

Part 1—Insights on Insite

Insite: Site and Sight

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Introduction

The *Insite* case is a great study for students of constitutional law.¹ The twinning of a claim of interjurisdictional immunity—in a somewhat novel application to provincial jurisdiction—to the assertion by some of Canada’s most marginalized citizens of the fundamental freedoms of life, liberty, and security of the person delivers a compact and compelling recitation of basic features of Canada’s constitutional landscape.

But a different landscape beckons from beyond this jurisprudential wrangling.² It is the landscape of the Vancouver’s Downtown Eastside (DTES)—a geography of spatial outcomes that reflects balances of economic and social power and displacement. This place has a specific demography and is shaped by particular sets of social conflict and cohesion.³ The landscape is inner city and urban, a material outlook that is among the poorest in North America, and a symbolic vista that signals the multiple blights of race, gender, culture, and class oppressions of 21st century capitalism. In this latter sense, the term “landscape” “refers to an ensemble of material and social practices and their symbolic representation.”⁴ In the former sense, the term captures the physical layout and use of space in this urban core. Thus, “landscape” signifies both “a physical environment and . . . a particular way of seeing a space.”⁵ It is both “site and sight.” Both aspects are useful in thinking about the social geography that underlies

the legal argument and about how rights to citizenship so often instantiate in property and space. As Sharon Zukin remarks, “landscape is the most important product of both power and imagination.”⁶

The purpose of my comment is to link the case’s jurisprudential allure back to the local politics and activism out of which the legal argument sprang. What aperçus I have to offer about *Insite* focus primarily on reflections that centre thinking about geography and its margins, space, politics, and law.

Site

The *Insite* case concerns North America’s first supervised injection site (SIS). *Insite* was opened on September 12, 2003, by Vancouver Coastal Health, in partnership with the Portland Hotel Society.⁷ *Insite* responds to injection drug-related issues in Vancouver’s Downtown Eastside.⁸ The injection clinic provides a range of services to injection drug users, including clean needles and a safe and supervised space to inject drugs. It also has association with *Onsite*, a detox unit located in the floor above *Insite*. While there are today over 75 SISs operating around the world, Vancouver is the only municipality on the continent with a sanctioned SIS.⁹

As a physical place on East Hastings Street in the DTES, *Insite* is significant. Cultural capital exists in real spaces: “a building is never just

a building.”¹⁰ The legal challenge in the *Insite* case rests on an important allocation of urban property, an allocation that has a role in shaping the social relations of the city. *Insite* locates and makes concrete (literally) a shifted balance of cultural and political capital in the DTES. It is a space for injection drug users, geared singularly and specially to their health and social needs. The municipal, provincial and federal governments have all contributed funds to the opening and maintenance of *Insite*. Its spatial presence is a product of a redistribution (however slight) of resources to the injection drug addict population of the DTES.¹¹ Thus the space of *Insite* may be relevant to local peoples’ “sense of . . . belonging.”¹² The use of property in this manner, in the DTES, reflects collective possibilities of entitlement to space meaningful to a very vulnerable group that is itself central to the character and composition of the DTES.¹³ Thus *Insite* is about urban property and its “acceptable” uses for different groups of residents. The case and the site mean that, to quote Nicholas Blomley slightly out of context, at least some of the “politics of urban property . . . have been forced to the surface.”¹⁴

The presence of *Insite* stands in complicated contrast to another spatial shift—gentrification—in the DTES. Both gentrification and the supervised injection site can be understood as the spatialization of consumption¹⁵—the former in terms of 21st century capitalism and the latter, perhaps more literally, in terms of injection drugs. Both spatial shifts generate controversy.

The space that *Insite* occupies has a story. It is a story that illustrates just how focal the physical location of *Insite* is in the struggle for safe injection rights. The current location comes out of an unplanned encounter between two Portland Hotel Society (PHS) supporters and a sandwich shop proprietor out sweeping the sidewalk of his shop. For 22 years, this shop owner and his wife had run the sandwich shop, living above it on the second floor and renting out the remainder of the building to hard-to-house tenants. An agreement was reached that the PHS would lease the space for a supervised injection site; the sandwich shop closed and renovations began to create *Insite*. The PHS spent

\$30,000 on these renovations until the space—nicknamed “the hair salon” because of the resemblance of its injection booths to salon stations—was ready, awaiting legal approval. Thus, the establishment of the space came before legal status and its presence, empty but ready, was impetus to the politicians working out their agreements.¹⁶ It sat for some considerable time as a material reminder of, and “nudge” for, the political goal of opening an official supervised injection site.¹⁷ While a practical and pragmatic step in the march to a supervised injection site, it was also a “politicized claim to space,”¹⁸ arguably instrumental to obtaining the legal status sought for *Insite*.

