Canadian Drug Policy Coalition
Coalition canadienne des politiques sur les drogues

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

International Centre for Science in Drug Policy

February 1, 2018

Ms. Victoria Atkins, MP
Parliamentary Under-Secretary
Home Office
2 Marsham Street
London SW1P 4DF
United Kingdom

Dear Ms. Atkins:

RE: Drug Consumption Rooms

We write further to your statements made during the Westminster Hall debate on Drug Consumption Rooms (DCRs) on January 17, 2018.[1] In that debate, you raised questions about the evidence in support of DCRs, referring to examples of DCRs mentioned by your colleagues. In the debate, you stated the following:

> The hon. Member for Inverclyde mentioned some countries. Canada has kept its provider, Insite, not because of the evidence that the services provided by Insite work, but because the users of Insite brought two court actions, and the Canadian Supreme Court ordered the Minister who wanted to close them to grant an exception to Insite in order to respect the constitutional rights of facility users and staff. I read that, with my legal hat on, not as an endorsement of the effect of DCRs but as a constitutional issue.

This statement, however, is neither factually nor legally accurate. We wish to set the record straight for you and your colleagues.

We are very familiar with the history of Insite and other DCRs in Canada, including the legal context and the robust evidentiary foundation for such health services. The Canadian HIV/AIDS Legal Network has prepared some of the most detailed analyses of legal issues related to DCRs in Canada,[2] and was an intervener before the Supreme Court of Canada in the 2011 case to which you have referred.[3] The Canadian Drug Policy Coalition (CDPC) is a national umbrella coalition of organizations across the country advocating for evidence-based, public health responses to drugs. Jointly, the Legal Network and CDPC have been convening for a number of years both informal and formal gatherings of people and organizations across Canada on the topic of DCRs; this includes the participation of front-line service providers (including those operating or proposing to operate DCRs), legal experts, public health authorities, and people who use drugs and who use harm reduction services such as DCRs. A year ago, we convened in Vancouver a large national two-day workshop on the subject with participants from across the country; it included the opportunity for visits to Insite and other sites providing supervised consumption and overdose prevention measures. We have held numerous lengthy discussions with

Canada's Ministers of Health and Justice, proposed substantive reforms to the legislative regime governing DCRs in Canada, and testified before committees in the Parliament of Canada regarding that regime. Finally, the International Centre for Science in Drug Policy (ICSDP) is currently leading the scientific evaluation of DCRs in Toronto, Canada and has worked consistently to communicate scientific findings on DCRs to policymakers, scholars, and other stakeholders internationally

We are, therefore, troubled, by the misrepresentation of the situation in Canada, and in particular regarding Insite and the basis for its continued operation.

The History of Insite

In the late 1990s and early 2000s, a coordinated response emerged by the City of Vancouver, the province of British Columbia, the federal government, and civil society to address the public health emergency of overdose and transmission of HIV through shared needles in the Downtown Eastside (DTES) neighbourhood of Vancouver through a public health approach. In 2001, Vancouver adopted a "four pillar approach" to substance use that included prevention, treatment, enforcement, and harm reduction.[4] As part of this four-pillar approach, Insite was opened in 2003 as a joint pilot project of the Vancouver Coastal Health Authority and the non-governmental organization PHS Community Services. When opened, Insite became the first DCR in North America to operate with a formal exemption from the risk of criminal prosecution of its staff or clients under Canada's federal law prohibiting the unauthorised possession of certain controlled substances. In 2007, the on-demand treatment facility, Onsite, was opened immediately above Insite.

