The use of knowledge translation and legal proceedings to support evidence-based drug policy in Canada: opportunities and ongoing challenges

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The role of evidence-based medicine in improving health services and health outcomes is widely recognized in the realm of health care policy.[1,2] However, there is growing recognition, particularly in the areas of illicit drug policy and HIV prevention, that policy-makers are in many instances implementing suboptimal programs and services because they are not basing their decisions on the best available scientific evidence.[3–7] The negative impact this has had on the health of marginalized groups, including people who use injection drugs,[7] has prompted interest in identifying strategies that can support the implementation of evidence-based policies.[6]

One notable example where a policy-making body has failed to use scientific evidence to inform public policy is the Canadian federal government's opposition to Vancouver's supervised injection facility, Insite. This opposition has persisted despite a large body of scientific evidence indicating that the program is associated with a range of health and social benefits.[8,9] The government's position on the supervised injection facility has spurred reactions from a broad range of individuals, organizations and politicians. In particular, two approaches have been pursued in an attempt to shift drug policy toward an evidence-based approach and maintain the operation of this evidence-based health facility. The first approach involved knowledge translation (KT), which rests on the assumption that the gap between research and policy is largely the result of a failure to present research findings in terms that are meaningful and accessible to policy-makers.[10,11] However, when the gap between research and policy is the result of ideological conviction taking priority over scientific evidence, as in the case of Insite, KT approaches do not work. Because federal policy-makers disregarded scientific evidence of the benefits of Insite, a second approach was used to support the continued operation of this facility: legal arguments and proceedings. We hope that an overview of these two approaches will offer lessons for the implementation of evidence-based policies in other areas of health and social policy and highlight some of the ongoing challenges to the application of evidence-based policies in controversial areas.

The establishment of a supervised injection facility in Vancouver, Canada

In the wake of a public health disaster characterized by a generalized epidemic of HIV infection among its local injection drug user population and high rates of drug-related overdose deaths, community and public health leaders in Vancouver, Canada, established a supervised injection facility called Insite.[12,13] Insite is a place where injection drug users can bring pre-obtained illicit drugs and inject in a sterile environment, with clean injecting equipment, under the supervision of a nurse.[8] In order to operate, the injection facility was granted an exemption from Canada's Controlled Drugs and Substances Act under the premise that it was a medical experiment and would undergo extensive evaluation. When it opened in 2003 the B.C. Centre for Excellence in HIV/AIDS initiated an ongoing and rigorous scientific evaluation to determine whether there was evidence of benefits or harms to health and to the community.[14,15] In the first five years of the scientific evaluation, over 30 studies were published in peer-reviewed journals demonstrating that the facility was associated with a range of health and social benefits and not associated with adverse effects.[8] Although this body of evidence would be sufficient to justify the expansion of just about any other public health

program, because of the controversial nature of supervised injection facilities, Insite was held to a much higher standard and continued to be scrutinized by the federal government.[9]

Knowledge translation to support an evidence-based health facility

To address this skepticism, researchers involved in Insite's scientific evaluation developed a multi-pronged KT strategy based on findings from the newly emerging KT field.[10,11,16–18] Health researchers in a range of disciplines are increasingly recognizing that generating high-quality research does not guarantee that the research will be used appropriately to inform policy and practice.[16] Within the field of health, efforts are under way to identify the most effective ways that health research findings can be made more accessible, or "translated," for policy-makers. Key findings of studies of KT methods are that policy-makers and community members generally do not read academic journals and are more receptive to research in the form of plain language summaries and synthesis reports.[10,11,16,17] As well, although the scientific rigour and quality of research is an important determining factor in the uptake of research findings, KT research suggests that even with high-quality research, establishing communication networks between researchers and policy-makers is a principal facilitator in the adoption of research in public policy.[18] Guided by the findings of KT research, the researchers involved in Insite's scientific evaluation implemented an extensive KT strategy (see Box 1 for highlights of their activities).

