



# Who has the Power?

A case study in “Insite” and the division of powers in Canadian government



## Teacher Introduction

This resource addresses the issue of the division of legislative powers between federal and provincial governments in Canada. This area is specifically included in the Social Studies 10 BC curriculum (outlined below), but the responsibilities of the different levels of government is an area of study also found in other social studies curricula in Canada.

This is a much avoided learning outcome probably because the information is written in a fashion which provides no inspiration in terms of how this might be taught, other than through lecture and memorization.

This resource uses a controversial case study to raise the interest level in this topic through examining “Insite”, the supervised injection site in Vancouver, students will learn the specifics of the division of powers, what they are, why they exist, and why they are important to our everyday lives.

The case study focuses on the jurisdictional dispute between the government of British Columbia and the government of Canada over the existence of the Insite supervised injection site in Vancouver. The federal government’s view is that the possession and use of illegal drugs is a criminal offence in Canada and therefore the federal government has the jurisdiction. In their view, Insite is involved in criminal activity and must be closed. The government of BC and the local government of the City of Vancouver believe that Insite provides a health care service and is therefore under the jurisdiction of the provincial government since the province has jurisdiction over health care.

In September 2011, the Supreme Court of Canada decided that Insite should be allowed to continue. The Court did not make its decision on the basis of jurisdictional power of one government over the other but rather on the “primacy” of the Charter of Rights and Freedoms and the section of the Charter (section 7) that insures the right to “life, liberty and security of the person”. The Supreme Court ruled that the federal jurisdiction in criminal law cannot override the rights set out in the Charter. In the case of Insite, the Federal government was jeopardizing individual life and security by claiming it was enforcing criminal law and not allowing a provider (Insite) of proven life-saving services to continue. A secondary learning outcome of the case study is that the Charter of Rights and Freedoms can have a significant effect on how governments, provincial and federal can exercise their powers.

**Note:** Teachers should note that there are two “Research Resources” for students. The first is an article from the *Globe and Mail* by Wendy Stueck (May. 11, 2011). This article outlines the arguments for and against Insite. The second “Research Resource” is from *Maclean’s* magazine by Emmett Macfarlane, “Dissecting the Supreme Court’s Insite Ruling” (Oct 1, 2011).

In addition, there are four optional resources. Teachers may wish to extend the case study by using these additional resources. They are on the specific topic but provide additional information and points of view. These resources are:

- “Federal / Provincial Division of Powers” by Claude Belanger (Belanger, 2011)
- “BC, Ottawa head to top Court Over Supervised Injection Site” by Kirk Makin, from the *Globe and Mail* (May 9, 2011)
- “Vancouver Safe Injection Site Cuts Overdose Deaths” by Andre Picard, from the *Globe and Mail* (Apr. 17, 2011)
- “Insite Clinic Enables Drug Users and Helps Spread Human Misery” by Barabara Kay from the *National Post* (May 17, 2011)

Hyperlinks are clickable if pdf is opened using Adobe.

**Update (2018):** While these resources present the Supreme Court decision as current (while now dating from 2011), the theme of the unit remains current and the unanimous Supreme Court decision is final. After 2011, the Conservative federal government introduced strict conditions Insite and other similar sites would have to meet (Bill C-2 – Respect for



Communities Act). In 2017, the federal Liberal government streamlined these conditions (Bill C-37). In light of the ongoing opioid crisis, the issue remains relevant today.

## **Student-directed learning and inquiry**

Educators and governments are increasingly recognizing the benefits of student-directed learning and inquiry. Students are encouraged to explore big ideas and investigate problems, to apply critical thinking processes, to take action, and to engage in communitarianism. The teacher's role is to facilitate students' learning, rather than to convey information.

## **New BC curriculum connections**

This resource has direct application to the learning standards of the BC Ministry of Education's Social Studies 10 – Canada and the World: 1919 to the Present new curriculum. In particular, it focuses on the Content areas of:

- development, structure, and function of Canadian and other political institutions, including First Peoples governance
- political and economic ideologies and the development of public policy
- domestic conflict and cooperation
- discriminatory policies and injustices in Canada and the world, such as the Head Tax, the Komagata Maru incident, residential schools, and internments.

