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Chair

Mr. Bill Casey

Standing Committee on Health

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● (1105)

[*English*]

The Chair (Mr. Bill Casey (Cumberland—Colchester, Lib.)): I call this meeting to order. I want to thank everybody for coming.

The sole purpose of this meeting today is to wish John Oliver a happy birthday—

Some hon. members: Oh, oh!

The Chair: —so John, happy birthday.

Mr. John Oliver (Oakville, Lib.): This is exactly what I want to be doing on my birthday, clause-by-clause.

The Chair: Yes, I'm sure it is.

Anyway, we're assembled here today to do clause-by-clause consideration of Bill C-37, An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts. It has a lot of clauses, and we have some experts with us at the table to help us through. I'll introduce them.

We have Kirsten Mattison, director of controlled substances directorate, healthy environments and consumer safety branch of the Department of Health, and Miriam Brouillet, legal counsel, Health Canada legal services. Welcome.

From Canada Border Services Agency, we have Megan Imrie, director general, commercial program directorate, and Cathy Toxopeus, director of program performance and reporting division. Thanks very much for coming, and we'll be calling on you from time to time.

We have legal counsel and a lot of advice to help us through this clause-by-clause study. Is everybody ready? All right.

We've had no amendments proposed—

Yes, Mr. Davies.

Mr. Don Davies (Vancouver Kingsway, NDP): I'm sorry, Mr. Chairman. I'm happy to defer if you think this question will come after what you are about to say, but I just wonder if we can be alerted by the clerk as to when our amendment is appropriately brought up. I presume we're going to move fairly rapidly through the clauses, and I'm not exactly sure when a particular clause invites the amendment, whether from Ms. May, myself, or anybody, or are we supposed to be alert to—

The Chair: It's on the agenda, and you'll have lots of time.

Mr. Don Davies: We'll be advised. Okay, thanks.

The Chair: I have no amendments from—

Go ahead, Ms. Harder.

Ms. Rachael Harder (Lethbridge, CPC): Thank you, Mr. Chair.

I have just a very brief procedural motion. I noticed that the majority of the amendments before us today relate to clause 42. There are a total of five amendments that relate to clause 42. I think all parties at the table certainly feel the urgency with regard to this piece of legislation and wanting to move it forward. We're willing to do that with pretty much all of the clauses leading up to clause 42, so we should move quite quickly.

That said, I'm wondering if we could agree to amend the original motion that was brought forward to the table by Mr. Oliver. He stated that we would have a maximum of five minutes to debate each clause. I'm wondering if we could agree to five minutes for each amendment, rather than for each clause, given that clause 42 is going to take the bulk of our attention today. I'm hoping that we can choose to be collaborative on this matter.

The Chair: Go ahead, Mr. Oliver.

Mr. John Oliver: Are the five minutes per amendment just the amendments related to clause 42?

Ms. Rachael Harder: Yes, sorry. Yes, that would be correct, so I mean just with regard to clause 42. I'm wondering if all parties would agree that we would be limited to five minutes per amendment per party.

Mr. John Oliver: I think the Liberals would support that.

The Chair: Mr. Davies, do you want to have a voice on this?

Mr. Don Davies: Yes, I support that too. What I hope will happen is that we will pass all of the non-controversial clauses very rapidly, and then I agree with Ms. Harder, if that means that we require more time to focus on the amendments. After all, at five o'clock tonight everything's deemed put and read anyway. There's no chance of that, and I don't want to restrict anybody from having their say on their amendments, so I would support waiving or relaxing that five-minute requirement when we get to clause 42. On any other section, I don't think there are many other amendments. There may be on another section.

● (1110)

The Chair: We're saying that the motion is that the chair may limit debate on each clause and amendment to a maximum of five minutes per party, per clause. Would that work for you, Ms. Harder?

Ms. Rachael Harder: No. That leaves it more open than I think we want.

I would state it this way: the chair may limit debate on each clause to a maximum of five minutes per party per clause, except for clause 42, where the limit would be five minutes per amendment per party.

Mr. Chair, the exception is only made for clause 42.

The Chair: Is there any debate?

Mr. Davies.

Mr. Don Davies: Yes, I think even that's too restrictive.

As I say, I think we're going to go through this very quickly. Then when we get to clause 42, I don't want to limit us to five minutes on an amendment. That's where the sensitivity is.

I think there's goodwill on all sides here to understand the amendments and if there are improvements to be made. I would not suggest we restrict that to five minutes. I think a person can make a motion to move on at any time if it looks deleterious.

I think we should have a full discussion on clause 42. I still think we'll finish this in lots of time.

The Chair: We have a motion by Ms. Harder to limit the amendments to five minutes. I will have to deal with that motion.

Mr. Don Davies: I would move a friendly amendment to that motion. I wonder if Ms. Harder would consider extending the five minutes to, say, no more than 15 minutes per amendment per party. I don't think it will take this long, but just so we have lots of time.

It may prove enough, but I think five minutes is a little short to talk about an amendment and 15 minutes may be too long. Maybe it could be 10 minutes. I just want each party to be able to speak to their amendment and have a discussion on that amendment.

The Chair: With this motion, the chair may limit debate. I think we could go to 10 minutes if the party discussing it needs to discuss it. Would everybody agree to allow the chair to proceed on that?

Mr. John Oliver: That's only for clause 42.

The Chair: That's only for clause 42, yes.

All right. We'll do that. Thank you very much.

We have to consider your motion withdrawn, then. We're going to adopt this approach: it will be 10 minutes, and it's up to the chair. Does that work on amendments?

Ms. Rachael Harder: Yes.

The Chair: Thank you very much.

We're going to skip the preamble. We're going to go right to the clauses.

I have no amendments for clauses 1 through 41.

(Clauses 1 to 41 inclusive agreed to sequentially)

(On clause 42)

The Chair: We're going to go to clause 42.

The first amendment is PV-1. It is Ms. May's motion to amend.

Go ahead, Ms. May.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thank you, Mr. Chair.

I appreciate all members of the committee asking me here, but I do like to place on the record every time that this is not an opportunity I actually welcome. I regard it as coercive and I much prefer the rights that I have under our normal procedures to be able to make amendments at report stage, as opposed to operating under the motions that were passed first under the previous government, and now again in every committee.

That said, I want to say how critical this piece of legislation is. My amendment is inspired by some testimony that the committee has heard and is very similar to some of the others that are before you today.

I want to pause for a moment and just share with committee members that one of my constituents, Leslie McBain, is a founder of Moms Stop the Harm. We know that this legislation is critical to help avoid deaths such as the tragic loss of her son.

The substance of my amendment deals with the criteria currently found in the bill at page 44. The overriding section is proposed subsection 56.1(2) under clause 42. This is certainly a big improvement in Bill C-37 over the current legislation, which had conditions (a) to (z), and then even (z.1). I opposed those when they went through the House the first time. They were extremely onerous and were clearly designed to stop harm reduction facilities from being opened in communities.

However, as the brief from Pivot points out, the conditions and criteria that are required under the current Bill C-37 are still onerous. I'll quote from their testimony to the committee:

> Streamlining the criteria will decrease delay and improve access to life-saving facilities for communities in need. Most importantly, it would remove the onus currently placed on minimally-resourced applicants that are, especially at this time, over-burdened and channelling all available resources into emergency measures to save lives.

The amendment you find from the *Parti vert*, amendment PV-1, is based on the Pivot advice. It compresses the criteria existing now in proposed paragraphs 56.1(2)(a) to (e) and simplifies them to this one:

> shall include information related to the local conditions indicating a need for the site, submitted in the form and manner determined by the Minister.

Then in proposed subsection 56.1(2.1), it would read:

> The Minister may require that an application for exemption under subsection (1) include information related to the regulatory structure in place....

It's a common sense measure to reduce the burdens and the hurdles in getting these life-saving facilities up and running.

Thank you, Mr. Chair.

Happy birthday to Mr. Oliver. I very much enjoy his comedy show. I just don't know why he doesn't look the same here as he does on TV, but that's okay.

● (1115)

The Chair: There you go.

Are there any other comments on the amendment? All right.

I have to say that if this amendment is adopted, amendments NDP-1 and NDP-2 cannot be moved. They are negated.

All those in favour of the amendment?

Go ahead, Mr. Davies.

Mr. Don Davies: The legislative clerk was talking to me for most of what Ms. May said, so I apologize.

Can you ask Ms. May to explain briefly what she has just proposed to do?

Ms. Elizabeth May: To make it very simple for Mr. Davies—and I understand you had other business you had to do—my amendment is remarkably similar to yours, but uses different language. It does the same as your amendment NDP-1. It compresses those criteria. The consideration section is differently worded but is remarkably similar. If mine were to pass, essentially you would be happy because it would be to the same purpose as yours.

Mr. Don Davies: Ms. May, I think you've submitted two amendments.

Ms. Elizabeth May: Yes. I'm on the first, which would make changes to page 44 of the bill.

Mr. Don Davies: Right. My concern and what I will speak to, if I hear the chair correctly, is that you're saying that if we adopt this amendment, the other two would be moot.

The Chair: Yours can't be moved.

Mr. Don Davies: They can be moved?

The Chair: They can't be carried.

Mr. Don Davies: All right.

I agree with Ms. May that her amendments and two others that I have moved speak to the criteria that an applicant would have to show and information or evidence, as the case may be, that would have to be furnished to the minister. These are the criteria that the minister would have to take into account in determining whether to grant a section 56 exemption.

All three of the amendments speak to that, but in different ways. They're alternative approaches. The amendment that Ms. May has proposed, which is very similar to one of my proposals, actually changes the criteria that are currently in the bill. There are six criteria in the bill right now, which emanate from the Supreme Court decision in the Insite case. This particular clause would truncate that and eliminate some of those considerations.

I'm in favour of this in the sense that from a public health point of view, we want to make this process as streamlined, effective, and efficient as possible for an applicant. The end goal, in my view, is to get supervised consumption sites up and running as fast as possible to save lives.

However, I do want to make clear that there are two different approaches to doing so. I have submitted two different approaches for my colleagues' consideration. One is this one, which I guess is the most efficient proposal you could have for an applicant. My other proposal is one that, personally, I favour. It retains the six criteria and simply reorders them in terms of what the applicant and the minister do and where the burden of proof is.

I guess what I'm saying is that I support them both, but if this one doesn't pass, I certainly hope that my colleagues will take a look at the other proposal, which maintains the six criteria.

● (1120)

The Chair: All right. Are there any other comments?

Go ahead, Mr. Kang.

Mr. Darshan Singh Kang (Calgary Skyview, Lib.): My concern is that this clause removes two of the Supreme Court's five factors from the application process. The five factors were equal in the Supreme Court decision, and it would be difficult to defend the inclusion of some but not all of those factors.

Removing some of the criteria would potentially result in the minister not receiving all of the information that would be relevant to making the decision and balancing public health and public safety in accordance with the charter. We cannot remove some of the factors from the Supreme Court decision. That's my concern.

