CRACKS IN THE FOUNDATION

Solving the Housing Crisis in Canada's Poorest Neighbourhood





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Every legal problem is unique. The legal analysis in this report is general and provided for information purposes only. If you have a legal problem, call Law Line at (604) 408-2172 for assistance or to speak to a lawyer.

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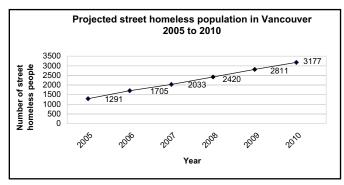
EXECUTIVE SUMMARY



"When the world arrives in Vancouver in 2010, what kind of city will they find?"

– Mayor of Vancouver, Sam Sullivan in his inaugural speech, 2005

If no new low-cost housing is built and the current stock of low cost housing continues to close and deteriorate at its present rate, visitors to Vancouver in 2010 will see nearly three times as many homeless people living on the streets of Vancouver as they see today, according to findings in Pivot Legal Society's housing report, Cracks in the Foundation. Visible poverty and homelessness will be apparent throughout the city, as all shelters in Vancouver are currently operating at or near capacity.



The authors of this report demonstrate that this unprecedented level of homelessness will have significant economic and social consequences for us all. As well as tarnishing our reputation as one of the world's most livable cities it will:

- result in more crime, disorder, drug use and dealing throughout the city;
- add to the taxpayer's burden due to increased spending in

- social services, health care, ambulance costs, and criminal law enforcement; and,
- impact tourism, small businesses and property owners.

Our current level of homelessness is costly. Between 2002 and 2005 the cost of homelessness to Vancouver's taxpayers rose 49 percent from \$25,120,000 to \$51,460,000 (based on a B.C. Government cost assessment of services that includes hospital, ambulance, police incarceration, emergency shelter and food aid).

According to government figures, it requires up to \$40,000 per year per to provide the above services to a homeless person. In contrast, according to the City of Vancouver, the cost to provide supportive housing is between \$7,300 to \$13,370 per year. Factoring in the cost of building housing units, it would cost between \$22,000 and \$28,000 per person per year to build social housing for those who are currently homeless.

The provision of housing for those who are currently homeless would represent a savings to taxpayers of between \$10,328,000 and \$15,492,000 per year. The overall human and social benefits of housing our homeless neighbors would be incalculable.

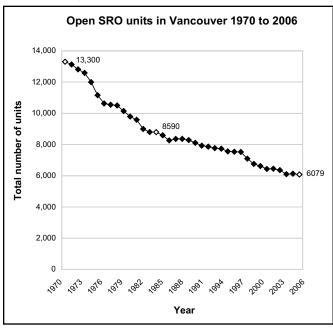
The *Housing Plan for the DTES* (2005) produced by the City of Vancouver (the "City") states that, "Homelessness will likely increase unless existing low-income housing is preserved or replaced." The City has also determined that we require a

net increase of 800 units of social housing per year to meet the demand for low-cost, supportive housing.

However, the low-cost housing stock in Vancouver for low-income singles is shrinking, not growing. The authors of this report found that SRO buildings that have traditionally housed low-income singles are closing at an alarming rate, and are not being replaced by new housing at the rate at which they are being eliminated.

Between 2003 and 2005, despite the development of 99 new housing units, Vancouver incurred a net loss of 415 housing units for low-income singles.

The rate of housing loss for this vulnerable group accelerated in 2005. While 82 new rooms for low-income singles were opened between June 2005 and June 2006, the City lost almost 400 units due to conversions, rent increases and closures during the same period.



Current plans for low-income housing paint a bleak picture. Only 270 units for low-income singles are scheduled to be built in Vancouver over the next three years - drastically short of the quantity needed to replace what the city has lost, let alone add to the stock for this at-risk group. At the same time, the authors of the report anticipate that many existing units are in danger of closing due to rising rental rates, increased market development in the DTES, and deteriorating conditions. If current trends continue, by 2010 we will see a loss of approximately 1600 units of housing for low-income singles.

Rising rental rates

Rental rates at all levels have risen rapidly in Vancouver in recent years. However, the shelter allowance for those on basic social assistance has remained the same since 1994, at \$325 per month, as has the \$185 living allowance. According to the City's 2005 Low-income Housing Survey, the number of rooms available at \$325 dropped 28 percent between 2003 and 2005. In the course of writing this report, the authors canvassed the entire list of 118 Single Room Occupancy (SRO) buildings listed in that Survey and were able to identify only two rooms in the entire city of Vancouver available for the welfare shelter rate of \$325 per month. Over one quarter of the buildings surveyed that provided rental rates listed as "affordable housing" in the City's Low-income Housing Survey had rents of \$380 or over, making them unaffordable to people on social assistance.

Accelerating development

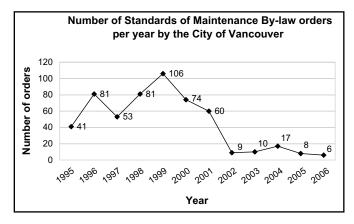
The DTES has become the new focus of development in Vancouver, with the successful sale of all units of the Woodward's development in two days, the International Village, and the Carrall Street Greenway. However, it is also the home of almost 5,000 SRO rooms, or 82 percent of the SRO rooms in Downtown Vancouver.

- Research conducted by the authors found that for the Oppenheimer sub-area of the DTES, 55 development permits were issued between 2000 and 2005, almost double the 28 permits issued between 1995 and 1999.
- Between 1994 and 2004, the Victory Square sub-area of the DTES had only 48 market housing projects completed. In June of 2005, there were 158 market housing projects in progress.

Substandard living conditions

The quality of low-income housing for many in the DTES is so poor that some participants in this study prefer to sleep on the streets. Many identified major problems with essential services such as heat, toilets, hot water, running water, roofs and pipes, and non-functional elevators in their buildings. Health problems due to landlord failures to address mould, bedbug infestations, and rats are common. Several affiants provided evidence of routine refusal by landlords to return damage deposits, extortion of guest fees from tenants, room entry without permission, seizure of property, and illegal eviction of tenants. For many victims, there is no effective recourse due to the delays, inaccessibility and complexity involved in the residential tenancy arbitration process.

The City could prevent further closures and significantly improve the conditions of existing hotels by enforcing the Standards of Maintenance By-law. Yet, according to findings in the report, the City's willingness to issue orders to repair has dropped dramatically in recent years from a high of 106 orders in the DTES in 1999 to a low of just eight orders in 2005. In addition, the City has only once exercised its power under City by-laws to go into buildings, make repairs, and bill those repairs to the owner, despite a finding by the B.C. Supreme Court that lower standards do not have to be tolerated by inspectors in poorer areas of the city.



There is a direct link between loss of low-income housing and homelessness, public disorder and visible poverty. Between 2003 and 2005, Vancouver lost 514 low-income housing units. During that same period, the number of homeless people rose by 663. Based on projected rates of lowincome housing unit loss and construction, rising rental rates and immigration, authors of this report predict that by 2010, Vancouver will see its street homeless population triple to over three thousand people.

Visible poverty and public disorder affect everyone, but the solutions are not as simple as increased policing and enforcement. The Charter of Rights and Freedoms still allows homeless people to sleep on the streets, beg for money, and carry all their belongings around with them. Even the law will not stop public defecation when there are no accessible toilets, a daily dilemma for many people. The solution to the housing crisis in Vancouver must address not only the symptoms, but also the underlying causes of homelessness.

Affordable, accessible housing must be available to those who need it before it is fair or practical to speak of law enforcement as a solution to the public disorder and disturbance that accompanies a lack of low-income housing.

In Vancouver's formal Bid Book, filed when it applied competing to host the 2010 Olympic Games, Canada made an "Inclusivity Commitment," in which the City, Provincial and Federal governments promised to be proactive in addressing negative impacts the Games might have on lowincome individuals. Specifically, the government committed to protecting rental housing stock and ensuring that people were not made homeless, involuntarily displaced, evicted or subjected to unreasonable rent increases. Above all, the government made a commitment to "provide an affordable housing legacy, and start planning now."

Urgent, effective action is needed to avoid the looming crisis of public poverty facing the City of Vancouver as it prepares to host the world in 2010. Without immediate action, the estimated 2.3 million visitors to the Games will see a City in the midst of an urban epidemic of poverty, and witness the clear evidence of a broken commitment to address the impact of the Olympics. There are three years left, however. If we act now, with practical and effective plans to address the impending housing crisis, Vancouver will show the world a thriving, healthy city, and the results of successful efforts to make sure that everyone, regardless of income, shares in the benefits of the Games.

The authors of this report make a number of recommendations, in several key areas. However there are five core recommendations. Government must:

- 1) actively protect, maintain, and improve the existing lowincome housing stock, through vigilant enforcement of existing regulations and bylaws;
- 2) adjust welfare rates to reflect the rising price of rental accommodation and the cost of living;
- 3) create a more effective and accessible residential tenancy dispute resolution process;
- 4) allocate funding to meet the official target of 800 units of affordable housing a year for the next four years; and,
- 5) create market incentives for businesses and developers to incorporate low-income housing in new developments.

This report is dedicated to Francis "Wheels" McAllister, who died of exposure on East Hastings Street December 4, 2005. He was 37 years old.

PART 1: INTRODUCTION



Pivot Legal Society's housing initiative is based on the proposition that safe, affordable shelter is a basic human right. All of society benefits when every person in society is properly housed: disorder, crime and tax burdens decrease, while healthcare, employment and outreach opportunities increase.

In May 2005 – thanks to a grant from the Vancouver Foundation – Pivot Legal Society commenced research on the extent of the housing crisis in Vancouver through one-on-one meetings with residents of Vancouver's poorest neighbourhood, the Downtown Eastside (DTES). This report is the culmination of those research efforts.

Driven by the philosophy that people living in housing crisis best know the issues they face and the barriers that prevent them from accessing quality housing, and built on a foundation of over 160 sworn statements (called "affidavits") taken from residents of the DTES, this report aims to educate, empower, and advocate for legal and policy reform on key housing issues in Vancouver.

The affidavits that form the backbone of this report were taken over a one-year period from June 2005 to June 2006 by volunteer and staff lawyers, supported by volunteer community members, students, social workers and many others. Where affidavits did not provide the information required, freedom of information requests and surveys were employed to provide a full picture of the extent of Vancouver's housing crisis.

All of the affidavits and documents collected through Pivot's research are available online at www.pivotlegal.org. Selections from some of the affidavits are included in the report for illustrative purposes.

About our research

Affiants were asked to give personal data about themselves and to describe their experiences in some detail in order to provide background information. All information was voluntarily given; the types of information disclosed vary across the sample. No compensation was given or offered to affiants. Some of the most notable patterns and characteristics of the data include:

- 97 affiants were male;
- 53 affiants were female;
- 31 affiants had a phone;
- 14 affiants self-identified as Aboriginal;
- 127 affiants were on social assistance, with 54 of those on disability assistance;
- 25 affiants were homeless;
- an overwhelming majority of affiants' problems stemmed from poverty, and a concomitant lack of enforceable rights;
- several affiants self-identified as suffering from health problems, such as Hepatitis C, and as having an HIV positive status;
- several affiants self-identified as struggling with depression and mental health issues;
- several affiants described a history of drug use, and several were currently on a prescription methadone program.

Issues arising from the affidavits

A general lack of affordable housing in Vancouver. Affiants expressed concerns about the steady decline of affordable rental housing. This decline includes the conversion of low-income housing to student housing, closure of buildings due to by-law enforcement methods and overall rising rental prices.

Inaccessibility of social assistance. Another source of identified housing problems were insufficient social assistance, shelter and living allowances. Delayed and complicated processes in order to apply for and acquire social assistance also contributed to the inaccessibility of social assistance.

Damage deposits. Affiants raised concerns surrounding damage deposits including: a \$20-per-month reduction in the \$185per-month living allowance by the Ministry of Employment and Income Assistance for lost or stolen damage deposits, a limit of two damage deposits per social assistance recipient, and illegal retention by landlords of damage deposits.

Discrimination by landlords. Certain groups of affiants were discriminated against by landlords. These include people with mental illnesses, people of Aboriginal heritage, families with two or more members, people on social assistance or disability assistance, and individuals without identification.

Invasion, eviction, destruction and seizure by landlords, hotel employees and police. Reported incidents include police entry without warrants, breakage of locks and doors by police, eviction by police and fire officials without notice, theft and removal of property without permission and illegal room entry by hotel employees or landlords.

Denial of utilities and essential services. Affiants reported that essential services were denied to SRO residents, including heat, running water, sanitary services (toilets, sinks, communal kitchens), elevator services, access for people with disabilities, and building security.

Structural problems with the hotels. Structural problems reported included leaking roofs, rotting foundations, and leaking pipes.

Guest restrictions. Multiple affiants reported landlords who illegally prevented them from having guests, or charged fees when guests visited or stayed the night.

Aggressive and violent managers and hotel employees. Affiants described incidents of physical violence and threats of violence at the hands of landlords, managers and hotel employees.

General health issues. Affiants reported bug and rodent infestations and mould as health threats.

Enforcement of municipal and provincial laws. Affiants described aggressive enforcement approaches by City of Vancouver (the "City") and provincial officials that threatened and closed existing housing, but did not punish landlords for failing to meet standards. Enforcement methods at the Pender Hotel, Lucky Lodge Hotel, Burns Block, Powell Rooms and American Hotel were key examples.

Gentrification. Affiants gave evidence indicating that the pace of gentrification in the DTES is increasing. This uncontrolled development continues to reduce the availability of low-income housing in the DTES and increase homelessness in Vancouver.

Non-profit housing and the Residential Tenancy Act. Affiants discussed extensive barriers to RTA access, and the effect of the Act's exemption for certain forms of housing most frequently used by poor individuals.

Guest registries and privacy rights. Many SROs, shelters, transition houses, and other forms of housing in the DTES keep detailed lists of residents' names, dates of birth, and even social insurance numbers. In addition, similar information is often required from visitors to these buildings. The collection and disclosure of this information by public and private operators to police raises questions about the privacy rights of the individuals whose information is collected.

Homelessness. Affiants discussed the stigma of homelessness and difficulties surrounding the lack of access to washrooms, storage facilities, showers and other amenities.

Lack of housing. Many affiants described struggling to find affordable housing in the DTES. As a result, some affiants with housing problems spoke about their hesitation to assert their housing rights for fear of eviction, while others described wait-lists for social housing that were two to seven years long.

Police. Police inaction was reported by some affiants, who were ignored after placing calls from their place of residence for police assistance with respect to a housing issue.

Methodology

Project objectives and design

Pivot Legal Society has been investigating the housing crisis in Vancouver's DTES since May 2005. The aim of this investigation has been to identify the barriers and obstacles with which residents of the area are confronted in their attempts to access safe, affordable housing.

Pivot's research involved primary and secondary research. Primary research was done in the form of one-on-one meetings with residents of the DTES who self-identified as being in housing crisis. The information gathered was put in the form of an affidavit that was sworn by the resident.

Secondary research included:

- re-creating the City of Vancouver Low-Income Housing Survey by sending Pivot volunteers to canvas all the SROs listed in the City of Vancouver Survey with regard to rental rates, vacancies and whether or not they are willing to rent to individuals on social assistance;
- analyzing existing sources of information including but not limited to the City of Vancouver's Low-Income Housing Survey and the Greater Vancouver Homeless Count; and
- collecting and analyzing documents obtained through freedom of information requests to the Vancouver and British Columbia governments.

Affidavit project background

In February 2005, Pivot Legal Society established a working group to explore and address legal issues surrounding affordable housing in the DTES. The working group consisted of residents of the DTES, law students, lawyers, activists and researchers.

The project's methodology was developed to meet two key objectives. First, all aspects of the project were to be carried out in collaboration with local residents – those living in SROs, staying in shelters, squatting, and living on the street – to ensure the project was safe, respectful and empowering for the residents of the DTES. Second, all analyses and recommendations were to be grounded in the lived experience of residents.

Data collection

Residents of the DTES were asked to give statements in affidavit form. An affidavit is a legally sworn statement. This was chosen as the way to record and present participants' statements because affidavits are clear, concise statements accepted as written testimony in a court of law.



