



**MONASH** University

Law

## Hepatitis transmission and prevention: Exploring the role that the law plays in shaping blood borne virus epidemics

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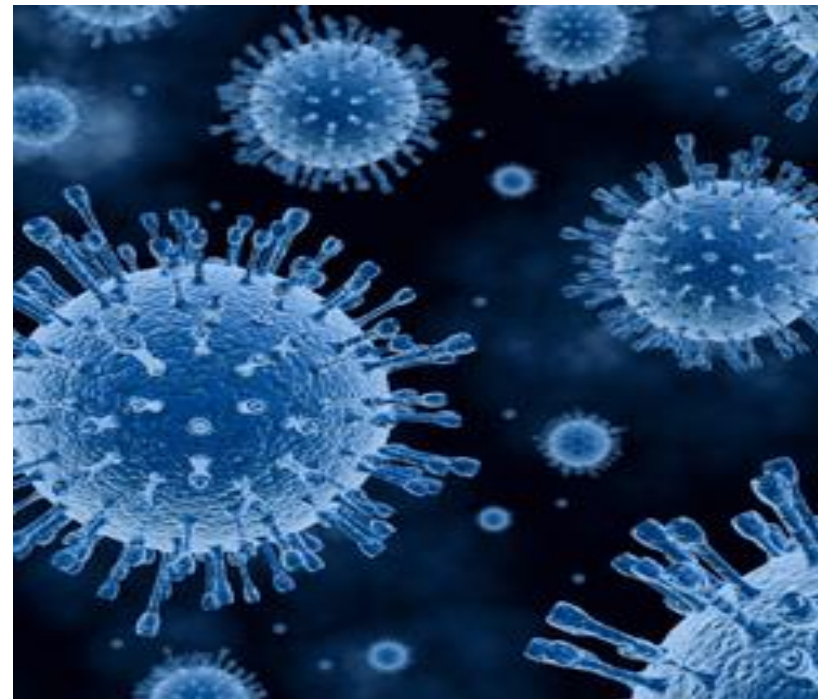
## A story

‘The child was removed from their parents’ care over concerns regarding one parent’s possible hepatitis C status (the parent does not in fact have hepatitis C). [...] Access to the case documents revealed, among other things, that the child had been ‘vaccinated’ for hepatitis C. This is, of course, not possible as no vaccine exists for hepatitis C. In this case it appears that case workers who primarily deal with parents presenting with drug and alcohol issues were unaware of basic information about hepatitis C and that the court readily accepted this incorrect evidence’.

valentine k and Treloar C, 2013, Response to Chandler et al., Substance, structure and stigma: Parents in the UK accounting for opioid substitution therapy during the antenatal and postnatal periods, *International Journal of Drug Policy*, Vol. 24, Issue 6: e87-e88.

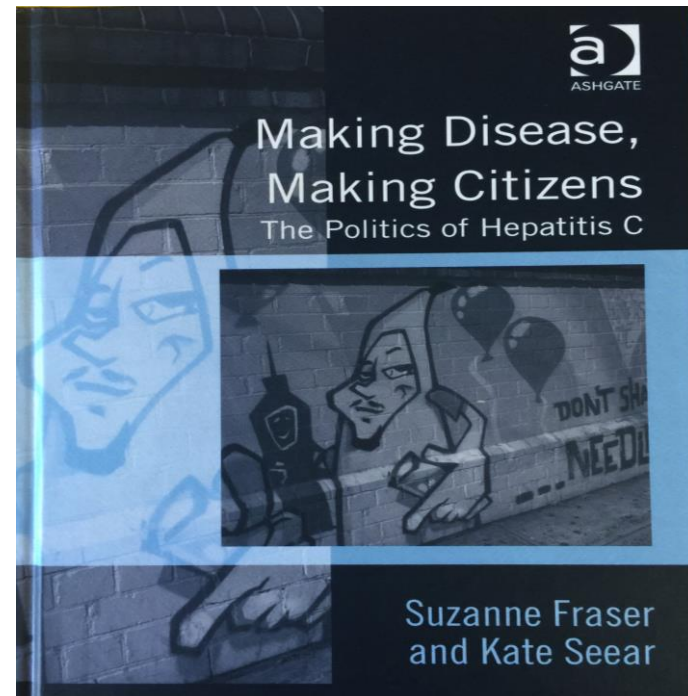
## Another story

- Q: Is it ethically justified to forcibly treat people with hepatitis C who have a history of injecting drug use?
- A: Yes, because: drug use > hepatitis C > illness and death.
- Here, IDU = hep C



## Introduction:

- Disease as a 'socially constituted' object (Fraser and Moore 2011);
- Epidemics as more than merely biomedical phenomena;
- Shaped by a multitude of factors, including policies and practices;
- Absence or presence of supports (e.g. NSPs and the extent of NSP coverage) plays a major role in shaping epidemic size, scale and spread.
- SO: Reconfigure policy and practice, and reconfigure the size/scale of the epidemic.



# The law: an oft-neglected institution

Today:

1. Quick recap of some of the best known factors that shape BBVs in Australia.
2. Lesser known factors associated with BBV epidemics and consider some of the obstacles to progress.
3. Consider options for reform.



## Law and BBV profiles: some factors we know

- UNODC, WHO and UNAIDS have called for a package of reforms.
- Prison NSPs:
  - since 1992;
  - now 60+, yet none in Australia;
  - Recent attempt in the ACT (Alexander Maconochie Centre) failed;
  - International human rights violation?



## Law and BBV profiles: some factors we know

- Continued prohibition on peer distribution in most states and territories (cf. ACT and Tasmania);
- Continued risk of prosecution for manslaughter (e.g. *R v Quoc Cao* (1999) unreported, New South Wales District Court).