The Chair: Is there any other discussion?

All right. We have Ms. May's motion on the floor. Does Ms. May's motion carry?

Mr. Don Davies: I'm sorry, are you asking who is in favour of the...?

The Chair: In favour of amendment PV-1, please indicate.

(Amendment negatived)

The Chair: All right. Now we go to amendment NDP-1.

Go ahead, Mr. Davies.

Mr. Don Davies: Mr. Chairman, in light of the vote, I'll withdraw that amendment because, as Ms. May has pointed out, it's almost identical.

The Chair: It's almost identical. All right.

Then we move to NDP-2.

Is there any discussion?

Go ahead, Mr. Davies.

Mr. Don Davies: Thank you, Mr. Chair.

I've submitted two amendments, with two versions of each. There are a few late ones that I might remove from the floor. This is the one I feel the most passionate about and that I strenuously ask my colleagues to give serious consideration to, because I think it makes the bill better, stronger, and more clear.

I'll read the original section of the bill. It says:

> An application for an exemption under subsection (1) shall include evidence

—note the word “evidence”—

> submitted in a form and manner determined by the Minister, of the intended public health benefits of the site and information, if any, related to

Then it mentions the following five criteria: the impact of the site on crime rates, the local conditions indicating a need for the site, the regulatory structure, the resources available to support it, and expressions of community support.

All I've done in my amendment is reorder these items. The first thing, from a point of view of principle, is that we want to make sure that the burden on the applicant is commensurate with the applicant's abilities. We put on the applicant the burden of showing information that they need, and you allow the minister to take into account the information that she needs to take into account.

The problem with this is that the burden is entirely on the applicant. That's number one.

Second, the very first thing it says is that the application shall include evidence of the intended public health benefits. I don't think it's possible to furnish evidence of intended benefits. By definition, intended benefits are speculative. You could supply information about that, but you can't supply evidence of something that is yet to happen, so that's a structural problem.

Then it goes on to say "and information"—and we're still talking about what the application has to include—on a number of factors. Why is the burden on an applicant to supply information on the impact of the site on crime rates? That is definitely something the government minister should take into account, but this is one of the problems that applicants under the current system have complained about. The reason it takes so long and is so difficult to put the application in is that they have to furnish evidence of the impact on crime rates.

If you look at some of the community groups that want to open these sites, you'll see they don't have the administrative or financial expertise to go out and gather sociological evidence on the impact on crime rates, although I think the minister should definitely be.... She should get the Minister of Justice and other departments, such as Public Safety, to furnish that evidence.

With the way it is now, some might say that paragraphs (a) to (e) under proposed subsection 56.1(2) are qualified with the words "if any".

Here's the problem. If I'm an applicant and I'm putting an application in and I read this section, I'd say okay, I have to put in evidence of the intended public health benefits and information, if any, on a bunch of things. Now, I don't know; do I have to do that? If I don't do that, will my application be weaker? I know the evidence exists; if I don't put it in, will my application look incomplete? It actually continues to confuse.

My amendment simply reorders it. It says that an application for exemption under subsection 1 "shall include information"—so I've changed that first word "evidence" to "information"—"submitted in the form and manner determined by the Minister, related to", and then I've given three things that the applicant has to give to the minister.

The first is the same one that's there now, the intended public health benefits of the site. I think an applicant should have to furnish information on that. The second is the local conditions indicating a need for the site, because the applicant will be specifically well placed for that. The third is to tell the minister what resources are available to support the maintenance of the site.

I want to pause and say that I changed the term from "regulatory structure", which I think is an error. I read the Insite decision from the Supreme Court. The Supreme Court talked about the regulatory structure of Insite, but if you follow the words that came after that, it talked about there being nurses on site, having pamphlets for drug treatment, doing criminal record checks. I think "regulatory structure" is the wrong word to use here, because it tends to make you think of the regulatory structure of the province.

I'll finish up very quickly, Mr. Chair. I know you're being indulgent. I'm almost done.

What we really want to know is what resources the applicant has to support the maintenance of the site.

Then, in terms of evidence, it goes on to say that in relation to the application:

> the Minister may take into account evidence,

● (1125)

Now I've changed it back to "evidence", but it could be "information." It doesn't really matter. I just thought "evidence" makes more sense in the second half. That's "evidence, if any, related to"

> (a) the impact of the site on crime rates;

—because there would be evidence of that—

> (b) the administrative structure in place to support the site;

—that's looking at the city, the municipality, the province, and any other structures, and then—

> (c) expressions of community support or opposition.

There would be evidence, or not, of that. I'm happy to change that second word, "evidence".

What I've done, in sum, is straighten out the evidence-information issue. I've clearly told the applicant what they have to satisfy. We keep all of the six criteria that the Supreme Court identified, and we let the minister have regard to the evidence that—I think everybody in this room, including the Conservatives, would agree—should be taken into account. It makes it a very clear and I think a much stronger section.

I don't have any skin in this game. I have no dog in this race. I don't have anything invested in this. I think, however, that it makes this subsection absolutely accord with what we want it to do, which it does not do right now.

The Chair: Thanks very much.

Go ahead, Dr. Carrie.

Mr. Colin Carrie (Oshawa, CPC): Thank you very much, Mr. Chair.

Don was saying that he was just reordering it. I would say that there are significant changes.

For example, if you look under "Application" in proposed subsection 56.1(2), it says "shall include evidence, submitted in the form and manner determined by the Minister, of the intended public health benefits of the site and information, if any, related to", and then it lists it down.

In Don's section of “Evidence”, it says “may take into account”. In other words, there is not really a requirement for the minister to do it. Anything that weakens the consultation process, Conservatives are not going to be in favour of.

As well, what's in place now, we hear, is onerous. However, the minister approved three new sites just this past week, and I assume they were approved under the old structure, because this is not the new law yet, so unless this is just an attempt to rubber-stamp things.... We're not going to be supporting anything that weakens the consultation phase in any way whatsoever, so we won't be supporting Mr. Davies' amendment.

● (1130)

The Chair: Go ahead, Mr. Oliver.

Mr. John Oliver: Thank you very much.

I want to thank Mr. Davies for the amendment he's brought forward. I wanted to start by saying I think we all agree with the spirit of what he's trying to accomplish, which is to make it easier and more expedited to get these applications through. I want to remind everybody that there used to be 26 criteria that basically froze the development of these safe sites, so there's already a significant loosening of the strictures that were there and that what is in the act is from the Supreme Court. That was a Supreme Court decision. I just wanted to start with that.

I think the suggestion to move from “evidence” to “information” is a really good idea. There are significantly different criteria and interpretation around that, so I think we would support that. I think removing the “if any” clauses for the (a), (b), and (c) criteria actually reduces the minister's flexibility and discretion, so I'm a little bit uncomfortable to see the “if any” removed for (a), (b), and (c).

Unfortunately, I've been stuck on the scrutiny committee for regulations, so I'm starting to understand acts and regs and how departments interpret things. I think overall, what we're trying to do here is dip into how an application process should be constructed and prescribe an application process, so I want to ask the department if they could walk the committee through the impact of this amendment and tell us what impact it would have on the proposed application process. Could you talk about the application process to us a bit and give us any concerns you might have about moving away from the Supreme Court's recommendations?

Ms. Kirsten Mattison (Director, Controlled Substances Directorate, Healthy Environments and Consumer Safety Branch, Department of Health): There are some distinct sections of the amendment, and I'll talk you through those. I don't want to use your time unnecessarily, so please stop me if something is clear and we can move on to the next portion.

The first part of the change is to substitute the word “evidence” for “information”.

Mr. John Oliver: We're okay on that one.

Ms. Kirsten Mattison: The word “evidence” was only used once in the provision. It was linked to the the intended public health benefits of the site.

Mr. John Oliver: I think we're okay with that. I think where the issue for debate here might be is around the reordering of what is required to be submitted and who's going to be submitting it.

Ms. Kirsten Mattison: Yes. I just want to be very clear of the difference between the public health benefits versus the other five factors. The public health benefits are to allow the minister to confirm that she has the authority to take the decision under section 56.1, because that decision is taken when it's necessary for a medical benefit. That was why that was necessary. The other five factors were grouped as a block in order to demonstrate that those were elements that the Supreme Court of Canada indicated should be considered in making a decision on an application.

The reordering of the requirements does change what the legislation sets out as what must be in an application. Currently the five factors are equally weighted; they're presented together. That's in line with the Supreme Court of Canada decision. Of course, you're absolutely correct that the legislation sets a framework, sets a high-level overview of how the application process works. It's the department's job, and that is sometimes accomplished through regulations under this framework and sometimes through guidance documents, application forms. In the case of supervised consumption sites in particular, there have been typically a series of discussions between departmental officials and the applicant. There's an application form, there's guidance on how to fill out that application form, and there's an ongoing conversation if applicants have any questions or concerns about how they should be providing information or what they should be providing.

Mr. John Oliver: I don't want to put words in Mr. Davies' mouth, but my understanding is the (a), (b), and (c), he feels, would be appropriate to be submitted by the applicant, but then under his amendment, the proposed new subsection 56.1(2.1), the part about (a), (b), (c) isn't clear, actually. The minister may take it into account, but it's not clear who's actually submitting it. Do you or does the minister have any way of collecting that information if it doesn't come through the application process?

● (1135)

Ms. Kirsten Mattison: The department may have access to information, and in considering an application it would certainly use information to which it already has access. It's helpful to the department in the process, so that's the reason for the five factors being together and the terminology “if any”. It's so that the applicant provides information if they've been able to obtain it to support the decision-making process. In asking the applicant to provide it if they have it, it's to help access information that the department might not have access to.

Mr. John Oliver: I have a final question. Do you have any problem with changing the words “regulatory structure” to “administrative structure”?

Ms. Kirsten Mattison: The term “regulatory” was chosen because it was exactly the term used in paragraph 153 of the Supreme Court of Canada decision. I could see substituting the term “administrative” and having the effect. The term “regulatory” was chosen because it was exactly the term used by the Supreme Court.

Mr. John Oliver: Do I have time left?

The Chair: You have three minutes.

Mr. John Oliver: Thank you very much for the departmental perspective. Again, I think it is important to understand that everybody is supporting getting these sites up and running and trying to find ways to make sure, while we have complete application processes, that they aren't unnecessarily burdensome.

When I looked at the administrative structures in place, the expression of community support, the impact of the site on crime rates, I saw there was an "if any" caveat around that one. I thought those would be relevant. If I put my old hat on as a hospital CEO, if I were applying for something, those look to be reasonable things that I would be submitting as part of an application for minister approval. The impact of the site on crime rates, I think, is a more difficult one for an applicant to assess, and the language as originally drafted is "if any".

Coming back to supporting moving from "evidence" to "information", supporting moving from "regulatory structures" to "administrative structures", but otherwise keeping the original five together as envisioned in the act, makes more sense to me.

