

## **CAMH Statement on the judicial ruling regarding the Insite Supervised Injection Site (June 2008)**

CAMH welcomes the decision of the Honourable Mr. Justice Pitfield in the PHS Community Services Society v. Attorney General of Canada, 2008. We urge the government to let the decision stand, and not seek an appeal.

Justice Pitfield ruled that parts of the Controlled Drugs and Substances Act (CDSA) threaten the security of the person provisions of the Canadian Charter of Rights and Freedoms. Accordingly, he declared ss 4(1) and 5(1) of the CDSA to be “of no force and effect.” While the effective date of constitutional invalidity is June 30, 2009, Justice Pitfield granted “users and staff at Insite [supervised injection facility in Vancouver], acting in conformity with the operating protocol now in effect, a constitutional exemption from the application of ss 4(1) and 5(1) of the CDSA.”

CAMH welcomes the decision because we believe Insite should be permitted to continue to operate. Insite is a harm reduction program, intended to decrease preventable deaths related to substance use, reduce the transmission of communicable disease, and increase public order, among other objectives. CAMH supports harm reduction as one element of a comprehensive approach to addressing the problematic use of drugs and alcohol. In its 2002 statement on the issue, CAMH defines harm reduction as “any program or policy designed to reduce drug-related harm without requiring the cessation of drug use.” CAMH’s support for the inclusion of harm reduction as one element of a broader approach was reinforced through our endorsement of the *National Framework for Action to Reduce the Harms Associated with Alcohol and Other Drugs and Substances in Canada*.

It is CAMH’s position that harm reduction programs and policies must demonstrate that they have the desired impact without producing unacceptable unintended consequences. If its evaluation reveals no support for the reduction of specified adverse consequences, or shows the unintended negative consequences are too serious, the program should not be considered part of a harm reduction approach and other alternatives should be developed.

In Justice Pitfield’s consideration of the issue of the context of the Canadian Charter of Rights and Freedoms, he addressed some of the fundamental

questions about the nature of addiction, and the care offered to persons with addiction problems. His thorough and thoughtful analysis of these questions is commendable. Those of us who provide care to persons with addictions, who research the nature of addictions, and who engage in public health and prevention activities struggle with the same questions everyday. To what extent is addiction a choice, and to what extent does it constitute an illness? Does the illness approach render law enforcement approaches inadvisable, or ineffective? Must treatment of the problems associated with substance use rely exclusively on approaches that require abstaining from all use?

These questions do not have simple answers, in part because there is no single model for understanding addiction – and treating addiction – that can be universally applied. As Justice Pitfield writes, “the original personal decision to inject narcotics arose from a variety of circumstances, some of which commend themselves to choice, while others do not.” What is humanely and comprehensively assessed in Justice Pitfield’s decision is how the care that is provided to persons with addictions can be permitted to most appropriately serve the needs of that person in a way that best protects their fundamental right to life and security. Such an approach focuses above all else on the person living with the addiction. Considerations of personal and political values, preferred treatment modality and application of criminal sanction are important considerations, but they are secondary to the health care needs of the person.

CAMH is a teaching hospital and a leading research institution with a mandate in the areas of education, health promotion and public policy. We are encouraged by Justice Pitfield’s sensitive assessment of addiction as a health problem, and the range of supports and services that must be offered in order to protect the fundamental rights of individuals with an addiction. Many of those with serious and persistent substance use problems are among the least powerful people in Canada, including a large number who live with a concurrent mental health problem. A human rights approach to defining the supports they need to promote and protect their health – and to begin addressing the complex problems of addiction, trauma, poverty and isolation – is highly appropriate.

We urge the Minister of Health to reconsider his assertion that the decision must be appealed, and we urge the Attorney General for Canada to let the decision stand.