Public opinion polls[19] and endorsements by medical bodies,[20] elected officials[21] and police[22,23] indicated that these KT initiatives were successful and that the evaluation results received widespread acceptance; nonetheless, the federal government remained fiercely opposed to the program, refusing to grant Insite a three-year extension for its operation and imposing a moratorium on trials of safer injection facilities in other Canadian cities.[9] It became evident that the basis of its opposition was ideological, that scientific evidence was irrelevant in this policy environment,[24] and that KT was not equipped to overcome the systematic disregard of scientific evidence by the federal government.[9]

Legal arguments and proceedings to support an evidence-based health facility

To prevent the federal government from closing the facility, in 2007 two community-based non-profit organizations representing the interests of injection drug users, along with two individual plaintiffs, sought legal advice.

Box 1: Highlights of knowledge translation activities supporting evidence-based policies and the continued operation of Insite, Vancouver's supervised injection facility[1]

Media engagement
- Educated media about research findings through media briefs
- Participated in hundreds of media interviews
- Wrote letters to the editor, op-eds and commentaries for newspapers and magazines

Plain language summaries
- Synthesized research into reader-friendly summaries (both long and short versions)
- Distributed summaries to policy-makers and other stakeholders, including a summary report sent to all federal members of Parliament

Oral presentations
- Delivered dozens of presentations to a wide range of audiences, including the Canadian parliament; provincial and municipal policy-makers and advisers; health care providers; community groups, including Insite's local community; and the general public

Internet
- Developed a webpage dedicated to posting research findings and plain language summaries (see the Urban Health Research Initiative website)

Political commentaries in academic journals
- Published multiple commentaries describing the political situation around the evaluation of the supervised injection facility and the disregard of scientific evidence by the Canadian government[6,9,28–33]

[1]These knowledge translation activities were conducted primarily by the principal investigators of the scientific evaluation of Insite, Drs Thomas Kerr and Evan Wood.

Relying on a range of legal arguments, this group launched a lawsuit against the Attorney General of Canada and the Minister of Health.[25] One of the primary arguments in the case was that people who use injection drugs have a constitutional right to access Insite because of its importance as a health care service that reduces the harms of injection drug use. Another argument was based on the doctrine of interjurisdictional immunity. Specifically, given that the province has constitutional power with respect to health care, and because Insite is a health care service, the facility falls under the jurisdiction of the provincial government and its operation should not be subject to federal interference.[25] In the process of the court case, KT again came into play when researchers were asked to present their findings in the form of sworn affidavits.

After lengthy proceedings, in May 2008 the B.C. Supreme Court dismissed the plaintiffs' claims that interjurisdictional immunity applied, but it ruled that the current Controlled Drugs and Substances Act, to the extent that it provides the federal government with the power to close the facility, is in violation of the Canadian Charter of Rights and Freedoms,[26] and the government was ordered to amend the relevant sections of the Controlled Drugs and Substances Act to allow Insite to continue operating. This decision represented an important

step forward for evidence-based drug policy, and the courts effectively became an arena where scientific evidence and constitutional rights trumped ideology. Although the ruling was not directly concerned with implementing evidence-based drug policy, the decision hinged on scientific evidence to establish that the program offered health benefits to injection drug users. It is undeniable that the B.C. Supreme Court decision has already had a significant impact on the course of Insite's history and prevented its imminent closure; however, the power of the ruling and its implications for the sustained advancement of evidence-based drug policy remain uncertain.

One reason for this uncertainty is that Charter rights have limitations, some of which are embedded in the Charter itself. Specifically, section 1 allows Parliament and provincial legislatures to limit Charter rights if the limitation can be "demonstrably justified in a free and democratic society." Furthermore, Parliament and provincial legislatures can use the notwithstanding clause provided by section 33 to override Charter protections for limited periods of time. Although these provisions are rarely used to reverse judicial rulings, legislative bodies have invoked sections 1 and 33 (*Ford v. Quebec*, [1988] 2 S.C.R. 712; *R. v. Daviault,* [1994] 3 S.C.R. 63).

