

Introduction

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In Vancouver's downtown eastside, just down from the Carnegie Community Centre on East Hastings Street, stands Insite. Funded by Vancouver Coastal Health, Insite is a supervised safe injection site for illegal drug users—currently the only such site in North America. It is also at the centre of a heated political and legal struggle over the boundary between health and crime. In *PHS Community Services Society v Canada (AG)*,¹ the courts have been articulating that struggle in the language of federalism, division of powers and interjurisdictional immunity. Insite, in the courtroom and in the media, raises a host of questions not only about the boundaries of provincial and federal powers, but also about drugs, harm, crime, health, poverty, community, the economy, urban planning, equality, epidemiology, social programming, race, gender, coalition building and municipal politics. Quite the menu of legal, social, and political possibility.

In this Issue of *Constitutional Forum*, we have drawn together a series of papers that were generated in the context of a pedagogical encounter at the University of Victoria, one that had students and faculty engaged in a collective exploration of the *Insite* case.² In the fall of 2009, at the end of the first two weeks of school, first year students in the introductory Legal Process course were given the trial judgment in *PHS Community Services Society v Canada (AG)* as a case briefing assignment: identify the facts, the issue, and the ratio of the case. The students returned to the case in January 2010 for the second module of Legal Process, one designed to provide space for a richer exploration of the case in its broader social context. Over the course of two days, with the benefit of the insights they had gained during their first semester of classes, the students returned to *PHS*

Community Services. They read more broadly about the case, watched a number of documentaries on Insite, and listened to a panel of politicians, activists, lawyers and health experts grappling with the challenges of drug use in Vancouver's Downtown Eastside (DTES). The B.C. Court of Appeal's judgment in the case was released the day after the Legal Process module was finished. With both students and faculty freshly immersed in the issues of the case, there was energy for yet a third return to the case the following week in the form of a panel in which 6 faculty members took a few moments to share "5 Minutes of Insight on Insite."³

For this issue of the *Constitutional Forum*, we offer 8 reflections generated by those involved in some way with this collective encounter with thinking, teaching and learning through the *Insite* case. In Part 1, "Insights on Insite," we offer a series of comments on substantive and jurisprudential questions raised by *PHS Community Services*. We begin with Margot Young's reflection on the intersection of site and sight, in which she asks about the visibility of the challenges of those living in the DTES.⁴ Hester Lessard follows with a longer piece generated by her earlier panel presentation, providing an in-depth exploration of the trial and appeal judgements, and asking about the place of legal geography in our notions of jurisdictional justice. She is followed by Gillian Calder, who links the approach taken by the judges in this case to doctrinal trends about the division of powers visible in other cases involving equality seeking groups. Patricia Cochran next asks us to consider questions about evidence and the burden of proof raised in the *Insite* case. Finally, Jeremy Webber poses questions about the relationship between our substantive judgments about complicated social issues and the ways in

which our institutions of judgment are set up to structure our approaches to political and legal decision-making.

In Part 2, “Some Pedagogical Insights,” we share three comments on the use of the *Insite* case to teach Legal Process. We begin with a paper from Tim Richards, who created and coordinated the teaching unit for the first year curriculum. Here, he reflects on the challenges of integrating social context into the teaching of law. After that, Freya Kodar provides reflections on the range of pedagogies used in the teaching of *Insite*. Lastly, Rebecca Johnson reflects on one particular pedagogical approach—the mapping exercise—that was used to engage students in thinking more broadly about the rich context within which the legal issues surrounding *Insite* are embedded.

For those with a taste for longer discussions of pedagogy, many of the materials used to teach the *Insite* case can be found at <http://insite.law.uvic.ca>. So too can be found the script of a short play, *WAITING FOR GODOT GABOR INSITE-INSIGHT: a play in three parts (with apologies to Samuel Beckett)*. In this play, Sarah Arngna'naaq, Liam Cooper, and Zuzana Modrovic (a group of students from that Legal Process class) meditate on the ways in which the experience of the *Insite* case has provided space for creative legal resonances. While the play script does not, perhaps, provide resolution, it opens space for thinking about the ways we wait for Justice (with all the inevitable controversies about what that means) to arrive.

It is clear that the issues raised by the *Insite* case are still far from settled in either the courts of law, or public opinion. The Supreme Court of Canada has granted leave to appeal and is scheduled to hear arguments in May 2011. As the wheels of justice prepare to engage in a third round of deliberations on *Insite*, the issues will again be debated, law will be re-articulated, and facts re-inscribed. We hope that this Issue will raise interesting questions, and contribute to a robust discussion of the place of law and the constitutional shape of experience on the streets of the cities and town in which we live.

Notes

- * Professor, Faculty of Law, University of Victoria.
- 1 *PHS Community Services Society v Canada (Attorney General)*, 2010 BCCA 15, 314 DLR (4th) 209, rev'g 2008 BCSC 661, 293 DLR (4th) 392, leave to appeal to SCC granted, 33556 (June 24, 2010) [*Insite*].
- 2 The course involves splitting the entering class of 100 into 5 small groups of 20, each of which is co-supervised by a group of 3 first year professors over the two week duration of the course. The result is that almost the entire first year faculty is involved in teaching the course. A set of materials from the course is available on line at <http://insite.law.uvic.ca>.
- 3 **At the original panel, students listened to Andrew Petter** discuss the different norms, assumptions and conceptions of community embedded in the three decisions. Nola Ries explored the role of judges in the context of cases involving questions of health policy, and Benjamin Berger focused on the bluntness of both constitutional law and criminal law for addressing complicated social questions, and about the way law (particularly when engaging with the brutality of criminal punishment) may cause more harm than good. The students also heard from Gillian Calder, Hester Lessard and Jeremy Webber, whose contributions are included in this issue.
- 4 While UBC can rightfully claim her as part of its faculty, Margot Young has regularly participated in the Legal Process course as a guest lecturer, and was thus drawn into the discussions here.