Members of the Housing Campaign identified venues for affidavit collecting sessions including public spaces, community centres and service providers.

A number of Pivot volunteers (non-lawyers) were trained to draft a legally valid affidavit under the supervision of a lawyer, and to facilitate participants through the affidavit process by creating a safe and comfortable environment and asking non-leading questions.

Prior to drafting an affidavit, all affiants were provided with basic information about the project. The information involved a discussion of:

- details about the project and how the affidavits would be used:
- information about confidentiality, consent, and the absence of compensation;
- instructions as to the drafting of affidavits, to ensure admissibility in court; and
- development of interpersonal skills to facilitate discussion and to build a relationship of trust with affiants.

Once an affiant had completed an affidavit, the affiant reviewed it for accuracy and added any information the affiant thought was pertinent. If the affiant was illiterate or had vision problems, the affidavit was read to the affiant, and any changes added by a volunteer. When the affiant was satisfied with the content, a volunteer lawyer attended, reviewed the affidavit, and the affidavit was sworn.

Most participants were content to have their personal information in the affidavit. However, some participants were not, and asked for anonymity. Many of these affiants were concerned about threatening their current housing arrange-

ments as a result of swearing an affidavit. As a result, some affidavits have all identifying information blacked out.

Recruitment of project participants

Members of the research team identified venues for affidavit collecting sessions. They also provided information about the time and location of the sessions to local agencies as well as to residents of the area, through word of mouth and informational posters in public spaces. Some such venues included Carnegie Centre, Oppenheimer Park, the DTES Women's Centre, the Vancouver Aboriginal Friendship Centre, the Evelyne Saller Centre, First United Church, the Vancouver Area of Network Drug Users ("VANDU") office, the Life Skills Centre, and the Grandview Calvary Baptist Church's Out of the Cold Program. Areas outside of the DTES included the Newton Advocacy Centre in Surrey and areas under the Cambie Bridge where homeless individuals had set up makeshift homes.

Data analysis

In keeping with the project's ethos, content analysis was used to find patterns of recurring issues that emerged from the qualitative data in the affidavits. In this way, the researchers' own notions about the state of housing in the DTES would not be superimposed on the affiants. Instead, research was guided by the affiants' experiences and evolved naturally out of the affidavits. Analyses were then conducted by assigning data segments to a list of issues that arose from the initial content analysis of the affidavits. A framework of themes was used as evidence for the broader arguments. There is inherent recognition in the methodology used for this report that residents of DTES have the right to participate in, and guide, a process that affects them.

Limitations

This project focuses on the experiences of a self-selected sample. As a result, demographic information cannot be taken as statistically significant. There are several other limitations to the data collected.

First, Pivot volunteers did not directly inquire into affiants' gender, race or health, but encouraged affiants to communicate the ways in which they self-identified. This possibly produced informational shortcomings in the affidavits, but ensured that affiants' privacy rights were respected.

Second, some potential affiants chose not to give affidavits as they did not want to jeopardize present living arrangements. This may mean that certain kinds of housing problems were not adequately documented.

Third, the number of participants of Aboriginal heritage is disproportionately low, when considered in terms of the Aboriginal population of the DTES in general. This may be due to the fact that some affiants of Aboriginal descent who deposed affidavits did not so disclose.

Fourth, we found that affiants were frequently unaware of the housing problems they faced, but accepted recurrent difficulties and threats of homelessness as part of their lived reality. A specific concern is that residents of the area who face particular housing issues may not have identified those issues in their affidavits because such issues are universal in the DTES and therefore perceived as "normal."

Finally, time and budget constraints limited the number of affiants, and so we were unable to capture the voice of every person who was interested in contributing to the project. Project information and affidavit sessions were held exclusively in English, which may have excluded some participants, although in no instance did this limitation directly arise; no potential participants were turned away due to language barriers.

Key definitions¹

A. DTES – "Downtown Eastside"2

The DTES is found in the downtown core of Vancouver. It is one of the city's oldest neighbourhoods. Although it is relatively small geographically, its population is very diverse. Forty-eight percent of its population consists of members of ethnic minorities, and men and seniors are overrepresented in the population compared with other areas of Vancouver.

The neighbourhood consists of five distinct areas: Chinatown, Gastown, Victory Square, Strathcona and Oppenheimer. It has long been a community with a high concentration of social problems, including poverty, mental illness, drug use, crime, survival sex work, high HIV/Hepatitis infection rates, unemployment and violence.

B. SRO – "Single Room Occupancy"

The majority of those with housing in the DTES live in "Single Room Occupancy" units, or "SROs." A typical SRO unit consists of one room measuring about ten by ten feet, with no private bathroom. Residents share common bathrooms and sometimes cooking facilities with other tenants. Single Room Occupancy units are located in privately owned and managed buildings. Most SRO units are found in either residential hotels or rooming houses.

Most of the Downtown Eastside's SRO buildings were originally built in the early 19th century as inexpensive rental accommodation for tourists, travellers, seasonal workers and those new to the city. Prior to the First World War, the DTES was Vancouver's bustling transportation, warehousing and shopping district. This was due to B.C.'s resource-based economy, which shaped the DTES into a residential area for loggers, fishermen and other emigrant workers. After the Second World War, however, economic and social change shifted Vancouver's centre west, and many of the area's SROs became permanent residences for a new low-income population, including retired resource workers, Aboriginal Peoples, middle-aged and older single men, and the disabled.³

For low-income individuals, SROs represent a crucial lifeline in the form of the lowest-cost market housing in Vancouver. The City acknowledges that the SRO housing stock "provides the lowest cost rental units in the city -- very little other market housing is available in the same price range. At the same time, it is vulnerable to redevelopment and closure."4

C. The difference between residential hotels, rooming houses and lodging houses

The term "SRO building" is an umbrella term that, for the purposes of this report, encompasses both residential hotels and rooming houses. Residential hotels are licensed to include a pub or lounge, while rooming houses are not. Other than this difference, both of these "SRO buildings" contain a similar make-up of SRO units like those described above.

The term "lodging house" is used by the City in a number of by-laws and means any building or separate portion thereof with three or more units or rooms, which are separately occupied or intended to be occupied as rental living accommodation. The definition of lodging house includes a rooming house and residential hotel but does not include a one-family dwelling, a duplex dwelling, or a building comprised exclusively of dwelling units, each with its own kitchen sink and bathroom.⁵

D. Deep-core housing

Deep-core housing means housing affordable to a person on basic social assistance. The current social assistance shelter allowance is \$325 per month.

E. Supportive housing or Special Needs Residential Facilities (SNRFs)

Supportive housing provides an intermediate form of care for seniors and people with disabilities, who have traditionally been cared for either in long-term care facilities or through home support programs. Each person in assisted living resides in his or her own apartment and must be capable of directing his or her own care. Assisted living provides a basic level of housing (a range of housing from individual, lockable rooms to selfcontained units); hospitality services (meals, housekeeping, laundry, social and recreational services); personal assistance (help with personal care such as dressing, eating, bathing and taking medications); and trained staff (college-certified home support/resident care aides or workers with an equivalent combination of education and experience, who are professionally supervised for tasks like giving medications). Even though people living in assisted living units are renters, these units are exempt from many of the sections of the Residential Tenancy Act and regulations.

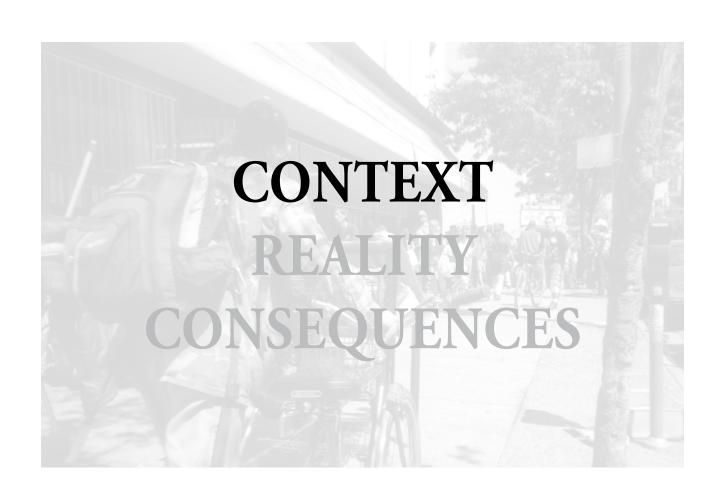
F. Affordable housing

The Canada Mortgage and Housing Corporation defines "affordable housing" as housing that costs less than 30 percent of a household's income.6

G. Market and non-market housing

Non-market housing is usually funded through municipal, provincial, and federal levels of government and managed by non-profit societies or government. Land or funds for these buildings are often provided by government. Most of the non-market housing stock in the Vancouver consists of selfcontained units, with each unit containing cooking facilities and a full bathroom; however, some former SRO buildings in the downtown core are operated as non-market housing by non-profit societies.

Market housing is defined as privately owned rental or owner-occupied housing, including live-work residences. They are generally more than 320 square feet and self-contained, with cooking and bathroom facilities. Many SROs are market housing but are often treated as a separate category.



PART 2: URBAN ABORIGINAL PEOPLE AND THE DOWNTOWN EASTSIDE



The affidavit evidence collected by the affidavit team suggests strongly that the housing issues identified in this report affect Aboriginal people disproportionately. This is not surprising, given that at least 10 percent but likely far more of the residents of Vancouver's poorest neighbourhood identify themselves as being of Aboriginal heritage.

Pivot's affidavits: affiants who self-identified as Aboriginal

Of the 160 affidavits taken from DTES residents by Pivot, almost 10 percent of the affiants (14 individuals) self-identified as Aboriginal.

I was born on the West Coast of Vancouver Island. I am a member of the Tla-o-qui-aht nation. I have been on the Downtown Eastside for 20 years.

[Affidavit 5, Ernest Francis Williams, para. 1]

I am a member of the Ojibway nation. I have lived in Vancouver for about 10 years. [. . .] I live in the "United Rooms" hotel at 35-139 East Cordova Street.

[Affidavit 31, Dan Restoule, para. 1]

I am a member of the Morricetown First Nation. [...] An advocate named Liza from the Women's Centre is trying to find me [social] housing through Native Housing. I have been on a waiting list for about a year now.

[Affidavit 97, Marguerite Joseph, paras. 1, 12, 13]

I am from the Glen Vowell Band of the Gitk's an nation. [Due to a car accident] I'm not working right now. [...] I don't know what I will do if I can't pay rent.

[Affidavit 68, Neil Kenneth Benson, paras. 1, 21, 22]

In Greater Vancouver, there are approximately 36,855 persons of Aboriginal identity. At least 10 percent of this population lives in the DTES composing 8.4 percent of the DTES population. The percentage of Aboriginal people in B.C. is 4.4 percent.⁷

Aboriginal homelessness: the GVRD homeless count

The affidavits presented convincing evidence that Aboriginal people are disproportionately affected by homelessness in Vancouver. Of all of the affiants who self-identified as being homeless in their affidavits, 28 percent were Aboriginal, even though Aboriginal people represent only 1.8 percent of the general population of Greater Vancouver, 8.4 percent of the DTES population, and nine percent of the affiants in this project.

These numbers support the findings of the Greater Vancouver Regional District (GVRD) homeless count, which found that Aboriginal people make up 30 percent of the total homeless population in Vancouver. The *GVRD Homeless Count* report reveals other disturbing statistics regarding the housing situation for Aboriginal people. About 70 percent of those who identified as Aboriginal in the GVRD survey were "street homeless" (i.e. those without physical shelter, who sleep on the street, or in doorways, parkades, underpasses and parks), compared with 57 percent of the non-Aboriginal homeless population. The *GVRD Homeless Count* also found that the number and proportion of Aboriginal



"I am sleeping [in] the park now - Oppenheimer, Crab and another one near Chinatown. A whole lot of [us] sleep outside for a long time . . . I wouldn't mind going in [an] apartment . . . I hang my laundry on the Oppenheimer fence." - Harry Joseph O'Donaghey [information courtesy 2006 Hope in Shadows photography contest]

people was highest among the street homeless at 34 percent, and smallest among the "sheltered homeless" (i.e. those staying in emergency shelters, transition houses, youth and safe houses) at 23 percent prompting the GVRD to suggest " . . . that Aboriginal people who are homeless avoid shelters, that shelters do not serve this population well or that they are underreported in the sheltered homeless data." 11 Both of these findings were strongly supported by the affidavit evidence.

I have been in Vancouver for two and a half years. I am originally from a Cree Nation in Ontario. I have family around here, but I don't know where they are. [...] I was only on welfare for three months here, then they cut me off. [...] I stay in different places outside, usually a different place every night, away from the public.

[Affidavit 33, Gordie Goodman, paras. 1, 2 and 4]

I was born in Queen Charlotte City. I am Haida Gwaii. I have been on the Downtown Eastside for 14 years. [. . .] I have been homeless for about a year.

[Affidavit 51, Brody Abel Williams, paras. 1 and 2]

According to the GVRD, there were proportionately more women among the total Aboriginal homeless population (35 percent) than among the total non-Aboriginal homeless (27 percent). 12 Similarly, in the affidavit evidence, Aboriginal women were disproportionately represented among the female homeless population in Vancouver who participated in this research.

I am 23 years old. I am from Calgary, but was born in Seattle and grew up in Vancouver. I am a member of the Blackfoot First Nation. [...] We have been forced to leave [our temporary accommodations] and we have no money and no clothing. Social services has found us a place to stay in a transitional house, where we can stay for two weeks.

[Affidavit 74, Robin Raweater, paras. 1, 8]

I am Blackfoot from the Peigan reserve. [. . .] I am homeless right now. I've been living on the street for four or five months.

[Affidavit 46, Shawne Little, paras. 1 and 2]

Finally, the GVRD Homeless Count found that Aboriginal persons were slightly more likely to have been homeless for a year or more when compared to the total homeless population.¹³ Similar stories were found among the affidavits provided by Aboriginal people in this project.

I am part Cree. I volunteer at the 10th Avenue Lions Church and at Grandview Baptist. I haven't been on assistance for three years. I'm living outside right now and I've been living outside for three years. I eat at soup kitchens. I also pick cans, find things in the alleys and sell them.

[Affidavit 100, Don Isbister, para. 1]

Conclusion

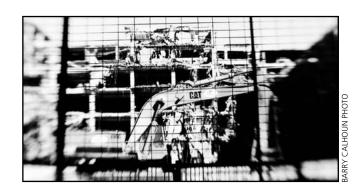
The significant Aboriginal community in the DTES, and particularly that community's representation within the homeless, street homeless and female homeless populations in Vancouver should not be ignored when examining issues of personal and institutionalized discrimination, sociocultural exclusivity and bias with regard to housing, shelter and assistance in Vancouver.

While every issue discussed in this report is relevant to the Aboriginal residents of the DTES, the key issues of gentrification, lack of affordable housing, inaccessibility of social assistance, and are particularly significant to this population that is considerably overrepresented in Vancouver's homeless and under-housed communities.

Urban Aboriginal people and DTES: recommendation

Both the Provincial and Federal governments should immediately increase funding for aboriginal-specific emergency, transition, supportive and permanent housing.

PART 3: GENTRIFICATION AND THE DOWNTOWN EASTSIDE



Whether the Downtown Eastside is gentrifying or changing, and at what speed that change is taking place, is a subject of regular debate among policy makers and community activists in Vancouver. The authors of this report addressed this debate through a discrete secondary research effort. This section of the report is based on that secondary research and aims to establish a context for the remainder of the report.

In particular, the authors of this section addressed the following:

- 1. Is gentrification taking place in the DTES?
- What factors, if any, support or discourage a finding of gentrification?

While nobody disputes that the decaying residential hotels and lodging houses of the DTES must be replaced or repaired, the concern of community members continues to be that these last bastions of affordable housing are being replaced by unaffordable market housing. If this happens, there will be nowhere for current residents to go but the street, increasing disorder, taxes, crime and drug use and dealing. These challenges could potentially spread throughout Vancouver.

