

WRCPC Agenda

May 11, 2018

Waterloo Region Museum

10 Huron Road, Kitchener

9:00 a.m. to 11:30 a.m. (8:30 a.m. Networking)

Chair: Shayne Turner

Minutes: Mary Anna Allen

1. Welcome and Introductions
2. Approval of Agenda
3. Declaration of Conflict of Interest
4. Approval of the April 13, 2018 Minutes – 5 min (attached)

4.1 Business Arising

5. Opioid Discussion Follow-up from FC - (Shayne Turner) - 10 min - for approval

As directed by CPC, FC reviewed the role of WRCPC in the opioid crisis and will bring forward a recommendation. This item was carried forward from the April meeting.

6. Smart on Crime Community Plan - Evaluators from CCRLA – 25 min – for information and action

Evaluators will provide a brief overview of preliminary survey findings as well as orient Council members on methods for sharing their Most Significant Change Stories.

7. Iceland Discussion Continued – (Kelly Anthony and Michael Parkinson) - 45 min – for decision

8. Waterloo Region Wellbeing (WWR) Update - (Christiane Sadeler) - 15 min – for information

9. Ad hoc work opportunities – (Christiane Sadeler) – 5 min – for information and action

Christiane is bringing a staff generated list of tasks that would benefit from Council support.

10. NCR Policy Paper – 10 min

A policy paper provided by Daniel Bader was referred to an ad hoc working group to aid council in its decision whether to endorse it. The findings from the working group will be brought forward.

11. Book Review: Utopia for Realists & How We Can Get There, by Rutger Bregman (Mark Pancer) 15 min – for information

Members of Council read a book with a topic related to crime prevention through social development and provide their colleagues with a review of the book as part of knowledge mobilization.

12. Sector Leadership Knowledge Exchange

13. Other Business

14. Adjournment

15. Next Meeting: June 8, 2018

WRPCPC Meeting April 13, 2018

Women's Crisis Services of Waterloo Region (Anselma House)

700 Heritage Drive, Kitchener

9:00 a.m. to 11:30 a.m. (8:30 a.m. networking)

Present: Angela Vanderheyden , Andrew Jackson, Barry Cull, Barry McClinchey, Carolyn Albrecht, Chris Cowie, Courtney Didier, Doug McKlusky, Felix Munger, Helen Jowett, Hsiu-Li Wang, Irene O'Toole, Janice Ouellette, Jennifer Mains, John Shewchuk, Jonathan English, Judy Merkel, Kathy Payette, Kelly Anthony, Kelly Bernier, Mark Poland, Michelle Sutherland, Peter Rubenschuh, Richard Eibach, Sarah Shafiq, Sharon Ward-Zeller, Shayne Turner, Shirley Hilton, and Tom Galloway

Regrets: Bryan Larkin and Mike Haffner, Bill Wilson, Cathy Harrington, Carmen Abel, Douglas Bartholomew-Saunders and Carolyn Schoenfeldt, Jane Mitchell, Joe-Anne McComb, Laurie Strome, Liz Vitek and Cheryl Flamenco-Steiner, Mark Pancer, Michael Beazely, Peter Ringrose, Trisha Robinson

Currently on Leave of Absence: Denise Squire and Pari Karem

Staff and Students: Christiane Sadeler, David Siladi, Jodie Thomas (Student), Mary Anna Allen, Michael Parkinson, Rohan Thompson

Special guests: Dr. Daniel Bader, Michele Sands (Neighbourhood Watch London, Ontario)

1. Welcome and Introductions:

Shayne Turner welcomed WRCPC members and guests.

2. Approval of the Agenda:

Moved by Doug McKlusky

Seconded by Barry Cull

Carried

3. **Declaration of a Conflict of Interest:** None
4. **Approval of the Minutes of March 9, 2018:**

Shayne Turner asked for a motion to approve the Minutes of March 9, 2018.

Moved by Tom Galloway

Seconded by Sharon Ward Zeller

4.1 Business Arising:

4.1.1 Police Street Checks:

At the last WRPCPC meeting on March 9, 2018, Council passed a motion to ask the local MPPs to request that the Honourable Justice Tulloch include Waterloo Region in the list of communities to be consulted on the collection of identifying information by police. The response received from Justice Tulloch's office was that the review team would be willing to hold a consultation in Waterloo Region but that the consultation would be by invitation only. For the purpose of ensuring an inclusive community process, another request to the office of Justice Tulloch advocated for the consultation to not be closed but rather to be locally promoted with a built-in RSVP process to keep the numbers manageable. A response from Justice Tulloch's office is pending.

4.1.2 Supervised Consumption Sites:

At the regular meeting of WRPCPC on November 10, 2017, WRPCPC passed a motion to ask Regional Council to suggest to Public Health to broaden their mandate from Supervised Injection Sites to Supervised Consumption Sites. Since that time, Regional Council approved phase 1 of the Public Health's Report regarding Supervised Injection Sites and Public Health staff are looking at Regional Council's recommendation. In addition, some of the local Regional Councillors had the opportunity to meet with the Assistant Deputy Minister of Health during a site visit of some of the Toronto Supervised Injection Sites. At that time, the Assistant Deputy indicated that the Province of Ontario is looking favourably at Supervised Consumption Sites. There are no additional costs to make the change to consumption sites. These sites would however not include inhalation because of the mechanical system required to control the secondary health impact.

4.1.3 Bill 175 Safer Ontario's Act:

The Safer Ontario's Act is to be proclaimed by the Province on May 7, 2018. There is potential that this will not happen one day ahead of Ontario entering the pre-election phase. If this were to be the case Bill 175 would not become law.

Carried

5. Approval of the Smart Update (Consent Agenda):

Christiane thanked Council members for sharing their organizational training opportunities reflected in the Community Corner section of the Smart Update.