The physical establishment of *Insite* also confounds the division of public and private space in the DTES. One issue *Insite* addresses is the absence of private space that is available for the drug users serviced by *Insite* to shoot up in. These people are poor and, if not homeless, then most likely insecurely and inadequately housed. Thus access to private space and the private resources of such space (such as clean water) for injection is certainly limited. Injection sites for those without rights to private property are necessarily public sites—alleys, parks, and so on. In this manner, the private needs of addicts in the DTES must play out in public space. This is not unique to injection drug users; it is a feature of how the private overlays the public for the homeless. But *Insite* caters to the private necessities of drug injection, albeit in another public space, and so creates inside each injection booth a moment of private space. Some drug users take advantage of the moment, stretching out in this space, a pause from their more exposed existence in other public spaces.¹⁹ In this manner, also, then, the physical space of *Insite* is important. It removes from a more public presence and gaze the intimate and personal acts of drug injection.

Sight

The point about private space, however, should not be overstated nor singularly understood. Injection is supervised inside *Insite* and takes place in a relatively large, open, well-lit and populated space. The visibility of the act of injec-

tion in Insite is what makes it a supervised and thus a safer injection site. So “sight” and being public are as important to the objectives of Insite as is the physical “site” of Insite. This lends a strong public or at least non-private caste to the injection.

The notion of “sight” is important more largely. Insite, as an institution, changes the political and social visibility of injection drug users in the DTES, at least as a group with legitimate collective needs and claims on the polity. And this presence, marked by the building, its signage, and the cluster of drug users outside its doors, is a more focused, public, political presence. Insite lends injection drug users in the DTES an enhanced claim not merely to physical space but also to political space. It potentially enlists the private property of the site in aid of a larger political goal of putting injection drug addicts “in the sight of” policy-makers and governments.

In a piece on the Ontario anti-squeezing law, Janet Mosher writes about the importance of visibility to ensure that the disposed or marginalized occupy political space in dominant political agendas and in the social consciousness of citizens.²⁰ Ironically, giving the injection drug users of the DTES a more private place to inject grants this group an enhanced political visibility in the sense Mosher indicates, although she writes of public dispersed visibility. The discomfort this visibility generates creates possibilities for political change and action. The sight of Insite—its concentration of the drug-addicted and the marginalized—is politically important.

Insite also represents a change in the conceptualization of injection drug addiction and of responses to it. It represents the re-articulation of injection drug addiction as a health issue and of supervision of injection as a healthcare service. Thus, Insite also symbolizes a public reframing of issues around injection-drug addiction and use in the DTES. In this way, its space “structures metaphorically” through the visibility it lends the issues of injection-drug addiction in the DTES and how it reminds us by its presence of the healthcare needs of this population.²¹ The site and sight of Insite locate a shift in the politi-

cal landscape of the DTES and its population of injection drug users.

The Just City

Cities in this century have “new dynamics of inequality,”²² a “valorization of certain spaces and people, and the simultaneous but interlocking devalorization of those deemed marginal, such as immigrants and the urban poor.”²³ In this sense, cities are places of contested citizenship.²⁴ The notion of a just city envisions “a harmonious and just urban form, in contrast to neo-liberal efforts to reshape civic life by narrowly proscribing active citizenship.”²⁵ The concept captures the struggle against “an increasingly exclusionary urban environment.”²⁶ Thus, creating and maintaining public space and private space reflect neo-liberal urban politics. We see, for example, how public space is subject to intensified policing as the homeless and the poor are evicted from or squeezed into narrower patterns of occupation of these spaces.²⁷