In drafting plans for Insite, the provincial Health Authority identified several goals:

a) provide a hygienic facility for injection drug users to inject their drugs under the supervision of a health care professional;
b) reduce the risk of overdose and the number of overdose deaths in the DTES;
c) reduce the number of ambulance calls to the DTES for overdose;
d) reduce the transmission of blood-borne pathogens including HIV and Hepatitis C;
e) reduce the incidents of potentially serious infections leading to conditions such as endocarditis and osteomyelitis
f) reduce the incidence of soft tissue injuries associated with [Injection Drug Use], including abscesses and cellulites;
g) provide access to needle exchange and sterile injecting equipment;
h) provide referrals to other health and social service providers in the area;
i) connect participants with peer support services and increase opportunities for health and social networking;
j) increase public order; and
k) increase safety and security for the community.[5]

The Evidence of Efficacy

The operational design of Insite included an extensive plan for study and evaluation by an independent research team selected by Health Canada: the BC Centre for Excellence in HIV/AIDS at St. Paul's Hospital. Through ongoing long-term qualitative and quantitative studies, it became clear that Insite did,

indeed, meet the goals of the Health Authority in reducing overdose, providing needed access to medical care, and increasing public order and safety for the community. Over time, the body of evidence supporting Insite has grown. There are currently dozens of peer-reviewed studies that, *inter alia*, demonstrate:[6]

a) The fatal overdose rate in the DTES decreased by 35% after the opening of Insite.[7]
b) DCRs such as Insite connect clients with addiction treatment, which in turn resulted in greater likelihood of stopping injection drug use.[8]
c) Insite led to improvements in public order, including reduced public injecting and public disposal of syringes.[9]
d) There was no measured increase in drug trafficking or assaults/robbery, and a decline in vehicle break-ins/vehicle theft in the neighbourhood surrounding Insite.[10]
e) Insite reduced syringe sharing.[11]

DCRs, including Insite, are among the most thoroughly-studied health interventions globally. Peer-reviewed research demonstrates on a whole that they are effective in preventing overdose deaths, reducing the risks of disease transmission through needle sharing and unhygienic injecting, referring people who use drugs to treatment facilities and other medical interventions, and improving public order.[12]

The Legal Case

Despite the overwhelming evidence supporting the efficacy of Insite and the strong community support for the DCR within Vancouver and British Columbia, Insite became a political target of the Conservative federal government that took power in early 2006. The federal Minister of Health threatened to withhold a further renewal of the ministerial exemption under the *Controlled Drugs and Substances Act* (*CDSA*) necessary for Insite to operate without the risk of criminal prosecution of the clients or staff for drug possession. As a result, two clients of Insite joined with the non-governmental organization operating Insite to bring pre-emptively a legal action claiming that closing of Insite would violate the constitutional rights of its clients that are guaranteed by the *Canadian Charter of Rights and Freedoms*, specifically the rights to life, liberty and security of the person and to not be deprived thereof except "in accordance with the principles of fundamental justice" (protected by section 7 of the *Charter*).

When the legal case was heard in the British Columbia trial court, the copious evidence of the efficacy of Insite was before the Court in the form of affidavits by both sides. It played an important role in that Court's decision recognizing addiction as an illness and finding that "[t]he risk of morbidity and mortality associated with addiction and injection is ameliorated by injection in the presence of qualified health professionals."[13] This evidence became part of the record that was before the BC Court of Appeal and ultimately the Supreme Court of Canada (SCC)—and was key to the final decision by the SCC ruling in favour of Insite and compelling the federal Health Minister to continue its exemption from Canada's prohibition on possession of controlled substances.

Clearly understanding that Insite was effective, the SCC noted in its judgment:

> Insite was the product of cooperative federalism. Local, provincial and federal authorities combined their efforts to create it. It was launched as an experiment. The experiment has proven successful. Insite has saved lives and improved health. And it did those things

> without increasing the incidence of drug use and crime in the surrounding area. The Vancouver police support Insite. The city and provincial government want it to stay open. But continuing the Insite project will be impossible without a federal government exemption from the laws criminalizing possession of prohibited substances at Insite.[14]

The SCC found that the Minister of Health's refusal to grant a continued exemption to Insite violated the *Charter* rights of the plaintiffs, and ordered him to grant said exemption.