The Chair: Mr. Davies, you have four minutes.

Mr. Don Davies: Thank you, Mr. Chair.

I have a few things. To answer Mr. Carrie's concern—and I'm not sure this would change his mind in any event—he's quite right. I didn't mean to avoid it. When I changed the words "may take into account" from "shall", the reason I changed it was because of the words "if any", so I thought "may take into account evidence, if any", but I'm happy to put that back to "shall" if that makes him more comfortable. I don't think that would change his view of the amendment anyway.

The problem with this, with great respect to Mr. Oliver, is that we continue to say we want to get these running as quickly as possible. That was said a year ago. The minister stood in the House and said she wanted to get these sites done as quickly as possible, while at the same time saying she didn't think the act necessarily had to be amended. The act is the barrier. The application process is the barrier. We have to acknowledge that.

While we're here at this historic moment with a chance to straighten out the application process, it's our chance to figure out what burden we want to give to the applicant. Applicants have been telling me for a year, "You're making me put stuff in that takes me a long time to gather, that is hard to gather."

If you're saying that the application has to have expressions of community support or opposition, if any—and I'll get to "if any" in a moment—you're basically slowing down the process. I'm going to go out there, I'm going to get petitions, and I'm going to go knock on doors in the neighbourhood because I'm going to think my chances of getting the minister to approve it will be better if I have expressions of community support. By the way, there will be other people acting to get evidence of community opposition at the same time. Let's not forget that.

I want to talk about the words "if any". "If any" is extremely confusing. I'm an applicant, and I'm told by a law of Parliament that an application shall include information, "if any". What is that telling me? Does it mean information if I want to include it—if I have it, I'll put it in—or does it mean if any exists? I'll tell you, there is always information about the impact of the site on crime rates. There are always expressions of community support or opposition.

Any person applying under this section who reads it the way it is, with the words "if any", will think they have to put that information in or they won't get their application approved, or the chance will be less. That's going to slow down the process.

I also want to be clear that, as I said before, the minister will take into account all those factors. Maybe there will be a countermove and there will be groups organizing to send information to the minister outside the application on expressions of community opposition. The way this is written now, the minister doesn't take that into account. It's only expressions of community support or opposition that are contained in the application.

What I'm saying is that from my reading of the Supreme Court decision, the minister should broadly exercise her discretion and ask what the impact of this would be on crime rates and find out what the community is saying about this issue. Don't put the burden on the applicant to provide that. Widen it so the minister can get that information from anybody she wants.

The last thing I will say is that in my amendment there's nothing that would preclude an applicant from including expressions of public support. An applicant could do everything that you said you want them to do, John. I'm removing the legal requirement, the burden placed on them to provide that.

Really, all I'm doing here is straightening out the burden. Let's clearly tell applicants, "You tell us what the public health benefits of the site are. You tell us about the local conditions. You tell us the resources available to support your site." Then, when you get that application in, and it will get in quicker now, you can have regard—in fact, as Colin says, "shall" have regard—to the impact on crime rates, the administrative structure, and expressions of community support.

I'm telling you this is better. If we don't pass this, you are telling applicants the process will be slower, and you are passing a section that will be confusing to applicants.

● (1140)

The Chair: Thank you.

Ms. Harder is next.

Ms. Rachael Harder: Thank you very much, Mr. Chair.

Can you further clarify? You talked about this phrase "administrative structure". I follow you to a point, but I would like you to expand on that further. What exactly is the difference? If we're moving from a regulatory structure to an administrative structure, what difference will that make in the end?

Ms. Kirsten Mattison: The intent of the legislative drafting was to align with the language used by the Supreme Court of Canada. The alignment provides an advantage for someone reading a piece of legislation and hoping to understand the intent of the provision, because it points very clearly to the Supreme Court decision, and the court in its decision elaborated on all of those points.

The intent is to make a clear link between the legislation and the Supreme Court of Canada decision so that the legislation doesn't bear the burden of that interpretation, and so that the entirety of that court decision can be seen to be a direct link into the legislation, so that the interpretation can be maintained.

I would agree that the statements, for example, of nurses present at a site as one of the clarifying statements in the court decision would support the term "regulatory structure". The intent is to make the link very explicit so that the entire interpretation of the court could be seen to apply to the provision.

Ms. Rachael Harder: I can value the fact that this links back to the Supreme Court of Canada decision. Are there other ways that we could clarify, in the application process, what is required here by this terminology?

Ms. Kirsten Mattison: Absolutely. The intent of the department is to develop a clear application form that applicants would use to structure their application. That form is accompanied by written guidance. We realize that sometimes that's not enough. The department is committed to working directly with applicants to answer any questions they have as they put together the application.

We've had telephone discussions and face-to-face discussions to explain to applicants how they can meet the provisions and exactly what information the department is expecting to see. It's one piece in a very comprehensive process of supporting applicants through understanding their obligations and requirements in submitting an application.

● (1145)

Ms. Rachael Harder: Thank you very much.

The Chair: Mr. Webber, you have five minutes.

Mr. Len Webber (Calgary Confederation, CPC): I don't need five minutes. Thank you, Mr. Chair.

It was really just a thought here. I think Mr. Davies' intention here is to try to make the application process for safe injection sites easier.

Would you be in a similar position, Mr. Davies, if we were sitting around the table here talking about application processes for pipelines in Alberta? To apply for a pipeline is extremely onerous. It's extremely burdensome and time-consuming. It can often take years.

We fought hard as Conservatives to try to make it easier to get pipelines built throughout this country, but we're not talking about pipelines here today; we're talking about safe injection sites.

Would you agree, Mr. Davies, that it is very onerous to put in a pipeline in this country? Would you be in favour of making it an easier process to put pipelines in, just as you would like to have safe injection sites put in without consultation from the community?

Basically, I see the changes here giving the minister the power to basically overrule any community consultation or community decisions, whereas communities opposing pipelines is something the minister can't overrule.

The thought is there. I was just thinking that in Alberta we are having a very difficult time trying to get pipelines put in place, and you are here talking about how you want to make it easy to put in safe injection sites. I think it's very important that we have community consultation, that we have approval from all areas with regard to getting these sites put in place. I know there are some communities that would be opposed to safe injection sites, yet the minister can overrule the desire of the community.

I don't support what you're doing here, Mr. Davies, in your motion or your amendments. However, I am making again the comparison between pipelines and safe injection sites. I may not have explained it quite clearly, but you know what I'm thinking here. It's very onerous for pipelines, yet you want it to be very simple for safe injection sites.

If you're willing to make it easier for us in Alberta, we can make it easier for you to put in safe injection sites throughout the country.

The Chair: Thank you very much.

Mr. Oliver is going to have to answer the question, because he's the next speaker.

Mr. John Oliver: I want to respond to some of Mr. Davies' comments.

Yes, there have been delays in getting safe injections sites established, but it is not this bill but the previous bill that was causing the problems. There were 26 requirements in the previous legislation. This is a dramatic reduction, to five. There is really no empirical evidence yet that these five conditions are going to stand in the way of a successful, expedited application.

My second comment is that this isn't just about letting these sites happen. The Minister of Health has to balance public health with public safety, and she needs to have the information available to her to make assessments of the appropriateness of the site for the community.

Having said that, I would like to move a subamendment, Mr. Chair.

I move that in proposed subsection 56.1(2), in line 10 the word "evidence" be changed to "information" and in line 16 the word "regulatory" be changed to "administrative".

I'd like to move that subamendment.

The Chair: You're just changing two words.

Mr. John Oliver: It's not of the amendment. The original wording of the bill stands, except for those two line items and the wording changes that I just went through.

The Chair: Thank you very much, but we have to deal with the amendment we have. We'll take yours as a separate amendment.

Now we are back to amendment NDP-2. I would like to know if amendment NDP-2 carries.

(Amendment negatived)

The Chair: Now we have a motion from the floor, which is Mr. Oliver's motion, to change the words.

I didn't catch it. Do you want to say it again?

● (1150)

Mr. John Oliver: Sure.

I move that in proposed subsection 56.1(2), in line 10 the word “evidence” be changed to “information” and in line 16 the word “regulatory” be changed to “administrative”.

The Chair: Is that in order?

A voice: Yes.

The Chair: All right. The motion is in order.

Go ahead, Ms. Harder.

Ms. Rachael Harder: Through you, Mr. Chair, I would be interested in knowing why the member would wish to change the word “regulatory” to “administrative”.

At first I didn't feel that there was much of a difference, and I felt that Mr. Davies perhaps made a point in terms of thinking of nurses and that sort of thing. However, the link directly to the Supreme Court decision firmed in my mind that we should stick with the original language, which is to say “regulatory structure”, and that the department should look for positive ways to make that very clear to those who are applying.

At the end of the day, those who put an application forward are not necessarily going to pull out this piece of legislation in its full form. They're going to read the application form that's put in front of them on a computer screen. That seems like the place to bring about greater clarity with regard to what that word means.

However, the direct link to the Supreme Court decision seems, on a legal front, to make a lot more sense to me. Perhaps that could be expanded on so that I understand the thinking there.

The Chair: Mr. Carrie is the next speaker.

Mr. Colin Carrie: Yes, I was going to elaborate on taking the word “evidence” out. We shouldn't lose the fact that what we're talking about here is an exemption for an illegal activity. We're not talking about Kool-Aid that people are putting into their veins at a consumption site. These are street drugs, purchased illegally from somebody with a nefarious background in many cases. It could be kerosene, for heaven's sake, that they're putting into their arms.

When the minister is deciding whether an exemption should be given to allow these illegal activities to take place, the word “evidence” is much stronger than just “information”. I think we should be taking this extremely seriously.

There are downsides to these sites. If you look at the evidence that we've heard.... We've had police state that there are a lot of offences —thefts, crimes to get the drugs—committed by these addicts, who usually aren't people of means, and they need to get the money somewhere.

I'm really concerned. Just to continue what my colleague Mr. Webber was saying, the government is saying that it is going to be a government of consultation, but we're moving to get rid of a lot of that consultation for these particular sites.

I know that on another committee, for Canada Post, the Liberal government is saying that they're going to give the veto to a municipality about where they put a mailbox, but they're not giving a veto or even mandatory information from a municipality or a community to give input on where an injection site is. These sites have significant criminal activity that goes with them.

Our current Parliamentary Secretary to the Minister of Justice is on the record as saying that when he was a police officer, there was no area in Toronto where this would not have negative effects.

I think that weakening the language in this bill is the wrong way to go. As I said, we're in favour of making sure that the consultation process is vigorous, and I think we should take into account what our colleagues from Health Canada said in response to Ms. Harder. They have tried to make the language consistent.

The Chair: Mr. Davies, go ahead.

Mr. Don Davies: I listened carefully to what Ms. Mattison said, and she's quite right.

