

Case Example for Comparative Law and Social Science

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Chosen case: *Canada (Attorney General) v. PHS Community Services* (2011), 3 SCR 134, 336 D.L.R. (4th) 385.

Canada (Attorney General) v. PHS Community Services (better known as the *Insite* decision) is a leading decision by the Supreme Court of Canada. This case concerns the application of Section 7 of the *Canadian Charter of Rights and Freedoms* (the *Charter*), which reads: “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”<sup>1</sup> *Insite* is the only legally-operating safe-injection site in North America. *Insite* does not provide the drugs themselves. It only seeks to reduce the harm caused by crisis-level intravenous drug use in Vancouver’s Downtown Eastside. The federal Minister of Health used his discretion under Section 56 of the *Controlled Drug and Substances Act* in order to allow *Insite* to operate in 2003, when the federal government was controlled by the Liberal Party of Canada. The Conservative party, which came to power in 2006, granted a temporary extension, but ultimately refused to renew the exemption granted to *Insite*. A court challenge eventually made its way to the Supreme Court of Canada. Supporters of the clinic argued that it provided life-saving services for its patrons, and that its forced closure by the government would therefore violate Section 7 of the *Charter*.

The decision in this case was unanimous. In considering the social science evidence provided, the Supreme Court recognised that *Insite* had dramatically reduced the number of overdoses and the transmission rate of blood-borne infections among intravenous drug users in

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<sup>1</sup> *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

its area of operation. All nine judges also accepted the findings which indicated no noticeable increase in drug use since *Insite* began its operations. They also noted that these findings were echoed by similar studies done in Europe, where safe-injection sites are widely accepted. Based on this evidence, the Court eventually concluded that the government's decision not to renew the exemption violated both the guarantee of life and the guarantee of security of the person under Section 7 of the *Charter*. Therefore, after considering the social science evidence and applying the remaining tests for Canadian constitutional challenges, the Supreme Court ordered that the Minister use his discretion to grant the exemption to *Insite*.