John Shewchuk shared that he appreciated the collection of news stories reflected in the Media section of the Smart Update.

Carolyn Albrecht announced that Jennifer Hutton is the new CEO of Women's Crisis Services of Waterloo Region and that Jennifer will officially take over the role of CEO as of April 26, 2018.

Moved by John Shewchuk

Seconded by Kathy Payette

Carried

6. Opioid Response Planning and Consultation regarding Supervised Injection Services (SIS):

Dr. Wang provided Council with a brief overview of the most current developments in the area of opioid response planning and the SIS consultation process. The overview included the development of the Special Committee on Opioids and an update on the Supervised Injection Services. The update included highlights from Phase 1 of the feasibility study, Public Health's recommendations approved on April 10, 2018 by Regional Council and Councillor Galloway's friendly amendment to make the change to include consumption services. In addition, Dr. Wang shared the City of Cambridge's interim control bylaw passed on April 11, 2018 prohibiting supervised injection sites or overdose prevention sites in their three downtown cores and buffer zones around the cores. The bylaw was passed shortly after Regional Council's approval of Phase 1 of the feasibility study. Dr. Wang also shared Public Health's next steps and what is anticipated as Phase 2 of the feasibility study. Please see PPT slides attached.

After the presentation, Council members had a discussion and provided the following feedback:

It was shared that Cambridge City Council does not want an unsanctioned SIS site appearing in the community that cannot be moved or closed after the fact and they plan on doing their own independent study to determine a location for a SIS. There is also no unanimous support by the City of Kitchener Council to have a SIS site in downtown Kitchener.

Public Health has been tasked with ensuring services that reduce harm. A well proven positive starting point for wrap around services that go beyond harm reduction tends to be the provision of basic health care. Effective upstream prevention efforts are obviously the best investment to avoid issues down the road.

Overdoses happen across Waterloo Region with a concentration in Central Kitchener and South Cambridge. Although the density is higher in the areas where most overdoses occur, it is disproportionately higher in the core areas compared to the rest of the region. The “heat maps” show thus that it is about more than just population distribution.

The question was asked if it was a local responsibility or a provincial responsibility to mediate difference of opinions about the location of the Supervised Injection Sites to help the community to come to a common understanding and to move forward.

Regional Councillors are committed to continuing the conversation and working towards finding a common ground. Public Health has been instrumental in bringing the community along by meeting with special interest groups and individuals on a one on one basis. They also continue to educate the public about the SISs and the opioid situation.

It was suggested that the WRCP keep upstream prevention on the Province’s radar and to ask for a percentage of the resources to be allocated towards upstream prevention along with overdose prevention.

The problem of opioid use is rooted disconnections. It is about how we respond to an event and when there is no response, it imbeds trauma. Relational wounds require relational healing. There is a spirit problem that is not being seen and not being valued. The disconnection that may have led to the addiction in the first place could end up being repeated because of the desire for the community to not to provide services where the need is. There is a collective neglect around us understanding the depths of some of these issues and we are now left dealing with it in a crisis.

We need to get to a point to take upstream prevention seriously. Perhaps the Iceland Project events and thinking on next steps next will take the community one-step closer to taking upstream prevention efforts.

7. Iceland Project Events Update and Next Steps: Carried over from the March 9, 2018 meeting:

Kelly Anthony and Michael Parkinson provided an overview of the events that introduced the Iceland approach so to not lose the momentum and seriously consider the next steps.

Kelly Anthony shared data from the “The Rat Park” experiment that was conducted by Bruce Alexander of Simon Fraser University in 1978 that showed that the environment plays a key role in addiction. Bruce Alexander, through a series of studies, identified the hypothesis that it is the social context that encourages, discourages, prevents, or facilitates the use and ill-use of drugs. The rats that were in richly stimulating environments where relationships with other rats were encouraged showed almost no interest in morphine laced water while those rats who were left alone in a small box with little stimulation regularly used morphine laced water , some of them to the point of overdose.

Michael provided an overview of the activities that occurred during Dr. Alfgeir Kristjansson’s visit to Waterloo region. The public and private events were extremely well received. The media coverage was excellent. Enthusiasm for developing a similarly transformational project in Waterloo region is high. However, funding to support a version of the Iceland approach as part of the Waterloo Region Youth Engagement Strategy is non-existent. A follow-up meeting with interested members of the community is planned for May 24, 2018 in Cambridge.

After the presentation, the WRCPC had a discussion and provided feedback.

The WRCPC is not looking to “duplicate” the Iceland Project but rather would look at the evidence of the effectiveness of the model to advance the agenda for upstream prevention.

A Council member shared that they would like to take a grassroots approach in developing the model so that the community and neighbourhoods are prepared to receive it.

Another Council member expressed concerns on how to integrate all of the conversations and the work that is happening at other collaborative tables in the community such as the Children’s Planning Table that is included in a Smart City proposal as part of Wellbeing Waterloo Region.

A Council member shared that it is important for the success of any program that it is rolled out with the appropriate resources attached.

It was shared by a Council member that even though the Iceland Project showed significantly positive outcomes after 20-years, improvements could be seen almost immediately. Within 5 years, the use of substances dramatically declined. The Ministry of Education did a broad-based consultation across the Province about the notions of wellbeing and both adults and youth conveyed that relationships with peers and caring adults are of critical importance. We need to feel connected and have a sense of belonging, be engaged in our own learning and have opportunities to have voice and express our own feelings and ideas. A healthy mind and body also depend on a sense of self and spirit, personal identity and self worth. If we look at primary prevention we should look at what are the strategies we are going to use to support those components in our youngest citizens. Primary prevention is about how healthy children and youth become healthy adults.

