being used by any person licensed under the regulations to deal with a controlled substance for the purposes of conducting business or professional practice. Clauses 2 and 3 of Bill C-65 amend section 31 to include the inspection of supervised consumption sites in inspectors’ powers. Specifically, inspectors may enter a site that is the subject of an application for ministerial exemption to confirm and exercise any of their statutory powers in order to verify information contained in the application (clause 3(1)). Where an exemption has been granted, inspectors may

enter a site and exercise their statutory powers to confirm compliance or non-compliance with the terms of the exemption (clause 3(1)).

Clause 3 amends the CDSA by making minor changes to simplify the language of the English text of the Act (clauses 3(2) and 3(4)). Some further amendments extend inspectors' existing powers and responsibilities to include aspects of inspection relating to supervised consumption sites and the enforcement of the terms and conditions of ministerial exemptions (clauses 3(3) to 3(5)).

## 2.3 REGULATIONS UNDER THE *CONTROLLED DRUGS AND SUBSTANCES ACT* (CLAUSE 4)

Section 55 of the CDSA sets out the Governor in Council's regulation-making authorities.<sup>21</sup> Section 55(1)(n) allows the Governor in Council to make regulations on the qualifications, powers and duties of inspectors in their enforcement of the regulations. Clause 4(1) of the bill amends this authority to include the regulation of aspects of inspectors' duty to enforce the terms of ministerial exemptions for supervised consumption sites.

Section 55(1)(z) of the CDSA permits the Governor in Council to make regulations exempting any person, class of persons or controlled substance from the application of the Act or the regulations in a manner similar to the ministerial authority currently set out under section 56. Clause 4(2) limits this authority, however, by stating that the Governor in Council may not exempt persons or substances from the operation of the Act with respect to substances obtained in a manner not authorized by the Act – that is, “illicit substances,” as defined in section 56.1. This means the Governor in Council may not grant exemptions for supervised consumption sites, as users of these sites bring in their own drugs, which are generally obtained by illegal means.

Although the bill prevents the Governor in Council from granting exemptions for supervised consumption sites, the Governor in Council may regulate certain aspects of the operation of the sites. Specifically, the Governor in Council may make regulations defining terms for the interpretation of the new section 56.1 and amending the definitions created in the bill. Further, the Governor in Council may make regulations setting out information to be provided to the Minister of Health in an application for an exemption under section 56.1, the circumstances under which an exemption may be granted, the requirements for an application for an exemption, and the terms and conditions of exemptions (clause 4(2)).

## 2.4 APPLICATIONS FOR EXEMPTIONS (CLAUSE 5)

Clause 5 of the bill requires that ministerial exemptions with respect to substances obtained in a manner not authorized by the Act, or “illicit substances,” must be made not under section 56, but rather under the new section 56.1. The new section includes:

- section 56.1(1), which sets out the definitions discussed in clause 4 (see section 2.1, “Interpretation (Clause 5),” of this legislative summary);

- section 56.1(2), which authorizes the ministerial exemptions dealing with illicit substances;
- section 56.1(3), which sets out the information that must accompany applications;
- section 56.1(4), which sets out the information that must accompany subsequent applications from existing sites;
- section 56.1(5), which sets out the principles the Minister must consider when deciding whether to grant an exemption; and
- section 56.1(6), which permits the Minister to give notice to the public when she or he receives an application for an exemption.

#### 2.4.1 MINISTERIAL EXEMPTIONS (SECTION 56.1(2))

The new section 56.1(2) is the main power conferred under Bill C-65. It permits the Minister to grant an exemption to a person or class of persons or to any illicit substance from the application of the CDSA. Essentially, this clause gives the Minister the power to authorize the operation of a supervised consumption site.

The Minister may grant the exemption only if she or he is of the opinion that the exemption is necessary for a health or law enforcement purpose, or another purpose set out in the regulations. The exemption may include any terms or conditions the Minister considers necessary. It may be important to note that the clause does not in fact compel the Minister to consider an application; the clause uses permissive rather than mandatory language in authorizing the Minister to grant exemptions.

#### 2.4.2 INFORMATION TO BE PROVIDED (SECTION 56.1(3))

The Minister may consider an application only if it is accompanied by the documents set out in the new section 56.1(3), created under Bill C-65 through clause 5. Some of these documents are mandatory and some are required only if the information is available. The bill does not direct the Minister on how to weigh the information the applicant submits. The requirements include demographic and scientific data, letters from representatives of local police and local and provincial governments, information about proposed staff, descriptions of planned procedures and reports from community consultations.