Working with this resource will help students develop the following Curricular Competencies:

- Use Social Studies inquiry processes and skills to ask questions; gather, interpret, and analyze ideas; and communicate findings and decisions
- Assess the significance of people, places, events, or developments, and compare varying perspectives on their significance at particular times and places, and from group to group (significance)
- Assess the justification for competing accounts after investigating points of contention, reliability of sources, and adequacy of evidence (evidence)
- Assess how prevailing conditions and the actions of individuals or groups influence events, decisions, or developments (cause and consequence)
- Explain and infer different perspectives on past or present people, places, issues, or events by considering prevailing norms, values, worldviews, and beliefs (perspective)
- Recognize implicit and explicit ethical judgments in a variety of sources (ethical judgment)
- Make reasoned ethical judgments about actions in the past and present, and determine appropriate ways to remember and respond (ethical judgment)



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## Background for students

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In Canada there are three “levels” of government. The level of government citizens are most aware of is usually the “municipal” level. People are more aware of this level because they see it in operation every day. This level of government runs city parks, libraries, water and sewer systems, property development and local police and fire services among many other local services.

Another level of government is the provincial level. This level of government is responsible for many services that are also critical to our everyday lives. They include education (K-12 schools and post-secondary institutions), health care (hospitals, medical services), social services such as social assistance and child protection.

The federal level of government is the level of government that has responsibility for services that involve the whole country. Some examples are the military (national defense), banking and currency (printing and controlling money), international relations (dealing with other countries on issues such as trade), and criminal law (major crimes such as murder, drug dealing).

These “powers” are divided between levels of government and have existed for a long time. In fact, many have been in effect since Canada became a country in 1867. They have, however, changed and evolved over time as conditions have changed. The environment is a good example. In 1867, it was not even thought of as a concern. In the 21st century, it is a major issue. As a result, the various levels of governments have had to work out which level is responsible for different environmental issues.

The responsibility of a government for a certain “power” such as the power to make laws regarding the environment is known as a “jurisdiction.” This means that a given level of government has the “jurisdiction” to make or enforce a law on a particular issue. It is a question of “who has jurisdiction” that can cause the levels of government to get into arguments over who controls what. In the following case study, you are going to learn about an issue that has led the Federal government and the Provincial government of British Columbia into a dispute over which level of government should have control.

The case you are going to examine involves the “Insite” safe injection facility for drug users in Vancouver. The dispute is between the Province of BC and the Government of Canada (the federal government) over whether or not this facility should be allowed. The federal government claims the site should not be allowed because it violates laws against drug use. The federal government is saying that its jurisdiction over criminal law (i.e. laws involving drugs) allows it to close the site. The BC government says its jurisdiction over health services allows it to keep the site open.

### Procedure:

Preliminary work:

Review the “Background for Students” and make notes based on the following questions:

- 1) What are the three “levels of government” in Canada?
- 2) What are some examples of what each level provides in the way of services to the public?
- 3) What is meant by the term “jurisdiction”?

Your task in this case study is to decide which level of government, federal or provincial, should determine what happens to Insite. In other words which government has “jurisdiction” in this case.

Step 1:

**Refer to “Research Resource #1”**

The case for keeping Insite open: Using the information provided you are to prepare an argument for keeping Insite open **using point form notes**.

Step 2:

The case for closing Insite: Using the information provided prepare an argument for closing Insite **using point form notes**.

Step 3:

Making a decision:

Knowing the arguments for and against Insite remaining open you now have to decide which arguments are most persuasive and which government’s jurisdiction is most important, the federal jurisdiction over criminal law or the provincial jurisdiction over health care. Look at the following “criteria for a decision” and for each criterion write a response and a reason. Use the “Decision Making Table” provided on the next page to help you organize your ideas. When you have considered each of the criteria make a final decision that completes the statement:

**Insite should (remain open/ be closed) and the federal/ provincial jurisdiction recognized because.....**

Criteria for a decision:

- 1) Which decision is most likely to provide the most good for the greatest number of people?
- 2) Which decision is likely to cause the least harm (to individuals, to the community)?
- 3) Which decision is the most likely to succeed in solving the problem of drug addiction?

## Decision-Making Table

The future of Insite: Which arguments are most persuasive – BC or Canada?

Criteria for a Decision	Government of BC	Government of Canada
Most good for the greatest number of people	Meets this criteria because...  <b>OR</b> Does not meet the criteria because...	Meets this criteria because...  <b>OR</b> Does not meet the criteria because...
Least harm to individuals, to the community	Meets this criteria because...  <b>OR</b> Does not meet the criteria because...	Meets this criteria because...  <b>OR</b> Does not meet the criteria because...
Most likely to solve problems of drug addiction	Meets this criteria because...  <b>OR</b> Does not meet the criteria because...	Meets this criteria because...  <b>OR</b> Does not meet the criteria because...