A Council member asked about the role of faith communities. It was explained that it is a broad definition of recreation and leisure and all appealing alternatives will be provided to youth.

The WRCPC cannot start the development of the model with existing resources. It was suggested that the WRCPC look to local businesses for development funding.

Courtney asked for a motion to pursue the development of an Iceland approach to youth engagement and prevention in Waterloo Region

John Shewchuk asked for a friendly amendment to Courtney Didier's motion asking to defer the discussion to the Facilitating Committee to allow for more time and to explore Council's concerns about any lack of integration with other projects such as Smart Cities.

Seconded by Tom Galloway

Carried

8. Not Criminally Responsible on Account of Mental Disorder (NCR):

Daniel Bader, Ph.D., RSW, presented his Policy Brief: **Why There Should Be Caps on Dispositions for Those Who Plead - "Not Criminally Responsible on Account of Mental Disorder"** and asked the WRCPC to endorse his recommendation to reintroducing the caps on NCR dispositions (sentences) that were present in the original 1992 bill, C-30. Please see Policy Brief and Executive Summary attached.

The Council members had a brief discussion about the policy brief and felt at that in light of the limited time available they could not make a decision without more information. It was recommended by Council to create an ad hoc working group to

further discuss the policy brief and report back to Council at the next meeting on May 11, 2018.

Several Council members volunteered to have this discussion. Staff will arrange for a meeting date and location.

9. Waterloo Region Wellbeing (WWR) Update:

Christiane provided an update about the region wide survey to be launched on April 16, 2018. The survey combines over 16 partners in a quest to better understand the experiences and thinking of residents of Waterloo region. The hope is to get 10000 surveys completed. Christiane encouraged members of Council to complete the survey and above all to ensure that the information about its existence is shared far and wide.

10. Opioid Discussion Follow-up from Facilitating Committee Motion for Approval:

Carried forward

11. Ad Hoc Work Opportunities:

Carried forward

12. Book Review: Utopia for Realists and How We Can Get There by Rutger Bregman - Mark Pancer:

Carried forward

13. Other Business: None

14. Adjournment:

Moved by Sharon Ward-Zeller

Carried at 11:37 am



Region of Waterloo
PUBLIC HEALTH AND
EMERGENCY SERVICES

Opioid Update for Crime Prevention Council

April 13, 2018

Dr. Hsiu-Li Wang (Public Health)

Outline

- **Special Committee on Opioids**
- **Update on Supervised Injection (Consumption) Services**
 - Highlights from Phase 1 of Feasibility Study
 - Recommendations to Regional Council (Approved)
 - Councillor Galloway's friendly amendment for consumption services
 - City of Cambridge's By-Law
 - Next Steps: Phase 2 of Feasibility Study



Special Committee on Opioid Response

- **An extension of the Integrated Drug Strategy**
- **Will build on existing work & ensure good collaboration & coordination across the 4 pillars**
- **Composed of leadership from key sectors in all 4 pillars**
- **Will oversee the development of a coordinated Opioid Response Plan for Waterloo Region, based on the 4 pillars**



Region of Waterloo
PUBLIC HEALTH AND
EMERGENCY SERVICES

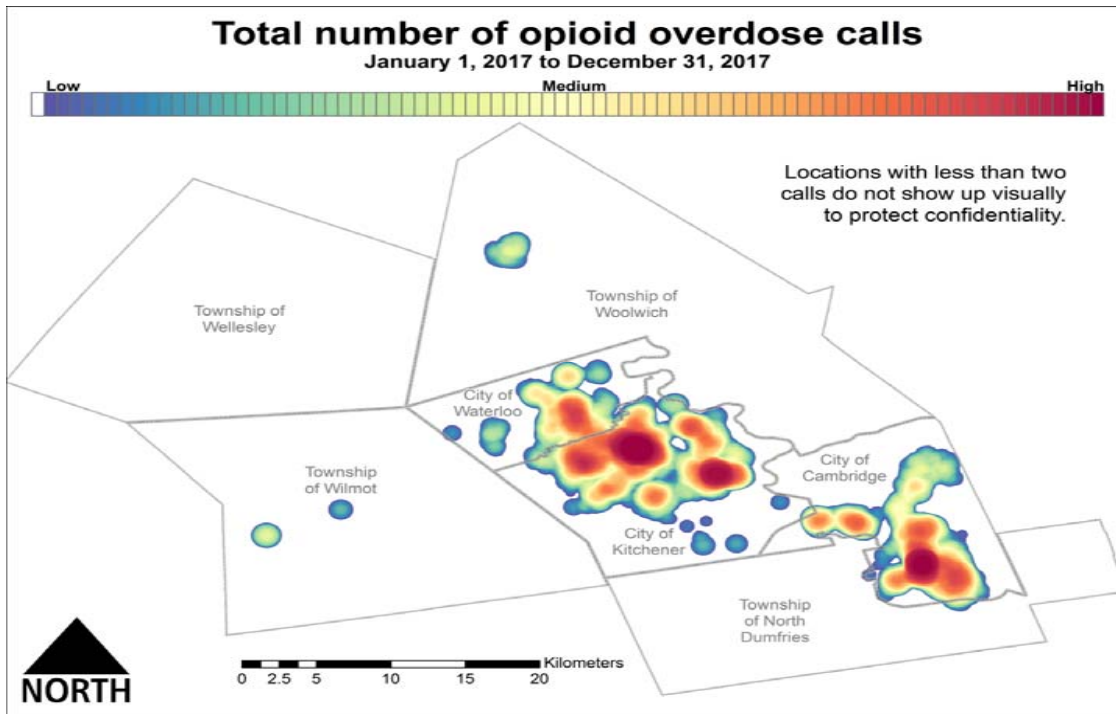
Supervised Injection Services Feasibility Study (Waterloo Region)