As a lawyer, I love saying this: I think the Supreme Court of Canada was wrong. What they said in the bill here—she's quite right —is “regulatory structure”. That's the wording of the Supreme Court, but the words that then illuminate what they were referring to make it clear that they're not talking about the regulatory structure in terms of regulations.

I changed the word—and I don't care which word it is—because under the current bill, when it says that an applicant has to include information on the “regulatory structure in place to support the site”, what does that mean? I'll tell you that as a lawyer, the first thing I would look for is the regulatory structure. I'd be looking at the municipal bylaws and the provincial structure.

That's not what the Supreme Court was talking about. To me the chance of an applicant saying, “Regulatory structure—I'm going to have regard to the Supreme Court decision to find out what was meant by regulatory structure” is pretty remote.

I'll just read for the committee what the Supreme Court said:

> It is a strictly regulated health facility

—this is speaking about Insite—

> and its personnel are guided by strict policies and procedures. It does not provide drugs to its clients, who must check in, sign a waiver, and are closely monitored during and after injection. Its clients are provided with health care information, counselling, and referrals to various service providers or an on-site, on demand detox centre.

Then it goes on to talk about other things. You see, what they were talking about when they said “regulatory structure” was the internal regulatory structure of Insite. That's why I thought it would be more clear to say to an applicant, “Tell us what administrative structure you have in place to support the site.” I thought it would be clearer and avoid confusion if applicants knew that this was the information they were being called upon to furnish.

I don't really believe it's necessary to respond to Mr. Webber's very strained analogy of pipelines, but I will say just a few things.

If Mr. Webber wants to leave the impression that I'm trying to ram through supervised consumption sites over the heads of communities that don't want them, he's absolutely mistaken and is misleading this committee and anybody listening. If he intends to say that I don't think the community's support or opposition to these sites is relevant, he's absolutely mistaken. My amendment specifically retains expressions of community support or opposition. I believe that's important. That's why I've been arguing that the minister should take that into account.

I was clearly just trying to say that the burden isn't on an applicant to furnish that information. If he listened to my argument, he would be quite happy, because an applicant who wants a site is quite unlikely to submit expressions of community opposition. Sorry, but he just voted against his own statement. My amendment would allow a community to put information to the minister about community opposition. He voted against my amendment to do that, so I think he's not quite clear on what we're talking about here.

Finally, I want to say here's a difference between the New Democrats and the Conservatives. We view the addiction and opioid crisis to be an issue of health, not an issue of morality or an issue of ideology. I want a proper administrative structure and application process for pipelines and for supervised consumption sites, but here's the difference. People are dying right now. People are dying today. In his province, in Alberta, Albertans are going to die today, and you know what? Their lives could be saved if we had supervised consumption sites, but he and his party are opposed to them.

The question I have for him is, why does he want to block health facilities that save Albertans' lives? He's content to let them die? Well, I'm not.

● (1155)

The Chair: Go ahead, Ms. Harder.

Ms. Rachael Harder: Ms. Brouillet, I want to ask you if you can just bring some clarification with regard to this terminology. If we were to change it from “regulatory” to “administrative”, what would be the repercussions?

Ms. Miriam Brouillet (Legal Counsel, Health Canada Legal Services, Department of Health): For me to answer that question would not be proper.

That said, I think it's useful to go back to the decision of the Supreme Court of Canada. In that decision the court was explicit in what the court understood as being a “strictly regulated structure”. If you allow me, I will read the passage that is of interest in the decision of the Supreme Court in order to enlighten your understanding of that notion that is currently in Bill C-37.

The court goes into a description, a citation, of elements that were presented as evidence in the court at the first instance. It says, “This passage describes a strictly regulated health facility.” It refers to that notion of health facility.

It says, “It operates under the authority of VCHA, and its personnel are guided by strict policies and procedures.” When it talks about a “strictly regulated health facility”, it goes back to those policies and procedures that exist within the health care service that is provided at that site.

It goes on to say, “It does not provide drugs to its clients, who must check in, must sign a waiver, and are closely monitored during and after injection.” They're describing how it operates and what circumstances and procedures are required in that particular site.

It also says, “There are guidelines for staff to follow in the disposal of used injection equipment and the containment of leftover drugs.”

Therefore, when we are using the words “a strictly regulated health facility”, we are going back to that wording of the Supreme Court of Canada. That helps the applicant understand what is meant. As my colleague Ms. Mattison has mentioned, the department will provide guidance to support the applicants in order for them to understand what is meant by these words that were carefully chosen by the Supreme Court of Canada and very carefully chosen by the government.

● (1200)

Ms. Rachael Harder: Can you further clarify whether those actions are taken by staff? Are they regulated by the province, or by an external health authority, or are they just internally regulated?

Ms. Miriam Brouillet: What is important to understand is that each site will be unique and will have its own reality. The minister has the duty to evaluate all the applications on a case-by-case basis. There's no one answer to that. It will be a case-by-case evaluation.

Ms. Rachael Harder: Let's look at the one example that we do have, which is Insite in Vancouver. Are they regulated by an external health authority or are they just internally regulated?

Ms. Miriam Brouillet: The answer is that they exist within a health facility that exists within a provincial structure. Therefore—

Ms. Rachael Harder: So would it be B.C. health that is overseeing them?

Ms. Kirsten Mattison: Insite exists within the Vancouver Coastal Health Authority, so it's within a provincial regulatory structure. It's functioning within its local municipal structure, so municipal bylaws, for example, apply to Insite, and it follows them. In addition, it develops its own internal policies and procedures.

The government, in evaluating the application for Insite, evaluated the layers of that. It would be a similar situation in most jurisdictions across Canada. There would be a provincial framework and a municipal framework, and it would be expected that there be internal policies and procedures.

In saying that it would be a different answer for each site, my colleague is indicating that the balance between those three may be different for each individual situation. One of the things the minister, in making that case-by-case assessment, would evaluate is whether the structure in place as a whole across the different layers is sufficient to support public health and public safety as the objective of the CDSA.

The Chair: Okay. Time's up.

We have one more speaker, and that's Mr. Oliver.

Mr. John Oliver: I won't be able to add much to this, but I was asked these questions.

First, why move from “evidence” to “information”? I think the issue here is that the language has been taken right from a Supreme Court decision that actually rebuked the previous government's model and the efforts they were working on to restrict these kind of sites, but gave direction to the minister on how she could proceed with safe consumption sites.

I want to say here that this isn't advice to a minister, but an application. It's requesting information from an applicant. Sources give the minister information. The information is then looked at. Evidence is drawn by the minister from that for her decision, in this regulation. I think that for an application, it makes sense to talk about “information”; it is the minister who draws evidence.

Second, I think my colleague Mr. Davies said it exceptionally well, so I won't say much more about it. With regard to “regulatory” versus “administrative”, everything that is in that Supreme Court frame is administrative structures and processes, not regulatory ones. I think it has to do with translating the Supreme Court decision, which is issued to a government, taking that, and then writing a bill that deals with the application of it.

I think changing from “regulatory” to “administrative” is right, and I want to thank Mr. Davies for picking up on both of these two wording points. I think they're important clarifications.

● (1205)

The Chair: All right.

Mr. Carrie, please make it short, just because of the time.

Mr. Colin Carrie: I think it's important to correct the record, because of a few things that Mr. Davies did say. I think everybody around the table realizes that addiction is a health condition that needs to be addressed, and I think detoxification treatment has been the best option.

As for his attack on my colleague Mr. Webber, who was just trying to point out that pipeline applicants have to do all the work, Mr. Davies was saying that for site applications, perhaps they don't need to do the work. We hear over and over that these sites save lives. Well, pipelines create jobs, and the suicide rate in Alberta is going up because of the unemployment rate. I think he cares about his constituents, so I don't think we should be playing that type of game and going down that road, especially with an important piece of information like this.

At any rate, I think I need to correct the record on that.

The Chair: Thank you very much.

I want to know if this amendment to change the word “evidence” to “information”, and then to change the word “regulatory” to “administrative”, passes.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Now we will move on to amendment CPC-1.

Would you like to address this?

Mr. Colin Carrie: Yes. Thank you very much, Mr. Chair.

Basically, as I was saying, we would like to make sure that the communities where these facilities will be located at least have the basic ability to have some input. If you look at my additions, what I'm saying is that:

> (2.1) An application for an exemption under subsection (1) shall also include
>
> (a) letters from both an authorized representative of the municipality in which the site would be located and the head of the police force that is responsible for providing policing services to the municipality in which the site would be located indicating their support for or opposition to the proposed site and including information related to the matters described m paragraphs 56.1(2)(a) through (e);
>
> (b) evidence that all households within a radius of two kilometres of the site were notified of the ability to provide expressions of community support for or opposition to the proposed site for the purposes of paragraph 56(2)(e);
>
> (c) evidence that the Member of Parliament representing the electoral district in which the site would be located was informed of the proposed application;
>
> (d) evidence that any consultation for the purposes of gathering information related to paragraph 56(2)(e) included consultations that were held in both official languages and were accessible to persons with disabilities; and
>
> (e) information regarding schools, churches, hospitals, businesses, and places of recreation or entertainment located within a radius of two kilometres of the site.

We heard evidence, Mr. Chair—you were here—that there are activities that go on around these sites. Our objection is that the way that it's currently written really does water it down. We've heard that for Insite, for example, the police have been directed not to charge, so when you're talking about crime rates.... Mr. Webber and I actually walked down there with police officers, and we saw criminal activity taking place right in front of us. They were told not to charge.

When police forces are making sure that public safety issues are served properly, the resources have to be there. For municipal politicians, mayors, there may be increased costs for policing. I know the number from the police association. They said that at Insite there are 100 extra police officers. Just to do round numbers in my head, that's $100,000 per officer, which is about $10 million per year. I think it's important that municipalities have the opportunity to discuss this, because ultimately somebody is going to have to pay to make sure that public safety is ensured in those areas.

This whole part that I would like to add really gets to what we think is the minimum. Communities should definitely have the ability to be consulted when these sites get put in.

● (1210)

The Chair: Thanks very much.

Do we have other speakers on this?

Go ahead, Dr. Eyolfson.

Mr. Doug Eyolfson (Charleswood—St. James—Assiniboia—Headingley, Lib.): Thank you.

Will all due respect to Dr. Carrie, I understand that there are all these social ills going on in these areas. We know that before these sites were established, much of this was going on anyway. These sites were put in areas where this was already an issue. Whether there have been increases in these rates in the meantime is difficult to say.

Do we know if that would have happened anyway? We don't know. We just know that these sites are put in areas where large numbers of addicts are injecting to start with.

This is a way of reducing the death rate, the transmission of infectious diseases, the finding of dirty needles, and all the other ills that come with this. Basically, as we've said, it is reducing the harm that comes with these activities.

This amendment is so over-prescriptive that it's going to more or less prevent it from happening in the first place. This basically reinserts a great number of the provisions of the so-called safe communities act, which was meant to prevent this from happening in the first place.

I can't speak for my colleagues, but I would imagine that they would agree that we will be opposing this amendment.

