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Globe editorial

The rights of drug addicts

Insisting that a Vancouver clinic be allowed to provide potentially life-saving supervision for heroin and cocaine addicts to inject their drugs, as a British Columbia judge did this week, is the right thing to do. It's right as a policy choice, but it's also right as a use of the Charter of Rights and Freedoms to protect addicts from the arbitrary reach of the criminal law.

Why is it arbitrary to apply a criminal prohibition on the possession of harmful drugs to a health clinic such as Insite, which has operated in Vancouver's Downtown Eastside since 2003? Because doing so would deprive sick people of a health clinic in the name of protecting their health.

The federal government argued that there was no constitutional issue at stake because the addicts chose to become drug users; it's their fault they are addicts, and therefore it's irrelevant whether the government chooses to close a clinic that might save their lives. Yet the government acknowledged in court that addiction is an illness. An absurdity, in defence of arbitrariness.

Insite serves the hardest of hard-core addicts. The Downtown Eastside has 4,600 addicts who have injected drugs an average of 15 years.

Eighty-seven per cent of this group are infected with hepatitis C, and 17 per cent with HIV, the virus that causes AIDS. Twenty per cent are homeless and nearly 40 per cent are involved in the sex trade. Nothing has worked to keep them permanently off drugs, and they are at high risk of a nasty death from an overdose or an infectious disease.

The federal government acknowledged that, in the past two years, 336 people had overdoses at Insite, and not a single one died. It acknowledged, too, that the risk of disease is reduced when injections are performed in the presence of health professionals. Yet Ottawa hadn't said whether it would allow the clinic to stay open beyond June 30, when a temporary exemption from federal drug laws was set to expire. If the government won't let a clinic stay open to allow these addicts to inject safely, it can't be said that the addicts are simply making a free choice to die; it's the state that is limiting the right of sick people to essential, perhaps life-saving, health care.

Sometimes judges are called on to do what politicians won't, in hot-button areas. Removing arbitrary restrictions to abortion was one.

Legalizing gay marriage was another. Protecting addicts from a scattershot "war on drugs" that could close life-saving health clinics is now a third.

In all these areas, judges moved alongside broad social change. What had once seemed a given - that marriage, for instance, was a heterosexual-only institution - had come to be seen as arbitrary. As Mr.

Justice Ian Pitfield points out in his thoughtful ruling on Insite, basic rights, which include the rights of addicts to health care, must not be subject to arbitrary limits.