Step 4:

**Refer to “Research resource #2”**

What actually happened?

In September 2011 the Supreme Court of Canada decided on the question of whether or not Insite should remain open or be closed.

In Canada the Supreme Court is the final authority on legal issues. Whatever the Supreme Court decides is final and cannot be affected by any level of government. So a decision by the court that goes against the government (as for example if the Court decided Insite should remain open and therefore that the Federal government was wrong in trying to close it) cannot be changed by the government just because they don't like the decision of the court. This is why the Supreme Court is considered “independent of government.”

Read the article (Bold and cautious?...) and in ten to fifteen lines summarize what the Supreme Court of Canada decided and the reasons it gave for the decision. Use the following questions to guide your summary.

Did the Supreme Court decide to let Insite remain open or not? What was the reason for the court's decision?

Did the “jurisdiction” issue of which level of government should be responsible influence the decision?

Do you think the court made the right decision? Why or why not?



## Research Resource #1: The arguments for and against Vancouver's supervised injection site

Wendy Stueck

*From Thursday's Globe and Mail*

*Published Wednesday, May 11, 2011 9:17PM EDT; Last updated Friday, Sep. 30, 2011 10:22AM EDT*

### Who's using at Vancouver's supervised injection site

In cities including Victoria and Montreal, groups that have lobbied for supervised injection sites along the lines of Vancouver's Insite facility will be waiting to see whether their proposals could proceed without breaking the law.

Across the country, researchers and health-care workers are looking to the Supreme Court decision as a signal that could shape future health care policy, ranging from needle exchange programs in prisons to inhalation rooms for crack-cocaine smokers.

Internationally, health researchers will be monitoring the case as a bare-knuckle brawl between political ideology and evidence-based research, of which a small mountain has accumulated to back Insite and which supporters repeatedly cite in their long-running fight to keep the clinic open.

At home and abroad, policy makers are watching the case in the context of Prime Minister Stephen Harper's newly-minted majority and tough-on-crime agenda.

A lightning rod for controversy, Insite attracts support and detractors along several main lines.

#### Supporters say:

##### It saves lives:

There have been no overdose deaths at Insite since it opened in 2003. On average, nearly 600 injections occur daily at the site and last year alone there were more than 200 "overdose interventions" by Insite staff who provide oxygen or drugs to users who are in danger of overdosing. A paper published in the *Lancet* in April of this year found fatal overdoses within 500 metres of Insite decreased by 35 per cent after the facility opened compared to a decrease of nine per cent in the rest of Vancouver.

Earlier this month, the B.C. Coroners' Service warned of a spike in overdose deaths resulting from potent heroin being sold throughout the province and urged drug users to use community services such as Insite "where possible." B.C. public-health officials and the British Columbia Nurses' Union support the facility.

##### It serves as a bridge to detox and treatment:

Insite was conceived of as part of a four-pillars approach – those being harm reduction, prevention, treatment and enforcement – modelled on similar programs that jurisdictions such as Switzerland and Germany pursued in the 1990s. By offering a clean, safe, non-judgmental environment to shoot up, the reasoning goes, Insite allows drug users to connect with other services, whether that be treatment for a drug-related abscess or dental care.

Last year, Insite staff made more than 5,000 referrals to other social and health agencies, including 458 admissions to Onsite, a neighbouring detox facility that opened in 2007 and recorded a "program completion rate" of 43 per cent in 2010.



Supporters say supervised injection facilities should be seen as just one piece of a bigger puzzle in treating drug addiction and its related toll on society.

#### **It benefits public health and the broader community:**

Among the many studies published on Insite are papers that conclude the clinic has not led to an increase in drug-related crime, is not a negative influence of those seeking to stop drug use and has resulted in a drop in public injections in back alleys and doorways.

Studies have also reported declines in dangerous behaviour, such as sharing needles, and a related decrease in HIV infections. The Vancouver Police Department supports the facility, which studies have shown has resulted in fewer discarded needles in neighbourhood streets.

In fighting to keep Insite open, the provincial government argues that the health benefits of the facility should trump jurisdictional issues, saying in written submissions to the court that British Columbians have a “visceral” memory of hundreds of addicts dying needlessly in flophouses and on the street before Insite was opened.