Another source of uncertainty regarding the B.C. Supreme Court decision is that court rulings can be overturned. Immediately after the 2008 court decision the government appealed the ruling that sections of the Controlled Drugs and Substances Act violated Charter rights. Conversely, the plaintiffs in the original case cross-appealed the dismissal of the interjurisdictional immunity claim. In January 2010 justices from the B.C. Supreme Court of Appeals ruled in a 2–1 majority that the doctrine of interjurisdictional immunity did indeed apply in the case; the implication of this ruling was that the Controlled Drugs and Substances Act could not interfere with the operations of Insite or hinder its ability to provide health care to people who inject drugs. Although the ruling in favour of applying the doctrine of interjurisdictional immunity made a ruling on the Charter issue unnecessary, the justices provided their assessment of the arguments pertaining to this aspect of the case. With the same 2–1 majority, the justices concluded that the original ruling on the Charter issue was correct and that aspects of the Controlled Drugs and Substances Act were unconstitutional.[27] Despite the positive implications of the rulings from the B.C. Supreme Court of Appeals on Insite's continued operation, in February of this year the federal government announced that it would appeal this decision to the Supreme Court of Canada.[21]

Conclusion

Clearly, implementing evidence-based policies can be particularly challenging in some environments. Although gaps between science and policy may at times be the result of a lack of communication between researchers and decision-makers, there are other instances where understanding scientific data is not the barrier to its use. In these cases other avenues will need to be pursued, and legal proceedings offer potential in this area. However, there are challenges involved in legal proceedings, including uncertainty regarding the impact and meaning of a ruling owing to its potential to be challenged and reversed. The case of the supervised injection facility illustrates that although legal proceedings are a potentially promising vehicle for advancing evidence-based drug policy, as with KT efforts, there are no guarantees that such approaches can effect substantial change. Nevertheless, given the health and social harms resulting from persistent gaps between evidence and practice in the areas of illicit drug policy and HIV prevention,[7] actions to support even incremental advancements must be pursued.

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REFERENCES

1. White B. Making evidence-based medicine doable in everyday practice. *Fam Pract Manag* 2004;11(2):51–58.
2. Straus SE, Green ML, Bell DS, Badgett R, Davis D, Gerrity M, et al; Society of General Internal Medicine Evidence-Based Medicine Task Force. Evaluating the teaching of evidence based medicine: conceptual framework. *BMJ* 2004;329(7473):1029–1032.
3. MacCoun R, Reuter P. The implicit rules of evidence-based drug policy: a U.S. perspective. *Int J Drug Policy* 2008;19(3):231–232; discussion 233–234.
4. Reuter P. Why does research have so little impact on American drug policy? *Addiction* 2001;96(3):373–376.
5. Pearson H. Science and the war on drugs: a hard habit to break. *Nature* 2004;430(6998):394–395.
6. Kerr T, Wood E. Closing the gap between evidence and action: the need for knowledge translation in the field of drug policy research. *Int J Drug Policy* 2008;19(3):233–234.
7. Beyrer C, Malinowska-Sempruch K, Kamarulzaman A, Kazatchkine M, Sidibe M, Strathdee SA. Time to act: a call for com-

prehensive responses to HIV in people who use drugs. *Lancet* 2010;376(9740):551–563.