Perhaps, we can understand the political and now legal struggle about Insite as an assertion of what David Harvey in an influential *New Left Review* article has discussed as “the right to the city.” Harvey describes this right as “the right to change ourselves by changing the city.”²⁸ Formulation of such a collective right rests on the understanding that it is through the city—the process and outcomes of urbanization—that we “re-make . . . ourselves.”²⁹ The political or social movement out of which the *Insite* case emerges attempts to “reshape the city in a different image,”³⁰ to rethink urban citizenship such that a more inclusive urban environment is offered to injection drug users. It is to claim, by the marginalized, a right to exist and exert agency in city spaces.³¹ Policies and practices at large in the city shape urban opportunities and help citizenship be achieved more broadly.³²

So the struggle to open Insite in the DTES is, perhaps, understandable as a “spatialization of rights” and a claim to more active citizenship by injection drug users.³³ Henri Lefebvre talks of the social production of space: that is, that social practices and regulations shape space. In this case, the use of the storefront

for Insite changes the social significance of the space and folds a particular set of social relations and meanings into the larger community. Insite's presence shifts the DTES as a community, altering associations and understandings of that community. Allocation of space to Insite communicates a set of moral and political meanings.³⁴ Insite instantiates localized agency working to shape the material and symbolic landscapes of the city.³⁵ Thus, the establishment of Insite shows that the city is a key site for the struggles of the dispossessed.

In sum, *Insite*, the legal case, enters the judicial fray trailing a rich and evocative tale of local activism and politics. The struggle for Canada's first legally sanctioned safe injection site³⁶ has been hard-fought, and the opening of Insite is both a symbolic and a practical victory. The case thus presents a legal moment in a much longer and more complex social and political struggle over the rights and life chances of groups significantly marginalized and disadvantaged in Canadian society generally, and in the urban life of the city at issue in particular. It also illustrates that a strong feature of the DTES is "a long history of activism and opposition" and assertion of community and right in the face of condemnation as marginal and anomic.³⁷ The DTES is a "contested landscape"³⁸; Insite is a piece of this.

These issues of urban politics and space translate into legal argument about rights and jurisdiction. Legal arguments, particularly those employing "rights talk," are salient currency in aid of the politicized claim to space and a richer social citizenship. But the matrix of site and sight shapes these arguments. Judicial analysis in the case, at both levels of court, raises interesting opportunity for scholarly observations about the connection (or disconnection) between social activism and legal activism and the city. This narrative about injection drug addicts and supervised safe injection sites, and its judicial articulation and endorsement opens up space, perhaps, for enhanced citizenship rights for injection drug users.

Notes

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- 1 *PHS Community Services v Canada (Attorney General)*, 2008 BCSC 661, 293 DLR (4th) 392, rev'd 2010BCCA 15, 314 DLR (4th) 209, leave to appeal to SCC granted, 33556 (June 24, 2010) [*Insite*].
- 2 Sharon Zukin, *Landscapes of Power: From Detroit to Disney World* (Berkeley: University of California Press, 1991). Zukin notes the ubiquity of the term "landscape," which I illustrate by my use of the notion to capture both the range of constitutional law and the social and geographic features of Vancouver's inner city.
- 3 See Zukin for a more general discussion of place as a geographical location, place as a form of local society, and place as a cultural artifact of social conflict and cohesion. *Ibid* at 12.
- 4 *Ibid* at 16.
- 5 Nicholas Blomley, *Unsettling the City: Urban Land and the Politics of Property* (New York: Routledge, 2004) at 37.
- 6 Zukin, *supra* note 2 at 268.
- 7 The program was supported by the Vancouver Police Department, the City of Vancouver, the Province of British Columbia, injection drug users, community groups, academic institutions, and others.
- 8 Insite provides a number of services. Specifically, it is staffed by a combination of clinical and non-clinical staff, including peers, program assistants, registered nurses, addictions counselors and co-ordinators. It is open 18 hours a day, seven days a week: 10 a.m. to 4 a.m. Its injection room has 12 booths with a daily capacity of roughly 850 injections. Drugs are not provided, injections are supervised, and emergency response to overdoses is available. The staff offers immunization and wound care, and injection-related first aid. Referrals to addiction treatment and other health services are available, accompanied by harm reduction institution and access to sterile injection equipment. Insite provides a post-injection space for observation and peer interaction. See Vancouver Coastal Health Authority, *Saving Lives: Vancouver's Supervised Injection Site* (Brochure) at 2, online: Legislative Library Services, Legislative Assembly of British Columbia <http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/458493/insite_brochure.pdf>.
- 9 Government of British Columbia, Ministry of Healthy Living and Sport, Fact Sheet, *North America's First Supervised Injection Site*