Methodology

Researchers developed a framework of analysis through an extensive review of the relevant gentrification literature. A definition of gentrification, assembled from the same literature review, was also used to guide their analysis. The framework established various indicators that were used to identify whether, and to what extent, gentrification of the DTES

was taking place. While many indicators were present in the literature, the authors chose four indicators for their ability to best reflect the basic elements of gentrification. Indicators the researchers chose to examine were:

- 1. rates of loss or gain of "affordable" housing in the DTES;
- the extent of demand for market housing in Vancouver and the existence of development in the DTES;
- 3. what, if any, impact the 2010 Olympics might have on the DTES; and
- 4. current government policy and the DTES.

To examine these indicators, researchers analyzed the 2005 City of Vancouver (the "City") Low-Income Housing Survey; the 2004 City DTES Community Monitoring Report; local and national newspaper articles outlining new development and SRO loss in the DTES; the City DTES Housing Plan; the Community Assessment of the 2010 Winter Games and Paralympic Games on Vancouver's Inner-City Neighbourhoods prepared for the Vancouver Agreement; Housing Market Outlooks from the Scotia Bank, the TD Bank, Re/Max and Royal LePage; statistical information from Statistics Canada and Statistics B.C.; the City's affordable housing policies; the 2010 Olympic Winter

Games Inner-City Inclusivity Commitment Statement; the Vancouver Agreement's Integrated Strategic Plan; homelessness statistics and research from the B.C. Ministry of Social Development and Economic Security, and the GVRD Homeless Count report.

What is "gentrification"?

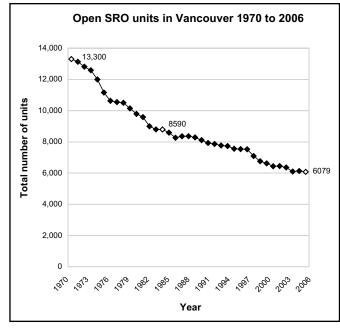
Social researchers, urban planners and legal scholars have defined "gentrification" in various ways. For the purposes of this section, the term "gentrification" is an occurrence that takes place in urban neighbourhoods populated by low-income households located in or near a city centre. It is a phenomenon of social and economic change, whereby more affluent residents return to a disadvantaged area, attracted primarily by its low cost, location at the city's core, and proximity to environmental, social and cultural amenities, such as art galleries, restaurants, theatres and places of work. 14

The arrival of these new residents has a snowball effect that leads to a transformation of the traditional neighbourhood as old low-income housing is demolished and redeveloped or simply converted into higher-priced accommodation. Simultaneously, landlords increase rental rates to respond to the boost in demand for housing by those with greater affluence. 15 As low-income housing is destroyed through redevelopment and rendered unavailable through rent increases, low-income residents are "displaced," as they can no longer afford the cost of living and, consequently, face either eviction or forced relocation. 16 This economic movement has a significant impact on the pre-existing low-income community, destroying support networks by dispersing individuals into neighbourhoods that are great distances from social services, community groups and social groups that were once situated close at hand. In the wake of gentrification, those who cannot find or afford replacement housing are often left homeless, creating significant social and economic costs.

Indicator 1: the loss of affordable housing in Vancouver's Downtown Eastside

There is clear evidence that gentrification is taking place in Vancouver's downtown core, and none is more perceptible than the loss of the Single Room Occupant (SRO) stock through the disappearance of residential hotels and rooming houses. This loss occurs because of:

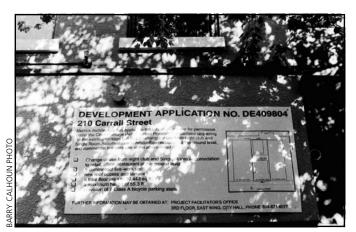
redevelopment – SROs are redeveloped for market housing or commercial use;



- closure SROs are closed because of their failure to comply with City's by-laws, such as the Standards of Maintenance, Fire, and Health by-laws;
- rent increases increases in SRO rental rates to above \$380 a month put rooms out of reach of social assistance recipients whose shelter allowance is \$325 a month; and,
- conversions/renovations SRO units are renovated and upgraded, which may put them beyond what is affordable for low-income tenants. Units may also be lost if their use changes from that of residential housing to student or temporary accommodation.

The City has introduced the Single Room Accommodation By-law, a very progressive measure intended to prevent conversion of SRO stock to hotels for tourists or condominiums. The by-law works by charging a \$5,000 levy for each room that is to be converted to another use, the funds from which are intended to be used for replacement housing. However, the intended effect of this by-law has been circumvented by some landlords who have converted SROs to student housing, others who have renovated and increased rents beyond what those on social assistance can afford, and still others who leave SRO units empty rather than rent them while they wait for property values to increase. In addition, for those who have paid the \$5,000 levy, the City has found that the cost of replacing the lost housing far exceeds the \$5,000 received in revenue as a result of the by-law.

In its Low-Income Housing Survey, the City lists the total



The biggest source of loss according to the City of Vancouver was "conversion," specifically, the conversion of SRO units into budget hotels, non-market housing, and hostels/backpackers inns.

loss of SRO units, in the 14 years leading up to 2005, as 1,846 units. ¹⁷ The biggest source of loss according to the City was "conversion," specifically the conversion of SRO units into budget hotels, non-market housing and hostels/backpackers inns. After conversion, enforcement of City by-laws (i.e. *Health, Standards of Maintenance*, and *Fire*) resulted in the second-greatest loss to the City's SRO stock. Then, ranked from greatest to least, loss was a consequence of fire, redevelopment, renovations and closure. ¹⁸

Oversights in methodology have meant that the City's statistics with regard to SRO loss err well on the side of conservatism. Statistics released by Pivot have shown that the City failed to account for the loss of 206 units as a result of the conversion of three buildings containing low-income units into student housing. The City also overlooked an additional 415 units lost due to rent inflation. ¹⁹ Furthermore, since June 2005, the DTES has seen the loss of almost 300 SRO units from the closure of the Pender and the Burns Block hotels and the conversion of the Marble Arch and St. Helen's hotels into higher priced residential unit hotels. These losses not only denote a quickly shrinking SRO stock, but also signify the ongoing process of attrition that characterizes gentrification: a process that shows signs of accelerating as the 2010 Olympic Games approach (see the "Lack of affordable housing" section on page 17). While the City is building a limited number of low-income single deep-core housing units – approximately 270 will be built over the next three years according to the City's DTES non-market inventory - the number of units slated for construction falls short of that necessary to keep pace with the projected rate of SRO loss.²⁰

Indicator 2: market-housing demand in Vancouver

Twenty-five years ago there was almost no condominium development within 15 blocks of Oppenheimer Park, in the heart of the Downtown Eastside, and the area was surrounded by industry and service-commercial business. Today there are condominium projects within two blocks of Oppenheimer Park, and there are hundreds of condominium units currently under construction or in the development process in the Downtown Eastside. The residential real estate market has strengthened, and significant market development is anticipated over the next decade as sites in the downtown core get built out.

City of Vancouver, Housing Plan for the Downtown Eastside,
 Sept. 22, 2005, p. 16

The researchers examined the City's real estate market to explain how market-housing demand affects affordable housing and contributes to gentrification. Over the years Vancouver's housing market has suffered from a steady decrease in affordability. As an example of the extent of development in the DTES, according to the 2004 *Downtown Eastside Community Monitoring Report* between 1995 and 1999 (updated edition), the City issued 28 development permits for the Oppenheimer sub-area of the DTES (i.e. the core of the DTES neighbourhood). Between 2000 and 2005, for the same area, the City issued 55 development permits – almost double the number of permits issued in the previous five-year span. ²¹ Likewise, statistics from the report surrounding market housing projects (i.e. those completed and those in progress) in the DTES illustrate how the area is moving towards gentrification. ²² Between 1994



Between 2000 and 2005 the City issued 55 development permits in the Oppenheimer sub-area of the DTES – almost double the number issued in the previous five-year span.

and 2004, the Victory Square sub-area of the DTES saw only 48 market housing projects completed. However, as of June 2005, there were 158 market housing projects in progress. This noticeable increase in development is one indicator of the type of re-investment that characterizes gentrifying neighbourhoods.

Geographically speaking, the DTES is also ripe for development. Two dynamics best explain this: (1) the scarcity of land on the peninsula on which Vancouver's downtown core is built and (2) the class of housing that encircles and borders the DTES, which primarily serves higher socio-economic groups.²³ As a response to the scarcity of land in Vancouver's downtown core, the City has encouraged development in the DTES by extending heritage grants, tax exemptions and density bonuses into the Downtown Eastside/Oppenheimer zoning district.

Gentrifying neighbourhoods like the DTES offer not only comparative affordability, but also proximity to downtown. This spatial immediacy comes with a location that is perceived by many Vancouverites as "hipper" and "fresher" than other downtown neighbourhoods. As such, it is alluring to those in search of a particular urban lifestyle. The marketing of Vancouver's redeveloped historic Woodward's building, which lies on the edge of the DTES, tapped into this sentiment of urban pioneering. The marginalized neighbourhood's street life, which consists of open and rampant homelessness and endemic poverty was marketed as "authentic" and "cutting edge," and full of "heritage" and "character." 24 One of the development's advertisements exclaimed, "BE BOLD OR MOVE TO SUBURBIA"; while another of the development's advertisements directly addressed gentrification in the area, declaring, "The smart money gets in early. Vancouver can only grow in one direction - East. "25

These advertisements are not just clever marketing aimed at a population of forward-looking new residents; they also contain the forecast that the DTES is set to gentrify and those looking for a good investment would be wise to buy into the neighbourhood. In April 2006, Woodward's 536 residential units sold out in two days.

While the acclaimed Woodward's development will also provide 125 new housing units for low income singles when it is completed in 2009, the number of social housing units is a fraction of the official City target of 800 units of low-income housing that needs to be created per year. Projected additions to the low-income housing stock in Vancouver, including the Woodward's development, are fewer than 300 units for lowincome singles over the next three years.



While the acclaimed Woodward's development will also provide 125 new low-income housing units (100 of which will be for individuals in deep core need) when it is completed in 2009, the number of social housing units is a fraction of the official City target of 800 units of lowincome housing that needs to be created per year.

The rapid sale of the condominiums in the Woodward's district and the construction of other condominiums in the DTES signal a shift in the neighbourhood's traditional occupancy from rental to home ownership. This shift indicates yet another aspect of the area's changing character and yet another sign that gentrification is taking place.²⁶

For some, factors like the hot real estate market and the upcoming Olympics signal a chance to make a profit through real estate investment. The presence of speculation is a strong indicator for a hot real estate market. Speculators are those who take advantage of a demand for property, invest in it, and then resell it at a profit.

Often speculators who buy property will leave it unoccupied until re-sale, and by doing so, increase demand for the remaining low-income housing stock and drive rents higher and out of reach of traditional residents. Many vacant buildings in the DTES, previously used for low-income rental housing, are being held vacant by speculators.²⁷

The "Irrational Exuberance Indicator" is a scale that measures speculative activity in a particular real estate market. An indicator greater than 10 means a real estate market is at an increased risk of speculative activity. In the first quarter of 2006, Vancouver scored 23.²⁸

Indicator 3: the "Olympic effect" – the 2010 Winter Olympics

"When the world arrives in Vancouver in 2010, what kind of city will they find?"

- Sam Sullivan, City of Vancouver Mayor, Inaugural Speech, Dec. 2005²⁹

Being an Olympic host city has a number of implications for Vancouver, and more specifically, the DTES. One of those is how Olympic-driven speculation will affect real estate prices and, in turn, Vancouver's remaining low-income housing stock. Vancouver has already felt some of this effect as infrastructure investments related to the 2010 Games have begun. These investments have played a considerable role in keeping Vancouver's housing market hot and in increasing the costs of development of new non-market housing. ³⁰

Large-scale events, such as the Olympics, can suffer from organizational shortcomings that fail to take account of the housing effects associated with their size and spectacle. 31 In addition to this, planning committees organize events to encourage real estate growth and redevelopment in the cities in which they are held. 32

In fact, one could argue that a particular motivation behind why cities compete for these events is because of the potential for such events to lead to the urban redevelopment of the city, especially the inner city. As an example, a report prepared for the Vancouver Agreement, the Community Assessment of the 2010 Winter Games and Paralympic Games on Vancouver's Inner-City Neighbourhoods, endorsed the Olympics' potential to serve as a vehicle for "revitalization" of the DTES.³³ In previous instances where cities have hosted mega-events, the long-term impact of urban redevelopment, catalyzed initially by the mega-event, has held detrimental consequences for the marginalized communities within those cities, including displacement, which most often resulted from forced evictions and the loss of affordable housing.³⁴ For example, both the 1986 Expo in Vancouver and the 1988 Winter Olympics in Calgary had negative effects on the low-income communities in those cities, causing mass forced evictions and the large-scale loss of affordable housing.³⁵

Indicator 4: urban policy and the DTES

The Municipal and Provincial governments have failed to respond to the housing crisis looming in Vancouver. Municipal by-laws and initiatives, such as the *Single Room*

Accommodation By-law ("SRA By-law") and the City's Housing Plan for the Downtown Eastside (adopted in September 2005), have not halted the loss of affordable housing in the DTES. In fact, in some instances, the City has contributed to the loss of what remains of the SRO stock. For example, the recent closure of the Burns Block hotel was the result of fire code enforcement for minor violations. SRO closures due to enforcement of health, fire and maintenance standards legislation can provide loopholes for landlords to escape the City's SRA By-law and its provisions designed to protect low-income tenants (see the "Enforcement of by-laws" section on page 56).

Among other issues, the *Housing Plan* recognises the importance of affordable housing in the DTES, and the fact that there are few other opportunities outside the area to find low-income housing due to climbing real estate prices and rents.³⁶

The *Housing Plan* states as fundamental objectives: *no* loss of low-income housing, *no* displacement of residents, and the one-to-one replacement of lost SRO units.³⁷ To date, these objectives have not been met. Individuals *have* been displaced, the SRO stock *is* rapidly decreasing, and one-to-one replacement *has not* been achieved.

The B.C. Government has also failed to address the affordable housing crisis. The *Employment and Assistance Act* (the "*EAA*"), the legislation that currently governs income assistance (i.e. welfare) in the province, has strict eligibility requirements, a lack of benefits and few opportunities to appeal (see the "Inaccessibility of social assistance" section on page 21).³⁸

The maximum allowance for "employable singles" under 65 is \$510 a month, separated into a \$325 maximum shelter allowance, and \$185 maximum living allowance. ³⁹ As of 2005, only 76 percent of rooms in the SRO stock rented for less than \$380 a month. ⁴⁰ When rents rise above \$380, housing is effectively out of reach for those on income assistance.

Although resources exist within the B.C. Residential Tenancy Act (the "RTA") to shield residents of SROs from illegal evictions by landlords who would seek to benefit from gentrification at the expense of low-income tenants, tenants who want to assert their rights through the enforcement mechanisms provided under the RTA, such as arbitration, face a process that is arduous, time-consuming, costly for those on social assistance and complex (see the "Barriers to RTA Access" section on page 60).

The hidden costs of uncontrolled gentrification: homelessness

Homelessness will likely increase unless existing low-income housing is preserved or replaced as the existing low-income housing is the most affordable in the city and the region. Social dysfunction is likely to increase as well if the SROs are not replaced with social housing and supportive housing is not built in the Downtown Eastside and throughout the city and region.

- City of Vancouver, Housing Plan for the Downtown Eastside, 2005, p. 16

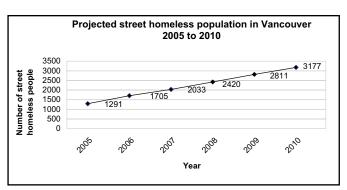
The GVRD released its GVRD Homeless Count in September 2005. 41 According to the report, street homelessness doubled in Vancouver between 2002 and 2005, rising from 628 people in 2002 to 1,291 people in 2005.⁴²

The reasons individuals find themselves homeless are numerous and complex, and while there is a danger of oversimplifying causal factors, there are, nonetheless, some significant contributing factors that suggest uncontrolled gentrification is a driving force in causing homelessness. In the GVRD Homeless Count, economic factors, i.e. cost of housing and lack of income, were given by 66 percent of individuals as reasons for their homelessness.⁴³

The upcoming Olympics requires an influx of workers to fill Olympic-related employment opportunities. The Olympics will also see a tightening of population outflow as fewer individuals leave the province.⁴⁴ Both will put increasing pressure on Vancouver's housing market. Many of these individuals will be in search of low-income housing and willing to pay more in rent than current residents of the DTES. This influx will create additional pressure on the DTES SRO stock and will increase current levels of displacement.