#### **Those who want to see the site closed maintain:**

##### **Insite’s operation is an affront to federal control:**

When Insite opened, it obtained a three-year exemption from Canada’s Controlled Drugs and Substances Act from Health Canada. That exemption was extended twice, until June 30, 2008. When the federal government declined to extend the exemption, Insite supporters launched a court challenge. The B.C. Supreme Court and the B.C. Court of Appeal supported B.C.’s right to run the clinic on health grounds. The federal government appealed.

Federal prosecutors say Ottawa needs to maintain control over drug policy and that giving B.C. control over Insite would open the door to a fragmented, patchwork of rules and regulations across the country.

The legal wrangle will zero in on the constitutional conundrum posed by Insite – the federal government has authority over criminal law and the promotion of health and safety, but provinces decide how health care can be delivered.

##### **Governments should not facilitate drug use:**

Despite the research studies backing Insite and its harm-reduction approach, there is still profound discomfort for many with any facility that gives addicts a green light to inject illegal drugs and out the law. Governments, they argue, should not be facilitating illegal, dangerous activities. “The state has no constitutional obligation to facilitate drug use at a specific location by hardcore addicts, the mildly addicted, frequent users or occasional users,” federal prosecutors Robert Frater and W. Paul Riley said in written submissions to the court.

There have been arguments that money spent on Insite would be better spent on services such as treatment and that government’s support of supervised injection sites sends a mixed message to young people who might be considering illicit drug use.

##### **Supervised injection sites do nothing to deter drug use or help drug addicts:**

Part of the federal government’s argument is that drug laws are not an unreasonable restriction on individuals’ liberty. “Unsafe injection or, for that matter, consumption by injection at all, is a choice made by the consumer,” the federal prosecutors say in their brief to the Supreme Court.

There are also arguments that supervised injection sites are a magnet for drug dealers and predators, and that public safety demands that illegal drugs be tightly controlled.

**Research Resource #2:****Bold and cautious? Dissecting the Supreme Court's Insite ruling**  
**Those who favour the reform of Canada's drug laws should be pleased**

Emmet Macfarlane

*From Maclean's Magazine, Oct. 1, 2011*

"Insite saves lives. Its benefits have been proven." With that blunt statement, the Supreme Court of Canada cuts to the heart of the matter: by denying Vancouver's safe-injection facility, Insite, a further exemption from laws prohibiting drug possession, the federal government acts contrary to the Charter of Rights and Freedoms.

The ruling stands as a razor-sharp rebuke of the federal government's rather fragile position, at least as in terms of the insurmountable evidence that Insite averts deaths from overdose, helps prevent the spread of disease, and facilitates treatment and recovery. The Court's decision also stands as a potential landmark in Canadian constitutional law, having considerable implications for the obligations the Charter increasingly imposes on government.

Before delving into these two important elements of the decision, it is worth noting what the Court does not do.

The decision does not privilege the provinces' role in health care over the federal government's ability to determine criminal law. This is not a case in which British Columbia and the other provinces won a jurisdictional battle. The federal Controlled Drugs and Substances Act remains intact. Although the decision likely paves the way for provinces to open new safe-injection facilities, the balance of power between the provinces and the federal government remains otherwise unchanged.

Nor does the Court's ruling pave the way for broader reform of the way Canada addresses the problem of illicit drugs. While the ever-expanding scope the judges give to the Charter make future challenges potentially ripe for success— another attempt at striking down the prohibition of marijuana, perhaps—this decision on its own places no burden on the Harper government to reassess its overall approach to drug policy.

In certain respects, the Court was quite cautious and tried to craft its decision as narrowly as possible. The Charter finding itself is limited to former Minister of Health Tony Clement's decision to refuse Insite another exemption from Canada's anti- drug laws. Not providing the exemption in this instance runs contrary to Insite users' right to "life, liberty and security of the person" under section 7 of the Charter. The law itself, and the general discretion the minister has to make decisions within that framework, remain valid.

This underscores the extent to which the judges acknowledge the legitimate purpose and scope of the federal government's power to prohibit and regulate illegal substances.

On the other hand, it would be a mistake to underestimate the significance of the Court's decision. The judges gave the Harper government's attempt to close Insite the legal equivalent of a UFC-style beating.



First, the Court dismisses the federal government's argument that because it retains the constitutional power to criminalize drug use this somehow means the province cannot open Insite. The judgment notes that the exemption was not necessary for B.C. to have the power to open the site; rather, it was needed so individuals would be able to use the site. This is an important distinction, in that the Court reaffirms the provinces' capacity to pursue health initiatives under their own constitutional authority.