Results from Phase 1

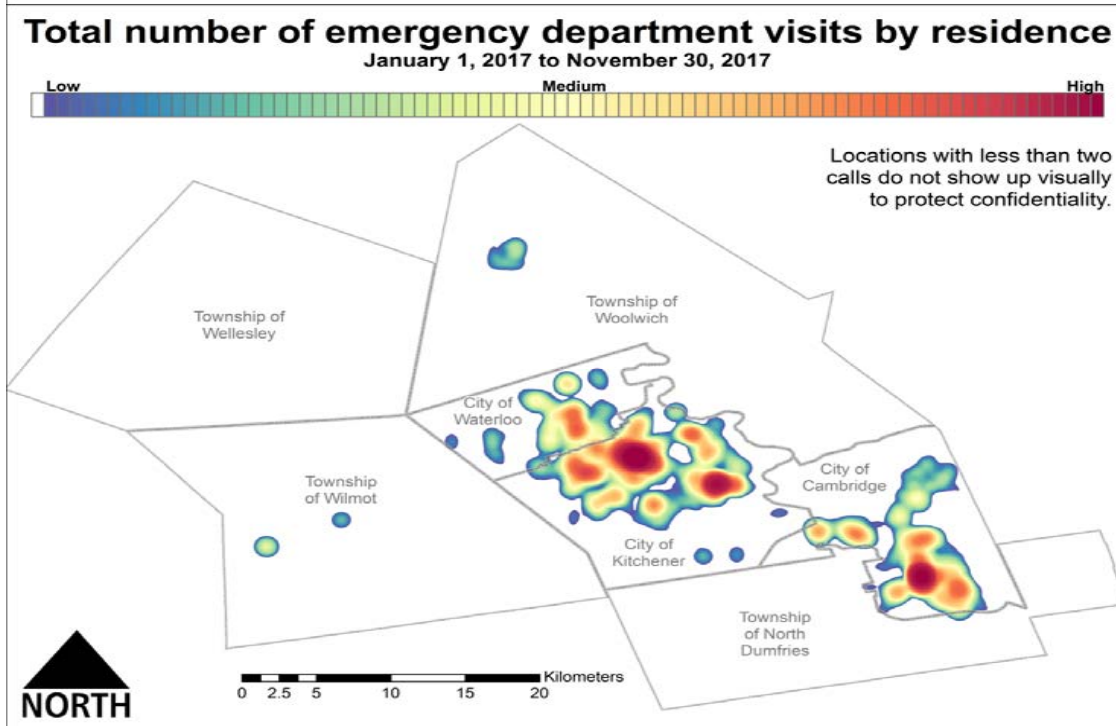


Highlights of findings

- Data shows that overdose is on the rise
- Approximately 4,000 people inject drugs
- Almost half of survey respondents inject every day
- Injection happens mostly in Central Kitchener, South Cambridge, four in five people inject alone
- 87% would/might use an Supervised Injection Service (SIS)
- Benefits of an SIS include decrease in public drug use, overdose and blood borne infections
- Concerns about SIS include fears about impact on property values and safety (drug trafficking, crime).



Overdoses happen across Waterloo Region with concentration in Central Kitchener and South Cambridge



People who overdose live in all parts of the region with concentration in Central Kitchener and South Cambridge



Model of Service: Integrated Health Care

- Integrated with "wrap-around" supports
- Accessible – where people who use drugs are, have more than one fixed site
- Access to treatment
- Safe space to access non-judgmental support; can serve as an entry into health services



Strategies to address community concerns

- **Improving communication** about the process to consider supervised injection services
- **Educating the community** on addiction, mental health, and harm reduction to build understanding and reduce stigma
- **Creating an advisory group** to oversee and respond to issues that may arise during implementation of supervised injection services



Service Models

- **Fixed locations are recommended; mobile may be explored to supplement**
- **Temporary sites provide an immediate, short term response**
- **Integration of treatment with Supervised Injection Services**

Recommendations to Regional Council (April 10)

- a) Further pursue supervised injection services in Waterloo Region as an intervention to prevent fatal opioid overdoses;
- b) Further pursue supervised injection services that are integrated with other services which at a minimum includes the mandatory components of the provincial program but will also include basic health care and access to treatment;
- c) Pursue up to three supervised injection sites in Waterloo Region as a starting point to support access for people who inject drugs;

Recommendations to Regional Council (April 10)

- d) Work with health service partners, staff from the 3 cities, and other stakeholders to identify potential site locations that meet the requirements for Federal approval and Provincial funding, and, to the extent possible, address the concerns raised during the Phase 1 consultation process; and
- e) Endorse the plan to initiate Phase 2 of the Waterloo Region Supervised Injection Services Feasibility Study, as described in the next slides.