The Chair: Thank you very much.

Go ahead, Ms. Harder.

Ms. Rachael Harder: I would add to my colleague's thoughts. Moving forward with a supervised injection site does alter a community. I had the opportunity to tour Insite in Vancouver earlier in the spring and see first-hand the impact it's having on the community around it.

There's no doubt that it is having an impact. The building right across the street is 90% vacant because businesses won't rent there. The apartment just beside Insite has changed its clientele entirely, the landlord reported to us.

This does change a community. When I talked to police officers there, they also told me about the difficulties they have in enforcement issues.

This committee heard from the fire department in Vancouver and the incredible impact it's having. I don't know if you recall, but the gentleman who was here testifying was quite moved by the impact taking place there and the fact that they're going to the same individuals sometimes, two, three, four times a day, saving them from an overdose just outside the site.

I think it's quite silly of us to pretend that this does not somehow have an impact on the community surrounding these centres and that the community shouldn't be included.

The Liberals use the tag line of "We're going to take an evidence-based approach." The Minister of Science said that, I think, four times in the House yesterday. I'd like to know where the evidence-based approach is on this, in collecting evidence from the community organizers who are going to be most impacted by this decision. This legislation as it stands right now fails to do that.

The Chair: Go ahead, Dr. Carrie.

Mr. Colin Carrie: I want to point out my colleague's comment about being overly prescriptive. I think the fact that the minister just approved three more sites proves that even with the situation we have today, these applications do go through. He's making extreme extrapolations.

One site in Vancouver, called Insite, has been operating for a number of years. The Dr. Peter site, I think, has only been up for maybe a year, so to assume we can replicate that community everywhere.... This was a very seriously affected community beforehand, and as the Parliamentary Secretary to the Minister of Justice said, there's no place in Toronto that is that bad.

He also mentioned that we don't know. We've heard the statistics that are being collected. I don't know the breakdown, but maybe our colleagues from Health Canada know. We do know that overdoses are increasing, but I've not seen the breakdown. Are these overdoses due to injections? Is it the injectable route, the oral route, the inhalation route? Are we even taking any of these things into consideration? I don't know.

All we're saying with this approach that we'd like to put forward is that we know the minister can overrule. She's going to do what she's going to do. We're just saying the communities where these are going to be placed.... We're talking about parents whose kids are going to schools and recreation centres and police officers who have to do their job in that community. Municipal politicians should have the right to be consulted. That has been proposed by this government over and over again. They've said they're going to be the government of more consultation, and I see that they're already decreasing it enough. I don't think these few simple additions are unreasonable, and the proof of the pudding is in the eating. It doesn't mean that it's going to be overly prescriptive.

Even with the 26 requirements, we've got three new ones that just came out last week. My understanding is there could be more in the pipe ready to go.

● (1215)

The Chair: Go ahead, Mr. Davies.

Mr. Don Davies: I may have the singular advantage on this committee of being the only MP from Vancouver. I've lived there for the last 26 years, and Insite has been operating for—jeez, I want to say 12 years. I drive through the Downtown Eastside every week. I've been on the Downtown Eastside literally hundreds and hundreds of times, and I want to tell you something: prior to Insite opening, the rate of vacancy of businesses and the general atmosphere on the street was worse. Do you know why? People were injecting drugs on the street, in the doorways, in the alleys. Right in front of businesses, people would inject drugs and collapse in front of the door.

When Insite opened, it was in a very discreet way. I have to tell you that it was several years before I actually knew where they were. That's how discreet they are. They have taken the street drug use that would have been happening on the streets, in the alleys, and in front of businesses, and they've moved a significant amount of it indoors. I talked to members of the Chinese business association—this is located in historic Chinatown—and they had a lot of issues with this site when it first opened. If you go and talk to those businesses now, they are absolutely convinced that the opening of Insite has helped the general environment and atmosphere around Chinatown because it has moved this activity indoors.

You know, supervised consumption sites are specialized health care facilities. They provide a range of services to mitigate the harms associated with substance use. Their core functions are to connect people who use drugs with sterile injection equipment, to supervise people while they are using psychoactive drugs, and to provide overdose reversal, first aid and wound care, and referrals to other health care services. In many cases they also provide referrals to addiction treatment programs, something that I think should be part of every supervised consumption site. I really like the fact that Insite has OnSite upstairs, where there are treatment beds. Every time someone goes into Insite, they have an opportunity to go there.

I want to say that to me, the challenge before this committee is to make sure that the criteria that go before the minister before a section 56 exemption is granted should be guided by the health perspective. We don't ask the community if they are in agreement if an abortion clinic gets opened. We don't ask the community if methadone treatment should happen in a pharmacy in their community. Those are core health services. While it may impact a community, so do hospitals and so does putting in a local fire station, with trucks going in and out of the station at three in the morning. These all have an impact on the community, but we know that these are core public services. Our job here is to make sure that an applicant can get an application in and the proper factors can be taken into account, not extraneous factors that serve only one purpose.

I'll say it here: the only reason that the Conservatives passed Bill C-2, with their 26 criteria, was that they were ideologically opposed to supervised consumption sites and wanted to put up a lot of barriers to opening them. That's why, yes, three sites in Montreal were approved this week, 16 months after they applied. I mean, every stakeholder in the country is telling us that those criteria are making it take an extremely long amount of time. Toronto has been waiting for months. Victoria has been waiting for months and months.

Again, this is a public health emergency. I'm glad to see Dr. Carrie uses that term. The Liberals are using that term. The New Democrats encourage the use of this term. This is a national public health emergency. People are dying, and when people are dying, I think it behooves us as a committee to get a process that is fair, medically based, and science-based, one that can expedite the opening of these life-saving facilities while taking into account the proper criteria.

I think the criteria proposed by Dr. Carrie are just a continuation, in a truncated form, of Bill C-2. Putting up additional barriers by consulting groups that really don't have any particular stake in the health care aspect of this problem will simply delay the process, make it more difficult, and make it more time-consuming. In the meantime, we will see more people die even as we know that these sites could be up and running.

● (1220)

On the first day that Insite opened, they reversed 15 overdoses. Not all of those people would have died, but I bet that some of those people would have died had those overdoses happened out on the street. Those are the stakes that we're dealing with here.

The Chair: Thank you very much, Mr. Davies.

We have four Liberals on the list and eight minutes, so that's two minutes each, and we have one Conservative with three minutes.

We're going to start with Ms. Sidhu.

Ms. Sonia Sidhu (Brampton South, Lib.): Thank you, Mr. Chair.

Dr. Carrie, if there are not any households within two kilometres, why not businesses too? It says, "within a radius of two kilometres of the site". If there is nothing in that area of two kilometres, why not everyone? Would this not be an incentive to put it in the middle of nowhere, where no one could get to it? The site should be where it is accessible to everyone.

Also, as Mr. Davies said, it is a very serious matter. People are dying.

I know that Mr. Webber said "pipeline", and Ms. Harder said "evidence-based". Let's do something. We are working on a very important issue. We shouldn't use these analogies. We should work on that. It's a very historic moment.

The Chair: Thank you very much.

Mr. Kang is next.

Mr. Darshan Singh Kang: Thank you, Mr. Chair.

I agree with Mr. Don Davies that this is a national public emergency. The evidence says that 40 to 50 people are dying every day. That is the evidence.

We don't want to make this application process so onerous that it takes months to get the application to the minister. As Mr. Carrie says, the minister is going to do what the minister is going to do. Let's streamline the application process so that it gets to the minister faster. Then he or she may decide on the site of the clinic.

I don't think we should be talking about pipelines or anything else. This is an emergency, and we should be dealing with this only.

It was my friends from the Conservative side who were pushing to have this study done and to move it quickly. Now, with these kinds of amendments, they're just throwing these roadblocks in here, so it defeats the very purpose of having this legislation in place.

Thank you very much.

The Chair: Thank you.

Go ahead, Dr. Carrie.

Mr. Colin Carrie: Thank you very much.

I was happy to hear that Don was able to tell me how I was thinking, because I do think that this is a health issue. We've heard over and over from witnesses in front of us that to have a successful site, you need to have community buy-in. Just as he is the MP in his community, I am the MP in my community, and I can tell you right now that I have spoken to my mayor and I've spoken to community members. There is concern about where it's going to be located if one of these sites is applied for in my community.

Don had a good statistic. He said that in the first day they saved 15 people from an overdose. My question would be how many of these people were put into treatment. My colleague, Ms. Sidhu, said that we have to do something. Well, what about treatment?

In Insite's own stats for OnSite, I think they said that only 7% of people were even offered treatment. Again, maybe Health Canada officials know how many of these people actually got into treatment, how many followed through, or how many actually completed the treatment.

If this were any other health condition—let's say it's diabetes—we wouldn't just be saying, “Here, inject yourself. Get your insulin on the street. By the way, we'll slap you around, and if you're okay, if you're cognizant, we'll put you back out on the street to commit four to eight crimes to do it again.” I think that's an issue we have to be cognizant of. This is not just about doing something; we have to be responsible.

All I'm saying with my amendment, which is not unreasonable and is not a roadblock, is to just allow the communities where these sites are going to be located to have a say. Ultimately the minister will decide, but if something of this magnitude.... You can't extrapolate the experience in Vancouver and start transporting that around the country. We've heard that it's going to be unique in every situation. We just have to be cautious, because we don't want to put people at risk and we also don't want them to defer their treatment.

If there is a Band-Aid solution, perhaps we should be focusing on the conversations with the provinces and territories when the minister is sitting down for the new health accord. I know we had $500 million per year in our anti-drug strategy. Part of that could be utilized for treatment. Maybe the minister, over a 10-year period, could allocate $5 billion towards treatment. Maybe she could sit down and work with our provinces and territories within their jurisdictions to make sure that these people, who have severe health conditions and whom we all want to save, get the help that they need.

● (1225)

The Chair: Thank you very much.

I just want to say I don't get a chance to debate here or talk.

Oh, I'm sorry. Go ahead, Dr. Eyolfson.

Mr. Doug Eyolfson: There's one last thing I'd like to say.

When Dr. Carrie asked for the evidence that this works, well, there are exhaustive literature reviews and position statements from the Canadian Medical Association, the World Health Organization, and—I would have to double-check this—Centers for Disease Control, which all agree that harm reduction is not the end of treatment but that it is an essential pillar of it, and that people will die without it. You do not increase the rate of drug use with these centres; you simply reduce the harm. That is the evidence. That is clear. I would just like to add that to this debate.

As you say, it's unique from centre to centre. Some centres don't need it. In Winnipeg, where I'm from, they may not need one. They're not sure that there is an area where large numbers of people are overdosing with intravenous drugs. If there is no need for this centre there, then there will be no incentive, and there's not going to be any push to open one. This will be done where it's needed. In Vancouver, they saw the need. In Montreal, they saw the need, and again I go back to the evidence by reputable organizations like the Canadian Medical Association, the World Health Organization, and the Centers for Disease Control that this does save lives.