Second, the judges flatly rejected the absurd argument that the risks affiliated with drug use are the result of an individual's "choice" to abuse illegal and dangerous substances. The Court's position reflects every reasonable reading of the available evidence. As Chief Justice Beverley McLachlin writes, "addiction is an illness, characterized by a loss of control over the need to consume the substance to which the addiction relates."

Finally, the Court was particularly candid in its determination that the decision not to give Insite another exemption was "arbitrary." McLachlin writes that "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." For a Court that often applies tremendous caution and tentative wording to its judgments this is no small rebuke to the government's ill-regard for the available evidence.



## Optional Background Information

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### B.C., Ottawa head to top court over supervised-injection site

Kirk Makin – Justice Reporter

*Published Monday, May 9, 2011*

For hundreds of Vancouver addicts who inject themselves with illicit drugs at a medically supervised site, a Supreme Court of Canada hearing on Thursday may hold the key to life and death.

For B.C. and the federal government, the looming legal battle is a vitally important clash over health policy that goes to the very roots of the Canadian Constitution.

#### Federal Leaders talk health care

Both levels of government argue that, under the arcane phraseology of the 1867 Constitution Act, they have the power to decide the legality of the Insite injection clinic – the only supervised injection site of its type in North America.

The sticking point lies in the fact that the Constitution gives the federal government authority over criminal law and the promotion of health and safety. But it gives provinces the right to decide how health care is delivered.

Who, then, has final authority when it comes to a facility where addicts can freely out drug laws as part of a state-sanctioned strategy to save lives?

In legal briefs to the Supreme Court, both sides warn that an incorrect decision could open a Pandora’s box of future constitutional ramifications.

“The plain truth is that, if Canada’s arguments in this case prevail, then the federal government can expand any area of legitimate federal criminal law interest into an authority for the federal executive to effectively wipe out core areas of provincial jurisdiction,” B.C. prosecutors Craig Jones and Karrie Wolfe cautioned.

Located in the heart of Vancouver’s Downtown Eastside, the Insite facility has a dozen cubicles where approximately 800 addicts per day come to inject themselves. The addicts arrive with their own drugs, unimpeded by the police, who have agreed to give them safe passage in and out of the clinic.



B.C. and local health advocates for the clinic triumphed at trial, and at the B.C. Court of Appeal. However, federal prosecutors insist that the Supreme Court must not let provinces meddle with federal criminal law powers by creating a legal oasis for people who voluntarily consume drugs.

“The state has no constitutional obligation to facilitate drug use at a specific location by hard-core addicts, the mildly addicted, frequent users or occasional users,” lawyers Robert Frater and W. Paul Riley argued in the federal brief.

If the lower-court findings are upheld, they said the result will be chaos. “The current national regime, which guarantees rigorous national standards of drug approval and access, would become a patchwork quilt of local decision-making,” they said.

Mr. Jones and Ms. Wolfe counter that drug addiction is an illness, not a choice. They said that B.C. has every right to set up a clinic to alleviate suffering and death in a local, drug-ravaged community.

“The unique problems in that community are visceral to British Columbians and their government in a way that has no federal equivalent,” the province’s brief states. “British Columbians remember years in which hundreds of addicts died of overdoses in the streets and ophouses, and when hundreds more died from easily preventable blood-borne diseases such as HIV/AIDS.”

To others associated with the case, constitutional niceties are an unaffordable luxury. The B.C. Nurses Union, a legal intervenor, says the facility has become a life-saver for addicts who would otherwise overdose in alleys and behind dumpsters.

“It would be devastating to lose it,” said Tim Gauthier, a nurse at the facility. “The immediate consequence of losing it would be dead people. I have worked a lot of overdoses. You have four minutes before tissue death and organ failure with someone who isn’t breathing.”

Mr. Gauthier said the Insite battle boils down to an unyielding federal government that is married to a “war on drugs,” versus the province’s pragmatic acceptance of the fact that addicts will die in droves unless it brings them out of the shadows and helps them manage their addictions under supervision.

“Any place with a high concentration of users needs to have a place like this,” Mr. Gauthier said.



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## Optional Background Information

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### Vancouver's safe injection site cuts overdose deaths

André Picard – Public Health Reporter

*Published Sunday, April 17, 2011*

*Vancouver – Globe and Mail*

The number of drug-overdose deaths on Vancouver's notorious downtown Eastside fell sharply after the opening of a safe injection site, new research shows.