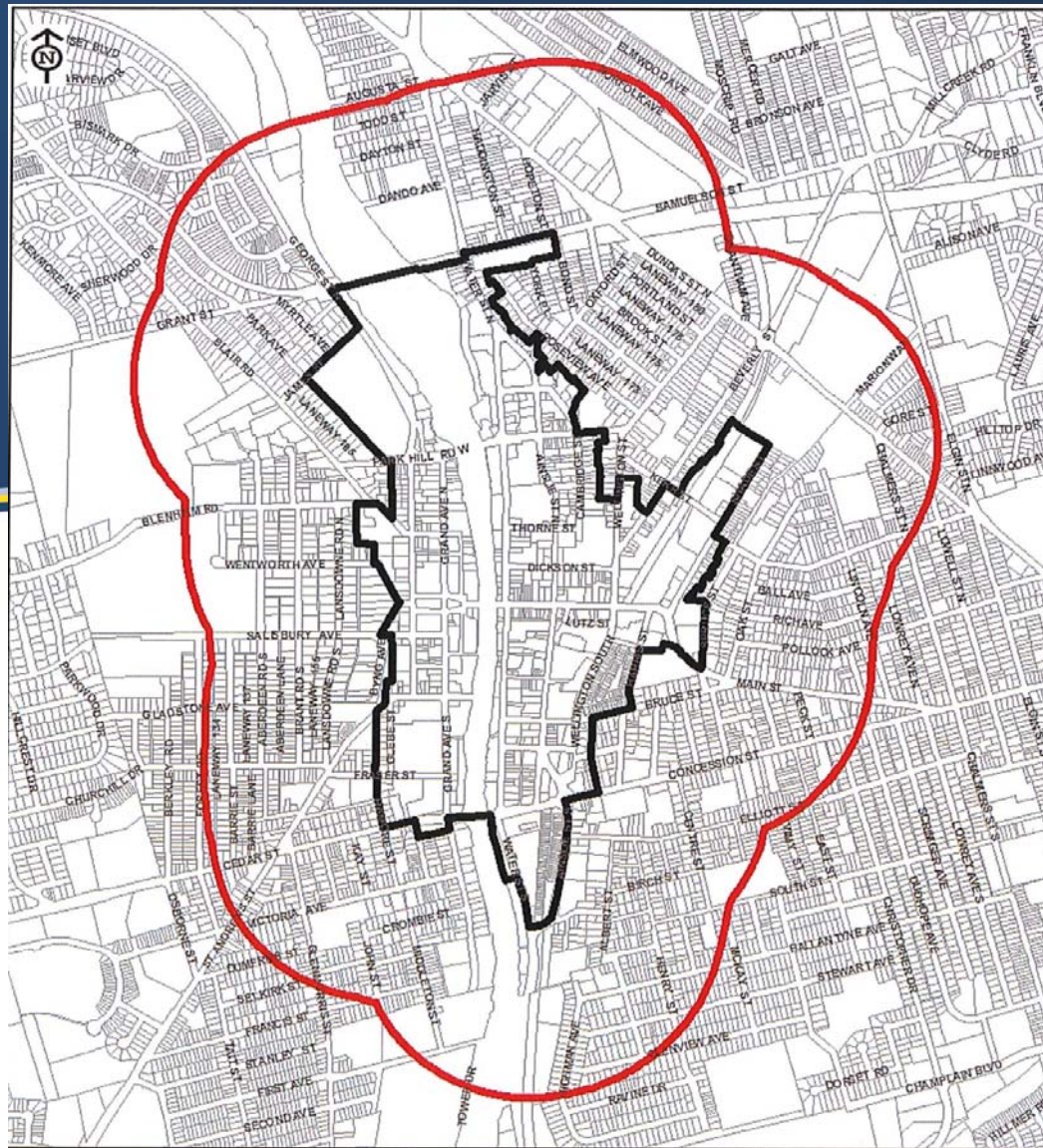
Shifting to Supervised Consumption Services

- Recently some sites in Ontario have received federal exemptions for other forms of consumption in approved SIS locations, specifically oral and intra-nasal (snorting).
- While provincial funding for SIS remains specific to injection... they are permitting it.
- Currently, sites in Ontario are not permitting smoking (re smoking legislation).
- Should we be able to put forward an application(s) for sites, we will incorporate other forms of consumption with the exception of inhalation.



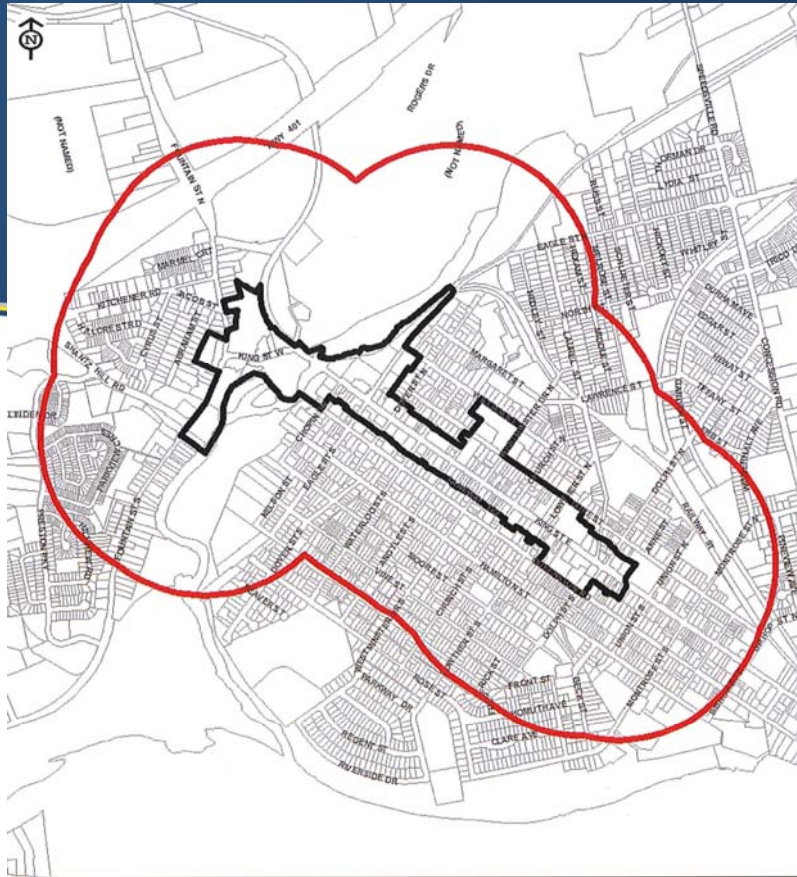
City of Cambridge By-Law Prohibiting SIS/ OPS