The migrant workers and newly displaced persons that cannot find other available low-income housing will spill over onto the street and into shelters. 45 The cost of this increase in homelessness will be passed along to taxpayers in the form of increased government spending in social services, health care and criminal law enforcement. 46 Accordingly, there are strong economic incentives to remedy uncontrolled gentrification early on. As an illustration, in a 2001 study, the B.C. Ministry of Social Development and Economic Security stated that:

the B.C. Government spent 33 percent more on the provision of health care, criminal justice and social services to a homeless person than to a socially housed unemployed individual;⁴⁷



This chart is based on the current rate of 400 SRO units lost per year in Vancouver. The rate is 1.2 made homeless per lost SRO unit and takes into account planned new building construction for lowincome singles by the City of Vancouver.

the combined service and shelter costs of homeless people ranged from \$30,000 to \$40,000 on average per person for one year (including the cost of staying in a homeless shelter). By contrast, the combined costs of service and housing for housed individuals in a social housing facility ranged from \$22,000 to \$28,000 per person per year.⁴⁸

Gentrification and the Downtown Eastside: recommendations

In order for any recommendations to be effective, government must work in concert with private developers, non-profit groups, and the DTES community.

Sustainable development

The City should not permit any residential development in Vancouver that does not allocate at least some portion of that development to housing for deep-core need residents, whether through a levy paid to provide housing on another site or through room allotments.

Protection of existing low-income housing stock

- The B.C. Government should amend the Vancouver Charter to allow the City to treat rent increases and conversion of low-income rental buildings to student housing as violations of the City SRA By-law.
- 3. The City should purchase the two hotels for renovation and re-opening as deep-core need housing promised in the DTES Housing Plan immediately, and begin setting aside funds to purchase one hotel per year each following year for the same purpose.

- 4. The City should appoint at least two staff whose sole responsibility is the identification of buildings listed on the City *SRA By-Law Schedule* in danger of closure and working with owners, municipal agencies and provincial agencies to ensure that the buildings remain open.
- 5. The City should not permit conversion of any building listed in the City of Vancouver *SRA By-Law Schedule* that does not provide greater than 1-for-1 replacement of the units to be converted.
- 6. The City should not permit any renovation other than standards of maintenance repairs for any building listed in the *SRA By-Law Schedule* where the owner does not commit to maintaining current rental rates upon completion.

7. The City should introduce anti-vacancy measures such as increased municipal taxes for vacant buildings that were formerly used as low-income rental housing in order to reduce eviction and purchase of these buildings by real estate speculators.

Community participation

8. The City should introduce a DTES planning office whose sole responsibility is to inform local residents of planned developments and facilitate meaningful community participation in neighbourhood development, as proposed by the Urban Core Service Providers' Coalition.

PART 4: LACK OF AFFORDABLE HOUSING



Multiple affiants identified issues consistent with a lack of available, affordable rental housing in Vancouver. This evidence was inconsistent with the City of Vancouver's Survey of Low Income Housing, which suggested that new lowincome housing was being added to the low-income housing stock. Pivot Legal Society decided to conduct its own survey of low-income housing in Vancouver.

Affiants stated that searching for subsidized, non-market housing was often frustrated by long waiting lists.

I'm on the waiting list for housing with the Downtown Eastside Residents' Association. I've been on the list for as long as I remember, it's been about 10 years. I check in every couple of months or every half-year to see where I am on the list, and they tell me I'm on the bottom. I don't understand how I can be on the list so long and still be at the bottom.

[Affidavit 66, Michael Oliver House, at paras. 2-5]

I have been looking for housing since January 2005. I am on disability (level 2) for bipolar and obsessive compulsive disorder. I have been told by the Lookout Society that there are no spots for me. I have an advocate that has assisted me. I have applied through B.C. Housing; they have told me that there is a minimum two year waiting list. DERA has told me that there is a five year waiting list.

[Affidavit 70, Paul Van Aspert, at paras. 3-4]

On Monday, I called B.C. Housing and told them I was being evicted. I asked for housing anywhere in the Lower Mainland.

They told me that if I didn't dispute the allegations, that they would become fact and would go on my file. They told me as a result I would be taken off of their list and that until I could prove that I could live for a year in a place without problems, they wouldn't put me back on their list.

[Affidavit 75, Rod Michelson, at para. 31]

The City of Vancouver's SRO survey

The City of Vancouver (the "City") relies primarily on a report called the 2005 Survey of Low-Income Housing in the Downtown Core for its data and forecasts for affordable housing. These data suggest that Vancouver's housing stock is not in decline and that the low-income units that have been converted to other uses have been or will be replaced.

Early in this project, this data appeared to be inconsistent with the lived experience of the affiants. As a result, in 2005, Pivot undertook a close analysis of the City's numbers and revealed that a net loss, rather than a net gain, of affordable housing has taken place in Vancouver since 2003, during a period of rapid growth for the city. 49 But even these statistics were based entirely upon self-reporting by landlords to the

City. For a more accurate picture of the state of the Vancouver's housing stock, Pivot undertook a study of the housing at the addresses listed as "low-income housing" in the City's housing report.

Pivot Legal Society's 2006 SRO survey

In July 2006, Pivot Legal Society with the aid of several volunteers undertook a housing survey with the objective of investigating the accessibility, availability and affordability of single-room accommodation in the DTES. The survey was conducted using the same list of designated low-income housing found in the City's 2005 Low-Income Housing Survey. The Pender and Burns Block hotels, both now closed, were excluded by Pivot volunteers, as well as the Creekside Residences because of their "student-only" policy.

Pivot volunteers, identifying themselves as potential tenants, and not as representatives of Pivot, canvassed 114 SRO hotels, inquiring into the number of rooms available, weekly/monthly rents, and whether or not landlords would rent to persons on income assistance. Volunteers wore their usual street clothes and did not make any attempt to appear as anything other than middle-class individuals. Volunteers found that the likelihood of locating a hotel, contacting a landlord or manager and then finding an available room with a rental rate not over \$380 a month was extremely low, even without the appearance of someone living on the street without access to clean clothes, regular shower facilities and services like haircuts.

Overview of the survey results

Total number of SROs surveyed	114
SROs with vacancies with rents of \$325	1
SROs that responded	51
SROs that could not be contacted	63
SROs that gave rental rates	49
- rents under \$325/month	0
- rents of \$325/month	6
- rents from \$345 to \$350/month	7
- rents from \$359 to \$380/month	26
- rents \$380 and over	10
SROs that stated they do not rent to	
social assistance recipients	2
SROs that stated they had room vacancies	19
SROs with vacancies with rents under \$380	14

Accessibility of housing counted as "affordable" in Vancouver

The greatest challenge of the Pivot survey, and certainly a challenge that would present itself to a prospective tenant, was that 63 out of 114 listed designated SROs could not be contacted by phone or in person. Of the 114 listed housing providers, even after repeated attempts, Pivot volunteers were only able to contact and speak with the landlord or managers of 51.⁵¹ Of those 51, one provided no information with respect to rental rates, one only rented to members of the Chinese Freemasons, one refused to speak to canvassers, two rented only to mental health patients, and one rented only to individuals on a methadone program. The final number of buildings that gave rental rates was 49.

In most cases, no phone number was listed for the building, and nobody answered the doors of the residences when volunteers knocked. Many of the hotels that might otherwise provide rooms for rent were poorly marked, if marked at all, and provided no buzzer or public entrance to contact persons inside, including managers and landlords. Pivot volunteers also had difficulty in tracking down phone numbers of some SROs as they were unlisted or listed under the name of the company which owns the building. As a result, rental inquiries took a substantial amount of time and resources, including access to a computer and the Internet, access to a phone for repeated phone calls, and repeated trips to the building, often with no result.

Increasing rent levels

Ten out of 49 who responded to rent cost inquiries had no rental rates under \$380, making them unaffordable for individuals on social assistance. Three hundred and eighty dollars is an estimate of the point at which low-income housing is no longer affordable to individuals on social assistance who receive \$325 for a shelter allowance each month (see the "Inaccessibility of social assistance" on page 23).⁵² Over twenty percent of the SROs that responded to rental inquiries – buildings designated as "affordable housing" in the City's low-income housing survey – turned out to be unfeasible housing options for persons on social assistance.

Twenty-six of the 49 buildings surveyed were renting at rates between \$359 and \$380 per month. Of those buildings below \$380 per month, only 14 had vacancies and would rent to people on social assistance. Only six of the buildings rented at the shelter allowance rate of \$325 per month, and only one of those had vacancies.

Many of the SROs who gave rental rates had a range of

prices for their rooms. For statistical analysis, the lowest rate given was used. This means that the situation may, in fact, be even worse than presented here.

Discrimination against social assistance recipients, drug users, and others

Two out of 51 respondents did not rent to welfare recipients. Volunteers also discovered that some SROs pre-screened against people appearing to be drug users.⁵³

[The landlord told me] that no users could stay in the hotel and no guests were allowed in who are users.

[Affidavit G, Bonnie Cruickshank, at para. 4]

Some of the SROs required personal references or were "men's only" facilities. References from past landlords are often difficult to obtain when a person lives a transient lifestyle due to economic circumstances.⁵⁴

I went to Laurel Apartments, at 610 Alexander St. on Tuesday. I was with a male friend, Soyer, at the time. I rang the buzzer. A person answered over the intercom. I asked if there were any rooms for rent. It was a man's voice that spoke to me. He said that it was a "men's only" building and hung up. I then asked my male friend to try again. He was successfully buzzed in, and spoke to the manager of the building. He told me that the manager said that there were vacancies, and that they rented to people on welfare, but references were required.

[Affidavit H, Bonnie Cruickshank, at para. 6]



Rejected and priced out. Pivot's survey results indicate that only 17 buildings in Vancouver are available to take new tenants who are on social assistance and that only one of those buildings had a vacancy at the current shelter allowance rate.

With three of the SROs, availability was restricted to persons referred to the premises by a mental health authority or to persons who are participating in methadone treatment programs, making the housing a Special Needs Residential Facility, akin to a healthcare facility - not affordable housing, and not an SRO.55

The first place I went to was the Cambie House, at 340 Cambie Street, where the manager, Rod, also an occupant, informed me that rentals in the building were only for recovering heroin addicts.

[Affidavit I, Kate Sansom, at para. 3]

I asked them if they had any rooms available to rent. They said not exactly because they only take people referred to them by a health facility or a mental health facility.

[Affidavit H, Bonnie Cruickshank, at para. 3]

A number of the SROs surveyed in Chinatown were associations that rented to members only, and not to the general public.56

The place didn't look like a residential building, more like an office building. There were no signs or indicators that it was a residential building, like room numbers. I asked the younger one if there were any rooms to rent. He immediately said, "We don't have any rooms for you." I then clarified and asked if it was because there were none available or they just didn't have any rooms. The young one said that that it was an association, and they didn't have any rooms to rent. Then, the younger one walked away. The older one however said that they didn't have any rooms for people who were not members of the association.

[Affidavit G, Bonnie Cruickshank, at para. 9]

Due to the shortage in available affordable housing, the reality is that many SROs in the DTES discriminate with regard to the types of tenants they accept. As a result, many hard-to-house persons, such as those with addictions, are at a great disadvantage when attempting to secure housing.

Analysis of the results of the survey

The list of SROs provided by the City in their low-income housing survey suggests there is sufficient existing affordable low-income housing in Vancouver, and that the availability of such housing is increasing. However, one of the limitations of the survey is its failure to account for the difficulties inherent in actually accessing and securing such housing.

Well-dressed and healthy volunteers experienced first-hand the difficulty locating adequate shelter as well as discriminatory practices of landlords at some of the buildings. Pivot's results indicate that only 17 buildings in Vancouver were available to take new tenants who are on social assistance and that only one of those buildings had a vacancy at the current shelter allowance rate. As a result, the City's 2005 Low-Income Housing Survey is an unreliable representation of the availability of low income housing in Vancouver.

Almost 300 rooms have been lost since June 2005 as a result of SRO closures, including the Pender Hotel (36) and the Burns Block (18). Included in this total is the Marble Arch Hotel (148) that has converted to student housing and the St. Helen's, on Granville Street (93) that has recently

- following renovations - begun charging a more expensive rate. The City of Vancouver has only three projects underway to replace these lost SROs, and the total number of rooms in these initiatives will, in the best-case scenario, be only 172 by 2007.57

Affordable housing recommendations

- 1. The City must urgently pursue its goal of 800 new social housing units per year through emergency meetings with all levels of government, developers and community members and groups.
- 2. The City must include rent increases, private associations and student housing conversions in its statistics on SRO conversions so as to provide a more accurate portrait of the housing situation in the DTES.

PART 5: THE INACCESSIBILITY OF SOCIAL ASSISTANCE



Affiants identified multiple barriers to accessing emergency social assistance and income assistance through the Ministry of Employment and Income Assistance. Obstacles to qualifying for social assistance that were reported by affiants included extensive wait times and restrictive eligibility criteria. Even after being successfully accepted into the system, affiants described the difficulty of survival on social assistance rates that have not been raised in over a decade, as well as their experiences as victims of fraudulent activity by landlords.

In 2002, the B.C. Government passed the B.C. Employment and Assistance Act. 58 The changes to the way in which social assistance was distributed under that Act led to a dramatic decrease in the number of people using the system. Overall, the number of people receiving assistance dropped by 42 percent.⁵⁹ This drop was not the result of the reintegration of social assistance recipients into the workforce, but was rather a reflection of the acceptance of fewer applicants into the system. 60 In June 2001, 90 percent of people who applied for social assistance were accepted; in 2004 however, only 51 percent of applicants were successful.⁶¹

Findings

Problems with application and eligibility requirements

Multiple affiants raised issues that suggested an overly bureaucratic and lengthy social assistance application process. As a consequence of these delays, individuals unable to access housing are put at risk of homelessness.

To reapply for welfare, I had to jump through a bunch of administrative hoops that I gave up on completing. I did go through the Internet application process. I booked an appointment. I came back for the appointment. They had no record of the appointment and didn't know why they made the appointment because I needed to wait for three weeks before getting welfare.

[Affidavit 22, William Simpson, at para. 6]

I was not able to get my first welfare cheque until about two months later. During those two months, I stayed in parks, friends' houses, wherever.

[Affidavit 11, Randy Allan Darling, at paras. 3-4, 9]

The complexity of the bureaucratic process leads to an incongruous situation where the provincial government funds programs that fast-track people through the process the provincial government itself created.

Current social assistance rates

Multiple affiants spoke about the difficulty of living on limited social assistance rates. The current rate of \$510 a month for a single adult is split into a \$325 shelter allowance, which automatically goes to a recipient's landlord, and a \$185 living allowance. If a recipient cannot access housing, they are denied a shelter allowance. Many affiants described supplementing the \$325 shelter allowance with their living allowance to compensate for increasing rents.

Once I have paid my monthly rent I am left with \$90 for all my living expenses.

[Affidavit 84, Cindy Ulrich, at para. 4]

The biggest housing problem on the Downtown Eastside is that the rent is so high. I am on disability and I have to take money from that to pay for my hotel room.

[Affidavit 134, Anne-Marie Monks, at paras. 2-3]

I live at the Jubilee; I pay \$375 per month. I have to pay \$325 out of the shelter allowance and \$50 out of my other money.

[Affidavit 72, Raymond Brown, at paras. 2–6]

The consequences of current social assistance rates

Affiants receiving social assistance spoke of the inability to afford necessities as a consequence of an inadequate support allowance, precluding their ability to look for work or purchase food:

Welfare is \$490 per month. \$350 goes directly to shelter. [...] I get \$140 per month for all of my expenses. I don't have enough money for other things, like bus fare to and from work.