The study, published online Monday in the medical journal *The Lancet*, shows that fatal overdoses dropped 35 per cent in the vicinity of Insite in the two years after it opened. By comparison, OD deaths dropped only 9 per cent in the rest of Vancouver in that same period.

"No one has ever been able to demonstrate a substantial reduction in overdose deaths due to the presence of a safe injection site, but we have done so," Thomas Kerr of the Urban Health Research Initiative at St. Paul's Hospital in Vancouver said in an interview.

Until now, research has shown that Insite reduces behaviours that lead to deadly infections like HIV and hepatitis C, and it reduces public disorder by getting intravenous drug use off the streets.

But the federal government has argued that the evidence of benefit is unclear and tried to shut down Insite.

This has led to a protracted legal battle – one that has become an important jurisdictional struggle between the provincial and federal governments. Both the B.C. Liberals and New Democrats support Insite and the program has the strong backing of the provincial health officer.

In January of 2010, the B.C. Court of Appeal decided 2-1 that the province has jurisdiction over the facility since it provides IV drug users with a health-care service, which is within provincial jurisdiction.

Its ruling upheld a 2008 trial decision by the B.C. Supreme Court, which found that the application of the federal drug law would violate IV drug users' Charter rights to life, liberty and security of the person.

The case will be heard in the Supreme Court of Canada on May 12.

"The Conservatives can no longer go around saying the evidence is unclear because the evidence is clear – Insite saves lives," Dr. Kerr said.

The new study, which examined coroners' reports, shows that between 2001 and 2005, there were 290 overdose deaths in Vancouver.

Eighty-nine of those deaths occurred within a 500-metre radius of Insite, which is located in the heart of Vancouver's skid row.



The safe-injection facility opened on Sept. 20, 2003, when the Liberal government was in power. Nurses can supervise IV drug users because the facility was specifically exempted from federal drug possession and trafficking laws. The Conservatives oppose this approach, saying it flies in the face of their anti-drug strategy.

In the two years prior to the opening, there were 56 OD deaths in the neighbourhood; in the two years subsequent, there were 33.

There have been overdoses at the facility but not a single death. Insite provides booths, along with clean SFU - CELS 2011 Optional background information syringes, where intravenous users can inject. Nurses can also revive users who OD – which happens frequently because the purity of street drugs is unpredictable.

The authors argue that having overdoses occur in a controlled setting is much more cost-effective because it takes pressure off the health system.

“The nurse saved my life when I ODeD,” said Gary Kyle, who has been an IV drug user on-and-off since 1977. By contrast, he once overdosed on the street, which required the intervention of paramedics, a visit to emergency and hospitalization.

“I’ve shot up in an alley, in the McDonald’s bathroom, the library, you name it. When I do it in public, I’m rushed and careless. At Insite, it’s safer,” Mr. Kyle said.

Conservative Senator Pierre Claude Nolin, a long-time supporter of Insite, said he was reluctant to speak during a federal election campaign, but the new evidence is clear.

“Public health programs like this need to be evidence-based, not politically driven,” he said. “And the new evidence proves that it works, that Insite reduces overdoses,” he said.

An earlier study, by the same group of researchers, found that there were more than 900 overdose deaths in British Columbia between 2001 and 2005, and that aboriginal people were disproportionately at risk. About 12 per cent of the OD deaths involved first nations people, who make up less than 4 per cent of the province’s population.

## Optional Background Information

### Provincial Government in Canada: Organization, Institutions & Issues

Source: Jay Makarenko, Mar. 4, 2009 (with hyperlinks to work by Claude Bélanger)

Exclusive Provincial Jurisdiction	Exclusive Federal Jurisdiction	Joint Federal & Provincial Powers
<ul style="list-style-type: none"> <li>• Anything local or private in nature</li> <li>• Direct taxation</li> <li>• Crown lands and natural resources</li> <li>• Hospitals (health sector)</li> <li>• Education</li> <li>• Welfare</li> <li>• Municipalities</li> <li>• Local works</li> <li>• Intra-provincial transportation and business</li> <li>• Administration of justice</li> <li>• <a href="#">Property and civil rights</a></li> <li>• Cooperatives and savings banks</li> </ul>	<ul style="list-style-type: none"> <li>• Peace, order, and good government</li> <li>• Any form of taxation</li> <li>• International/interprovincial trade and commerce, communications &amp; transportation</li> <li>• Banking and currency</li> <li>• Foreign affairs (treaties)</li> <li>• Militia and defense</li> <li>• Criminal law and penitentiaries</li> <li>• Naturalization</li> <li>• Weights, measures, copyrights, patents</li> <li>• First Nations</li> <li>• <a href="#">Residual powers</a></li> <li>• <a href="#">Declaratory power</a></li> <li>• <a href="#">Disallowance and reservation</a></li> <li>• Unemployment insurance and old age pensions</li> </ul>	<ul style="list-style-type: none"> <li>• Immigrations</li> <li>• Agriculture</li> <li>• Pensions</li> </ul>