- On April 11, 2018
- Passed an interim control bylaw prohibiting supervised injection sites or overdose prevention sites in their 3 downtown cores + buffer zones (see maps next slides)



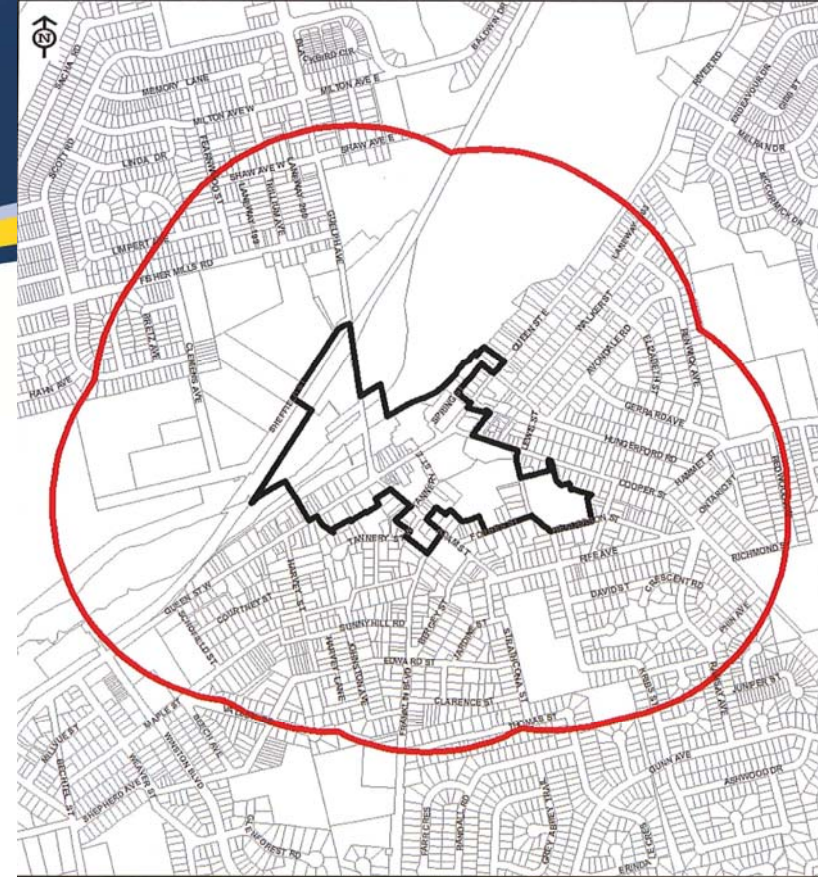
This is Schedule A attached to and forming part of
By-law

-  500m Buffer
-  Galt City Centre



This is Schedule B attached to and forming part of
By-law

- 500m Buffer
- Preston Towne Centre



This is Schedule C attached to and forming part of
By-law

- 500m Buffer
- Hespeler Village





Next Steps

Phase 2 of Feasibility Study

- Regional staff would work with health service partners, staff from the 3 cities, and other stakeholders to identify potential site locations that meet the requirements for Federal approval and Provincial funding, and, to the extent possible, address the concerns raised during the Phase 1 consultation process.
- As part of this process, staff would also work with health service partners to identify the proposed operating model for any potential sites.



Phase 2 (cont'd)

- Provide an update report to Community Services Committee on the candidate locations, operating model, and plan for further community consultation. (Target May 2018)
- Consult extensively (using a variety of methods) with the community (residents and business owners) from the areas surrounding the candidate locations to identify concerns and develop mitigation strategies.



Phase 2 (cont'd)

- Report to Community Services Committee on the results of the consultation and mitigation strategies, and, if appropriate based on the evaluation and consultation, provide recommendations about proceeding with applications for up to three possible supervised injection sites in the Region.

Policy Brief:

Why There Should Be Caps on Dispositions for Those Who Plead

“Not Criminally Responsible on Account of Mental Disorder”

Daniel Bader, Ph.D., RSW

June 16th, 2017

Why There Should Caps on Dispositions for Those Who Plead “Not Criminally Responsible on Account of Mental Disorder”

Executive Summary

The current penalty regime for those who plead “not criminally responsible on account of mental disorder” (NCR) is untenable. Currently, the consequences are *more severe* if someone pleads NCR than if someone pleads guilty. As a result, many people are pleading guilty to crimes for which no one believes them to be responsible. This is both an injustice and a threat to public safety. It is an injustice because no one should be convicted of crimes committed when they are “legally insane”, and it is a threat to public safety because such people are not receiving treatment while incarcerated. I recommend reintroducing the caps on NCR dispositions (sentences) that were present in the original 1992 bill, C-30, as it will address both of these problems.

I have written this brief both as a clinical social worker providing psychotherapy and as a member of the public who is living with mental illness. I have seen among my clients, among my peers, and among my friends, several people who have received criminal records based on actions for which no one believes them to be responsible, damaging reputations, careers, and peace of mind.

