An overview of the *Community Care and Recovery Act, 2024*

prepared by the HIV Legal Network

On November 18, 2024, the Ontario government tabled *Bill 223, Safer Streets, Stronger Communities Act, 2024*, which became law on December 4, 2024. While the bill amended several laws, of relevance to drug policy is Schedule 4 of the legislation, titled *Community Care and Recovery Act, 2024*. As described in the Explanatory Note to this Schedule:

"The Act prohibits the establishment and operation of a supervised consumption site at a location that is less than 200 metres from certain types of schools, private schools, child care centres, EarlyON child and family centres and such other premises as may be prescribed by the regulations.

The Act also provides that municipalities and local boards are precluded from applying for an exemption from the *Controlled Drugs and Substances Act* (Canada) for the purpose of decriminalizing the personal possession of a controlled substance or precursor.

Finally, limits are imposed on the power of municipalities and local boards to make specified applications respecting supervised consumption sites and safer supply services. Municipalities and local boards may only make such applications or support such applications if they have obtained the approval of the provincial Minister of Health."

KEY TAKEAWAYS

The CCRA creates two additional barriers to implementing or operating supervised consumption services (SCS) in Ontario by:

1. Prohibiting any SCS from operating within 200 metres of a designated premises such as a school or childcare centre; and

2. Requiring municipalities and local boards to get provincial approval to make or support a request for a federal exemption or a renewal to maintain or establish SCS.

This is in addition to barriers related to denial of provincial funding that force SCS to close in Ontario.

The Act will also prevent local initiatives to decriminalize personal possession and implement safer supply programs.

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How does the *Community Care and Recovery Act, 2024* ("CCRA") limit the operation of supervised consumption services in Ontario?

a. The 200-metre prohibition

Section 2(1) of the Act states that "no person shall establish or operate a supervised consumption site at a location that is less than 200 metres, measured in accordance with subsection (2), from a designated premises."

"Designated premises" are defined in Section 1 of the Bill to include schools (including private schools), childcare centres, and a "prescribed premises," which is not defined. A "prescribed premises" (which does not need to be limited to premises for children) can be defined by subsequent regulations opening the door to additional unlimited restrictions.

This means no one — whether it is a community organization or a municipality — can operate supervised consumption services (SCS) within 200 metres of a designated premises. This includes provincially funded Consumption and Treatment Services (CTS), but also other sanctioned SCS[1] funded through donations or municipalities as well as temporary Urgent Public Health Needs Sites (UPHNS). Several UPHNS exist in Ontario, including in shelters, and are run by municipalities.

This section of the CCRA comes into force on April 1, 2025. The government has not provided a rationale for the 200-metre rule. In practice, it makes it extremely difficult to establish or maintain SCS where needed.

b. Restrictions on municipalities and local boards

The *Controlled Drugs and Substances Act* (CDSA) is the federal law that prohibits the possession of certain drugs for personal use as well as handling, distributing, splitting, or sharing those drugs (which may amount to "trafficking"). To operate supervised consumption and drug-checking services without risk of criminal prosecution, staff and clients of sites therefore need an exemption from the CDSA issued by the federal government pursuant to either sections 56(1) or 56.1 of the CDSA.[2]

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[1] The Act defines "supervised consumption services" as a site that is operating under a federal exemption under section 56(1) or 56.1 of the *Controlled Drugs and Substance Act*.
[2] Section 56(1) of the CDSA is the general exemption provision and provides that the Minister may "exempt from the application of all or any of the provisions of this Act or the regulations any person or class of persons or any controlled substance or precursor or any class of either of them if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest." Section 56.1 of the CDSA is the exemption provision specific to SCS and allows the Minister to exempt activities to take place at SCS, if "necessary for a medical purpose."

However, as noted above, Ontario's new law binds municipalities and local boards from applying for these exemptions. Section 3(2) of the CCRA indicates that "a municipality or local board does not have the power, without the approval of the (provincial) Minister (of Health), to … Apply to Health Canada for an exemption or a renewal of an exemption to the *Controlled Drugs and Substances Act* (Canada) for the purpose of operating a supervised consumption site" or even to "Support, including by passing a by-law or making a resolution, an application made to Health Canada by any other person in respect of any matter described in paragraph 1 or 2."[3] This section of the CCRA applied immediately when the law was passed.

This means that municipalities, including local boards of health, are no longer permitted to:

- Request a federal exemption, or renew their exemption, to operate a SCS, without provincial approval; or
- Support a person to request a federal exemption or renew their exemption, to operate an SCS, without provincial approval.