##### 2.4.2.1 DATA

The applicant must provide data on several topics, although in some cases, the data are required only if they are available. Some of the data requirements relate to municipalities that have existing supervised consumption sites, and some relate specifically to the municipality in which the proposed site would be located. The requirements include the following:

- scientific data showing that supervised consumption sites provide medical benefits to individuals or to public health (section 56.1(3)(a));

- a description of the potential impacts the site could have on public safety, including information, if any, on crime and public nuisance, public consumption of illicit substances and drug-related litter both in the vicinity of the proposed site and in municipalities with supervised consumption sites (section 56.1(3)(i));
- law enforcement research or statistics, if there are any, on crime and public nuisance, public consumption of illicit substances and drug-related litter in the vicinity of the proposed site and in municipalities with supervised consumption sites (section 56.1(3)(j));
- information on the prevalence of illicit substance use in the vicinity of the site and in the municipality (section 56.1(3)(k));
- information on the prevalence of infectious diseases that may be in relation to illicit substance use in the vicinity of the site and in the municipality (section 56.1(3)(l));
- information on the number of deaths from overdose, if any, in the vicinity of the site and in the municipality (section 56.1(3)(m));
- official reports, if any, related to the establishment of a supervised consumption site (section 56.1(3)(n));
- information, if any, on loitering that may be related to illicit substances, trafficking in controlled substances or minor offence rates in the vicinity of the site (section 56.1(3)(s)); and
- information, if any, on public health emergencies that occurred in the vicinity of the site or the municipality that a public health authority has declared may be related to illicit substances (section 56.1(3)(t)).

#### 2.4.2.2 LETTERS

The applicant must provide letters from certain identified representatives of the local and provincial governments of the community in which the site would be located. In each case, the letter must express the individual's opinion on the proposal, and in some cases must address additional issues. The letters must come from:

- the provincial health minister, who must outline how the site's activities incorporate into the provincial health system, and provide information on drug treatment programs available in the province, if any (section 56.1(3)(b));
- a representative of the local government, outlining any concerns about public health or safety (section 56.1(3)(c));
- the head of the local police, outlining any concerns about public safety and security (section 56.1(3)(e));
- the head of public health in the province (section 56.1(3)(g)); and
- the minister for public safety in the province (section 56.1(3)(h)).

#### 2.4.2.3 PROCEDURES

The applicant must submit proposed measures to address certain concerns that may have been raised in relation to the proposed site, and set out procedures that will be in place at the proposed site. The proposed measures must include the following:

- A description of what has been or will be done to address concerns raised in the letter from the local government (section 56.1(3)(d)).
- A description of measures proposed, if any, to address concerns raised in the letter from the local head of police (section 56.1(3)(f)).
- A financing plan demonstrating the feasibility and sustainability of operating the proposed site (section 56.1(3)(q)).
- A description of any drug treatment services available at the site as well as information on drug treatment services available elsewhere (section 56.1(3)(r)).
- A description of measures that will be taken to ensure that controlled substances are secure at the site and to ensure the health and safety of staff and other persons at the site and in the vicinity. These measures must include establishing procedures on the disposal of controlled substances and related equipment and how to turn over these items to police officers, controlling access to the site and preventing the loss or theft of controlled substances (section 56.1(3)(u)).
- A description of record-keeping procedures to monitor disposal, loss, theft and transfer of controlled substances and related equipment at the site (section 56.1(3)(v)).

#### 2.4.2.4 INFORMATION ABOUT PROPOSED STAFF

The applicant must provide detailed information about the primary staff members proposed for the site, as defined in the interpretation provisions of section 56.1(1): the “responsible person in charge,” any “alternate person in charge” and all “key staff members.” The following information must be provided for all three classes of staff:

- the name, title and résumé, including education and training (section 56.1(3)(w));
- a document from a Canadian police force for each defined staff member, stating whether they have, in the past 10 years, been convicted of a designated drug offence or designated criminal offence (as defined in new section 56.1(1); see section 2.1, “Interpretation (Clause 5),” of this legislative summary) as an adult, as a young person in ordinary court under the former *Young Offenders Act*,<sup>22</sup> or as a young person with an adult sentence under the *Youth Criminal Justice Act*<sup>23</sup> (section 56.1(3)(x)); and
- for any of the defined staff members who have lived in a country other than Canada in the past 10 years, a document from a police force in that country stating whether 1) the person was convicted as an adult in that country of an offence that would have constituted a designated drug or criminal offence if committed in Canada, or 2) they were convicted of an offence committed in that country – when they were at least 14 years old but less than 18 – that would have constituted a designated drug or criminal offence if committed in Canada, and sentenced to a term greater than the maximum sentence for an equivalent offence under the *Youth Criminal Justice Act* (section 56.1(3)(y)).