The History of the Current Law

Until the 1980s, insanity defences were based on a common law principle called the “M’Naghten Rule”, based on a 1843 case in England, which set the criteria for legal insanity.¹ In 1986, John Crosbie, the justice minister, drafted legislation to update this regime, ultimately

¹ Pilon, M. (1999). *Mental disorder and Canadian criminal law*. Department of Justice, Law and Government Division. Ottawa: Government of Canada. Retrieved June 18, 2017 from <http://publications.gc.ca/Collection-R/LoPBdP/BP/prb9922-e.htm>

passed into law as Bill C-30 in 1992.² However, not all of the bill was proclaimed, including provisions that would have capped dispositions for those who plead NCR to approximately the sentence for the original offence.³ A mandatory review of the legislation in 2002 ultimately advised against capping NCR dispositions,⁴ and those portions of Bill C-30 were repealed in 2005.⁵ In 2014, under justice minister Peter McKay, Bill C-54, the “Not Criminally Responsible Reform Act” was passed, tightening the current regime by further spacing reviews, and creating a category of “high-risk accused”.⁶

Why Indefinite Dispositions are not Working

Capping was rejected because of concerns that it would compromise public safety.⁷ On the surface, this seems intuitive. If there is a cap on detention, it would seem to imply that people would be released at an earlier date.

However, this intuition is incorrect. People are not remaining in detention longer despite indefinite dispositions. This is for a simple reason: *those who have committed crimes have the option of pleading guilty*. Dispositions for those who plead NCR may not have a legislative cap, but they do have a *de facto* cap, which is whatever the consequences would be of a guilty plea. Since defendants may simply plead guilty, “tougher” NCR dispositions beyond the consequences of a guilty plea are simply futile.

² *Bill C-30: An Act to amend the Criminal Code (mental disorder) and to amend the National Defence Act and Young Offenders Act in consequence thereof*. [1991], 3rd session, 34th parliament, 40 Elizabeth II, 1991.

³ Pilon, M. (1999). *Mental disorder and Canadian criminal law*. Department of Justice, Law and Government Division. Ottawa: Government of Canada.

⁴ Standing Committee on Justice and Human Rights. (2002, June). *Review of the mental disorder provisions of the Criminal Code*. Ottawa: House of Commons, pp. 19-20.

⁵ *Bill C-10: An Act to amend the Criminal Code (mental disorder) and to make consequential amendments to other Acts*. [2005], First Session, Thirty-eighth Parliament, 53-54 Elizabeth II, 2004-2005.

⁶ *Bill C-14: An Act to amend the Criminal Code and the National Defence Act (mental disorder)*. [2014], Second Session, Forty-first Parliament, 62-63 Elizabeth II, 2013-2014.

⁷ Standing Committee on Justice and Human Rights. (2002, June). *Review of the mental disorder provisions of the Criminal Code*. Ottawa: House of Commons, pp. 2-3, 19-20.

At present, the consequence of pleading NCR is indefinite detention, no matter the severity of the offence, while the consequence of pleading guilty is usually some finite jail term, and often not even that for first or lesser offences.⁸ Moreover, even after detention, those who plead NCR may have what is called a “conditional discharge”, in which someone can have his or her medical care mandated, or be subject to other rules including where he or she may live (such as a group home). These indefinite conditional discharges are *in addition* to the indefinite detention that is often *already longer* than the detention that would have resulted from a guilty plea.⁹

As a result, few people who might plead NCR for lesser offences are actually pleading NCR for such offences. According to a Justice Committee report, one of the reasons that “only a small group of accused actually raise the issue of mental illness,” is that it “may not even be in their best interests.”¹⁰

Caps would Prevent Miscarriages of Justice

Simply put and to quote the Supreme Court of Canada, “No person should be convicted of a crime if he or she was legally insane at the time of the offence”.¹¹ When someone is convicted of a crime who could have been found not criminally responsible, a miscarriage of justice takes place. The criminal code should be set up to prevent this from happening, not to actively encourage it. While one might argue that defendants are choosing to plead guilty, it is not the choices that defendants are making that are the problem; it is the options that defendants

⁸ Latimer, J. & Lawrence, A. (2006). *The Review Board Systems in Canada: An Overview of Results from the Mentally Disordered Accused Data Collection Study*. Ottawa: Department of Justice Canada, pp. 1-4.

⁹ The Criminal Lawyers' Association. (2013). *Submissions on Bill C-54: Not Criminally Responsible Reform Act*. Toronto: The Criminal Lawyers' Association, p. 5.

¹⁰ Latimer, J., & Lawrence, A. (2006). *The Review Board Systems in Canada: An Overview of Results from the Mentally Disordered Accused Data Collection Study*. Ottawa: Department of Justice Canada, p. 1.

¹¹ *Winko v. British Columbia (Forensic Psychiatric Institute)*, 2 Supreme Court of Canada [1999]. Retrieved on June 22, 2017 from the Supreme Court of Canada Judgments Website: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1711/index.do>

are given that are the problem. Our current system causes miscarriages of justice by encouraging those who were “legally insane” at the time of the offence to plead guilty.

Caps Would Protect the Public

Not only are indefinite dispositions not detaining people any longer than caps would, but it is causing people who could plead NCR to be released untreated. Because they are treated not punished, NCR dispositions reduce recidivism. The three-year recidivism rate (17%) for people who are found to be NCR and receive treatment is half of that for those who plead guilty (34%), and even lower for moderately serious crimes against the person (8.8%) and for serious crimes against the person (0.6%).¹² As former justice minister, Irwin Colter, said, “When such people are returned untreated into society after serving a prison sentence, they will undoubtedly be a significant public safety risk.”¹³ NCR caps therefore protect the public.

Recommendations for How To Implement the Caps

Fortunately, a law concerning caps has already been written, and had already been passed in 1992. Implementing the caps would be a matter of passing the same or similar legislation again through the House of Commons. I have included the text of the original bill as an appendix. Caps would apply to both detention and to conditional discharges, and a person might still be discharged early, if it is deemed that the person is no longer a threat.

It should be mentioned that, just because a person would be discharged from their NCR dispositions, it does not imply that the person would necessarily be released into the public. It simply means that the person could no longer be held by the criminal justice system. Provincial

¹² Charrette, Y. et al. (2015). The National Trajectory Project of Individuals Found Not Criminally Responsible on Account of Mental Disorder in Canada. Part 4: Criminal Recidivism. *The Canadian Journal of Psychiatry*, 60(3), pp. 130-131.