The CCRA does not outline conditions for provincial approval of an application for a federal exemption by a municipality or local board, leaving it to the sole discretion of the provincial ministry of health. The Health Minister has also indicated "there will be no safe injection sites in the province of Ontario under (their) government."[4]

While it remains unclear whether the province has the legal authority to restrain municipalities from requesting or supporting a federal exemption to operate a SCS, the CCRA does not prevent other entities (e.g. a private SCS operator) from seeking a federal exemption, if it does not contravene the 200-metre prohibition.

Nevertheless, this provincial government has repeatedly stated that it will not support or fund the establishment of new SCS in the province. Moreover, by preventing municipalities from supporting other applications or renewals for a federal exemption, including possibly through funding,[5] the government has barred municipalities from supporting SCS that are denied provincial funding.

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[3] As per Section 1 of the *Municipal Affairs Act* R.S.O. 1990, CHAPTER M.46, a "local board" means "a school board, municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes, including school purposes, of a municipality or of two or more municipalities or parts thereof." [emphasis added]

[4] Minister of Health, Sylvia Jones, at a press conference on November 18, 2024, at Queen's Park Toronto, Ontario. See www.cbc.ca/news/canada/toronto/ontario-consumption-site-ford-1.7386562.

[5] As described by the Minister of Health Sylvia Jones, "The proposed legislation also requires municipalities and local boards such as public health units to obtain provincial approval before making or supporting a request for a new drug consumption site, providing funding for a new site (…)."

Effectively, only SCS that can operate with their own funding and federal exemption, beyond 200 metres of a designated premises, will be able to open in Ontario. But if a new private school or childcare centre opens within 200 metres of a site, the site will be forced to close.

IMPACT

- Ten currently operating SCS, as well as several temporary Urgent Public Health Needs services, will be forced to close in Ontario on April 1, 2025, because of the 200-metre rule.

- Other SCS currently operating in Ontario risk closure if:
  - the provincial government does not renew funding and/or
  - the provincial government does not approve an application for a federal exemption (or its renewal) from a municipality or board of health, or these entities' support for another SCS's application for an exemption or renewal and/or
  - they run out of funding (for those already relying on donations and private funding).

- It will extremely difficult and precarious to establish new SCS in Ontario.

How might the CCRA limit other harm reduction or healthcare services?

Notably, the CCRA does not define the activities of a "supervised consumption site" but merely describes it as "a site in respect of which the federal Minister of Health has granted an exemption to allow activities at the site in relation to a controlled substance or precursor that is obtained in a manner not authorized under the *Controlled Drugs and Substances Act*" either under section 56.1 or 56(1) of the CDSA. The CDSA itself does not define a "supervised consumption site."

Given this vague definition, there is a risk that any activity that is exempted pursuant to sections 56.1 or 56(1) in relation to a controlled substance or precursor, such as drug checking, may be captured by the definition of "supervised consumption site" and further restricted under this legislation. However, the province recently clarified that the CCRA does not capture drug checking services.[6]

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[6] Factum of the Respondent, *The Neighbourhood Group Community Services, Katharine Resendes And Jean-Pierre Aubry Forgues v. Ontario*, Court File No: CV-24-00732861-000.

Moreover, section 3(2) of the CCRA indicates that "a municipality or local board does not have the power, without the approval of the Minister, to … Apply to Health Canada for funding under Health Canada's Substance Use and Addictions Program or any other Health Canada program in respect of safer supply services, or enter into an agreement with the Government of Canada with respect to funding under such a program in respect of safer supply services" or even to support, "including by passing a by-law or making a resolution" a safe supply application to Health Canada.

The law defines "safer supply services" very expansively to mean "the prescribing of medications by a legally qualified medical practitioner as an alternative to a controlled substance or precursor." While the federal government distinguishes safe supply from Opioid Agonist Treatment,[7] the vagueness of the definition is, once again, a source of concern. There are no safeguards in the CCRA that would prevent the vague definition of "safer supply services" from potentially capturing other therapies involving prescribed medications for people who use drugs.

The legal authority for the provincial government to intervene in the health funding decisions of municipalities is unclear. However, this provision means that only non-governmental bodies in Ontario will be able to seek federal funding for safe supply programs.

How might the CCRA limit other drug policy reforms?

Section 3(1) of the CCRA states that "(s)ubject to such exceptions as may be prescribed, despite sections 7 and 8 of the *City of Toronto Act, 2006* and sections 9, 10 and 11 of the *Municipal Act, 2001*, a municipality or local board does not have the power to apply to Health Canada for an exemption under subsection 56 (1) of the *Controlled Drugs and Substances Act* (Canada) from any provision of that Act for the purpose of decriminalizing the personal possession of a controlled substance or precursor."