# The lesser known factors/obstacles to change

- An underfunded sector;
- Significant unmet need;
- Community legal centres and legal aid services must turn clients away;
- Services are stretched; Legal services:
  - ‘are a dumping ground for what no one else wants, although we are limited in the areas of law we handle, but a lot of lawyers will refer people to our office for help in areas of law that we don’t handle, simply because they don’t want to deal with these people’. (Yannick, Community Lawyer)
- Prohibitions on some strategic advocacy.
- Status quo = undisturbed?



## The lesser known factors/obstacles to change

- Lawyers' own assumptions;
- Persistent stereotypes, stigmatising language and simplistic conceptualisations permeate legal practice:
  - ‘no different than dealing with the general public [...] in terms of the perception and stigmatisation’.  
(Yannick, Community Lawyer)
- Lack of knowledge and training.

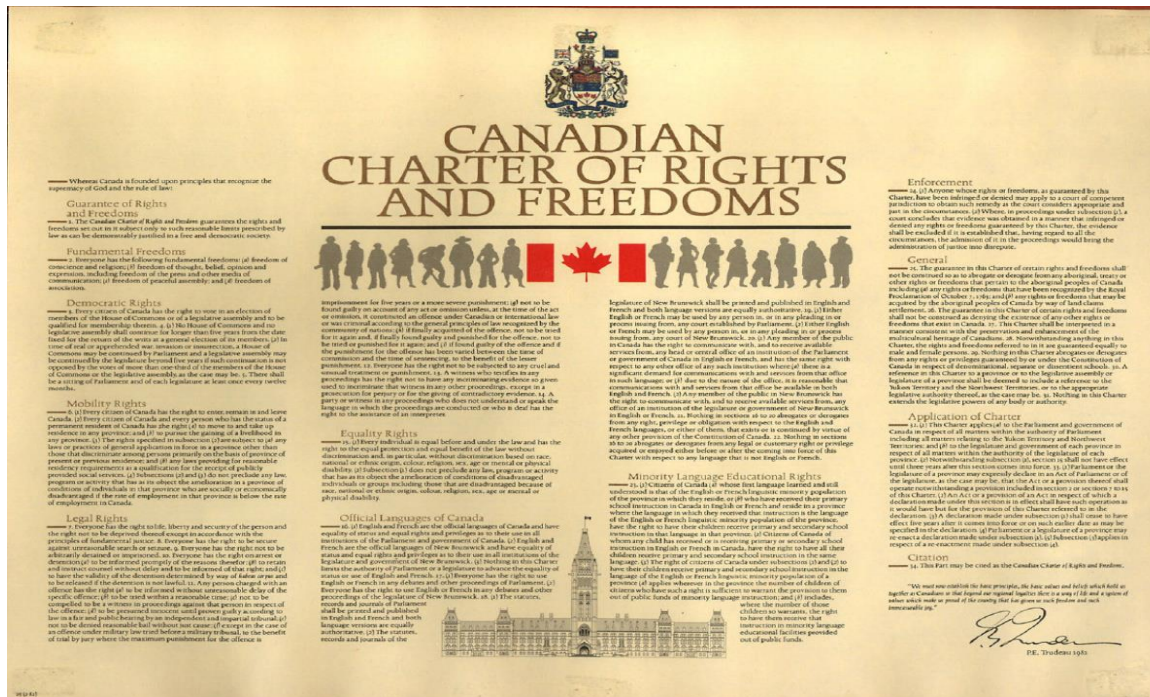


## Legal education: do we need a new emphasis?

- Formal legal doctrines are understood, but with gaps in knowledge;
- No formal training in AOD, BBVs;
- Seminars, self-education.



# Canada



# Lessons from Canada

1. The much-heralded *Insite* decision: In 2011, a strategic human rights case in Canada's Supreme Court was responsible for saving Vancouver's drug consumption facility, Insite, after attempts by the Federal government to shut it down;
1. In 2013, in the case of *Bedford*, certain laws associated with sex work – including bans on brothels and bans on street soliciting – were deemed unconstitutional;
1. And soon, a major case called *Simons* will go before the Canadian Supreme Court arguing that the government's failure to provide NSPs in prisons is a breach of prisoner's human rights.

# Lessons from Canada

Section 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Attempts to close down *Insite*:

‘created an impermissible barrier between persons afflicted with the serious and debilitating illness of drug addiction and their access to the professional health care and services offered by Insite which would reduce, if not eliminate, the risk of death from overdose and reduce, if not eliminate, other serious and life threatening diseases’. (see Voell 2012: 14)



## Lessons from Canada

‘It is within the scope of registered nursing practice to supervise injections for the purposes of preventing illness and promoting health and furthermore, in the nursing practice standards, an employer is responsible for ensuring a nurse has the support to practice according to their standards in the workplace’.

From Suzanne Fraser’s ARC-funded Future Fellowship study (FT120100215).

For more on this research, go to: [addictionconcepts.com](http://addictionconcepts.com)

# Australian Charters

- *Charter of Human Rights and Responsibilities Act 2006* (Victoria):

Section 9: ‘every person has the right to life and has the right not to be arbitrarily deprived of life’.

- *Human Rights Act 2004* (Australian Capital Territory):

Section 9: ‘everyone has the right to life. In particular, no-one may be arbitrarily deprived of life’.

## Unrealised opportunities: working as allies

1. An unrealised opportunity to strategically push for reform?
2. Not without problems: Canadian approaches utilise problematic concepts and stigmatising language;
3. Lawyers, user organisations, health care workers and others working together on these issues in Canada.
4. Dialogue model.

*'lawyering as ally [...] not to be judgmental, and also to be curious, and that (lawyer's must realise) there's often much we don't know. And to try to kind of shift away from really dichotomous thinking'. (Tania)*



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