¹³ Colter, I. (2013, March 1). *Policy should not mistake mentally ill for criminals*. Retrieved June 18, 2017, from Huffington Post Website: http://www.huffingtonpost.ca/irwin-cotler/bill-c-54_b_2790342.html

governments still have the capacity to detain people who are dangerous under their respective mental health acts.¹⁴

Implementing the caps could be more expensive, but would ultimately be comparable. While it costs more money to house someone in a forensic mental health facility (\$275,000 per year)¹⁵ than in a prison (\$115,000 per year),¹⁶ many NCR inmates will leave before they reach the cap. Further, reduced recidivism will reduce the cost of future crimes. Unjust convictions would be reduced very soon after the law is passed, while decreased recidivism should become apparent as those who plead NCR instead of guilty are released into the community. One complication is that, if someone is detained as dangerous under a provincial mental health act rather than as NCR, that cost would be borne by the provinces, not the federal government, something that would need to be negotiated between government levels.

Conclusion

Capping dispositions for those who plead NCR will have a number of positive effects, because it makes it reasonable for people who have committed crimes while “legally insane” to plead NCR without substantially harming their legal interests. It will cut down on the number of unjust convictions. The main reason for avoiding caps, protection of the public, is ineffective, because defendants may simply plead guilty rather than stay incarcerated longer. In fact, reintroducing the caps will protect the public by decreasing recidivism. I therefore recommend that there be caps on NCR dispositions to protect not only those living with mental illness but the public at large.

¹⁴ Standing Committee on Justice and Human Rights. (2002, June). *Review of the mental disorder provisions of the Criminal Code*. Ottawa: House of Commons, p. 19.

¹⁵ Jacobs, P., Moffatt, J., Dewa, C. S., Nguyen, T., Zhang, T., & Lesage, A. (2014). *Criminal justice and forensic psychiatry costs in Alberta*. Edmonton: Institute of Health Economics.

¹⁶ Correctional Service Canada. (2016). *CSC statistics – key facts and figures*. Retrieved June 22, 2017 from Correctional Service Canada Website: <http://www.csc-scc.gc.ca/publications/005007-3024-eng.shtml>

Appendix: Excerpt from *Bill C-30: An Act to amend the Criminal Code (mental disorder) and to amend the National Defence Act and Young Offenders Act in consequence thereof, passed 1992.*

“Capping of Dispositions

672.64 (1) In this section, section 672.65, 672.79 and 672.8,

"designated offence" means an offence included in the schedule to this Part, an offence under the *National Defence Act* referred to in subsection (2), or any conspiracy or attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, such an offence;

"cap" means the maximum period during which an accused is subject to one or more dispositions in respect of an offence, beginning at the time when the verdict is rendered.

(2) An offence contrary to any of the following sections of the *National Defence Act* is a designated offence if it is committed in the circumstances described:

- (a) section 73 (offences by commanders when in action), where the accused person acted from cowardice;
- (b) section 74 (offences by any person in presence of enemy), 75 (offences related to security) or 76 (offences related to prisoners of war), where the accused person acted otherwise than traitorously;
- (c) section 77 (offences related to operations), where the accused person committed the offence on active service;
- (d) section 107 (wrongful acts in relation to aircraft or aircraft material) or 127 (injurious or destructive handling of dangerous substances), where the accused person acted wilfully;
- (e) section 130 (service trial of civil offences), where the civil offence is included in the schedule to this Part; and
- (f) section 132 (offences under law applicable outside Canada), where a court martial determines that the offence is substantially similar to an offence included in the schedule to this Part.

(3) Where a verdict of not criminally responsible on account of mental disorder or unfit to stand trial is rendered in respect of an accused, the cap is

- (a) life, where the offence is
 - (i) high treason under subsection 47(1) or first or second degree murder under section 229,
 - (ii) an offence under section 73 (offences by commanders when in action), section 74 (offences by any person in presence of enemy), section 75 (offences related to security) or section 76 (offences related to prisoners of war) of the *National Defence Act*, if the accused person acted traitorously, or first or second degree murder punishable under section 130 of that Act ,
 - (iii) any other offence under any Act of Parliament for which a minimum punishment of imprisonment for life is provided by law;
- (b) ten years, or the maximum period during which the accused is liable to imprisonment in respect of the offence, whichever is shorter, where the offence is a designated offence that is prosecuted by indictment; or

(c) two years, or the maximum period during which the accused is liable to imprisonment in respect of the offence, whichever is shorter, where the offence is an offence under this Act or any other Act of Parliament, other than an offence referred to in paragraph (a) or (b).

(4) Subject to subsection (S), where an accused is subject to a verdict in relation to two or more offences, even if they arise from the same transaction, the offence with the longest maximum period of imprisonment as a punishment shall be used to determine the cap that applies to the accused in respect of all the offences. [sic]

(5) Where a verdict of not criminally responsible on account of mental disorder or unfit to stand trial is rendered in respect of an accused who is subject to a disposition other than an absolute discharge in respect of a previous offence, the court may order that any disposition that it makes in respect of the offence be consecutive to the previous disposition, even if the duration of all the dispositions exceeds the cap for the offences determined pursuant to subsections [sic] (3) and (4).”¹⁷

¹⁷ Minister of Supply and Services Canada. (1992, February 14). Statutes of Canada. *A Nation's Chronicle: The Canada Gazette*, 14(6), pp. 26-28. Retrieved June 22, 2017 from http://www.collectionscanada.gc.ca/databases/canada-gazette/093/001060-119.01-e.php?document_id_nbr=11211