



An Act to implement certain provisions of the budget tabled in Parliament on April 16, 2024

Rapid Q&A prepared by the HIV Legal Network on May 7, 2024

On April 16, 2024, the government of Canada tabled in Parliament a bill entitled [An Act to implement certain provisions of the budget](#). This expansive bill relates to [Canada's 2024 budget](#) tabled on the same day where “the government proposes to introduce amendments to the *Controlled Drugs and Substances Act* to **streamline authorization of supervised consumption sites and drug checking services.**”¹ (Emphasis added.) The government is looking for quick passage of the bill.² As of May 2, 2024, the bill had passed first reading in the House of Commons.

Exemptions for supervised consumption sites and drug-checking services in Canada

Because the *Controlled Drugs and Substances Act* (CDSA) prohibits the possession of illicit drugs for personal use as well as handling, distributing, splitting, or sharing those drugs (which may amount to “trafficking”), staff and clients of supervised consumption and drug-checking services need an *exemption* from the CDSA issued by the federal government to operate without risk of criminal prosecution. There are currently three options under the CDSA for the federal government to provide such exemptions:

1. **General ministerial exemption under section 56 of the CDSA.**

[Section 56\(1\)](#) gives the federal Minister of Health the power to grant an exemption from the application of the CDSA if, in their opinion, it is necessary for a medical or scientific purpose or if it is otherwise in the public interest. [Insite](#), Canada's first *legally sanctioned SCS*, received an exemption under section 56 of the CDSA in 2003 (current section 56(1)).³ In recent years, the federal government has also used section 56(1) to issue class exemptions to facilitate the rapid deployment of overdose prevention sites and urgent public health need sites as well as drug-checking services.⁴

¹ Budget 2024 available at www.budget.canada.ca/2024/report-rapport/anx3-en.html.

² R. Aiello, “Freeland leaves capital gains tax change out of coming budget implementation bill, here's why”, *CTVnews*, April 30 2024, available at <https://www.ctvnews.ca/politics/freeland-leaves-capital-gains-tax-change-out-of-coming-budget-implementation-bill-here-s-why-1.6867484>.

³ For a history of the implementation of SCS in Canada, see HIV Legal Network, *Overdue for change: scaling-up supervised consumption services in Canada*, 2019.

⁴ HIV Legal Network, *Scaling-up supervised consumption services: What has changed in Canada*, 2024



2. **SCS-specific ministerial exemption under section 56.1 of the CDSA.**
Section [56.1](#) establishes a specific exemption regime applicable to “supervised consumption sites” for a *medical purpose*.⁵
3. **Regulations by Cabinet under section 55(1)(z) of the CDSA.**
[Section 55\(1\)\(z\)](#) of the CDSA provides broad powers to the federal Cabinet to “exemp[t], on any terms and conditions that are specified in the regulations, any person or class of persons [...] from the application of all or any of the provisions of this Act or the regulations.” Nothing in section 55 prevents Cabinet from using its power to adopt regulations that grant exemptions in relation to SCS.

As of May 2024, the federal government has never used its authority under section 55 to adopt regulations exempting SCS from the CDSA.⁶

In contrast, the *ministerial exemption* regime (under sections 56(1) and 56.1) has proved central to establishing SCS in Canada and has been used and shaped by federal governments to either facilitate or impede the establishment of new SCS — including through legislative reforms in 2015 and 2017.

Why does the SCS exceptional exemption regime creates barriers?