[Affidavit 11, Randy Allan Darling, paras. 3-4, 9]

After I pay my rent, I have \$142 to cover my necessities. This is not very much money and the struggle does take a toll on my emotions and health. To help make ends meet, I have a free lunch every day at the Downtown Eastside Women's Shelter. I don't usually eat breakfast. [...] I don't usually have dinner but may grab something light to eat, such as a slice of pizza, if I am hungry. It's not very healthy.

[Affidavit 83, Christiane Bordier, at paras. 3-4]

Right now I live on \$205 welfare payments for two weeks, the rest of the time I use food lines.

[Affidavit 20, Robert Vincent, at para. 24]

Fraudulent activity by landlords

One affiant receiving social assistance reported being involved in welfare fraud with his landlord. In the most common type of welfare fraud, a social assistance cheque is issued in the name of a landlord to pay rent for a recipient. The landlord will offer the recipient cash for less than the value of the cheque, and the recipient will not use the accommodation, permitting the landlord to rent it to somebody else. In most cases, tenants involved in selling their rent cheques have serious addiction issues.

I pay \$360 per month in rent. [...] Each month I would come to the Lucky Lodge, and Anna Laudisio would give me \$180, and I would live on the street.

[Affidavit 141, Anonymous, at paras. 3, 9]

The Vancouver Police Department (VPD) responded to welfare fraud by undertaking an operation, called Project Haven, in 2005. This undercover investigation was directed at corrupt businesses in the DTES. In particular, the investigation focused on three hotels: the Astoria Hotel, the Lucky Lodge and the Gastown Hotel. Project Haven resulted in multiple charges of welfare fraud and business license reviews (see "Enforcement of by-laws" section on page 56).

Welfare fraud has the potential of extending its harm well beyond those recipients upon whom it is practised. The VPD has declared that owners of SROs who do not halt their practice of welfare fraud face the closure of their buildings. Any such closure would result in the eviction of all of the SRO's residents and, subsequently, the loss of vital rooms that are affordable to social assistance recipients. In 2006, the VPD launched an expanded second phase of Project Haven in which they plan to target 50 additional DTES hotels and rooming houses. ⁶³

Legal analysis

The preliminary job search requirement and emergency assessment policy

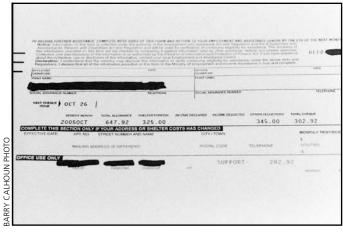
Before an individual's social assistance application will be considered, he or she must complete a three-week "active" job search. ⁶⁴ Applicants must demonstrate that their employment search has involved regular and ongoing efforts to find employment, and that they have not restricted their search to a particular type of job or wage range. This requirement means that even people who are in urgent need of social assistance cannot get immediate access. It also ignores the reality that social

assistance for many people and those who apply have often exhausted all other financial options. Very few social assistance applicants have the economic means to support themselves for three weeks while they conduct a job search. Moreover, upon finishing the job search requirement, applicants must continue to wait for their application to be processed before they actually begin to receive assistance.

An exception to the three-week job search criterion is the Emergency Assessment Policy, which allows people to apply for emergency funding. However, applicants are not told of this option when they initially apply. Unless they are aware of it, and specifically ask to receive emergency funding, they will not have access to it.65

The independence test

Applicants are only able to file a social assistance application once they have proven they have undertaken the required threeweek job search. However, to be eligible, applicants must prove: (1) that they have earned at least \$7,000 in each of the two years prior to applying for social assistance or (2) that they have worked a minimum of 840 hours in each of those two years.⁶⁶ These criteria serve to deny assistance to people because of their lack of financial independence: an illogical consequence, given that social assistance is intended to help those who are unable to achieve financial independence.⁶⁷



Social assistance rates in B.C. have not been raised in over 12 years, despite periods of significant inflation that have effectively decreased the value of social assistance payments by 24-30 percent.

Current social assistance rates

Social assistance rates in B.C. are extremely low. Social assistance rates have not been raised in over 12 years, despite periods of significant inflation that have effectively decreased the value of basic social assistance payments by 24-30 percent, depending on the measure used.⁶⁸

Many recipients receive less than the full allowance due to deductions made by the Ministry of Employment and Income Assistance (see "Damage deposits" section on page 26). Assistance recipients are discouraged from working, as reported income is deducted dollar for dollar from the social assistance recipient's following month's cheque. As a result, many recipients resort to black market labour where income is not reported, or to limited exceptions like "binning" for pop bottles and cans, in order to supplement welfare rates.

The insufficiency of the current support allowance is easily demonstrated by examining the cost of one of the most basic necessities: food. In their report, The Cost of Eating in B.C., the Dieticians of Canada state that a monthly food allowance for a single adult male costs approximately \$170, while an adequate diet for an adult female costs approximately \$140.69 According to these figures, a single male would have to spend 92 percent of his support allowance on food, leaving him with a mere 50 cents per day to cover all other expenses, while a single female would have to spend 75 percent of her support allowance on food.

The inability to afford such necessities has a far-reaching effect on social assistance recipients. For example, a lack of access to basic transport such as public transit and basic services like telephone makes it difficult for individuals to find or keep work. It also restricts their employment efforts to very narrow geographic areas. Furthermore, recipients are unable to relocate in order to find employment. In 2001, the average monthly rent in the DTES was \$407. This figure represents approximately half of the average rent in the rest of Vancouver.⁷⁰

Low levels of income assistance limit not only the areas of the city in which assistance recipients can afford to live, but also the areas in which they can search for employment.

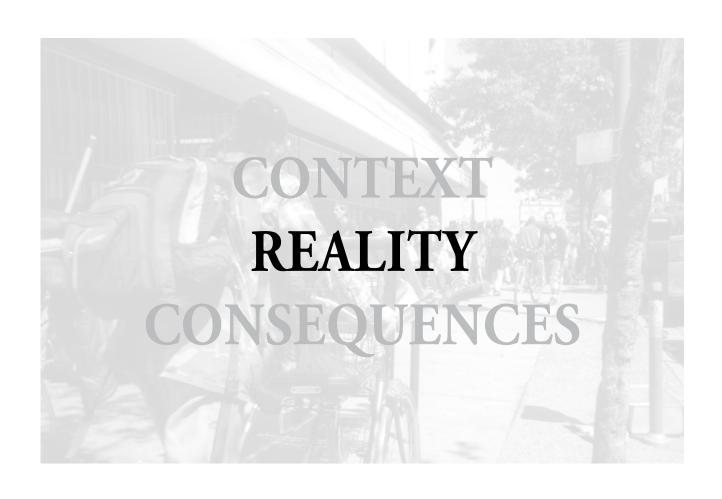
Residents of the DTES, in particular, feel the inadequacy of the current levels of social assistance. Forty percent of households in the DTES rely upon social assistance for the entirety of their income.⁷¹ In comparison, only 10 percent of households in Vancouver depend wholly upon government transfers for their income. As a result of the high numbers of social welfare recipients living in the DTES, the problems of the neighbourhood are, in part, a reflection of hardships caused by current insufficient levels of social assistance.



Darcy Rogocky became homeless when he fell off a ladder at work in May 2006. Darcy says his employer "wasn't covered," and was told he was unable to claim Government Assistance because of the provincial government's three-week wait rule. "Everything happened so fast [after being refused Welfare]: 'Here's your GA number - we'll see you in three weeks!" Homeless until the second week of July, one day he met two women on the street who fasttracked him through to receive Welfare and a place to live that day. The women were from a program funded by the provincial government, which had initially told him to wait three weeks for assistance. [information courtesy 2006 Hope in Shadows photography contest]

Social assistance recommendations

- The opportunity to apply for Emergency Assistance must be made known to all people who request social assistance.
- The "basket approach" method should be adopted as a means of setting social assistance rates. This approach involves the creation of a "basket" of goods and services that are considered essential. The cost of this basket is then used as the basis for setting social assistance rates.⁷² Adopting a basket approach would mean that social assistance rates would be increased from their current levels because the actual cost of each necessity in the basket would lead to a calculation that accurately reflects the cost of covering such needs. This rate should subsequently be indexed to inflation.
- Shelter allowances must be set regionally to reflect economic realities, particularly for major centres such as the Lower Mainland and Victoria.
- The job-search and independence eligibility components of the Employment and Assistance Act must be abolished.
- Welfare recipients should be allowed to earn up to the total amount of the income assistance rate before deducting earnings from their assistance, to encourage them to gain work experience, confidence and independence, and to discourage black market labour.



PART 6: DAMAGE DEPOSITS



Many SRO buildings in the Downtown Eastside require damage deposits from their residents before they begin a tenancy. The B.C. Ministry of Employment and Income Assistance (the "Ministry") provides damage deposits directly to landlords for many residents in B.C. who receive social assistance. Affiants reported widespread abuse of damage deposits by landlords.

Findings

Damage deposits not returned

Despite the clear rules governing the return of deposits, landlords in the DTES regularly retain tenants' damage deposits when tenancies are ended, without the consent of the former tenant and without an arbitrator's order. Multiple affiants reported that collecting a damage deposit from a landlord was almost impossible.

The manager told me that they would send my damage deposit to my worker, April, who I had to report to for my welfare at the dockside office. I still haven't received my damage deposit back. I've been back to the Piccadilly about eight times to try to get my damage deposit. I usually go to the bar downstairs and ask to go up to talk to the manager. They always tell me that he's in a meeting or something and that he can't see me. [...] I'm paying off my damage deposit from the Piccadilly Hotel out of my welfare \$20 per month, each cheque.

[Affidavit 32, Darrell Edgelow, at paras. 5–10]

In April 2001, despite my making a written request, I didn't get a damage deposit back from my landlord. At the time, I was

staying at Victoria Block, at Pender and Richards Street. The rent at the time was \$375. I was staying in a room on the first floor. I moved into the building in January 2001. I asked for my damage deposit when I gave my notice in writing to leave a month prior. I asked for it several more times and I phoned two or three more times, and I went in person one time. They told me that the cheque was in the mail. The last time I asked for it was in July of 2001, several months after I had moved out.

[Affidavit 57, George Marshall Henry, at paras. 2-3]

Several affiants described illegitimate reasons given by landlords who retained security deposits.⁷³ None of the affiants described situations in which a landlord followed the process for retaining a security deposit. In every case, affiants simply could not get the landlord to return the deposit or the landlord accused them of causing damage that either had existed in the apartment previous to their arrival or was caused by another person in or around the building.

I also asked for the damage deposit back when I moved out. I only got \$31 back of my \$210 damage deposit because of things that they charged me for. They charged me for plumbing. It was broken before I moved in. [. . .] They charged me \$50 for a

broken window that somebody had thrown a rock at from the alley and it hit my window. [. . .] They also charged me a \$25 fee for cleaning, and \$30 or \$40 for draining product, which they said that I had requested to keep. I never saw any draining product. I cleaned the room before I moved out, and it was cleaner than when I moved in. They didn't do an assessment of my room when [I moved] in. They also charged me for keys, but I returned two sets of keys. The ones they had given me, ones I had made for myself.

[Affidavit 30, Theresa Ann Capuano, at paras. 4-9]

When I left, they took \$40-50 off my damage deposit of \$165.25 for cleaning the fridge, which I never used, and cleaning the room. [. . .] I lost part of one deposit at the Wonder Hotel and another deposit at the Cosmopolitan.

[Affidavit 11, Randy Allen Darling, at paras. 6, 9–10]

In January, a friend of mine came to stay for about eight days in my room. [The landlord] deducted \$100 from my damage deposit for that visit. She also deducted \$60 after I painted my room. The last \$20 of my damage deposit went to pay for guests that [my friend] had over. I have no money left in my damage deposit, so when I move out I will have to pay it back.

[Affidavit 146, Anonymous, at para. 20]

Effect of losing damage deposits

Affiants explained that losing a security deposit has a significant impact on tenants in the DTES for two reasons. First, lost security deposits are repaid to the Ministry automatically at a rate of \$20 per month deducted from an assistance recipient's \$185 per month living allowance, reducing money available for necessities.

I receive \$165 per month from welfare, which is \$157 after I cash it at MoneyMart. I am supposed to receive \$185, but \$20 per month is going to pay off a damage deposit of \$162.50 that was not returned by Mr. Mishra. [...] Since then, I have been sleeping on the street near Britannia. I have not tried to get into shelters because they are mostly overrun by thieves and junkies. I am no longer taking any medication for schizophrenia.

[Affidavit 106, Thomas McConnell, at paras. 7–12]

I got a place I pay rent on, but I stay there seldomly because I'm not comfortable there. Another part of the problem is damage deposits, now to find a place to live, I need to pay for the damage deposit. I can't afford to do that, because they take it off my

welfare cheque, and my cheque is only 150 bucks a month as it is.

[Affidavit 43, Michael Roderick Currie, at para. 2]

Second, social assistance recipients are limited to two damage deposits. Once the two are used, no further deposits will be issued until one is repaid. Whether the tenant is receiving social assistance or earning wages, saving enough money for a new damage deposit is a hurdle few can overcome. This means that tenants are left with even less choice in their housing; they must either avoid leaving a lodging house for fear of losing their damage deposits, or must look for the few buildings that accept new tenants without a deposit.

Every time a tenant moves out, the landlord refuses to return damage deposits to the tenant. Three people have told me that this has happened to them. I need to move to a new place with an elevator because I won't be able to climb stairs soon due to the pain in my feet. I don't want to give my notice, because if I give my notice I'll be out on the street because I won't have a damage deposit for the next place.

[Affidavit 27, Paul Michaud, at paras. 5-8]

The legislation restricts the Ministry from issuing a third damage deposit for someone fleeing a dangerous situation not necessarily related to their domestic situation. For example, if a person believes their personal safety is in danger due to a neighbour, they could not get another damage deposit. Only if the individual is fleeing an abusive relationship is the third damage deposit available.

[Affidavit 128, Soraya VanBuskirk, at para.14]

The decision by the Ministry to limit the number of security deposits issued to tenants on social assistance leaves tenants with no power to fulfil their housing needs if they are unable to access the Residential Tenancy Act's (the "RTA") remedies. This leaves tenants in the position of having to move onto the streets until they have paid off one of the retained security deposits, or look for housing in the few buildings in the DTES that do not require damage deposits.

I have been homeless since I was kicked out of the Roosevelt Hotel. I can't get another damage deposit because I have had landlords keep three of my damage deposits. [...] I am paying off three damage deposits right now and will pay off one of them in the next couple of months.

[Affidavit 19, Robert Vincent, at paras. 22-23]



Government documents obtained by Pivot revealed that DTES residents were singled out as a unique population that would be harder hit by damage deposit clawback legislation than both average social assistance recipients and the general public.

I can't find a place. It's hard to find a place at all, let alone one without a damage deposit. I don't have a damage deposit because [the landlord] has taken it all.

[Affidavit 146, Anonymous, at para. 30]

Current law

Law on retaining security deposits

The *RTA* permits a landlord to collect a security deposit that cannot be more than one half of one month's rent. Under ss. 38 and 39, the *RTA* requires the landlord to return the security deposit with interest within 15 days of the later date of (1) the end of the tenancy or (2) the date the landlord receives the tenant's forwarding address in writing.

An inspection of the rented premises by the landlord and tenant together must be made before the tenant moves in and directly after the tenant moves out. The *RTA* states that the landlord loses the right to the damage deposit for damage done to the rental unit if: (1) the landlord does not offer the tenant two opportunities for inspection and (2) if, after inspecting the unit, does not complete a condition inspection report or provide a copy of it to the tenant. The tenant can also lose their right to the security deposit if they have refused to attend at the two opportunities for inspection offered to them by the landlord.

If the existence of an inspection is not at issue, the landlord must return the security deposit unless: (1) the tenant agrees to allow the landlord to keep some or all of the deposit to cover damages or unpaid rent; (2) the landlord has an arbitrator's order saying the tenant owes him money; or (3) the landlord has applied for an arbitrator's order to keep some or all of the deposit.

If none of these exceptions apply and the landlord does not return the security deposit by the designated day, under s. 38(6) the landlord must pay double the amount of security deposit to the tenant.

