

# Barriers to Harm Reduction: Legal issues related to assisted injection at safe injection facilities

RICHARD PEARSHOUSE, RICHARD ELLIOTT,  
JOANNE CSETE, GLENN BETTERIDGE



Canadian  
HIV/AIDS  
Legal  
Network | Réseau  
juridique  
canadien  
VIH/sida

## 1 Issues

In Vancouver, the HIV prevalence rate among people who use drugs who require assistance when injecting (i.e. who rely on another person to inject them) is double that of those who do not. Women are more than twice as likely as men to require assistance injecting.

Canada's safe injection facilities (SIFs) operate under federal guidelines that exempt them from the criminal law. Under guidelines and professional standards, SIF staff cannot assist clients with injection, nor can clients assist one another. Similar policies apply in other countries where SIFs operate.

Permitting assisted injection at SIFs would likely improve the health of people who use drugs who need assistance injecting. For people who provide such assistance, however, it might result in criminal and civil liability. Canadian courts have not decided the legal issues raised by assisted injection.

## 2 Methods

This research report

- identifies areas of potential criminal and civil liability for people assisting with injections,
- considers assisted injection from a human rights perspective, and
- proposes law and policy reforms necessary to permit assisted injection at SIFs.

## 3 Results

A person who assists another person to inject illegal drugs could face criminal and civil liability. Potential bases of legal liability include:

- “possession” and “trafficking” under the *Controlled Drugs and Substances Act*;
- “unlawful act manslaughter” (should the person receiving an injection subsequently die), “criminal negligence” (causing either death or bodily harm, as the case may be), and “administration of a noxious thing” under the *Criminal Code*; and
- a lawsuit in negligence.

Since people who require assistance injecting have less incentive to go to SIFs (because the assistance they seek cannot legally be provided), they are less likely to access services provided by SIFs, such as:

- medical supervision, including medical intervention to prevent overdose;
- sterile syringes;
- primary health care; and
- referral to addiction treatment.

As a result, under international human rights laws, the prohibition on providing assisted injection conflicts with the right to the highest attainable standard of health. The prohibition also likely infringes rights guaranteed under the Canadian Constitution — “the right to equal protection and equal benefit of the law without discrimination” (based on sex, physical disability or age), and “the right to life, liberty and security of the person”.

## 4 Recommendations

Law and policy reforms are necessary to reconcile existing criminal prohibitions with the rights of people who inject drugs. We recommend

- that the current federal guidelines on SIFs be amended to permit assisted injection, and
- that government officials guarantee that people who provide injection assistance will not be criminally prosecuted.

Similar proposals would likely be relevant to other jurisdictions where SIFs exist or are being considered.

## Contact

Richard Pearthouse  
Senior Policy Analyst  
rpearthouse@aidslaw.ca

Canadian HIV/AIDS Legal Network  
1240 Bay Street, Suite 600  
Toronto, Ontario M5R 2A7  
Telephone: +1 416 595-1666  
www.aidslaw.ca