#### 2.4.2.5 CONSULTATION REPORTS AND ADDITIONAL INFORMATION

The applicant must provide reports of their consultations with several stakeholders regarding the proposed safe consumption site:

- a report of consultations held with physicians' and nurses' licencing bodies in the province, as well as these bodies' opinions on the proposal (section 56.1(3)(o)); and
- a report of consultations held with a broad range of local community groups, including the groups' opinions on the proposal, copies of any written submissions received and a description of what will be done to address concerns raised (section 56.1(3)(p)).

The applicant must also provide any additional information that the Minister of Health considers relevant and any information required by the regulations (sections 56.1(3)(z) and (z. 1)).

#### 2.4.3 SUBSEQUENT APPLICATIONS (SECTION 56.1(4))

Existing sites may reapply for a ministerial exemption under the new section 56.1(4), created under Bill C-65 through clause 5. The bill does not indicate under what circumstances a subsequent application is necessary. The terms and conditions of an exemption are, unless prescribed otherwise, entirely at the Minister's discretion. These terms and conditions would likely include an expiry date, as did Insite's exemption, in which case the subsequent application would likely be made in anticipation of the expiry.

Subsequent applications must include all of the documents required under section 56.1(3). In addition, they must include data on variations, if any, in crime rates in the vicinity during the period of the first exemption and data, if any, on the site's impact on individual or public health during the exemption.

#### 2.4.4 PRINCIPLES (SECTION 56.1(5))

The new section 56.1(5), created under Bill C-65 through clause 5, specifies that the Minister may grant exemptions only under "exceptional circumstances." Further, in determining whether to grant the exemption, the Minister must consider:

- that illicit substances and adulterated controlled substances may be dangerous to one's health;
- that there is a risk of overdose associated with illicit substances;
- that, given the risks associated with controlled substances, it is necessary to impose strict controls on their use; and
- that the use of illicit substances may benefit organized crime and may lead to criminal activity.

### 2.4.5 NOTICE (SECTION 56.1(6))

The new section 56.1(6), created under Bill C-65 through clause 5, allows the Minister to give notice of any application for an exemption that she or he receives. If the Minister gives notice of an application, the public has 90 days from the date of the notice to provide the Minister with any comments. This section does not compel the Minister to provide notice.

### 2.5 COMING INTO FORCE (CLAUSE 6)

Bill C-65 comes into force on a date or dates to be set by the Governor in Council.

## 3 COMMENTARY

The Canadian Police Association publicly expressed support for Bill C-65, suggesting that there should be a “high threshold for applicants to meet before any supervised consumption site can be considered.”<sup>24</sup> Association President Tom Stamatakis said that in his experience, supervised consumption sites “lead to an increase in criminal behaviour and disorder in the surrounding community and have a significant impact on police resources.”<sup>25</sup>

Early reaction to Bill C-65 from other stakeholders was generally negative. The Canadian Medical Association issued a statement saying that the bill creates “unnecessary obstacles and burdens that could ultimately deter creation of more injection sites.”<sup>26</sup> Further, it claimed that the bill is “founded upon ideology that seeks to hinder initiatives to mitigate the very real challenges and great personal harm caused by drug abuse.”<sup>27</sup> In its response to the bill, the Canadian Nurses Association stated that “[a] government truly committed to public health and safety would work to enhance access to prevention and treatment services – instead of building more barriers.”<sup>28</sup> Dr. Mark Tyndall, head of infectious diseases with the Ottawa Hospital, argued that supervised injection sites help some of the most vulnerable members of communities, and that policies he sees reflected in the bill “in essence take a serious medical condition and criminalize it.”<sup>29</sup>

The Canadian HIV/AIDS Legal Network, the Canadian Drug Policy Coalition and Pivot Legal Society issued a joint statement accusing the bill of “flouting” the Insite decision and arguing that it “ignores both the extensive evidence that such health services are needed and effective, and the human rights of Canadians with addictions.”<sup>30</sup> Other groups advocating on behalf of persons living with HIV/AIDS expressed similar views.<sup>31</sup>

