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Does judgment clear way for safe-injection sites?

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VANCOUVER -- Legal experts were divided yesterday on whether a B.C. Supreme Court ruling ensuring that Vancouver's injection facility for heroin addicts remains open clears the way for supervised injection sites across the country.

"The decision only exempts Insite," lawyer Joseph Arvay, who represented the Portland Hotel Society in the court case, said yesterday in an interview.

The city of Victoria or other places with problems similar to Vancouver's Downtown Eastside neighbourhood may try to use the court ruling to set up their own facilities, but they would require a court order to stay within the law, he said. "And whether they get that order would depend on the facts of their case."

Margot Young, an associate professor of law at the University of British Columbia, agreed. She said the ruling was made in the context of expert evidence about the dire circumstances of the Downtown Eastside, research showing that Insite had success in addressing some of the issues, and city policies for responding to drug problems in the neighbourhood.

"There is no guarantee [others who open an injection facility] are going to find a judge who is going to make the same judgment call about their particulars," she said. The court ruling gives a constitutional exemption to Insite based on the circumstances of the case.

"It is not a general exemption for injection sites," Prof. Young said.

However, academic researcher and lawyer Neil Boyd and lawyer Monique Pongracic-Speier said others could use the ruling to open their own facilities.

"It applies to Insite and by extension to others," Prof. Boyd said, adding that he assumed the ruling would cover any facility that met Insite's standards. Ms. Pongracic-Speier, who also represented the Portland Hotel Society in the court case, agreed.

"If another site opened and operated in relatively the same way as Insite, I don't see how there could be an argument against it," she said.

In a court ruling that caught many by surprise, Mr. Justice Ian Pitfield decided that the federal drug law as applied to Insite was unconstitutional. Unless a higher court overturns

Judge Pitfield's ruling, Insite will have a constitutionally protected right to stay open indefinitely.

The federal government has not yet indicated whether the ruling will be appealed. The lawyers estimated it could take two or three years to reach a final ruling, and possibly longer, if the B.C. Court of Appeal and the Supreme Court of Canada are asked to consider the case.

Mr. Arvay urged the government to accept the ruling and amend the drug laws to be consistent with the constitutional protection for Insite.

"It is my hope that the government, on sober reflection, realize this decision is correct in law, and a highly moral decision. They should not appeal it," he said.

The injection facility operates under an exemption from the law that was to expire on June 30.

Prof. Boyd said federal Health Minister Tony Clement should move ahead with plans to clarify the government's position on whether the exemption would be extended beyond June 30, despite the court ruling. Otherwise, the future of Insite will depend solely on higher courts upholding a decision of a lower court judge, he said.

Prof. Boyd said he is concerned the issue would be left in limbo as any appeal winds its way through the court system. "There's no clear outcome from this," he said. "It appears to me we are not going to have a clear decision [on whether Insite will remain open] in the near future."