

Legal Issues Related to the Community Care and Recovery Act, 2024

Date: January 7, 2025

To: Board of Health

From: City Solicitor

Wards: All Wards

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege and information about litigation or potential litigation that affects the Board of Health.

SUMMARY

The *Community Care and Recovery Act, 2024* (the “CCRA”) received Royal Assent on December 4, 2024. The CCRA creates new restrictions on harm reduction services in Ontario, including a prohibition on the operation of a supervised consumption site within 200m of a school, private school, child care centre, and EarlyON child and family centre. It also limits the power of boards of health and municipalities to apply for new exemptions under the *Controlled Drugs and Substances Act*, to apply for funding from Health Canada for safer supply services, and to support applications that relate to the aforementioned.

Confidential Attachment 1 provides further information and advice regarding the *Community Care and Recovery Act, 2024*.

RECOMMENDATIONS

The City Solicitor recommends that:

1. The Board of Health direct that the confidential information contained in Confidential Attachment 1 remain confidential in its entirety as it contains advice which is subject to solicitor-client privilege and information about litigation or potential litigation that affects the Board of Health.

FINANCIAL IMPACT

The financial impacts are identified in Confidential Attachment 1.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

DECISION HISTORY

At its special meeting of December 19, 2024, the Board of Health requested the Medical Officer of Health or Acting Medical Officer of Health, to provide evidence in support of the Superior Court Application bearing Court File No. CV-24-00732861-0000 if requested by the Applicants and as determined appropriate by the City Solicitor.

At the same meeting, the Board of Health also requested that the City Solicitor advise the applicants and the respondent of the Board of Health's potential intention to intervene in the Superior Court Application bearing Court File No. CV-24-00732861-0000 by January 10, 2025.

<https://secure.toronto.ca/council/agenda-item.do?item=2024.HL20.1>

At its meeting on November 18, 2024, the Board of Health requested the Medical Officer of Health, in consultation with the City Solicitor, to provide a summary for the January 20, 2025 meeting of the Board of Health of any legal issues related to the Provincial decision to close supervised consumption sites in Toronto.

<https://secure.toronto.ca/council/agenda-item.do?item=2024.HL18.2>

COMMENTS

Summary of the Community Care and Recovery Act, 2024

The [Community Care and Recovery Act, 2024](#) (the “CCRA”) was introduced as part of Bill 223, *Safer Streets, Stronger Communities Act*, [SO 2024, c 27](#), and received Royal Assent on December 4, 2024.

The CCRA creates new restrictions on the operation of supervised consumption and harm reduction services in Ontario.

Subsection [2\(1\)](#) of the CCRA prohibits any person from establishing or operating a supervised consumption site (“SCS”) at a location that is less than 200 metres from a “designated premises”, which includes a school, private school, child care centre, and

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EarlyON child and family centre, and may include additional premises as prescribed by regulation. The *CCRA* specifies how the 200 metres shall be measured from each premises.

If a private school begins providing instruction or a child care centre begins operating after December 4, 2024, the prohibition does not apply until 30 days after the day the private school begins providing instruction or the child care centre begins operating.

An SCS is defined broadly in the *CCRA*, and includes a site in respect of which an exemption has been granted under section [56.1](#) of the *Controlled Drugs and Substances Act*, [SC 1996, c 19](#) (the “*CDSA*”) in circumstances where the federal Minister of Health is of the opinion that the exemption is necessary for a medical purpose; and under subsection [56\(1\)](#) of the *CDSA* in circumstances where the federal Minister of Health is of the opinion that the exemption is necessary for a scientific purpose or is otherwise in the public interest.

The 200m prohibition on supervised consumption sites comes into effect on April 1, 2025. This prohibition will result in the closure of ten SCSs in Ontario. Of those, five SCSs facing closure are in Toronto, including the SCS operated by The Works – the harm reduction clinic run by Toronto Public Health. It will also impact the operation of urgent public health needs sites (UPHNS) and drug checking services, which also operate by way of federal exemptions under the *CDSA*.