However, the landlord is permitted to keep the deposit when the tenant does not provide a forwarding address in writing within one year after the end of the tenancy. This can be a problem for people who cannot find housing after they leave a particular lodging house.

Simply put, a landlord cannot unilaterally choose to withhold the damage deposit amount. If a tenant agrees that damage or unpaid rent was sustained, the tenant can agree to the withholding of the damage deposit. If not, the landlord *must* apply for an arbitrator's order to keep some or all of the deposit.

Law on \$20 clawback of retained security deposits

On April 1, 2002, the Ministry added s. 58 to the *Employment and Assistance Regulations* ("*EA Regulations*") to help meet the Ministry's budget targets for 2002–2003. The intention of this section was to save money for the Ministry's budget and to increase personal responsibility on behalf of the recipients to collect their security deposits from their landlords.⁷⁴

The section created two major changes in the way that the Ministry offered security deposit assistance to people receiving social assistance income. Originally, people receiving regular assistance could get an unlimited number of security deposits and had to repay the amount at \$10–\$15 per month once they moved or their assistance file was closed.

Under the new system, people can only have up to two security deposits outstanding at one time. In addition, repayment begins immediately on the second assistance cheque that is issued to the client after the security deposit is issued to the landlord. The repayment is set at \$20 a month, which is automatically taken from the recipient's social assistance monthly amount until the deposit is paid off. Essentially, if a recipient has received two security deposits from the Ministry, they cannot get another security deposit, and consequently another home, until they have paid off at least one of the deposits.

At current social assistance rates, an individual receives \$325 per month for shelter costs, issued directly to a landlord, and \$185 per month for all other living expenses. With the new mandatory \$20 repayment scheme, individual social assistance recipients are only left with \$165 per month to cover all of their essential needs, such as food, clothing and utilities.

Implications of the current law

The application of s. 58 of the EA Regulations, B.C.'s damage deposit clawback policy, results in substantively different treatment of DTES social assistance recipients. Through Freedom of Information (FOI) requests made under the Freedom of Information and Protection of Privacy Act, Pivot Legal Society obtained government documents that assessed the impact and savings created by s. 58 of the EA Regulations before it was implemented. In earlier versions of the documents, DTES residents are singled out as a unique population that would be harder hit by the legislation than average social assistance recipients and the general public.

This initiative will likely have a significant impact upon a population of multi-recipients living in areas such as Vancouver's Downtown Eastside. These clients are more likely to be impacted as they tend to move more frequently, partly as a result of landlords either evicting them or requiring them to move to another residence.

[2006-03-13 - FOI Request - Damage Deposits]

The nature of housing in the DTES means that residents move often because of eviction, dangerous neighbours, health concerns, the loss of services provided and various other reasons described throughout this report. DTES residents therefore face enormous difficulty in retrieving their damage deposits from their landlords and need to do so at a greater frequency than other social assistance recipients. They are most likely to have deductions from their social assistance and find themselves without housing because of the lack of a damage deposit and reduced social assistance. The FOI request further revealed

that the number of recipients who had reached the maximum number of deposits by July 2005 was 2,521 in Vancouver, and 10,192 in B.C.

The recognition of DTES residents as a uniquely affected group is absent from final versions of the FOI documents.⁷⁵ No changes were made to the structure of the regulation to protect this group. The uniform application of the regulation to all social assistance recipients resulted, as predicted, in a more pronounced effect upon DTES residents, as evidenced in the affidavit material collected for this report. Because of the historical and current disadvantage that DTES residents face, the regulation will in no way make the residents more personally responsible for the retrieval of the damage deposit. By nature of the power imbalance between DTES residents and their landlords, DTES residents are unable to ensure that their damage deposits are returned.

The adverse impact of B.C.'s damage deposit clawback policy on residents of the DTES – an impact specifically noted in documents used by the B.C. Government to evaluate s. 58 suggests that s. 58 of the EA Regulations may be subject to legal scrutiny under the Canadian Charter of Rights and Freedoms ("Charter"). In particular, it may pose a problem with respect to s. 15 of the Charter, which guarantees that every person in Canada is equal before and under the law and has the right to equal protection of the law without discrimination.

Damage deposits: recommendations

- The Ministry of Employment and Income Assistance should record which landlords retain damage deposits and whether the landlord has retained the deposit through the legal process established for retaining these deposits. Landlords who do not follow the legal process for retention should be aggressively prosecuted to discourage this type of
- Section 58 of the EA Regulations should be eliminated immediately for all social assistance recipients living in the DTES, eliminating the clawback of \$20 per month to repay damage deposits.

PART 7: DISCRIMINATORY PRACTICES OF LANDLORDS AND HOTEL MANAGERS



Few affiants identified landlord discrimination against them as an issue; however, many advocates noted in their affidavits that such discrimination is common. In the Pivot SRO survey, two SRO building managers specifically told survey volunteers posing as prospective tenants that they would not rent to an individual on social assistance. Another prohibited guests or tenants who were "drug users" or who presumably had the appearance of a drug user. Multiple buildings will only rent to students.

There is no obvious explanation for the failure of the affidavits from community members to identify this type of discrimination; however, the most likely explanation appears to be that DTES residents are so accustomed to being discriminated against in the provision of all services that discrimination in provision of housing does not appear to them to be a housing-related issue.

Findings

Refusal to rent

Advocates identified race, mental illness, family status, disability and receipt of social assistance as grounds of discrimination used by landlords to refuse accommodation to individuals.

I am able to find jobs for many of my clients, but find it very challenging to find them housing. Landlords require references

and do not want to rent to people who have been previously homeless. As a result, people are not able to move forward with their lives. I have found it very difficult to find housing for people with mental illness.

[Affidavit 125, Saira Khan, at paras. 5–6]

There is also stigma for people who are receiving welfare and landlords will refuse to rent to them. Many ads say "students or working person only," which makes it clear that if you are on social assistance you should not phone.

[Affidavit 123, Marina Vereschagin, at para. 7]

Many of my First Nations clients are faced with the "drunken Indian" stigma. As a result, many landlords do not want to rent to them. Landlords do not want to rent to my clients because many of my clients are on financial aid. [...] Landlords also refuse to rent to people with two or more children. They base this on problems they had with past tenants with three or more

children, such as noise and damage to the suites. A few of my clients require wheelchairs and have difficulty finding housing. There is no wheelchair accessibility in most housing and landlords worry about their liability.

[Affidavit 127, Sonya Marshall, at paras. 3-7]

"Student-only" housing

Affiants reported that discrimination occurs against lowincome individuals when affordable accommodations are only made available to students. Student-only housing further limits individual and family access to adequate and affordable housing. The conversion of low-income housing into student housing may result in marginalized individuals facing the threat of homelessness as landlords become more selective. In a "tight market," such as the one in Vancouver, landlords can afford to be more particular in their selection of tenants, resulting in discrimination against harder-tohouse individuals seeking affordable accommodations. These potential tenants can often be viewed as less socially and economically desirable.⁷⁶

[The manager] told me that he runs the building in a really tight manner. He said that he keeps the building really clean and safe. He also said that the demand for rooms is so great that he can be very choosey about who he is going to rent to.

[Affidavit G, Bonnie Cruikshank, at para. 10]



In a "tight market," such as the one in Vancouver, landlords can afford to be more particular in their selection of tenants. This effectively discriminates against harder-to-house individuals seeking affordable housing.

Being I am a certain age, I feel that I fall in between the cracks. There is less help for people of my age group because they feel you are able to work. But if you don't have a place to live, it's hard to function and get a job.

[Affidavit 11, Randy Allan Darling, at para. 2]

I checked about six hotels in the Downtown Eastside of Vancouver, in the area of Main, Powell and Chinatown to see if they would rent a room to a couple. I was told that hardly any hotels in the Downtown Eastside rent to couples. Only one of the hotels I checked with, the New Sun Ah hotel at 100 East Pender Street, rented to couples, the rest only rented just to single men and women. The Dunsmuir International [Student] Village, where I live now, won't take local people. I was lucky my partner is Mexican, so we were able to get a room there.

[Affidavit 53, David Allan MacFarlan, at paras. 3-4]

Legal analysis

Landlords who discriminate against persons applying for tenancy or during the course of an individual's tenancy may be subject to fines or other penalties under the B.C. Human Rights Code (the "BCHRC"). Section 10 of the BCHRC expressly prohibits discrimination with respect to housing:

10. (1) A person must not:

- (a) deny to a person or class of persons the right to occupy, as a tenant, space that is represented as being available for occupancy by a tenant, or
- (b) discriminate against a person or class of persons regarding a term or condition of the tenancy of the space,

because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or lawful source of income of that person or class of persons, or of any other person or class of persons.⁷⁷

A prima facie violation of s. 10 of the BCHRC occurs when an individual establishes that he or she has received differential treatment with respect to a tenancy based on a prohibited ground, such as lawful source of income, family status and physical or mental disability.

Of particular importance, under the BCHRA a landlord may not exclude a potential tenant on the basis that he or she receives social assistance. For the purposes of the BCHRC, social assistance is considered a "lawful source of income." 78 Furthermore, an admitted preference to rent to individuals who are not on social assistance is also a basis for a complaint under the BCHRC.⁷⁹

As long as a person's source of income is lawful, landlords cannot refuse to rent based on source of income. 80 Also, an application for tenancy may not be dismissed based on the status or number of persons in a family. For example, the Human Rights Tribunal considered the denial of a rental application for a one-bedroom apartment to a family with children discrimination under the BCHRC.81

Discriminatory practices of landlords and hotel managers: recommendations

- 1. The Residential Tenancy Office must be equipped with the dispute resolution mechanisms needed to address issues of discrimination. Currently, only people in a tenancy relationship can bring a residential tenancy claim.
 - (i) People applying to be tenants should also be given standing to bring claims.
 - (ii) Amendments to the Residential Tenancy Act are required to allow damages to be awarded against land lords and managers who discriminate against prospective tenants.
- 2. Public education campaigns funded by all levels of government and targeted at landlords should emphasize the legal prohibitions against discrimination in providing housing and remedies available to those against whom discrimination is practiced.

PART 8: ILLEGAL PRACTICES BY LANDLORDS



The laws of British Columbia, and in particular the B.C. Residential Tenancy Act (the "RTA"), prohibit landlords from entering the rental units of tenants without proper notice. The RTA also governs procedures and causes for evictions and abandoned property. Affiants reported many different violations by landlords of the RTA. The most serious violations reported included: illegal entry of rooms by landlords, theft of property by landlords, and illegal evictions and threats by landlords.

Findings

Illegal entry by landlords/hotel employees

The landlord was about 80 years old. [. . .] He would enter our suite illegally without giving proper notice. My daughter and I would be inside our suite and he would just walk in. I took him to arbitration over this as well. He pretended he didn't understand the law, and the arbitrator believed him. He was given a warning by the arbitrator, and he was told next time I could change the locks. He continued to enter illegally. I woke up from a nap one afternoon to find him in my room. I pretended I was still asleep because I was afraid.

[Affidavit 102, Merina Theadora Matthew, at paras. 3–6]

On Friday, May 27th I left my dog in my suite with the door locked and spent the night at my friend's place. I returned to my suite with my friend the morning of Saturday, May 28th and found my dog missing. I immediately went to see the landlord with my friend and he admitted that he had entered my suite,

taken my dog, and had thrown him in Renfrew Park across the street. He swore at me, told me I was evicted, and told me I had until 5 p.m. that day to get my stuff out. I looked for my dog with my friend for one hour and could not find it. I have not seen my dog since.

[Affidavit 02, Elean Lehti, at paras. 2–3]

I have lots of stuff in my apartment, mostly clothes which I keep in bags, and lots of loose clothes. This makes my room really cluttered . . . A few months after the landlord first noticed my clothes, someone came into my room. I was gone when the person was in my room. When I came back I noticed that someone had gone all through my entire apartment, not just the entrance, and had put my clothes in garbage bags.

[Affidavit 77, Teresa Lynn Gerhan, at para. 8]

Affiants gave many reasons for failing to enforce their rights to be free from illegal entries by landlords, including: barriers that prevent tenants from enforcing their rights under the *RTA* (see the "Barriers to *RTA* access" section on page 60); reluctance to jeopardize their current housing situation (see the "Lack of affordable housing" section on page 17); and fear of retaliation by management.

Evictions

The most serious of the breaches of the *RTA* reported by affiants were illegal evictions. Affiants gave evidence that they are often evicted without cause and without proper notice. Affiants suggested that their experiences with illegal evictions, including threats of eviction by management, most often occurred if other illegal practices, such as guest fees, were challenged by the tenant:

About eight months after I moved in the landlord told me that I was getting evicted because I had too many guests. He did not give me any warning. I left to go find a place to store my things and when I came back I saw my clothes and my hat in the garbage bin behind the hotel. I went up to my room and it was empty. [...] I have been living on the street ever since I was evicted from the Cordova Rooms. 82

[Affidavit 15, Don Winsell, at paras. 3-6]

I moved to Vancouver last July. I took up residence in the Columbia Hotel, in room 116, in September of 2004. It was a monthly tenancy. They didn't tell me that I had to pay guest fees to have a guest over to my place. I told management that I didn't think guest fees were right, and they told me that they could evict me right there on the spot. They would threaten me with eviction whenever I spoke up.

[Affidavit 78, William Blair Childress, at para. 2]

They kicked me out to renovate, to become residential housing instead of a hotel. Other tenants were kicked out. They didn't give me written notice for the eviction.

[Affidavit 49, Anonymous, at para. 4]

On July 18, 2006, I was eating dinner underneath the Jubilee Rooms at a place called "Jacob's Well." My wife came downstairs. She was crying. She told me that Mike, the manager from the Dodson, was changing the locks on our room door. She said that Mike told her to get some things together, because we were going to be kicked out that night. I ran upstairs to see what was happening. Egon [the desk clerk] was upstairs with Mike. I showed Mike the arbitration papers. I told him that the

arbitration would decide this stuff. I told him that there was no order of possession. I told him he had better get lost. Mike and Egon left, but the locks on the room had already been changed. I tried my key in the lock, but it didn't work.

[Affidavit J, Darryl Menard, at paras. 5-7]

When is a tenant's property considered abandoned?

Affiants reported that landlords frequently abused the provisions of the *RTA* with respect to disposal and seizure of tenants' belongings:

I told Rob the landlord that I would get my stuff out on the 31st of July. I got a room at the ***** on Georgia Street, and began to move my things to my new apartment. I made two trips between the two Apartments. On the third trip back, the lock was changed on my old apartment. I looked through the window and saw that the apartment was completely empty and had been painted.

[Affidavit 48, Anonymous, at paras. 5–6]

I was released 14 days after I was arrested and went straight to the Orwell after I got off of the bus from Kamloops. They wouldn't let me into the hotel; they said I was permanently barred because I was a so-called "criminal." I called the police to tell them that I couldn't get in. I told them what the circumstances were, they came to the hotel and the manager Gary let me in with the police. We went up to my room. I tried my key, the locks had been changed. When Gary opened the door, the room was completely empty. Gary told me that my stuff had been thrown away. In my room I had clothes, a watch, my wedding ring, Michelle's wedding and engagement ring, a stereo, a TV, a VCR, 200 CDs and 50 movies.

[Affidavit 19, Robert Vincent, at paras. 9–11]

There are room checks every month. The manager has a key to my room. There are times when my room is messy. In September 2005, she came into my room and told me to clean it up. I asked her if I could help her clean, but she kicked me out and threw out my stuff. She threw out my toaster, my shoes and other things without my permission. She does this to all the tenants.

[Affidavit 95, Elizabeth Pyke, at para. 4]

I came back home after going out and doing some business one Saturday. The maid told me that I was evicted, she asked me if I had seen the front desk. She said that it was because I hadn't paid my rent; however, it turns out there was a mix-up at the front desk because I had paid rent. She had removed most of my belongings in my room already. There was clothing, a pocket knife, and some toiletries that went missing and I never got it back.