When enacted in 2015, section 56.1 of the CDSA created an extremely burdensome exemption regime that would only apply to “supervised consumption sites.”⁷ In 2017, amendments to the CDSA streamlined the exemption process but the exceptional legal regime still requires case-by-case SCS-specific exemptions. Despite efforts made by the federal government in recent years to ease the exemption process under section 56.1 and to allow additional services to be provided at SCS, this exceptional regime does not allow for the normalization of SCS and their full integration into health services for people who use drugs. It also politicizes SCS by leaving the decision to legally operate a site in the hands of the federal government. And the fact remains that there are insufficient safeguards in the

⁵ Section 56.1 was introduced by the previous federal government in 2015 to restrict SCS exemptions and preclude the use of the general Section 56 provision to exempt SCS. In 2017, the current federal government amended section 56.1 to (1) alleviate some of the barriers associated with the SCS exceptional regime and (2) restore the possibility of granting general exemptions under section 56 in relation to SCS if “in the public interest” and under section 55. See HIV Legal Network, 2019 report, *supra* note 3.

⁶ In 2020, Health Canada organized a virtual meeting with SCS providers to inform the development of new SCS regulations. At the time, Health Canada did not issue regulations but took some incremental steps to facilitate SCS implementation and to authorize additional services and practices at SCS. See HIV Legal Network, 2024 report, *supra* note 4.

⁷ Under that new regime at the time, the federal Minister of Health was not allowed to examine an application for exemption unless and until the applicant had submitted the 25 different pieces of information. Furthermore, and contrary to the spirit and letter of the Supreme Court of Canada’s decision in the case of *Insite*, an exemption to operate a given SCS without risk of criminal prosecution could only be granted by the Minister in “exceptional circumstances,” and only after the Minister had considered a number of principles set out in the Act.



law or in existing regulations to prevent Health Canada from abandoning its current flexible approach.

What changes at the federal level could help normalize SCS and facilitate their rapid implementation?

In two reports published in [2019](#) and [2024](#), the HIV Legal Network explored legal and policy barriers to the scale-up of SCS in Canada. In 2019, we found that despite progress, the exemption application process represented a significant barrier to the expansion of SCS across the country.⁸ In 2024, the federal exemption process was no longer perceived as a major barrier by respondents, especially in comparison to new barriers erected at provincial levels where governments do not support SCS. However, the current application process may still be overwhelming for organizations that have little capacity or experience with applying for an exemption. SCS providers and advocates maintain that the exemption process should be less complicated and nimble enough to respond to immediate needs of people who use drugs and to the constantly changing drug supply.⁹

As such, the HIV Legal Network has **recommended depoliticizing SCS by removing the requirement for site-specific exemptions and decriminalizing activities related to personal drug use (including for some activities that may amount to trafficking)**. Such decriminalization would, *de facto*, decriminalize activities related to SCS.

In the interim, we recommended that the federal government decriminalize SCS by **granting a class exemption protecting clients and staff, including volunteers, from prosecution for simple drug possession (or for some activities that may amount to trafficking) when accessing or providing SCS that meet some pre-defined minimum conditions**. Such minimum conditions could include, for example, having a minimum number of people trained in administering naloxone and CPR on site at all times and the availability of appropriate equipment to ensure the immediate provision of evidence-based emergency interventions in the event of an overdose.

What are the amendments proposed to the CDSA by the federal government?

In [An Act to implement certain provisions of the budget](#), the federal government proposes to “streamline authorization of supervised consumption sites and drug checking services” through amendments to the CDSA.

A major proposed change is the repeal of section 56.1 of the CDSA (and associated provisions) that established a specific exemption regime for “supervised consumption sites.”¹⁰

⁸ HIV Legal Network, 2019 report, *supra* note 3.

⁹ HIV Legal Network, 2024 report, *supra* note 4.

¹⁰ The repeal of section 56.1 is accompanied by the repeal of section 56(2) that prevented the government from granting a section 56(1) exemption to SCS “for a medical purpose.” Additionally, Section 55(1.2) on setting out regulations in relation to the application of section 56.1 and section 56.2 that provided the possibility for



Instead of exemptions, SCS will be subject to “authorizations.” These authorizations will be determined by a “regulatory scheme” to be enacted by the government under section 55.