- (Factsheet) (February 1, 2010), online: Housing Matters BC http://www.housingmattersbc.ca/docs/dtes_insite.pdf.
- The Netherlands, for example, opened several sites in the 1970s. See Larry Campbell, Neil Boyd & Lori Culbert, *A Thousand Dreams: Vancouver's Downtown Eastside and the Fight for Its Future* (Vancouver: Greystone Books, 2009) at 177. In Switzerland, a Zurich site in 2003 also had a restaurant that employed addicts, a laundromat, public computers, and a medical team to attend to clients. As well, it had an inhalation room for addicts who smoked drugs (*ibid* at 178).
- 10 Blomley, *supra* note 5 at 46.
 11 See generally Zukin, *supra* note 2 at 267.
 12 *Ibid* at 268.
 13 Blomley, *supra* note 5 at 153.
 14 *Ibid* at xviii.
 15 Zukin, *supra* note 2 at 269.
 16 This story comes out of Campbell, Boyd & Culbert, *supra* note 9 at 173.
 17 While this official site-in-waiting sat empty, activists had opened an illegal injection site at another location in the DTES. The illegal site was monitored by the police but not shut down. It closed when the official site opened in September 2003. *Ibid* at 180.
 18 Blomley, *supra* note 5 at 59.
 19 Personal conversation with Insite staff by author, Summer 2010.
 20 Janet Mosher, "The Shrinking of the Public and Private Spaces of the Poor" in Joe Hermer & Janet Mosher, eds, *Disorderly People: Law and the Politics of Exclusion in Ontario* (Halifax: Fernwood, 2002) 41 at 41.
 21 Zukin, *supra* note 2 at 268.
 22 Saskia Sassen, "The Global City: Strategic Site/New Frontier" in Engin F Isin, ed, *Democracy, Citizenship and the Global City* (New York: Routledge, 2000) 48 at 52.
 23 Blomley, *supra* note 5 at 31.
 24 See e.g. Penny Gurstein and Silvia Vilches, "The Just City for Whom? Re-conceiving Active Citizenship for Lone Mothers in Canada" (2010) 17:4 Gender, Place and Culture 421 at 423.
 25 *Ibid* at 422.
 26 *Ibid* at 423.
 27 Blomley, *supra* note 5 at 31. Also, see generally Hermer and Mosher, *supra* note 20.
 28 David Harvey, "The Right to the City" (2008) 53 New Left Review 23 at 23, online: <<http://www.newleftreview.org/?view=2740>>.
 29 *Ibid*.
 30 *Ibid* at 33.
- 31 Blomley, *supra* note 5 at 423.
 32 *Ibid* at 432.
 33 *Ibid*. See generally Ute Lehter and Andrea Winkler, "Public or Private? The Pope Squat and Housing Struggles in Toronto" (2006) Social Justice, online: <http://findarticles.com/p/articles/mi_hb3427/is_3_33/ai_n29330385/pg_2/?tag=content;coll>.
 34 Blomley, *supra* note 5 at 76.
 35 *Ibid* at 59.
 36 Indeed, Insite is North America's only legally sanctioned supervised safe injection site. Importantly, however, Insite is not Vancouver's only supervised safe injection site. The Dr. Peter AIDS Foundation, an HIV/AIDS health-care facility in Vancouver, has for some time allowed its registered nurses to provide supervised injection services without formal legal sanction, in this case a Ministerial exemption under the federal *Controlled Drug and Substances Act, RSC 1996, c 19*. The Dr. Peter AIDS Foundation is a non-profit registered charity, funded through various government health and housing agencies, with the purpose of assisting and caring for persons who are poor or needy and who suffer from HIV/AIDS. In defence of the absence of such an exemption, the Foundation argues that supervised injection services are part of the primary healthcare it provides to its clients. See generally Dr. Peter AIDS Foundation, online: <<http://www.drpeter.org/>>.
 37 Nick Blomley, "Enclosure, Common Right and the Property of the Poor" (2008) 17 Social & Legal Studies 311 at 312. Blomley refers to activism around issues of land, redevelopment and gentrification, but his characterization is equally true in reference to poverty and drug use issues.
 38 Blomley, *Unsettling the City*, *supra* note 5 at 53.