[Affidavit 78, William Blair Childress, at paras. 7–9]

Legal analysis

Illegal entry - the law

Section 28 of the RTA states that a tenant has the right to "quiet enjoyment" including reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with s. 29 of the RTA, and the use of common areas for reasonable and lawful purposes, free from significant interference.83

Section 29 of the RTA outlines restrictions on a landlord's ability to enter a rental unit. Generally, a landlord may not enter a rental unit without the consent of its tenant. However, if a tenant refuses to consent, s. 29 stipulates that a landlord may enter the premises, if at least 24 hours and not more than 30 days prior to the entry the landlord gives the tenant written notice that includes a reasonable purpose for the entry as well as the date and time the entry is to be undertaken. The time for entry must be between 8 a.m. and 9 p.m. unless otherwise agreed to by the tenant.84

Pursuant to s. 29 of the RTA, a landlord can also enter a rental unit where:

- there is an emergency and the entry is necessary to protect life or property;
- the tenant has abandoned the rental unit;
- the landlord has an arbitrator's order authorizing entry;
- the landlord provides housekeeping or related services and entry is for that purpose; and
- the landlord wishes to perform a monthly inspection, provided the landlord gives the tenant written notice with the purpose for entering and the date and time of the entry. 85

Eviction for cause - the law

Under s. 47 of the RTA, a landlord may evict a tenant for cause. "Cause" pursuant to s. 47 includes:

- a tenant's failure to pay rent or a tenant's repeated late payments of rent;
- an unreasonable number of occupants in tenant's rental unit;
- a tenant's disturbance of the landlord's or another occupant's health, safety or personal property;86
- a tenant or a person permitted on the residential property by the tenant who has engaged in illegal activity.

In order to evict a tenant for cause, a landlord must give the tenant 30 days' written notice that must be signed and dated. The notice must include the landlord's reason as to why a tenant is being evicted. Finally, the notice must be given on a form approved by the Residential Tenancy Office of B.C.87

To be grounds for eviction, illegal activity must (i) damage or be likely to damage the landlord's property, (ii) disrupt or be likely to disrupt the quiet enjoyment, security, safety or physical well-being of another occupant, or (iii) jeopardize or be likely to jeopardize a lawful right or interest of another occupant or the landlord.88

Attempts to terminate a tenancy for illegal activity are subject to a "balancing of probabilities" whereby an arbitrator will determine whether it is more likely than not that an illegal event has occurred that affects the landlord, another occupant, or the residential property.⁸⁹

A tenant's failure to pay rent may result in eviction of the tenant. A landlord may end a tenancy by giving notice. Such notice must not require the tenant to vacate the premises earlier than 10 days after the date the tenant receives the notice. A tenant who has received an eviction notice for late payment of rent has five days following the reception of that notice to either apply for arbitration or pay the rent owed. If a tenant fails in both regards, a landlord can begin the eviction process. 90

Eviction for demolition or conversion purposes – the law

Under s. 49(2) of the RTA, a landlord seeking to demolish or convert a rental unit must give the tenant of the unit a minimum of two months' notice. A landlord must have all permits required by the municipality before evictions can take place. If the tenancy agreement is for a fixed term of years, a notice to end a tenancy agreement will not be effective until the date specified as the end of the tenancy.⁹¹

The City's Single Room Accommodation By-law ("SRA By-law") also states that owners that wish to convert their buildings to tourist uses and other non-residential uses or to demolish their buildings must first apply to the City for an SRA conversion or demolition permit.

In addition to the SRA By-law's other formal requirements, s. 4.6 (e) and (f) specify that a landlord who wishes to convert or demolish a rental unit listed in the by-law has a duty to relocate displaced residents into comparable or better accommodation at comparable or lesser rent. Under s. 4.6 (e) and (f), owners are also required to pay the actual moving expenses of displaced tenants (see the "Enforcement of by-laws" on page 56).92

Abandonment of property – the law

The RTA outlines when belongings may be considered abandoned. Under the RTA, Residential Tenancy Regulation, Part 5, sections 24-31, landlords are permitted to assume a tenant's property has been abandoned, if at the end of a tenancy agreement a tenant has vacated his or her unit and left his or her personal belongings on the residential property.

If an individual's tenancy agreement has not expired, a landlord is permitted to assume abandonment if:

- a tenant leaves his or her personal property on residential property that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
- a tenant leaves his or her personal property on residential property from which the tenant has removed substantially all of his or her personal property.

In addition to the above, abandonment under the RTA where an individual's tenancy agreement has not ended requires that a landlord have express oral or written notice of the tenant's intention not to return to the residential property, or requires circumstances surrounding the giving up of the rental unit to be such that a tenant could not reasonably be expected to return to the residential property.

A landlord cannot assume abandonment if a tenant's rent has been paid. If a tenant has left possessions, in deciding whether to wait a month before removing the possessions and re-renting the unit, a landlord can consider the probability that the possessions have been forgotten or left because they are of no or little value. A landlord may start to remove a tenant's possessions, if a tenant does not inform a landlord of their absence, does not pay rent on time and remains absent for 30 days or more.⁹³

Illegal practices by landlords: recommendations

- 1. The provincial government should introduce an enforcement branch of the Residential Tenancy Office that accepts complaints about, investigates and prosecutes violations of the RTA. In the alternative, the Vancouver Police Department should dedicate resources to investigating and charging individuals for violations of the RTA.
- The B.C. Government must increase funding for residential tenancy advocates who provide representation for lowincome tenants.[see further recommendations from part 14 on page 60.]

PART 9: POLICE AND EMERGENCY RESPONSE



Two key issues were identified with respect to Vancouver police and emergency response. First, affiants identified multiple occasions where police illegally searched rooms relying on municipal by-laws to trump Charter of Rights and Freedoms ("Charter") protections against unreasonable searches. Second, research revealed that 911 emergency response calls from SRO buildings are discouraged by City of Vancouver policy and police response.

Findings

Several affiants reported incidents in which police officers entered their rooms without a warrant and without providing a lawful reason for entering. These warrantless entries often led to searches and temporary detention (see the Pender Hotel incidents in the "Enforcement of By-laws" section on page 56). 94 In addition, the Vancouver Police Department (VPD) has a formal policy that instructs police officers to conduct checks on tenants of lodging houses to ensure their health and safety. Police officers use these health and safety checks as an opportunity to check the names of tenants and to conduct a visual search of each room.

This was the seventh time they have come to my door in the past few months to verify names or do "room checks." I thought that after the first few times they would stop if I told them that they didn't have the right to open my door whenever they wanted. They haven't stopped.

[Affidavit 81, Brad Dmytryshyn, at para. 17]

I heard banging on my mom's apartment window. I went to

open the front door, and I was grabbed by a police officer and slammed against the wall in the hallway outside the apartment. The police officers put me in handcuffs. [...] The police officers kept saying "Where is the gun?" over and over. I asked if the police officers had a warrant. They told me that they didn't need a warrant. I watched a police officer kick in the door to my mom's room, which was locked. [...] The police officers searched the whole apartment, opening drawers, looking in a hole that is in our wall due to repairs that are going on, looking in cupboards. They looked everywhere.

[Affidavit 139, Charles Pronteau, at paras. 3–16]95

A police officer came back about two days later. [...] He told us that he wanted to search the house and Charles's mom said no.

[Affidavit 140, Tyler Lagimodiere, at paras. 26–28]

[...] I heard a big bang on my door. I got up and opened the door and there was a police officer with his gun pointed at me. He told me to get out of my room and go down to the end of the hallway. I asked if I could put some pants on and he said no.

[Affidavit 82, Brian Sutton, at paras. 2–3]

Legal analysis

Vancouver by-laws

The City of Vancouver *License By-law* No. 4450 s. 19.3(4) requires a lodging house operator, or someone authorized by that person, to ensure every 24 hours that every lodger (i.e. tenant) on the premises is alive and able to call for medical help if necessary. ⁹⁶ This is a municipal by-law and does not supersede the *RTA* requirements that a landlord must fulfil before entering the room of a tenant for any other reason.

Vancouver Police Department Training Bulletin

The VPD Training Bulletin 2006-03-14, used to re-educate officers following formal complaints about police searches, suggests that police officers can request to be designated an agent of a lodging house operator and conduct the check on the tenants of that building instead of the landlord. This interpretation of the by-law is problematic. A municipal by-law cannot be intended to supersede the clear Charter protection: warrants are required for searches of an individual's home, with narrowly defined exceptions as listed above. None of these exceptions include allowing police to use a by-law to gain entry into a home. The VPD are misusing the by-law, which was originally intended to give lodging house staff the authority to do such safety checks in lieu of the actual lodging house operator.

In any event, the VPD's interpretation of the by-law means that poor people, who live in lodging houses in Vancouver, do not have the same protections against police searches as do people who do not live in lodging houses. This violates not only s. 8 of the *Charter*, but also the equality protections of s. 15 of the *Charter*.

Search warrants required

Under the *Criminal Code* and the *Charter*, police officers cannot legally enter a "dwelling-house" without a search warrant, with limited exceptions. A dwelling house refers to lodging houses, apartments, SROs and temporary residences; in sum, searches of "any part of a building or structure" that is "occupied as a permanent or temporary residence" require search warrants. 98

Even an arrest warrant for an individual by itself does not give a police officer the authority to enter or search a dwelling-house for the named individual. ⁹⁹ The police officer must obtain judicial authorization (from a judge or justice) by showing there are reasonable grounds to believe that the person is in the dwelling-house before they are authorized to enter

with the intent to find the person and arrest them.

An officer, like all members of the public, is allowed to knock on the door of a residence. Section 8 of the *Charter*, however, limits this invitation to knock to the purpose of letting the residents know that visitors are there to talk to them. Officers also may *not* knock on the door of a residence in order to perform smell or visual searches of a residence for evidence of drug cultivation or use. ¹⁰⁰ Therefore, police officers cannot have another intention, such as checking for visual signs of a crime or sniffing for drugs, and cannot use this as an opportunity to search the home.

Justice Sopinka, speaking for the majority of the Supreme Court of Canada, has explained that, without this protection:

The police could enter a neighbourhood with a high incidence of crime and conduct surprise "spot-checks" of private homes of unsuspecting citizens, surreptitiously relying on the implied license to approach the door and knock. Clearly, this Orwellian vision of police authority is beyond the pale of any "implied invitation. 101

In the DTES, illegal spot-checks of private homes by police have become a normal occurrence and a practice formally condoned by VPD policy in their training bulletin.

Exceptions

Police are justified in some specific circumstances to enter a dwelling-house without a search warrant. They may enter if:

- reasonable grounds exist to believe that a person for whom an arrest warrant has been issued is present in the building;
- grounds exist to get an entry warrant but there is no time to get one because:
 - reasonable grounds exist to believe that an entry is needed to save an individual within the premises from death or bodily harm; or
 - entry is necessary to prevent the imminent loss or destruction of evidence related to the commission of an indictable offence.¹⁰²

Police may also enter if:

- there are reasonable grounds to believe that forcible warrantless entry is needed to save an individual within the premises from death or bodily harm;
- the police officer is in hot pursuit of an individual who is reasonably believed to have committed a criminal offence and is in the dwelling-house;¹⁰³ or

• the occupant consents to entry. If this consent is denied or subsequently withdrawn, the officer must leave.

It is important to note that in all cases, police officers must give "proper announcement" before entering a dwelling-house unless this would expose any person to imminent bodily harm or death, or result in the imminent loss or destruction of evidence relating to the commission of an indictable offence. 104

Proper announcement includes:

- knocking or ringing a doorbell;
- identifying themselves as law enforcement officers;
- giving a lawful reason for entry.¹⁰⁵

Protection of the Charter

The sanctity of one's home is protected by the Charter of Rights and Freedoms s. 8 protection against any unreasonable search and seizure by police officers. If the police do enter or search a dwelling-house, the court considers two questions under s. 8:

- (1) Did the police conduct in question interfere with a reasonable expectation of privacy?
- (2) Was this interference reasonable?

Once an individual has demonstrated that a search or entry was a warrantless one, the search or arrest is presumed to be unreasonable and the police must show that the search was reasonable.

The Supreme Court has said that the reason for the narrow exceptions to warrantless entry is to force police to prove they have proper authority to enter and search before they do so. In this way, the sanctity of the home is protected proactively and residents are not left in the position of having to demonstrate after the fact why an entry and search was unjustified.

Tenants' rights against a trespasser

While the authors of this report would not in any circumstances recommend such action, a police officer who enters a dwelling-house illegally is trespassing and that officer may be forcibly removed by the tenant if he or she does not leave after a demand is made.

Sections 40 and 41 of the Criminal Code justify anyone in peaceable possession of a dwelling-house, or someone lawfully assisting them, to use reasonable force to remove a trespasser or to prevent entry by a trespasser. However, the force used to eject the trespasser must be reasonable in all the circumstances and it is extremely unlikely that any court would ever condone physical force used against a police officer, even if an illegal search were in progress.

Common areas of multiple-occupancy buildings

The question still exists whether common areas (e.g. hallways, common rooms) fall under the Criminal Code definition of "dwelling-house" and are protected against a warrantless entry and search. A warrantless search, in situations where an individual has no reasonable expectation of privacy, is not a violation of that individual's s. 8 Charter rights. 106 To date, there has been no appellate court finding of a reasonable expectation of privacy in the common areas of a residence containing multiple dwelling units. 107 Whether the common areas of apartment buildings are to be included under the Criminal Code definition of "dwellinghouse" is largely untouched by the courts. Current decisions are from the lower courts and are contradictory. 108

The liability of police officers

Under section 25(1) of the Criminal Code, officers are afforded protection from civil liability in cases of mistake of fact, but not mistake of law. Police officers are therefore not protected when they make a mistake about their authority to commit a trespass to make an arrest.

If police officers unlawfully enter a person's home to make an arrest without a warrant, those officers can be held liable for damages for unlawful arrest and detention and are not protected by s. 25 of the Criminal Code because the entry and arrest are thus not "authorized by law." 109

The failure of the police complaints process to address violations of section 8

The Office of the Police Complaint Commissioner (OPCC) provides civilian oversight over all complaints against municipal police and keeps complainants informed. Complaints must be characterized in one of three ways by the OPCC: public trust, internal discipline, or service or policy.

The Vancouver Police Board, a civilian board providing police oversight in Vancouver, considers complaints related to the level of police service or to police policies. The Police Board and OPCC usually ask the VPD to investigate, although they both have the power to request that an outside body investigate instead.110

For complaints against individual police officers (conduct or public trust complaints), the OPCC usually gives the complaint to the originating police department for investigation, meaning that the police departments investigate themselves. Currently,

it is the Professional Standards Section (PSS) of the VPD that investigates such complaints. The OPCC, if not satisfied with either the Police Board or PSS result, can either order an external investigation or a public hearing.

The VPD Regulations and Procedure Manual s. 33.06 states that a police officer who enters a dwelling house without invitation or proper legal authority may face disciplinary action and may also be criminally prosecuted.¹¹¹

Four formal complaints concerning police searches at an SRO were made by Brad Dmytryshyn, a resident of the Pender Hotel, to the OPCC and the PSS. The complaints were later recharacterized as having a policy or service component and were also considered by the Police Board.

In Mr. Dmytryshyn's case, outlined in the chart below, the OPCC and PSS excused the behaviour of the police officers by

stating that although the police officers were acting according to a mistaken authority, they were "acting in good faith." ¹¹² In relation to the first incident, the Internal Investigations Section (now the PSS) commented "no discipline will be instilled on the officers" and stated that continued training would take care of the problem. ¹¹³ Mr. Dmytryshyn, dissatisfied with the result of the VPD investigations and conclusions, asked for a public hearing to deal with the repetitive nature of these complaints and the widespread use of the practice by VPD officers. Specifically, the PSS investigation and conclusions ignored the pattern of problematic police behaviour that focused on buildings that they deem to be problem buildings. Each letter in response to his complaints discussed the fact that the VPD officers involved in each complaint were not aware of the limitations to their ability to conduct checks in rooming houses.

Complaint

October 11, 2005

Officer pushed open Mr. D's room door for a "room check" and to verify the names of the residents in the building. Accompanying officer states that they have authority to do so under the *Innkeepers Act*, which has not been in force since the 1970s.

[Affidavit 137, Brad Dmytryshyn, at para. 2-10]

Response

Public trust violation substantiated (abuse of authority). Activity of opening doors during room checks called a "questionable practice." Officer not disciplined. Continued training expected to correct the problem.