The bill does not provide details of the “regulatory scheme.” Without further information, it is unclear how this will affect the exemption process for SCS. It remains to be seen whether the federal government will issue a general class exemption to SCS — recognizing that SCS are vital evidence-based health services that should be fully decriminalized — or whether service providers will still need to apply to Health Canada for site-specific authorizations. One transitional provision seems to suggest that applications to Health Canada will remain necessary.¹¹

Would removing section 56.1 make SCS more vulnerable to political change?

Section 56.1 of the CDSA was enacted by a federal government that opposed SCS to create a legal regime that would make it *harder* to establish new SCS in Canada. Removing section 56.1 means the federal government can use the general provisions of sections 56 and 55 (that are not specific to SCS) to exempt SCS from activities forbidden by the CDSA. Because these general provisions do not establish criteria for SCS applications, there is always a risk of unfair decisions which is especially problematic if the power to issue exemptions remains at the sole discretion of the federal Ministry of Health, as illustrated in the case of Insite.

However, in its [2011](#) decision, the Supreme Court of Canada ruled that the federal government’s refusal to grant an exemption to Insite violated the *Canadian Charter of Rights and Freedoms* and ordered the federal Minister of Health to grant a new exemption. The Court was clear: the discretion to grant an exemption must comply with section 7 of the *Charter*, which guarantees the rights to life, liberty, and security of the person. To prevent future unconstitutional decisions by the Minister, the Court also identified five factors to be considered by the Minister in assessing applications for a CDSA exemption:

1. the impact of such a facility on crime rates;
2. the local conditions indicating a need for such supervised injection site;
3. the regulatory structure in place to support the facility;
4. the resources available to support its maintenance; and
5. expressions of community support or opposition.¹²

Importantly, the Supreme Court **did not rule that these are preconditions that must all be addressed or satisfied before an application for an exemption could be reviewed or an exemption granted.** The Court simply said that if there is evidence regarding these factors,

people supervising drug consumption at a site to offer alternative pharmaceutical therapy would also be repealed.

¹¹ See, section 466 of the bill: “If an application for an exemption under subsection 56.1(1) of the previous version is submitted before commencement day and the minister responsible for the previous version has not, before that day, made a decision in relation to the application, the application is deemed to have been submitted on that day as an application for an authorization under the regulatory scheme.”

¹² *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 at paras 128, 133 and 153.



then such evidence must be taken into consideration by the Minister. The Court also did not say that the evidence, if available, regarding any one of these factors is necessarily determinative. Not all five factors might be necessary or relevant — especially those related to community support and impact on crime rates, and some may pose challenges to the scale-up of SCS in Canada. The SCC decision also dates from 2011, before the drug poisoning crisis made access to SCS more vital than ever.

It is important to note that section 56.1 of the CDSA merely reflects the five factors identified by the SCC in 2011 and does not provide additional safeguards or protection against arbitrary decisions.

Under sections 56 or 55 of the CDSA, the federal government could ease conditions for the establishment of SCS and create new pathways to authorize SCS. The federal government has already made use of this flexibility under section 56(1) to facilitate the establishment of overdose prevention and urgent public health need sites by provincial and territorial authorities.

Whether this approach underlies the government's proposed amendments remains to be seen. More information is needed to appreciate the potential impact of the proposed amendments.

What about funding for SCS in Canada?

Funding for SCS is critically lacking, which is a significant barrier to service availability and the scale-up of SCS across the country. Because funding is largely dependent on provincial authorities, implementing and maintaining SCS in provinces where the government does not support them is especially challenging.¹³ Notably, the 2024 federal budget proposes **providing \$150 million over three years, starting in 2024–25, to Health Canada for an Emergency Treatment Fund, open to municipalities and Indigenous communities to help provide rapid responses to emergent, critical needs related to the opioid crisis.**¹⁴ How this funding is used has yet to be determined but it could represent an important opportunity for municipalities to support SCS. This is especially important in provinces where authorities block access to SCS funding.

¹³ HIV Legal Network, 2024 report, *supra* note 4.

¹⁴ See Federal budget 2024 at p. 250, available at www.budget.canada.ca/2024/report-rapport/budget-2024.pdf.