Thank you.

The Chair: Okay.

Dr. Carrie, you have 19 seconds. Just take your time.

Mr. Colin Carrie: I'm not going to be arguing the evidence with Dr. Eyolfson. What I am simply stating is that as he said, certain communities may feel that this is something they would like to have in their community. What we have now with what the Liberals put in front of us is the bare minimum. What I'm suggesting is to give communities the right to be consulted legitimately before this gets put into their community. We know that the minister can overrule whatever happens.

The Chair: Thank you very much.

Go ahead, Mr. Davies.

Mr. Don Davies: I want to bring the committee's attention back to the wording that's before the committee. The “application for an exemption...shall include evidence...of the intended public health benefits...the impact of the site on crime rates; the local conditions indicating a need for the site...and expressions of community support or opposition.”

I want to be clear. Although I understand Dr. Carrie's amendment, I think it expands on those criteria. Those criteria are in the act and are part of any consideration and discretion by any health minister, so when we talk about whether it's appropriate for a particular community or where it should be located in that community, that's squarely dealt with in the proposed section where we're supposed to have regard to the local conditions, and again, yes, we all agree that the community should have some portal to express its opposition or support to this, and we recognize that, and that's why it's in the section as well. I understand it's probably not as expansive as Dr. Carrie would like, but it is there.

● (1230)

The Chair: All right, we're going to decide.

Shall CPC-1 carry?

(Amendment negatived)

The Chair: The amendment is negatived.

I just want to say that everybody here at this table wishes we didn't have to discuss this subject, and everybody has strong feelings. Everybody's done a lot of homework on a very complicated bill. We're all generally going in the same direction, so I think we're.... I just want everybody to remember that.

We are on CPC-2. Who is...?

Go ahead, Ms. Harder.

Ms. Rachael Harder: Mr. Chair, in this amendment I tried to balance two things. One is the timeliness, because I do understand that this is in fact a response to the opioid crisis, which I'll say is in fact urgent. At the same time, though, I want to balance that with the need for a public voice. The Liberals campaigned on and have stressed over and over again in the House how important consultation is and how important an evidence-based approach is. My hope would be that we would be able to come to a consensus today with regard to this amendment, given that it is important to both sides.

My amendment is this:

> The Minister may grant an exemption under subsection (1) not earlier than 45 days after the day on which the Minister provides public notice, in the form and manner determined by the Minister, of any application for an exemption under subsection (1). The notice shall include the period of time—not to exceed 90 days —in which members of the public may provide the Minister with comments.

The change that's taking place here is that I'm advocating for a minimum amount of time during which we would allow the public to respond to a public notice. The way the piece of legislation reads right now, it simply says that the minister can give up to 90 days. I would say then that the minister could choose just to do zero days, which means she has not consulted or allowed the community to be consulted at all, which seems very counter to what the Liberal position is. I would say that a minimum of 45 days seems appropriate to allow the community the opportunity to consider a supervised injection site being put in place and to respond to the minister.

Again, I'm not taking away any authoritative power from the minister. At the end of the day, she gets to consider the thoughts that are brought before her and then make a final decision based on that information that is presented. I think this current government has demonstrated its desire for consultation, whether it's through pipelines or through putting national strategies in place at various times. I guess I'm a little bit confused as to why there wouldn't be more emphasis placed on allowing the public a voice with regard to something like a supervised injection site, which is going to alter the community in which it is located.

Further still, the minister was directed in her mandate letter to consult with Canadians, so again it would seem fitting for that to occur on all legislation going forward if it is in her mandate letter. I could quote that for you, but in the interest of time I won't be doing that today.

My statement is this: I certainly believe that this amendment is in alignment with the Liberal position with regard to seeking public input, doing consultations, and allowing individuals to take an interest in a change that's going to take place in their community. It's not a motion that stands in the way of the supervised injection sites being put in place. It's just simply a mechanism by which we can elicit further input from the community, which I think always strengthens the decisions that we make. Based on the platforms that have been put forward, I would expect you to agree.

I know my community is considering a supervised injection site and is taking the steps forward to look at that and to gather evidence for our need. I don't stand for or against that personally, but what I do stand for is bringing the community into that procedure and making sure that our different organizations are informed and given a voice.

For example, I want Canadian mental health at the table. I also want community mental health at the table. I also want Alberta Health Services at the table, along with our mayor, but also I want other community organizations such as our homeless shelter at the table because I believe that all of these organizations will have a role to play in the care that is provided to these individuals. As we're stating at this table, a safe injection site or a supervised injection site is only one of the pillars.

● (1235)

If we were to move forward with that without consulting with these other organizations or with community members, then it weakens it because it doesn't give them an opportunity to share their feedback and how they might further engage in the process going forward.

With that, I leave this in front of you to say that giving public notice a minimum of 45 days ahead of time allows for a broader consultation and for community organizations to partner with one another, rather than being left in the dust or blindsided. A community effort is what's going to strengthen this and allow all pillars to be obtained.

The Chair: Go ahead, Ms. Sidhu.

Ms. Sonia Sidhu: Thank you, Mr. Chair.

I do not with agree with Ms. Harder's comment.

First of all, the consultation is reaching out to a broad range of people. These consultations are already done, and it's a broad range of people. They put the consultation in there.

This amendment would remove the minister's discretion and prevent sites from being approved in an urgent situation. We don't need a delay of extra days, particularly if there's urgent need of a site.

Also, it is important to note that one of the five criteria in this bill already includes community consultation. It is important, but it's sufficiently covered off in the proposed legislation. It includes all the broad information in there.

The Chair: Go ahead, Dr. Carrie.

Mr. Colin Carrie: My concern, without having this important amendment put forward and accepted, would be that it allows for the shutdown of any community input.

We're talking about a permanent injection site. First of all, we know from our testimony that for this to be a success, you want to have community support. Does a 45-day consultation change anything? I know the Liberals did MyDemocracy.ca, and that was 45 days. For consistency across government consultations, I think 45 days is the minimum that's out there.

Could you comment on those two points?

Ms. Kirsten Mattison: To the first point about whether a consultation would change anything, maybe I'll speak to the proposed changes as compared to the bill as drafted.

The bill as drafted allows the minister to post a notice of public consultation if she requires additional information to make her decision after considering the application. In the current drafting that's before you as Bill C-37, it would be discretionary for the minister to determine whether the applicant had submitted sufficient information for her to balance public health and public safety or whether she felt the need to seek additional information. The amendment proposed before you would make that consultation a requirement for 45 days. That would be the difference.

With regard to a set time or a minimum period for government consultations, I don't have experience with the consultation around the issue to which the member referred. I can say that under the CDSA, we post notice of consultation for various reasons. Often it's for notices of intent to propose orders of the Governor in Council, to propose regulations to be made by the Governor in Council, or to propose changes to policies, procedures, guidelines, templates, and that sort of thing. I have seen those consultations range from 30 to 75 days. That's typically decided on a case-by-case basis, based on who you're trying to reach and how much time they require to gather the information to respond to the government consultation.

● (1240)

Mr. Colin Carrie: Basically there's a usual period, as you said. It could be 30 to 75 days—that's very common—but to have zero days, as it's written now, makes it at her discretion as to whether or not she wants to consult with anybody. She may decide on zero consultations, as my colleague said, and just move ahead with what she wants to do.

Ms. Kirsten Mattison: In the context of this proposed subsection 56.1(4), that's correct, but that's paired with the application requirements, which would be that the applicant would be asked to submit information on any expressions of community support or opposition. Those would often be obtained after the applicant had conducted a consultation. The minister would determine whether she had sufficient evidence or whether she chose to consult.

Mr. Colin Carrie: Thank you.

The Chair: Dr. Eyolfson is next.

Mr. Doug Eyolfson: I have a very quick point to the question that was asked about what the harm would be in 45 days and whether it would matter.

The question I would ask in return is if there's an urgent enough need. For instance, as Mr. Davies pointed out, the day that Insite opened, they reversed 15 overdoses. Multiply that by 45 potential deaths. Does that matter? I would say it does.

The Chair: Go ahead, Mr. Oliver.

Mr. John Oliver: I'll speak to Ms. Harder's points.

I think it's really important that we remember what we're doing here. This isn't designing the treatment programs and the whole care model around people with drug addictions. That's the province's responsibility. It's a public health area of responsibility. The gathering of people that she described for input is about care and treatment.

What we're doing here is deciding who would be exempted from the Controlled Drugs and Substances Act because of medical conditions. The fact is that the data being gathered, the information being assembled, is quite different. I agree the necessary, really important consultation with other providers would be done through a provincial or local public health authority as part of an overall care plan, but it's not relevant to this exemption.

The Chair: Seeing no other comments....

Go ahead, Mr. Davies.

Mr. Don Davies: Thank you, Mr. Chair.

I would reiterate that the current bill as proposed does invite and permit the consideration of local conditions and of support or opposition. The opportunity for community consultation is currently in the act. I think it's important to remember that.

The reason I'm opposed to this provision is that it sets out a minimum barrier of at least 45 days before an exemption could be granted. I think everybody on this committee knows that in my province of British Columbia there aren't just two supervised injection sites open right now: there are about six. Four sites opened up spontaneously, regardless of the law, to save lives. These were called pop-up overdose prevention sites. They popped up not for ideological reasons but because people were dying.

I was going to pick up what Dr. Eyolfson said. In British Columbia we had 1,000 deaths last year—914 officially, but probably closer to 1,000, if you count the deaths that probably eluded the coroner's diagnosis. That means that in British Columbia we have about 20 people dying per week, which would mean that in five weeks, 100 people would die. The Vancouver Police Department tracks the number of overdose deaths in Vancouver itself, and in the second week of January they found 15 overdose deaths per week. In 45 days, that means 75 people dying.

In Alberta, probably 400 people died last year. That's eight per week. That's 40 deaths.

The difference is that every time we erect a barrier or delay in opening sites, we are handcuffing our ability to take measures when a public health emergency demands immediate action. Although in the normal course a city or municipality may apply for a supervised injection site and could wait, this provision, if it were adopted, would restrict the ability of the minister to grant an exemption on an emergency basis. That's what we need.

That's what has happened in British Columbia. Those four extra sites operating right now are saving lives now. I visited all four of them about three weeks ago. The last thing in the world we need to do is erect a legislative barrier that says they couldn't operate for 45 days.

Given that the spirit behind it is to make sure there's adequate consultation, a fact that's in the act, we can have that consultation as Ms. Harder wants. We can ensure that local conditions are taken into account and we can leave open the discretion of the minister to act quickly if need be.

● (1245)

The Chair: Mr. Kang is next.

Mr. Darshan Singh Kang: Thank you, Mr. Chair.

I will echo Mr. Davies' words. Time is of the essence when we are setting up these clinics. This amendment will constrain or tie the minister's hands for 45 days in terms of taking any action. Look at all the lives that may be lost in that delay.