8. Wood E, Tyndall MW, Montaner JS, Kerr T. Summary of findings from the evaluation of a pilot medically supervised safer injecting facility. *CMAJ* 2006;175(11):1399.
9. Wood E, Kerr T, Tyndall MW, Montaner JSG. The Canadian government's treatment of scientific process and evidence: inside the evaluation of North America's first supervised injecting facility. *Int J Drug Policy* 2008;19(3):220–225.
10. Jewell CJ, Bero LA. "Developing good taste in evidence": facilitators of and hindrances to evidence-informed health policymaking in state government. *Milbank Q* 2008;86(2):177–208.
11. Lawrence R. Research dissemination: actively bringing the research and policy worlds together. *Evid Policy* 2006;2(3):373–384.
12. Strathdee SA, Patrick DM, Currie SL, Cornelisse PG, Rekart ML, Montaner JS, et al. Needle exchange is not enough: lessons from the Vancouver injecting drug use study. *AIDS* 1997;11(8):F59–F65.
13. Millar JS. HIV, hepatitis, and injection drug use in British Columbia: pay now or pay later? Victoria: BC Provincial Health Officer, BC Ministry of Health. June 1998.
14. Wood E, Kerr T, Montaner J, Strathdee S, Wodak A, Hankins C, et al. Rationale for evaluating North America's first medically supervised safer-injecting facility. *Lancet Infect Dis* 2004;4(5):301–306.
15. Wood E, Kerr T, Lloyd-Smith E, Buchner C, Marsh D, Montaner J, et al. Methodology for evaluating Insite: Canada's first medically supervised safer injection facility for injection drug users. *Harm Reduct J* 2004;1(9).
16. Graham ID, Tetroe J. How to translate health research knowledge into effective healthcare action. *Healthc Q* 2007;10(3):20–22.
17. Ritter A. How do drug policy makers access research evidence? *Int J Drug Policy* 2009;20(1):70–75.
18. Innvaer S, Vist G, Trommald M, Oxman A. Health policy-makers' perceptions of their use of evidence: a systematic review. *J Health Serv Res Policy* 2002;7(4):239–244.
19. Decima Research Inc. *Record disclosed under the Canadian Access to Information Act: PCO Corporate Communication*. 2006. Table SIS6, p 147.
20. National Specialty Society for Community Medicine. *Supervised drug consumption sites and InSite program* [position statement]. 2009. Available at: http://www.nsscm.ca/files/POSITION_ON_SUPERVISED_CONSUMPTION_SITES.pdf (accessed 09/09/2010).
21. Bains C. Federal government to take supervised injection site case to Supreme Court. *The Record*. 2010 Feb 9. Available at: http://news.therecord.com/article/668034 (accessed 13 Aug 2010).
22. Vancouver Police Department. Vancouver police department drug policy. 2006. Available at: http://vancouver.ca/police/assets/pdf/reports-policies/vpd-policy-drug.pdf (accessed 21 Feb 2010).
23. DeBeck K, Wood E, Zhang R, Tyndall M, Montaner J, Kerr T. Police and public health partnerships: evidence from the evaluation of Vancouver's supervised injection facility. *Subst Abuse Treat Prev Policy* 2008;3:11.
24. Jones D. Injection site gets 16-month extension. *CMAJ* 2006;175(8):859.
25. *PHS Community Services Society v. Attorney General of Canada*, 2008 BCSC 661.
26. Small D. Fighting addiction's death row: British Columbia Supreme Court Justice Ian Pitfield shows a measure of legal courage. *Harm Reduct J* 2008;5:31.
27. *PHS Community Services Society v. Canada (Attorney General),* 2010 BCCA 15.
28. Milloy M, Wood E. Emerging role of supervised injecting facilities in human immunodeficiency virus prevention. *Addiction* 2009;104(4):620–621.
29. Kerr T, Montaner J, Wood E. Supervised injecting facilities: time for scale up? *Lancet* 2008;372(9636):354–355.
30. Kerr T, Montaner JS, Wood E. Misrepresentation of science undermines HIV prevention efforts. *CMAJ* 2008;178(7):964.
31. Wood E, Montaner JS, Kerr T. Illicit drug addiction, infectious disease spread and the need for an evidence-based response. *Lancet Infect Dis* 2008;8(3):142–143.
32. Wood E, Kerr T, Tyndall MW, Montaner JSG. The Canadian government's treatment of scientific process and evidence: inside the evaluation of North America's first supervised injecting facility. *Int J Drug Policy* 2008;19(3):220–225.
33. Kerr T, Kimber J, DeBeck K, Wood E. The role of safer injection facilities in the response to HIV/AIDS among injection drug users. *Curr HIV/AIDS Rep* 2007;4(4):158–164.

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