Overall, political scientists commonly characterize Canada as being significantly **decentralized** in its division of powers. This is due to the fact that the provinces control several critical areas of public policy, as well as having access to important sources of government revenue.

First, the provinces have exclusive jurisdiction over key areas of **social services**, such as health care, education and welfare. Today, these areas form the core of Canada's modern welfare state and are considered to be central public interests. Second, the provinces have exclusive jurisdiction over **property and civil rights**. The former has been interpreted under the Constitution to include anything subject to ownership, such as real estate, animals, liquor, vehicles, merchandise, stocks, bonds, etc. Civil rights include such things as contracts, labour-management disputes, marketing, credit, adoption and child welfare. The breadth of property and civil rights further raises the profile of the provinces as an important level of government in Canada.

Third, the provinces have exclusive control over [local government](#). With this jurisdiction — in conjunction with others, such as intra-provincial transportation and property rights — the provinces dominate a broad range of important local issues, including urban and rural development, property taxation and local infrastructure (for example, roads, sewers, garbage collection, etc.). Even though many are administered by local governments,





the provinces often play a central role in setting local government budgets, priorities and powers to deal with these issues.

### Limits on Provincial Powers

While the provinces are an important level of government in Canada, there are limits on their powers and jurisdictions. To begin, the Constitution grants the federal government exclusive jurisdiction in several areas of public policy, such as foreign affairs, national defense, First Nations, criminal law, interprovincial/international transportation, trade and communication, to name a few. The provinces are constitutionally precluded from passing legislation in these critical areas of public policy.

The Constitution further provides for several federal controls over the provinces: the [declaratory power](#) and the [powers of disallowance and reservation](#). The first of these allowed the federal government to assume control over local works that were deemed to be in the national interest or in the interest of two or more provinces, regardless of whether it fell within exclusive provincial jurisdiction. The powers of disallowance and reservation allowed the federal government to review and reject legislation passed by provincial legislatures. For the first 30 years after Confederation, all three powers were actively used. Over time, however, their use has gradually declined, ceasing completely in the mid-1900s (reservation and declaratory powers were last used in 1961, while the power of disallowance was last exercised in 1943).

A third limit on the provinces is **the federal government's spending power**. While the Constitution forbids federal and provincial governments from passing laws in areas that are under the other's exclusive jurisdiction, it does not prohibit them from spending money in those areas. The federal government has actively used its spending power to influence provincial policies and programs, particularly in the areas of health care and social services. In the case of health care, for example, the federal government transfers billions of dollars annually to the provinces to support their public health systems. Moreover, the federal government places important conditions on the provinces in order to receive this money, which are stipulated in the [Canada Health Act](#). If a province fails to meet these conditions, then the federal government withholds portions of its federal transfers. In this way, the federal government can indirectly influence provincial policies in areas that fall outside federal jurisdiction.

- See the [Issues in Canadian Provincial Government](#) section of this article for more information on debate surrounding federal spending power.

Another key limit on provincial power is the **Canadian court system**, particularly in the context of [Canadian federalism](#) and the [Canadian Charter of Rights and Freedoms](#). In Canada's system of federalism, the courts are responsible for interpreting the basic powers and jurisdictions of the different levels of government. Moreover, in regard to the Charter, the courts interpret citizens' rights vis-à-vis their governments, including the provincial level. Since the enactment of the Charter in 1982, there have been hundreds of cases in which the courts have rejected provincial laws and programs on the grounds they failed to properly respect citizens' constitutional rights.

When the Supreme Court of Canada convenes Thursday to consider Vancouver's supervised injection site, it will hear detailed arguments that hinge on the fine print of the Canadian Constitution.

But besides being a landmark showdown between federal and provincial powers, the hearing also sets the stage for a ruling expected to affect not only the daily lives of injection drug users on Vancouver's Downtown Eastside but drug policy across the country and potentially farther afield.