Ms. Atkins, you are simply incorrect to state that Canada has kept Insite "not because of the evidence that the services provided by Insite work," but solely of the court actions and decisions. In fact, the Supreme Court's ruling was inextricably tied to the fact that, as amply demonstrated on an extensive evidentiary record, Insite was "potentially lifesaving medical care." The Court described the deprivation of constitutional rights as follows:

> The record supports the conclusion that, without an exemption from the application of the CDSA, the health professionals who provide the supervised services at Insite will be unable to offer medical supervision and counselling to Insite's clients. This deprives the clients of Insite of potentially lifesaving medical care, thus engaging their rights to life and security of the person.[15]

Furthermore, in considering the extent of the deprivation of constitutional rights, the Court went on to conclude as follows:

> **Insite saves lives. Its benefits have been proven.** There has been no discernable negative impact on the public safety and health objectives of Canada during its eight years of operation. The effect of denying the services of Insite to the population it serves is grossly disproportionate to any benefit that Canada might derive from presenting a uniform stance on the possession of narcotics.[16]

In summary, it was due to the fact that Insite was proven to save lives and to provide an avenue to necessary medical care that denying a ministerial exemption was found to be unconstitutional.

It is therefore disingenuous and misleading to assert, as you have done, that it was simply a court order, and not evidence of effectiveness, that underpin Insite's continued existence. Are you suggesting that the Supreme Court of Canada (and two lower courts before it) recognized a *constitutional* right of people who use drugs to not be criminalized in obtaining life-saving health services, and therefore ordered the Canadian government to issue an exemption from Canada's drug laws to permit this health service's continued operation, without any regard to the extensive evidentiary record of the need for, and benefit of, such a facility?

Since the Supreme Court's ruling in 2011, controversy over DCRs has continued. Having lost in court (at all three levels), the government of the day subsequently enacted legislation, at odds with both the spirit and the letter of the Supreme Court's ruling, aimed at creating multiple hurdles to securing ministerial exemptions for DCRs in future.[17] Fortunately, the current government, elected in 2015, has recognized the deep flaws in that legislation and repealed it,

replacing it with a simpler, less onerous framework for securing ministerial exemptions for DCRs to operate without risk of criminal prosecution.

It should be noted that the Government of Canada has now repeatedly and publicly recognized that DCRs (generally referred to here as "supervised consumption services") are effective, evidence-based public health measures that reduce the varied risks of harm that are often associated with drug injection. As of today's date, there are 17 sites currently offering services under a ministerial exemption; 10 additional sites have valid provisional exemptions but are currently undergoing renovations before beginning operations.[18]

Drug Consumption Rooms and UK Drugs Policy

DCRs are proven public health interventions that address the real-world situation where drugs are widely consumed despite harsh criminal penalties that only exacerbate the health and social justice conditions of people who use drugs. As the Minister for drugs policy in the UK, we hope that you will publicly correct your statements that inaccurately portray Insite and the hard-fought legal case that recognized for the first time in Canada the relationship between lifesaving medical interventions for people who use drugs and human rights. Since that court decision, much has changed in Canada. We are proud of the steps that the Canadian government has recently taken to shift course from opposing DCRs to supporting them. We also note that, against the backdrop of an ongoing crisis of opioid overdoses and related deaths, additional steps have been taken—by community services providers, provincial governments and the federal government—to also scale up "overdose prevention sites," lower-threshold services akin to more elaborate supervised consumption sites.

We invite you and your colleagues to visit Vancouver, tour Insite and other harm reduction facilities in the city (and elsewhere in the country), and see for yourself how such facilities operate. We trust that you will find the experience of talking with the clients of Insite, the dedicated staff, and health and government officials here enriching.

Sincerely yours,

Donald MacPherson, Executive Director, Canadian Drug Policy Coalition
Richard Elliott, Executive Director, Canadian HIV/AIDS Legal Network
Daniel Werb, Director & Scientific Board Chair, International Centre for Science in Drug Policy

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[1] *Hansard*, Volume 634, 17 January 2018, online: https://hansard.parliament.uk/Commons/2018-01-17/debates/1681A3C1-E6A4-4E10-8E38-8B4B240D5B67/DrugConsumptionRooms.