Those are my comments. Thank you very much.

The Chair: Go ahead, Ms. Harder.

Ms. Rachael Harder: Chair, I'll just echo my final thoughts on this.

I think we have to acknowledge the difference between an applicant during the consultation versus the minister making notice public. Those are two very different things. When the applicant does a consultation, of course that applicant gets to pick and choose who he or she consults. That's very different from the minister making a public notice that is on the public record and is available to every member of the public.

Those are two very different things. Let's be clear about that. One is more consultative. One is not. One is more open and transparent. One is not. That the Liberals would be against openness and transparency, against consultations, is in direct opposition to what they campaigned on and in direct opposition to what's in the mandate letter for the health minister.

The second point I wish to make is with regard to the 45 days and the fact that this requirement would somehow hold this up. Now, we can argue that there might be deaths that would result from this measure. I don't think it's fair to assume that every single one of those deaths would be saved, because I don't think it's fair to say that every single person in Alberta would all of a sudden come into that injection site and not overdose. That argument just doesn't hold water.

Nevertheless, I will acknowledge that, sure, I suppose 45 days could cause some delay, and I suppose that delay could have some negative impact, but I think the negative impact is very small in comparison with the positive impact from a coherent and cohesive effort that could be taken when community organizations and members of the public come together and have their input.

At the end of the day, of course I still stand in favour of my motion. I do believe it is in the best interest of Canadians that the minister does give a minimum of 45 days' public notice.

● (1250)

Mr. Darshan Singh Kang: If I may, Mr. Chair, I disagree with Ms. Harder. I believe one death is one too many. If the delay causes one death, that's one too many. Thank you very much.

Ms. Rachael Harder: I didn't say anything contrary to that.

The Chair: All right. Seeing no further speakers on the list, I'll seek your direction.

Shall amendment CPC-2 carry?

(Amendment negatived)

The Chair: Thank you very much.

I'll go now to PV-2— no; that was a little oversight on my behalf. We have to now adopt the clause.

Do you have another amendment, Mr. Davies?

Mr. Don Davies: Well, I think maybe we need some direction from our legislative clerk.

I see a number of amendments still on clause 42. There's Ms. May's amendment, PV-2, which is an amendment proposing a new clause, clause 42.1. I have an amendment for proposed clause 42.1 as well, which has been submitted. I actually had a second amendment, which is an alternative to the one that I mentioned, so I see three more amendments—two that have been before the clerk and one that I will read from the floor.

The Chair: PV-2 and NDP-3 are considered part of a new clause, not part of clause 42. We are seeking to approve clause 42.

Are there any questions?

Mr. Don Davies: I'm fine with that.

My binder goes from clause 42 to clauses 43 and 44, so that's why it was—

The Chair: We have a new clause proposed, clause 42.1.

Mr. Don Davies: Okay, so we'll move to that after we are done with clause 42. Is that right?

The Chair: Yes.

Mr. Don Davies: Okay. If that's the case, that's fine.

The Chair: Shall clause 42 carry?

(Clause 42 agreed to)

The Chair: Now we're going to go to proposed clause 42.1.

Ms. May, we've gone through your amendment and we have concluded that it is outside the scope of the original bill as passed at second reading because it delegates power from the federal minister to the provincial minister. It's a new concept that wasn't in the original, and I have to rule it out of order.

Ms. Elizabeth May: Can I make any comment on that?

The Chair: You sure can.

Ms. Elizabeth May: I'll just say briefly that I understand the ruling, but this is a public health emergency. In my normal rights, which I would have had but for this committee's passing a specific motion that primarily applied only to me—I think it's discriminatory and unhelpful—I could have tried, at report stage, to at least make the case that Pivot has made. The anecdotal evidence—and it's actual, real evidence—that Don Davies just mentioned is that these pop-up clinics are happening because it's a public health emergency.

I think it would be far better to include the provincial minister as having a delegated power in this time of emergency to ensure that this life-saving assistance is made available as quickly as possible.

I assume that if my amendment is out of order, so will be Don's, and I understand. I think there is a grey zone here. The purpose of the bill is to save lives. It's not outside the purpose of the bill to find a way to save lives.

● (1255)

The Chair: I appreciate your understanding. We did a lot of thinking on it, and we consulted several sources before I was to declare your amendment inadmissible, I can assure you.

Mr. Davies, go ahead.

Mr. Don Davies: I want to get some more clarification and information to understand the reason for this ruling. First of all, I want to understand the ruling, and then understand why.

The ruling, as I understand it.... You're saying that it's beyond the scope of this bill.

The Chair: It changes the concept and adds a whole new element that wasn't in the bill when it passed at second reading. That's the condition. It passed second reading. Everybody voted this through based on a certain concept. There was no delegation to the provinces.

Mr. Don Davies: That's true. I know the scope of the bill is always a very opaque and abstract determination, but clause 42 of the bill that passed says this:

> For the purpose of allowing certain activities to take place at a supervised consumption site, the Minister may, on any terms and conditions that the Minister considers necessary, exempt the following from the application of all or any of the provisions of this Act

The act itself deals squarely, I think, in pith and substance, with the minister having the discretion to grant an exemption on any terms and conditions that she feels necessary.

If you look at Ms. May's amendment—

The Chair: She is not granting the exemption under this. She is granting the power to grant the exemption.

Mr. Don Davies: If I may just continue, there is no question in constitutional law that the minister may delegate authority. The Supreme Court of Canada has ruled on that: the minister may. Therefore, it doesn't change the scope of the bill to expand it and say that the minister may, on any terms and conditions—mirroring the language—consider it necessary to delegate the power to grant an exemption. It is part and parcel, hand in glove, of the power that's right there in the bill.

I have to say that in my conversations with counsel prior to this, it has never once been raised that this could be outside the scope of the bill. It has been argued that it may be redundant, because the discretion already exists in the bill. That's the interesting part. I've been told by counsel, in preparing my amendments, that my amendments aren't necessary, because proposed section 56.1 already allows the minister to delegate her authority, as the minister "may, on any terms [she wants] exempt the following".

If the minister decides that one of the terms and conditions is that she will delegate that authority, which she has the power to do, I don't see that being outside the scope of the bill. I think it's just an extension of what the bill is already allowing the minister to do.

That's my pitch. I'll respect contrary opinion on that, but I don't think it's outside the scope of the bill.

The Chair: I'm not a lawyer, but it seems to me that the members of Parliament at second reading voted to give the minister the power, not the provincial minister. That's my interpretation of it. That's my ruling, unless you want to oppose it.

Mr. Don Davies: No, I'm good.

The Chair: Now we're moving on to NDP-3 in proposed clause 42.1.

Mr. Don Davies: Thank you, Mr. Chair.

I'm just trying to make sure that I have the correct amendment. The package I have doesn't say "NDP-3" on it. Is this the amendment for clause 42.1?

The Chair: It's reference number 8742335.

Mr. Don Davies: Okay, thank you.

Mr. Chairman, the purpose of this amendment is essentially to deal with the situation that I alluded to earlier, when provincial health ministers, who are very much closer to the ground in what's happening in their communities, may, on an emergency basis, want to request the Minister of Health to grant an exemption in a quicker way than the current application process because it may be necessary to deal with a public health emergency.

This new clause allows the minister of health in a province to request in writing to the Minister of Health that she make a section 56 exemption. It goes on then to have a couple of mechanical kinds of provisions that say that the minister shall, within three days after which she receives the request, publish the request on the departmental website. It says that the minister may, in response to a request, grant an exemption for a period not to exceed one year on terms and conditions the minister may consider necessary.

If the minister does not make a decision within seven days, then the minister is deemed to have granted the exemption on the seventh day. The minister shall, within five days after the day on which a decision is made, publish the decision on the departmental website, and the period of one year on which exemption is granted begins on the day after the exemption is granted.

Really it seeks to empower the Minister of Health to take a request directly from a provincial health minister, without delegation, and essentially grant that request almost on an interim basis. It would allow a supervised consumption site or—again I'm going to use the term used in British Columbia—an overdose prevention site to be sanctioned immediately.

Right now in this country, we have four sites in Vancouver that are operating illegally. Everybody knows it. They're actually getting funded by Vancouver Coastal Health in British Columbia. The provincial ministry of health is spending tens of thousands of dollars on these sites. Everybody is allowing it to happen, but the people who work in these sites subject themselves to legal jeopardy every single day they go to work. They're willing to take that risk because they're saving lives every day, but they shouldn't have to be at legal risk when everybody, including the federal government.... The local police forces are allowing it to happen even though the legal situation makes them technically illegal.

This gives the health minister another little tool to respond directly to a province and act on an expedited basis. Even though we're clearing up the criteria—which I congratulate the Liberal government for doing, and I'm so happy that they're doing it, since it's long overdue—you can still see that the application process for a section 56 exemption will take some significant time. It will be very difficult for an applicant to get all of that information before the minister so that the minister to comply with her duty to act. It will significantly cut it down, but I would suggest it would cut it down from years to months. What this would do is cut it down from months to weeks, or maybe it would even be quicker.

I would urge my colleagues to support this improvement to the act. It doesn't take away anything from the minister. It adds to her tool box and allows her to respond much more nimbly and quickly on an emergency basis.

● (1300)

The Chair: Thank you very much.

I'd like to offer our guests some lunch, if you'd like. It's really good.

Go ahead, Mr. Oliver.

Mr. John Oliver: I want to thank Mr. Davies for the suggested amendment.

I guess for me this bill is about the legislation giving the minister certain authorities to exempt people. It's not about giving the provinces and territories the rights. There's an important balance here that I'm not sure has been found in the proposed amendment.

I guess my question really goes to the staff here. The minister talks to her counterparts all the time. They can always pick up the phone and talk. Does this proposed amendment give the minister any greater power to make these things happen? Do you think it expedites her decision-making capabilities?

Ms. Miriam Brouillet: Thank you for your question.

It's an interesting and important question. The discretionary power that is currently found in section 56.1 is a broad discretionary power, and that power must be understood as being used by the minister in a way that is aiming at striking a balance between public health and public safety in light of the charter considerations that she also has to keep in mind when she makes a decision. Therefore, what the minister must consider is whether the applicant, no matter who the applicant is, should be granted an exemption from the CDSA in light of those factors—public health, public safety, and the constitutional obligations that are set out in the charter. Therefore, I think it is clear that it's a broad discretionary power that the minister can use in such circumstances.

● (1305)

Mr. John Oliver: Thank you.

Just drawing on that, then, it's kind of clear to me. The Supreme Court laid out five criteria. If the intent of this amendment is that those five criteria for exemption be bypassed by the fact that a minister in a province has declared a state of emergency, I'm not sure that meets that problem of balancing public health and public safety. We can't just bypass that balancing act that the Minister of Health federally has to maintain, and there's nothing prohibiting a minister of health at a provincial or territorial level from submitting an application with those five. If they reached a point where they had declared a state of emergency, then they could be facilitating those applications. They would know who the people are. They would have the entire provincial or territorial resources at hand to put together the application on an expedited basis.