Editorials in several Canadian newspapers were critical of the bill because it does not fully take into account the Supreme Court of Canada’s ruling or the life-saving purpose of supervised injection sites.<sup>32</sup> However, editorials from some other newspapers, although not dealing directly with Bill C-65, expressed objections to the establishment of supervised injection sites, questioning the efficacy of these facilities in achieving their public health objectives.<sup>33</sup>



## NOTES

1. [Bill C-65: An Act to amend the Controlled Drugs and Substances Act](#), 1<sup>st</sup> Session, 41<sup>st</sup> Parliament.
2. [Controlled Drugs and Substances Act](#), S.C. 1996, c. 19.
3. [Canada \(Attorney General\) v. PHS Community Services Society](#), 2011 SCC 44, [2011] 3 S.C.R. 134.
4. Canadian Centre on Substance Abuse, [Harm Reduction: What's in a Name?](#), Ottawa, July 2008.
5. European Monitoring Centre for Drugs and Drug Addiction [EMCDDA], ["Consumption Rooms," Harm Reduction](#).
6. Dagmar Hedrich, Thomas Kerr and Françoise Dubois-Arber, ["Drug consumption facilities in Europe and beyond,"](#) Chapter 11 in *Harm reduction: evidence, impacts and challenges*, eds. Tim Rhodes and Dagmar Hedrich, EMCDDA, Lisbon, April 2010, p. 305.
7. Canadian Centre on Substance Abuse (2008).
8. *Narcotic Control Act*, R.S.C. 1985, c. N-1 [Repealed].
9. [Food and Drugs Act](#), R.S.C. 1985, c. F-27.
10. *Canada (Attorney General) v. PHS Community Services Society*, para. 41.
11. Vancouver Coastal Health, [Insite – Supervised Injection Site](#).
12. Health Canada, ["Vancouver's INSITE service and other Supervised injection sites: What has been learned from research? Final report of the Expert Advisory Committee,"](#) *Reports & Publications*, 31 March 2008.
13. Evan Wood et. al, ["Summary of findings from the evaluation of a pilot medically supervised safer injecting facility,"](#) *Canadian Medical Association Journal*, Vol. 175, No. 11, 21 November 2006, pp. 1,399–1,404.
14. Ibid.
15. *Canada (Attorney General) v. PHS Community Services Society*, para.121.
16. [Constitution Act, 1982](#), 1982, c. 11 (U.K.), Schedule B.
17. *Canada (Attorney General) v. PHS Community Services Society*.
18. Ibid., para. 136.
19. Ibid., paras. 151–153.
20. Health Canada, ["New Legislation for Supervised Consumption Sites,"](#) Backgrounder, June 2013.
21. It is worth noting that the *Marihuana Medical Access Regulations* ([SOR/2001-227](#) and [SOR/2013-119](#)) were also introduced pursuant to section 55(1) of the CDSA.
22. *Young Offenders Act*, R.S.C. 1985, c. Y-1 [Repealed].
23. [Youth Criminal Justice Act](#), S.C. 2002, c. 1.
24. Health Canada, ["Harper Government respects community concerns with new legislation for Supervised Drug Consumption Sites,"](#) News release, 6 June 2013.
25. Ibid.
26. Canadian Medical Association, ["Statement from the Canadian Medical Association,"](#) News release, 6 June 2013.
27. Ibid.

28. Canadian Nurses Association, "[Canadian Nurses Association concerned new safe injection site rules pose extra barriers](#)," News release, 6 June 2013.
29. Mark Tyndall, "'Communities' include people with addictions," *The Ottawa Citizen*, 13 June 2013.
30. Canadian HIV/AIDS Legal Network, the Canadian Drug Policy Coalition and Pivot, "[Government Bill Will Impede Life-Saving Health Services, Cause More Death and Disease](#)," News release, 6 June 2013.
31. See, for example, Canadian Association of Nurses in AIDS Care, "[CANAC Response to Bill C-65 on Safe Injection Sites](#)," News release, 6 June 2013; and AIDS Action Now, "[Minister of Health Continues Attack on People Who Use Drugs](#)," 6 June 2013.
32. See, for example, "The Canadian government still embraces a war-on-drugs mentality," *The Globe and Mail* [Toronto], 6 June 2013; "Injection-site ruling callous," *Times Colonist* [Victoria], 12 June 2013; and "Insite response unwise policy," *The Star Phoenix* [Saskatoon], 7 June 2013.
33. See, for example, "No place for injection site," *The Ottawa Sun*, 12 July 2013; and "No to drug injection sites in Toronto," *The Toronto Sun*, 21 July 2013.