The *CCRA* imposes additional limitations on the powers of municipalities and local boards. Pursuant to subsection [3\(1\)](#) of the *CCRA*, municipalities and local boards no longer have the power to apply to Health Canada for a subsection [56\(1\)](#) *CDSA* exemption for the purpose of decriminalizing the personal possession of a controlled drug. This is an absolute prohibition (i.e. no mechanism for the provincial Minister of Health to approve) but exemptions may be prescribed in the regulations.

Furthermore, subsection [3\(2\)](#) of the *CCRA* provides that municipalities and local boards do not have the power, without approval of the Ontario Minister of Health, to:

- Apply to Health Canada for an exemption or renewal of an exemption to the *CDSA* for the purpose of operating a supervised consumption site.
- Apply to Health Canada for funding in respect of safer supply services, or enter into an agreement with the Government of Canada for funding in respect of safer supply services.
 - Safer supply services are defined in the *CCRA* as the prescribing of medications by a legally qualified medical practitioner as an alternative to a controlled substance or precursor.
- Support, including by passing a by-law or making a resolution, an application made to Health Canada by any other person in respect of (1) and (2) above.

The current Ontario Minister of Health and Deputy Premier Sylvia Jones has publicly stated that there is no situation in which she would approve a new SCS anywhere in the province.

These prohibitions will impact the ability to operate new or continued services involving CDSA exemptions. In addition, these provisions may impact the delivery of programs involving federally funded opioid alternatives, such as injectable opioid-agonist treatment (iOAT), given the broad definition of “safer supply services”.

Aside from the 200m prohibition on supervised consumption sites which comes into effect on April 1, 2025, all other restrictions under the CCRA are in effect as of the date of Royal Assent (December 4, 2024).

Court Application to Challenge the Constitutionality of the CCRA

On December 9, 2024, a [Notice of Application](#) was issued in the Ontario Superior Court of Justice which challenges the constitutionality of the CCRA (the “TNG Application”). The TNG Application bears Court File No. CV-24-00732861. The TNG Application is being brought by The Neighbourhood Group Community Services (“TNG”), Katherine Resendes and Jean-Pierre Aubry Forgues.

TNG is a charitable corporation that, among other things, operates an SCS in Kensington Market in Toronto called the Kensington Market Overdose Prevention Site (“KMOPS”). KMOPS operates within 200 meters of a child care facility and is thus facing closure under the CCRA.

The named applicant Ms. Resendes uses the supervised consumption services at KMOPS. The named applicant Mr. Aubry Forgues uses the services at a supervised consumption service in Kitchener, Ontario, which is operated by the Region of Waterloo Public Health, among others.

The TNG Application seeks an order declaring that the provisions of the CCRA violate sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms* (the “Charter”) in a manner that cannot be justified under section 1 of the *Charter* and are thus invalid and of no force or effect.

The TNG Application also seeks an order declaring the provisions of the CCRA as *ultra vires* because they encroach upon the federal government’s exclusive jurisdiction over criminal law and are constitutionally inoperative pursuant to the doctrine of paramountcy because they frustrate the purpose of the CDSA. Finally, the TNG Application seeks an interim and/or interlocutory injunction restraining the CCRA until the TNG Application is decided.

A Court ordered timetable is in place for the TNG Application. The TNG Application will be heard on March 24 and/or 25, 2025. Any party seeking to intervene shall advise the Applicants and Respondent by January 10, 2025. The Applicant’s record is also to be delivered on January 10, 2025. A case conference will take place on January 15, 2025 to determine the process that will be applied to determine intervenor status.

On December 19, 2024, the Board of Health requested that the Medical Officer of Health or Acting Medical Officer of Health provide evidence in support of the Superior Court Application bearing Court File No. CV-24-00732861-0000 if requested by the Applicants and as determined appropriate by the City Solicitor. The City Solicitor's office has been in communication with counsel for the applicants in the TNG application.

On December 19, 2024, the Board of Health requested that the City Solicitor advise the applicants and respondents of the Board of Health's potential intention to intervene in the TNG application. The parties to the TNG application have since been advised.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Confidential information from the City Solicitor