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## Optional Background Information

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### Barbara Kay: Insite clinic enables drug users and helps spread human misery

*Barbara Kay- May 18, 2011*

Insite, in Vancouver's Downtown Eastside is the only "safe-injection site" (SIS) in North America where addicts can legally inject hard drugs under medical supervision. If the Supreme Court, now in deliberation, rules the federal government has no right to shut it down, Insite clones will spring up all over Canada.

Insite is the brainchild of a concept called "Harm Reduction" (HR), supposedly one of four pillars in Canada's National Anti-Drug Strategy. But because HR militants are also in favour of legalizing all drugs, the other pillars — prevention, treatment and enforcement — are of little interest to them.

### Related : National Post, 2011/05/16

*David Berry: Insite's success causes problems for morality-based opposition*

Supporters always speak of the numerous "studies" that show success for Insite. But how scientific are they? In a 2007 evidence-based critique of Insite, for example, Colin Maugham, Director of Research for the Drug Prevention Network of Canada, noted the most-cited studies' lack of control groups, and concluded that Insite's evaluations overstated its positive findings, and omitted or understated the negative findings. For example, while studies claim that Insite's presence saves lives, the Government of British Columbia Selected Vital Statistics and Health Status Indicators states in its annual report that the number of deaths from drug overdose in Vancouver's Downtown Eastside has increased in most years since the site opened in 2003.

Insite is often touted as the "compassionate" response to drug addiction by its promoters. Addiction enablement is not true compassion. True compassion is animated by the belief that people can change, that they have moral agency. Insite-type compassion is the soft bigotry of low expectations. It is politically correct timidity around "judging" (certain) uncontrolled human appetites. Curiously, sometimes the same "compassionate" romanticizers of drug addiction — call them the Additionally Correct (AC) — have no problem judging smokers or the obese for their poor health choices.

From the discourse of the AC, you would never know that it is actually quite difficult to become addicted to drugs like heroin. It takes months of steady usage. The AC have convinced themselves, too, that weaning oneself from a hard drug is nigh impossible. In fact, detoxing from heroin, according to those who supervise it, is no more stressful than a transient illness — and (unlike alcohol withdrawal, a far more pernicious addiction), nobody has ever died from heroin withdrawal. Motivation is all. Indeed many heroin addicts, like returning Vietnam soldiers, have withdrawn from heroin use without incident.

Long-term rehab works, even in cases where addicts are forced into programs. A 2008 longitudinal study by Portage, since 1970 Canada's foremost practitioner of the therapeutic-community approach to rehabilitation,



found that 18 months after completion of rehab, the study cohort's hallucinogen, amphetamine and cocaine use had decreased by a stunning 85% overall.

Sidebar results, with significant implications for reduced burdens on the public purse, were equally impressive. Hospitalizations and contact with the justice system decreased by 86.8% and 92% respectively, while full-time employment increased by 55%.

If safe injection sites (SISs) are so wonderful, then why have three dozen European cities, including Berlin, Stockholm, London and Oslo signed a declaration against SISs? Because they learned that SISs lead to increased drug use and crime. Sweden, for example, has had remarkable success with a program of compulsory drug treatment for addicts. As a result, Sweden's rates for crime, disease, medical and social problems stemming from drug addiction are lower than other European countries.

Almost nobody is beyond redemption from drug addiction, but you wouldn't know it from the deep-throated baying for addiction enablement that dominates debate on the issue. And oh, the hypocrisy: There isn't a single AC pundit in this country militating for Insite who would passively allow his or her own child to use their services. Each and every one of them would move Heaven and Earth to ensure that their loved ones got intervention and treatment. As retired Vancouver policeman Al Arsenault, who patrolled the "chemical gulag" of Downtown Eastside Vancouver for 27 years and who calls Insite an "abject and utter failure," put it: "The rich get treatment, the poor get [Insite]."

Nobody has ever died of an overdose at Insite, a key argument for its supporters. That is true, but so what? No depressed people would ever die from stepping off the Golden Gate Bridge if there were a safety net below it. The net would do nothing to solve the depression of those jumping into the net, or help the many thousands of others who continued to jump from other high places in plain sight of the net. It would only give the impression that society is "doing something" to reduce the harm.

Just like Insite. Yes, 1,400 people use it, but Insite does not protect them from the health risks of direct-to-vein injection. They don't die from a sudden overdose, but they do die from their behaviour. There are better ways than Insite to spend public money. It is puzzling and rather shameful that the federal government has not found its tongue in making its own case on this file.