[2] R. Elliott et al., *Establishing Safe Injection Facilities in Canada: Legal and Ethical Issues* (Canadian HIV/AIDS Legal Network, 2002), online: http://www.aidslaw.ca/site/establishing-safe-injection-facilities-in-canada/?lang=en; R. Pearshouse & R. Elliott, *A Helping Hand: Legal Issues Related to Assisted Injection at Supervised Injection Facilities* (Canadian HIV/AIDS Legal Network, 2007), online: http://www.aidslaw.ca/site/a-helping-hand-legal-issues-related-to-assisted-injection-at-supervised-injection-facilities-3/?lang=en.

[3] *PHS Community Services Society v. Attorney General of Canada*, 2011 SCC 44, online: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7960/index.do.

[4] D. MacPherson, *A Framework for Action: A Four-Pillar Approach to Drug Problems in Vancouver* (City of Vancouver, 2001), online: https://www.researchgate.net/profile/Donald_Macpherson2/publication/242480594_A_Four-Pillar_Approach_to_Drug_Problems_in_Vancouver/links/55ca4a3c08aeca747d69e597/A-Four-Pillar-Approach-to-Drug-Problems-in-Vancouver.pdf.

[5] *PHS Community Services Society v. Attorney General of Canada*, 2008 BCSC 661, online: http://www.courts.gov.bc.ca/Jdb-txt/SC/08/06/2008BCSC0661err1.htm.

[6] *InSite for Community Safety: Published Science, Reports and Evaluation*, http://www.communityinsite.ca/science.html.

[7] B.D. Marshall et al., "Reduction in overdose mortality after the opening of North America's first medically supervised safer injecting facility: a retrospective population-based study," *Lancet* 2011; 377(9775): 1429-37, https://doi.org/10.1016/S0140-6736(10)62353-7.

[8] K. DeBeck et al., "Injection drug use cessation and use of North America's first medically supervised safer injecting facility," *Drug and Alcohol Dependence* 2011; 113(2-3): 172-6, https://doi.org/10.1016/j.drugalcdep.2010.07.023.

[9] E. Wood et al. "Changes in Public Order After The Opening of a Medically Supervised Safer Injection Facility for Injection Drug Users," *Canadian Medical Association Journal* 2004; 171: 731-4, doi: https://doi.org/10.1503/cmaj.1040774.

[10] E Wood et al., "Impact of a Medically Supervised Safer Injecting Facility on Drug Dealing and Other Drug- Related Crime," *Substance Abuse Treatment, Prevention and Policy* 2006; 1:1-4, https://doi.org/10.1186/1747-597X-1-13.

[11] E. Wood et al., "Factors Associated with Syringe Sharing Among Users of a Medically Supervised Injecting Facility," *American Journal of Infectious Diseases* 2005; 1(1): 50-54.

[12] C. Potier et al., "Supervised injection services: What has been demonstrated? A systematic literature review," *Drug and Alcohol Dependence* 2014; 145: 46-68, https://doi.org/10.1016/j.drugalcdep.2014.10.012.

[13] *PHS Community Services Society v. Attorney General of Canada*, 2008 BCSC 661, http://www.courts.gov.bc.ca/Jdb-txt/SC/08/06/2008BCSC0661err1.htm, paras. 87-89.

[14] *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 (Supreme Court of Canada), para. 19.

[15] Ibid., para. 91.

[16] Ibid., para. 133 [emphasis added].

[17] C. Kazatchkine, R. Elliott & D. MacPherson, *An Injection of Reason: Critical Analysis of Bill C-2 (Q&A)* (Canadian HIV/AIDS Legal Network & Canadian Drug Policy, 2014), online: http://www.aidslaw.ca/site/an-injection-of-reason-critical-analysis-of-bill-c-2/?lang=en.

[18] Government of Canada. (2018). Supervised Consumption Sites: Status of Applications, online: https://www.canada.ca/en/health-canada/services/substance-abuse/supervised-consumption-sites/status-application.html.