I have a problem with this amendment, because it moves away from the five Supreme Court criteria. It moves away from the balancing of public health and public safety concerns, and it almost relieves the minister of her obligations in the case of a provincial emergency being declared. I have a concern from that perspective.

There are people who need these services today. We need to get these sites up and running immediately. We heard compelling testimony from witnesses when we did our own study that this is an incredible risk, and people are in incredible jeopardy from the opioid crisis that's out there. I do think we need to move forward, but a piece of legislation shouldn't be written to deal just with the crisis of the moment; it has to be reflective of a longer-term solution.

I understand the urgency that Mr. Davies is attempting to address, the sense that maybe something could be put in place faster. I don't know anything about their legality, but we're already hearing that there are workarounds that the provinces are tolerating right now to make sure that there are appropriate safe treatment sites created while they wait for this legislation to come.

Again I'm going to come back to this. The minister can't waive that important balance between public health and public safety and can't just defer to a request from a provincial or territorial counterpart to waive them, and I do believe that provinces and territories have the rights to do this work to get the applications in. They have enormous resources, so there's no reason they can't comply with the act as written.

The Chair: Go ahead, Mr. Davies.

Mr. Don Davies: There are a few things. The way the act is currently written, subsection 56(1) talks about the minister being able to grant the exemption. In the bill, proposed subsection 56.1(2) says:

> (2) An application for an exemption under subsection (1) shall include

Therefore the only way an exemption can happen right now is if there's an application that responds to the information.

In answer to John's concerns, I don't see how a written request by a provincial health minister would obviate the need for the federal minister to consider the criteria of the Supreme Court. In fact, right now the application says only that it shall include information on the intended public health benefits of the site and information, if any, related to the rest.

Right now, the way the government members have voted for this, they don't even have to have information on the other five criteria of the Supreme Court. It's only if the applicant wants to put it in. It doesn't even require the minister to take those factors into account, so the only thing that has to be in an application right now is information regarding the intended public health benefits.

I'll read a little bit from Pivot's submission. I think Pivot sent a submission to all of us on this committee. It says:

> Delegating the s. 56.1 exemption [or giving the power to the health minister] would empower provinces to take emergency actions during localized or regional health events.... Without legislation allowing them to do so, provinces will, in most cases, delay the provision of health services in order to apply for an exemption under s. 56.1....
>
> The delay caused by the application process threatens timely access to crucial health and safety services.... Even if the application process is streamlined, Health Canada requires time to review and assess the merit of the application. Even when applications are expedited by Health Canada, as in the case of the two outstanding Vancouver...applications, they can take many months to process. At the time of this submission, the two Vancouver applications that were submitted on October 31, 2016 and are being expedited were still under review.

> In that time, BC's emergency SCSs went ahead without an exemption and have been extremely successful in limiting the number of fatal overdoses and increasing access to sterile injection equipment. Statistics from the Coroner's Office at the end of 2016 show that of the 914 fatal overdoses in B.C. last year, none occurred in any supervised consumption facilities.

It goes on and on. It also says,

> Provincial Ministers have more timely and extensive knowledge, expertise, and information than the Federal Minister about the health circumstances and needs of local communities in their province. Their familiarity with regional Health Authorities, medical services, frontline service providers, community health indicators, and gaps in existing services puts them in a better position to assess the nature and degree of need...in a given community.

I just see this again as adding to the tool box of the federal minister. In an unusual situation where a province has declared a provincial health emergency, as British Columbia has, instead of forcing them to go through the application process, which will take time, it gives the minister the ability to grant it quickly but also to consider those factors if the minister wants to. Nothing in here precludes that.

I want to point out something. Without this right now, and if the federal government does not accept this amendment, you are saying that there is no way to operate supervised consumption sites outside of getting an exemption. What you are really saying is that the current sites that are operating right now in B.C. are illegal. If that's the case, why is the federal government not shutting them down? Why is the federal government not enforcing the law? Why are you not sending in the RCMP or the Vancouver Police Department to shut down these sites because they're operating with flagrant disregard of the law?

I'll tell you why. It's because all members of the Liberal government know that those supervised consumption sites currently in operation are saving lives.

If you know that, why don't we provide a mechanism so that they can at least operate under the sanction of the law? Right now they're illegal. You are making the people who go into those sites and the people working there break the law each and every day. You know, and the government knows, that they are saving lives, but it won't take the jeopardy away from them.

To order them to shut down and to tell them to make an application means that in a public health emergency you would be saying exactly what we just argued against in Ms. Harder's motion, when we said 45 days was considered too long for the government, because people die in that time.

● (1310)

You're still going to make applications go through the application process, knowing that if a province needs it right now, there's no mechanism for a provincial health minister to directly consult with the federal health minister and for the health minister to authorize it right now, and that's what this amendment does.

There's no harm in providing the health minister the discretion. If the health minister doesn't think that the provincial request is legitimate or substantial, the health minister doesn't have to approve it, but let's give the health minister that ability to at least do that on an emergency basis when the health minister thinks it's necessary.

I'll just conclude by saying this is not academic. This is a real situation in British Columbia right now.

The Chair: Okay.

Mr. Oliver is next.

We're actually on proposed new clause 42.1. It's been pointed out to me we originally said we would allow the time to be 10 minutes on clause 42 only, but we're on proposed new clause 42.1. I just broke the rules to let Mr. Davies have a little extra time there.

Mr. Oliver, you're up.

Mr. John Oliver: The only person on this committee who said there are illegal operations in British Columbia is Mr. Davies, and nobody else has said that, I don't think.

Second, with regard to the article in the report he read from, this is a new government. This is a new bill, and this is a new minister of health, so where the previous government was setting up obstacles to safe consumption sites, this government is doing everything they can to facilitate them and get them in place. The bureaucratic processes described in that report are not proven and are not necessarily going to be in effect here.

Your first point was that the minister has the power to do this right now, to waive the Supreme Court requirements, to waive what's in section 42. I believe the minister could take a phone call tomorrow from a minister of health, if the bill were to be passed and enacted.

I have a question, then, for the staff here. Does the minister not already have the discretion to do this in an urgent situation if a phone call came from a minister? Do we need this amendment? Does she already have the power?

● (1315)

Ms. Miriam Brouillet: Thank you for your question.

I think, as I mentioned before, that the power that is conferred to the minister under subsection 56.1(1) is a broad power, and she's required to make her decision in light of the medical purpose. If there is a medical purpose, she has the power to use this exemption power.

Further, the minister is required to balance two elements, public health and public safety, in light of the different factors that the Supreme Court laid out. Once she is convinced that there is a medical purpose and that those two elements are balanced, the minister may grant an exemption from provisions of the CDSA. Therefore, that power to act rapidly exists currently under the provision as presented in Bill C-37.

Mr. John Oliver: That's my understanding as well. We don't need this amendment, because the minister already has those authorities and powers.

The Chair: Seeing no more speakers, Mr. Davies, I believe you have about three seconds. You don't even have that, but go ahead.

Mr. Don Davies: I have a quick question. I'm curious where the source of.... I think it's the second or third time you've referred to the requirement to balance public safety. Is that in the legislation? Where do you get the public safety requirement from, or is that just your general description word?

Ms. Miriam Brouillet: Thank you for your—

Mr. Colin Carrie: I have a point of order.

You've been very generous. I think you've given Mr. Davies twice the amount of time that was allocated and agreed to. The NDP were very clear that they did support closure on this matter in the House. They supported the motion that was brought forth by Mr. Oliver to limit debate. For him to continue is, I think, just being unreasonable to the rest of the people around the table.

The Chair: Motion sustained.

Mr. Don Davies: Can I just speak out briefly, Mr. Chair?

I must say that at the beginning of this meeting when we said that we would extend our time limit on clause 42, I assumed that included clause 42.1, particularly because the binder we were given talked about clauses 42, then 43 and 44.

The only amendments I have are on clauses 42 and 42.1. I did not understand that.... Nobody said—

Mr. Colin Carrie: I have a point of order—

Mr. Don Davies: I have the floor right now, please.

Nobody said you can have more time on clause 42 but not on clause 42.1. I assumed that the purpose of that was so we would have time to discuss our amendments.

The Chair: It doesn't matter: either way, you're over. You're over 10 minutes. We're going to close the debate.

Seeing no more debate and no more questions, shall amendment NDP-3 carry?

(Amendment negatived)

The Chair: I see no amendments to clauses 43 to 73, so shall clauses 43 to 73 inclusive carry?

Mr. Don Davies: Could I just have a moment, please?

The Chair: Yes.

● (1320)

Mr. Don Davies: Can I just take two minutes? I have two other amendments and I'm not sure where they go. We were asked to fit them in, so before we jump to that, I want to make sure that I'm not missing....

Mr. Chairman, I have good news and bad news. The good news is that I have only one more amendment, and it's a very short one. I'll just describe it briefly.

It's to repeal section 36 of the Narcotic Control Regulations. As you may have heard, there are stakeholders who suggest that over-the-counter medication that has codeine in it should be behind the counter, codeine being an opioid. That's what this amendment would do.

I was going to move that from the floor. What I was told at the beginning of the meeting was that I'd have to find the right place in the bill to put it. I thought it could be anywhere, tacked on the end, but I'm now advised that clause 40 would be the appropriate place in the bill for such an amendment, if we did it. In order to move the amendment, I would have to ask for unanimous consent to reopen clause 40 to be able to consider that amendment. It's just a technicality as to where the amendment would have to go.

The Chair: Does Mr. Davies have unanimous consent to reopen clause 40?

An hon. member: No.

The Chair: There is no unanimous consent. Sorry, Mr. Davies.

Mr. Don Davies: That's okay. In that case, I will move that the amendment be considered as a clause at the end of the bill.

The Chair: Okay.

Mr. Don Davies: Perhaps I could ask the legislative clerks or counsel to determine if there's another place in the bill. I'm sure there's not just one place in the bill that it could be. I'd ask them to look and see if there's another part of the bill where it could validly be placed without jeopardizing the legislative statutes of Canada.

The Chair: We'll have to suspend for a few minutes while counsel digs.

● (1320)

(Pause)

● (1325)

The Chair: Mr. Davies, legal counsel and the legislative clerks have gone through this, and I'm advised that the only place that this fits in the bill is clause 40.

I have a quote here: “An amendment is out of order if it is moved at the wrong place in the bill.”

Therefore, it would be out of order to put it somewhere else. I'm sorry. We're not trying to stop it, but that's the way it is.

(Clauses 43 to 73 inclusive agreed to)

(Schedules 1 and 2 agreed to)

(Preamble agreed to)

(Title agreed to)

(Bill as amended agreed to)

The Chair: Shall I report the bill, as amended, to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

Thank you very much, everybody, for all your co-operation and research and hard work.

The meeting is adjourned.