

# INSITE

evidence  
ideology  
and the fight  
for harm reduction

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## The Background

The Downtown Eastside is one of Vancouver's oldest neighbourhoods, known for its high incidence of homelessness, illicit drug use, and street-based sex work. It is also known for the deep sense of community among residents and its rich history of grassroots activism.

In 1997, rates of overdose death were climbing, three in 10 injection drug users were living with HIV, and 9 in 10 were infected with Hepatitis C. Vancouver's chief medical officer declared a public health emergency.

The municipal government responded with a new drug strategy. Vancouver's "Framework for Action: A Four Pillar Approach to Vancouver's Drug Problems" outlined an integrated approach built on the four pillars of prevention, harm reduction, treatment and enforcement as a way of addressing addiction, particularly in the Downtown Eastside.

Grassroots activists planted 1,000 crosses in a local park to represent the drug users who had died of overdoses in the previous four years.

The Vancouver Area Network of Drug Users (VANU), an organization made up of current and former drug-users set up an unsanctioned, peer-run, supervised injection facility.

In March of 2003, PHS Community Services Society opened Insite, North America's first government-sanctioned supervised injection facility as a three-year pilot project. Women and men who use drugs quickly came to rely on Insite as an essential medical resource. Staff were soon supervising approximately 600 injections a day. They also

## The Research

Insite is the most researched health care facility in Canada. This research has resulted in over 30 peer-reviewed studies<sup>1</sup> which conclusively document the benefits of Insite, including:

**Insite successfully attracted individuals most likely to contract HIV and/or overdose, including those who were homeless, shared needles, and injected in public.<sup>2</sup>**

**Injection drug users who use Insite...significantly changed their drug use habits. This included decreased rates of public drug use and syringe sharing.<sup>3</sup>**

**Insite increased public order. Drug-related crime did not increase, and in some cases it was reduced.<sup>4</sup>**

**Insite users were 30% more likely to enroll in detoxification services than injection drug users generally, and were also more likely to sustain enrollment.<sup>5</sup>**

## The Court Case

In order to open Insite, PHS had to apply for an exemption from the provisions of the federal Controlled Drugs and Substances Act (CDSA), and received a three-year exemption for scientific purposes. In 2007, after two extensions, the new federal Minister of Health would not commit to renewing the exemption. PHS and two Insite users filed a constitutional claim in the B.C. Supreme Court in order to keep Insite open.

The plaintiffs<sup>6</sup> claimed that, as a health care facility, Insite falls under the exclusive jurisdiction of the provincial government. The plaintiffs also claimed that denying users access to health services at Insite would violate the users' rights to life, liberty and the security of the person under section 7 of the Canadian Charter of Rights and Freedoms.

In the trial court, evidence of the efficacy of Insite was presented through affidavits from the researchers that had studied users of Insite. This evidence resulted in a finding that denial of access to Insite infringed the right to life, liberty and security of the person of Insite users. Justice Pitfield of the BC Supreme Court stated in his reasons for judgment:

**Whatever the shortcomings in the science surrounding the assessment of outcomes at Insite, and however the disputes may be resolved among those who engage in the assessment of the efficacy of safe injection sites generally, or Insite in particular, all of the evidence adduced by PHS, VANU and Canada supports some incontrovertible conclusions: 1. Addiction is an illness. One aspect of the illness is the continuing need or craving to consume the substance to which the addiction relates. 2. Controlled substances such as heroin and cocaine that are introduced into the bloodstream by injection do not cause Hepatitis C or HIV/AIDS. Rather, the use of unsanitary equipment, techniques, and procedures for injection permits the transmission of those infections, illnesses or diseases from one individual to another; and 3. The risk of morbidity and mortality associated with addiction and injection is ameliorated by injection in the presence of qualified health professionals.<sup>6</sup>**

The Government of Canada appealed the decision all the way to Canada's highest court. Drug user groups, medical professionals and human rights organizations from across the country rallied in support of the plaintiffs.

On September 30th, 2011, a unanimous Supreme Court of Canada held that denial by the Minister of Health of an exemption to the criminal laws prohibiting possession of drugs for Insite users was unconstitutional. The reasons for judgment were based largely on the evidence of Insite's efficacy that had been presented to the lower court:

The trial judge made crucial findings of fact that the conclusion that denial of access to the health services provided at Insite violates its clients' s. 7 rights to life, liberty and security of the person. He found that many of the health risks of injection drug use are caused by unsanitary practices and equipment, and not by the drugs themselves. He also found that "[t]he risk of morbidity and mortality associated with addiction and injection is ameliorated by injection in the presence of qualified health professionals" (para. 87). Where a law creates a risk to health by preventing access to health care, a deprivation of the right to security of the person is made out.<sup>7</sup>

The Court ordered the Minister of Health to grant Insite an exemption to the CDSA, and laid the groundwork for future applications for exemptions for harm reduction services based on evidence:

**The CDSA grants the Minister discretion in determining whether to grant exemptions. That discretion must be exercised in accordance with the Charter. This requires the Minister to consider whether denying an exemption would cause deprivations of life and security of the person that are not in accordance with the principles of fundamental justice. The factors considered in making the decision on an exemption must include evidence, if any, on the impact of such a facility on crime rates, the local conditions indicating a need for such a supervised injection site, the regulatory structure in place to support the facility, the resources available to support its maintenance, and expressions of community support or opposition.<sup>8</sup>**

## The Conclusion

The Insite case is unique in the nature of the evidence used to support a constitutional right to harm reduction. The case serves as a profound teaching tool for legal advocates seeking to litigate the right to harm-reduction services. It also demonstrates to scientists and researchers the potential of their work to impact constitutional lawsuits. The expert evidence produced in this case was critical for persuading the court to declare a legal right to operate Insite, and served to trump non-evidence-based policy. As Canada explores other innovative ways to deal with the harms of drug use, this court decision will become a model for introducing scientific evidence into rights determinations on the path to harm reduction.

NOTES

1. For a complete list of studies, see <http://www.communityinsite.ca/science.html>

2. Wood E, Tyndall MW, Li K, Lloyd-Smith E, Small W, et al. 2005. Do Supervised Injecting Facilities Attract Higher-Risk Injection Drug Users? *American Journal of Preventive Medicine* 29:126-30

3. Wood E, Tyndall MW, Qui Z, Zhang R, Montaner JS, Kerr T. 2006. Service Uptake and Characteristics of Injection Drug Users Utilizing North America's First Medically Supervised Safer Injection Facility. *American Journal of Public Health* 96:770-3

4. Wood E, Kerr T, Small W, Li K, Marsh D, et al. 2004. Changes in Public Order After the Opening of a Medically Supervised Safer Injection Facility. *Injection Drug Users. Canadian Medical Association Journal* 171:731-4

5. Evan Wood, Mark W. Tyndall, Ruth Zhang, Julio S. G. Montaner & Thomas Kerr, et al. 2007. Rate of detoxification service use and its impact among a cohort of supervised injecting facility users. *Addiction*, 102, 916-919

6. PHS Community Services v. Canada, 2008 BCSC 661, para. 87

7. PHS Community Services v. Canada, 2011 SCC 44, [2011] 3 S.C.R. 134, para. 93

8. *Ibid.*, para. 153

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