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[7] According to the federal government: "Opioid agonist treatment (OAT) is an evidence-based approach for treating opioid use disorder. It involves the use of different medications to prevent withdrawal and lower cravings for opioid drugs. These medications include methadone, buprenorphine, and slow-release oral morphine. Usually, the goal of traditional OAT is for a patient to stop taking drug" while "safer supply refers to providing prescribed medications as a safer alternative to the toxic illegal drug supply to people who are at high risk of overdose. Safer supply services build on existing approaches that provide medications to treat substance use disorder. However, they are often more flexible and do not necessarily focus on stopping drug use. Instead, they focus on meeting the existing needs of people who use drugs, reducing the risk of overdose by helping people to be less reliant on the toxic illegal drug supply, and providing connections to health and social services where possible and appropriate." See www.canada.ca/en/health-canada/services/opioids/responding-canada-opioid-crisis/safer-supply.html.

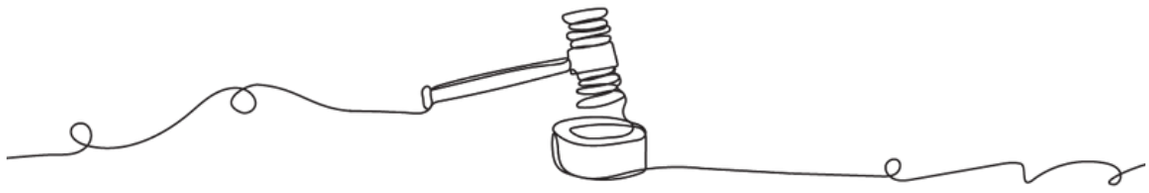
This provision prohibits any local initiative to decriminalize personal drug possession in Ontario. However, the criminal law is within the exclusive jurisdiction of the federal government. Therefore, it remains unclear whether the province has the legal authority to prohibit municipalities from applying for a federal exemption to decriminalize personal drug possession.

Is the CCRA supported by evidence and in conformity with Ontario human rights obligations?

The Ontario government decided to pass this law knowing, from their own experts, that there is high risk it will increase emergency department visits, overdose, overdose deaths, and other negative health impacts, as well as public use, and disproportionately harm Indigenous, Black, and low-income people in Ontario.[8]

Ample studies, including internal government reports and independent evaluations, consistently demonstrate a range of public health and public safety benefits of SCS. According to a recent report on SCS in Ontario, "Ontario's supervised consumption services have recorded 1.12 million visits from 178,000 unique clients" since March 2020 and "have facilitated more than 530,000 service referrals — including housing, case management, and substance use treatment — and successfully reversed 22,000 overdoses."[9] SCS also reduce public drug use and discarded drug use equipment. Contrary to the Ontario government's claims that crime has increased in neighbourhoods with SCS relative to other neighbourhoods, data show decreases in rates of homicide, assault, and robbery in the vicinity of an SCS after opening.[10]

In 2011, the Supreme Court of Canada unanimously ordered the federal Minister of Health to grant Insite, the first legally sanctioned SCS in Canada, an exemption to continue operating. The court found that Insite saves lives and ruled that denying an exemption would violate the Charter rights to life, liberty, and security of the person in a way that would be both "arbitrary" and "grossly disproportionate."[11]



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[8] Colin D'Mello and Isaac Callan, "Hospitalizations and death: Ontario's internal warnings over supervised consumption site ban," Global News, November 14, 2024.
[9] Centre on Drug Policy Evaluation, *Supervised Consumption Services in Toronto: Evidence and Recommendations*, November 2024.
[10] *Ibid*.
[11] *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44.

According to media reporting, the Ontario government was warned by its own lawyers that the prohibition of SCS within 200 metres of a school or childcare centre created a "high risk" of infringing the Charter. Specifically, the advice laid out that section 7 of the Charter ("life, liberty, security of the person of site users") could be contravened. In order to win a Charter challenge, government lawyers indicated that Ontario would have to demonstrate that the operation of a SCS is "always unsafe or harmful, even when operated under reasonable conditions," which is not supported by evidence.[12] Given the predictable disproportionate impact on people who use drugs, especially Indigenous, Black, homeless, formerly incarcerated, and low-income people and women, it could also be argued that the CCRA violates section 15 of the Charter that protects individuals against discrimination.

Indeed, in December 2024, shortly after the CCRA became law, a Charter challenge was initiated by a SCS in Toronto and two individuals against the Ontario government, alleging that the law violates Charter rights to: life, liberty, and security of the person (s. 7), equality and non-discrimination (s. 15), and not to be subject to cruel and unusual treatment or punishment (s. 12). In addition, the applicants challenged the constitutionality of the law arguing that the province had exceeded its power by preventing federally exempted SCS from operating. For more information about this case, see here.

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[12] "Hospitalizations and death: Ontario's internal warnings over supervised consumption site ban," Global News, *supra* note 8.