[2006-03-21 – Letter from PSS – Brad Dmytryshyn]

No service and policy changes necessary.

[2006-03-29 - Letter from VPD - Brad Dmytryshyn]

October 11, 2005

Two officers demand entry due to the smell of incense coming from the room, calling out "police" and "room check." When Mr. D explained that officers had already checked his room at noon, one officer told him: "We'll be back on a regular basis."

[Affidavit 137, Brad Dmytryshyn, at paras. 12-16]

No public trust violation found. Officers found to have acted appropriately under authority granted to them in common law to protect property and persons who may be in danger.

[2006-03-21 - Letter from PSS - Brad Dmytryshyn]

No service and policy changes necessary.

[2006-03-29 – Letter from VPD – Brad Dmytryshyn]

January 8, 2006

Officer pushed open Mr. D's room door for a "room check."

[Affidavit 137, Brad Dmytryshyn]

No public trust violation found.

[2006-05-29 – Letter from PSS – Brad Dmytryshyn]

No service and policy changes necessary.

[2006-03-29 – Letter from VPD – Brad Dmytryshyn]

February 15, 2006

Officer pushed open Mr. D's room door to "see if it was secure" and shone a flashlight into the room in the gap between the door and the wall.

[Affidavit 137, Brad Dmytryshyn, at para. 2]

No public trust violation found.

 $[2006\hbox{-}05\hbox{-}27-Letter from PSS-Brad Dmyrtryshyn}]$

After the first three complaints were made, the Police Board held that further training was needed and enclosed a bulletin that they had used to educate their officers. In September 2006, Mr. Dmytryshyn's application for a public hearing was dismissed and the findings of the VPD upheald by the OPCC.

The authors of this report are of the opinion that the contents of the training bulletin itself contains instructions that will continue to lead police officers to violate DTES residents' Charter rights.

911 emergency response and SRO buildings

The Vancouver Agreement, in preparation for the Olympics, is attempting to identify "problem hotels" in an effort to increase enforcement efforts at these buildings.¹¹⁴ To do so, the three levels of government involved in the Vancouver Agreement have commissioned an investigation of 50 SRO buildings in the DTES, currently being conducted by Inspector Ken Frail of the VPD.

While Pivot calls for increased enforcement that improves the quality of the housing in the DTES (see the "Enforcement of by-laws" section on page 58), one of the measures historically used to identify problematic hotels by Inspector Frail and by the City is an inappropriate measure that unnecessarily jeopardizes the safety of residents in buildings that provide services to hard-to-house individuals.

On at least two occasions in the past, and likely in the upcoming Vancouver Agreement document, frequency of 911 calls has been used as a measurement to determine whether a hotel is a "problem" or not.

In 2000, Inspector Frail completed his Problematic Hotels Report for the Vancouver Police Board in 2000 that identified 10 "problem" hotels. 115 According to the 2000 survey conducted by Inspector Frail, there were a disproportionate number of 911 calls made from the 10 hotels, which helped him identify them as problems. 116

The majority of the calls received and documented by emergency response services were related to assaults, drug sale and use, as well as overdoses, prostitution, disturbances, suspicious persons or circumstances, theft, requests for assistance, and requests for emergency health services. On few occasions there were reports of sudden death, usually associated with drug use.117

In short, they were calls typical of an extremely marginalized population residing in those particular hotels - drug users, sex trade workers, and people with mental health issues – likely



One of the measures historically used to identify problematic hotels by Inspector Frail and by the City is an inappropriate measure that unnecessarily jeopardizes the safety of residents in buildings that provide services to hard-to-house individuals.

coupled with management untrained in how to deal with those challenges in need of expert assistance.

The 2000 survey was not the last time that 911 data was used to identify a problem hotel. At the 2006 City business license hearing for the Lucky Lodge hotel, a Vancouver police constable was called as a witness by the lawyers for the City to provide evidence about the number of 911 calls made by residents and employees of the Lucky Lodge.

This constable's evidence was intended to be used to support the City's position that the Lucky Lodge should not be granted a business license. Shortly after the constable gave her evidence, the hearing was cancelled, because the building was transferred to a new manager.

Policy arguments against using 911 call frequency to identify problem hotels

There are at least two key policy arguments against using 911 phone call data as a measure of whether a building is a "problem" building. First, using 911 phone call data as a reason to refuse to grant a business license results in informal and formal business policies that discourage employees and residents from contacting 911, even in emergency situations. The policy of penalizing buildings who use the 911 emergency service may explain the response of a security guard to a tenant complaint of an assault as described in this affidavit:

On or about October 13, 2005, I was assaulted by a male in the hallway of my apartment building when I was on my way to the bathroom. The man grabbed me and threw me against the wall and told me that he was going to throw me out the window. [...] Immediately after the assault [I] complained to security who are in the building and I was told they were there to protect the building not the people in the building.

[Affidavit 84, Cindy Urich, at paras. 7 and 9]

Residents and employees of SROs are far more likely to experience emergency situations, especially among a population with increased incidents of drug abuse and mental health issues. A policy that pressures building owners to discourage employees and residents from contacting emergency services via 911 will inevitably result in increased harm to residents and employees of SROs, and possibly loss of life.

The second policy argument is that using 911 data to identify "problem" buildings increases discrimination against hard-to-house individuals. If landlords know that increased 911 calls will result in or contribute to the loss of a business license, they will be more aggressive in refusing to provide housing to people that they perceive to have drug or mental health issues.

Any policy that discourages landlords from providing housing to the most marginalized members of Vancouver society, and those that would benefit the most from stable housing, is a policy that should itself be discouraged. (see "Discriminatory practices of landlords and hotel managers" on page 30)

Inadequate and non-response by police to requests for assistance

Multiple affiants described their perceptions of police indifference to security complaints and complaints of landlord malfeasance.

My place has been broken into twice. This month and last month. I didn't do anything about it; they don't care. The police come around once or twice a week for other problems, but for my problem they wouldn't care.

[Affidavit 5, Ernest Francis Williams, at para 4.]

I have tried to complain about this [drug dealing and sex work activity in my building] to the police but they have repeatedly told me that they can not help me because their hands are tied because they can't enter the suites.

[Affidavit 7, Leslie MacDonald, at para. 3]

On July 18, 2006, I was eating dinner underneath the Jubilee Rooms at a place called "Jacob's Well." My wife came downstairs. She was crying. She told me that Mike, the manager from the Dodson, was changing the locks on our room door. She said that Mike told her to get some things together, because we were going to be kicked out that night. [. . .]

[The next day] I called the police at their non-emergency number. Nobody showed up. I called at least four times between 2 p.m. and 8 p.m. When I called at 8 p.m., I started getting a bit smart on the phone. The police station at 222 Main Street is right across the street from my building, and I couldn't figure out why one officer couldn't come over.

The sergeant who was working at the time came on the phone at the 8 p.m. phone call and told me that some officers had been on their way, but they were called away to a major event, and that as soon as that was done, two officers would be right over. I went to bed at 9:30 p.m. and nobody had turned up by that time.

[Affidavit J, Darryl Menard, paras. 5-7 and 15, 16]

Statutory accountability and legal recourse for failure to investigate

In the event of an allegation of police misconduct or where the quality of service of the police force is called into question, which affects or is witnessed by a citizen, a person may file a public trust complaint which may be directed against a municipal or chief constable or deputy chief constable, or the municipal police force. 118

However, s. 21(2) and s. 21(3) of the *Police Act* (1996) absolves police officers or people appointed under the Act from personal liability unless they are found to have been guilty of dishonesty, gross negligence, or willful or malicious misconduct.¹¹⁹

The B.C. Code of Professional Conduct Regulations (1998) establishes under section 4(1)(b) that police officers may be held accountable for a disciplinary default of neglect of duty if they fail to promptly and diligently perform their duties. 120 Section 17 of that same code establishes that a police officer commits a disciplinary default if that officer intentionally or recklessly committed the act or omission in question. As a result, a number of disciplinary or corrective measures may be imposed upon the officer at the discretion of a disciplinary authority, such as dismissal, reduction in rank, transfer or reassignment, training, or suspension. 121

Tort of negligence and police response

Alternatively, Canadian courts have begun to recognize a civil private law remedy for police negligence in conducting investigations in a number of limited instances. The courts have found conduct to be negligent if it creates an unreasonable risk of harm. In the context of the police, an unreasonable risk of harm is created when they fail to take the necessary and reasonable steps to lessen the foreseeable risk of crime and harm. 122 By failing to respond adequately to complaints, police officers create an unreasonable risk that problems underlying complaints will recur, that individuals in need of assistance will be harmed, or that conditions which produced the complaints in the first place will be exacerbated and worsen creating an even greater potential for criminality and harm.

It is not unreasonable to encourage police to respect the equality rights and security of the persons filing complaint, and the Courts as custodians of the common law are under the duty to ensure that the common law reflects the emerging needs and values of society as reflected in our Charter of Rights and Freedoms. 123 To date, the difficulty in making a successful claim for negligent investigation has primarily resulted from failing to establish a relationship of proximity sufficient to create a duty of care between police officers and claimants, and in establishing the causal connection between the negligent investigation and the resulting harm.

Duty of care and standard of care

Public Authorities, such as the police, are generally capable of being held liable in court for their negligent acts as a matter of policy and principle on operational decisions. 124

In order for a duty of care to arise, a court must find forseeability of risk, in combination with a special relationship of proximity between a public official and an individual member of the general public. 125 A court will also consider whether

or not there exist any considerations which might negative or reduce or limit the scope of duty or the class of persons to whom the duty is owed or the damages to which a breach of it may give rise. 126

When an individual is known, or should be known, by police to belong to a narrow and distinct group of potential victims, a special relationship of proximity exists between them such that a duty of care on the police is established. 127 Police have a duty to take reasonable steps to protect those individuals from the foreseeable risk of repeated crime and harm.

Arguably, there is a private law duty of care of police officers to investigate if a plaintiff can show that a special relationship of proximity arises from the circumstances of the complaint. In particular, a duty of care seems likely to arise where a person who calls 911 is in a position of a special risk above and beyond that of the general public. 128 A specific relationship of reliance appears to be inherent to the act of filing a complaint with the police. 129

Repeated phone calls from certain SRO hotels regarding a number of identifiable themes of complaints, which match the complaint made via a 911 report, could also make it more likely that police should recognize the potential for harms materializing from a failure to respond and investigate effectively, thereby making the harms to a potential plaintiff increasingly foreseeable.

Policy arguments for and against finding such a duty are apparent. For example, concerns that a private law duty on police officers to investigate all 911 calls might interfere with officers' abilities to exercise discretion to set priorities in connection with investigation and suppression of crime, and further, that the threat of litigation might result in police officers doing their job defensively to the detriment of law enforcement, might present a difficult policy obstacle to a court finding a duty of care.

Further concerns that a duty to investigate might lead to overzealous arrest policies that could infringe on the rights of suspects, or that valuable financial resources would be diverted to investigate discretionary decisions and increase police and legal services at the expense of other important services to the detriment of the community, also present a notable obstacle to success.

However, a pressing policy argument in favour of finding such a duty, particularly in the DTES, is the threat of an increase in overall public distrust of police and dysfunction in policing if discriminatory and arbitrary access to protection and justice become the norm.

Causation

To win in court, a plaintiff must not only prove that the defendant owed a duty of care, but also that the defendant's inaction or actions caused damage to the plaintiff. ¹³⁰ While there are situations in which a court will use a relaxed burden of proof, it seems unlikely that an action for negligent investigation or response would be such a situation.

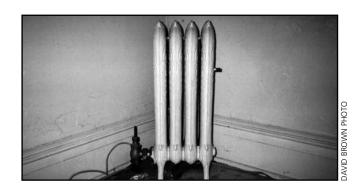
The evidential burden of proving causation may be difficult in situations where there is speculation required on the part of the court to determine what would have happened had a proper response or investigation taken place. For example, in B. M. v. British Columbia (AG) 131 the court found no causal link between the inaction of the RCMP and the harm that ensued, as the court held that the failure to investigate did not materially contribute to or increase the risk of harm beyond the de minimis level to the extent that the RCMP were held responsible for the acts. However, in situations where a harm was demonstrated to have occurred repeatedly – to the knowledge of police – at the same location and involving the same factors as a 911 call that was not responded to, it seems possible that a court would find that the failure to respond caused the harm that resulted. This situation seems most likely to arise at SRO buildings in the DTES.

Police and emergency response: recommendations

- 1. The VPD *Training Bulletin 2006-03-14* must immediately be cancelled.
- 2. The training bulletin should be replaced by a training bulletin that prevents officers from doing room checks

- unless requested by a landlord in a situation where there is a reasonable belief on the part of the landlord that the landlord or a tenant's personal safety is at risk if the police are not present.
- 3. The VPD should immediately begin retraining all officers in the DTES on the legal requirements for a valid search.
- 4. The City and the VPD must stop using 911 call frequency as a measure to determine whether a hotel is a "problem" hotel, and instead use indicators like: welfare fraud, criminal activity by landlords, and failure to meet health and safety requirements.
- 5. The VPD should revise its policy on landlord and tenant matters, requiring officers to prioritize complaints of illegal eviction over other matters not requiring immediate response.
- 6. The VPD should train officers working in the DTES in the residential tenancy process and legislation so that officers can identify illegal evictions and illegal landlord activities, and charge landlords under the provincial *Offence Act* for violations.
- 7. The VPD should introduce a team dedicated to identifying threats to tenant health and safety in SRO buildings identified by tenants in those buildings, and work through community forums and with community advocacy groups in identifying ways of addressing those issues, including criminal investigations and charges where required. These investigations should be very conscious of the goal of improving the quality of what affordable housing remains in Vancouver while avoiding closing housing through the direct or indirect effects of the team's investigations.

PART 10: DENIAL OF UTILITIES AND ESSENTIAL SERVICES

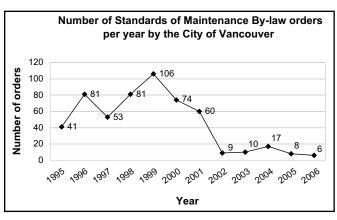


Running water, working furnaces and structurally sound buildings are housing essentials that most individuals take for granted. They are also vital and basic services that, according to provincial and municipal law, must be afforded to all members of society.¹³² The affidavits of Downtown Eastside (DTES) residents indicate that many live in conditions that do not fulfil these legal requirements.

Findings

Follow-up research by the authors through freedom of information requests has identified that the City of Vancouver (the "City") has been negligent in identifying and ordering standards of maintenance repairs. Orders for repairs are important, because they ensure that buildings are safe for tenants to occupy. In addition, orders for repairs allow the City to make repairs in situations where the landlord refuses to make repairs, and bill the owner for those repairs. In some cities, these policies have allowed municipalities to take over the management of "problem" buildings when owners walk away from repair bills that they cannot afford to pay.

In 1999, the City made 106 orders for repairs. In 2005, they made just eight. In the first half of 2006, only six orders were made. Given affiant evidence about the state of the buildings they live in outlined in this section, it is unlikely that there have not been opportunities for Standards of Maintenance inspectors to make orders for repair to force owners to improve the quality of the housing they provide. See the chart in this section for more information on the frequency of orders for repair made by the City under the Standards of Maintenance By-law.



Lack of heat

The Standards of Maintenance By-law states that heating systems must be kept in good working condition so as to remain capable of sustaining an adequate temperature. 133 Many affiants reported having no heat or inconsistent heating during the winter.

The heat is only on for a few hours in the winter at a time. It's totally unpredictable. The heat wasn't on today, and it's freezing out and snowing.

[Affidavit 113, Horst Minkofski, at paras. 28-32]

The heat didn't work properly in the wintertime. The heat didn't come on at all in January, February and March, so I would turn on the stove because I was so cold.

[Affidavit 55, Elmer Azak, at paras. 5-9]

We often have clients that after they move into housing I will find out in the course of a conversation with them that there... is no heat where they are living.

[Affidavit 121, Henriette Chabot, at paras. 4-13]

Lack of running water

All plumbing, including pipes, must be kept in "good working order and repair." This means that pipes must be free of leaks or defects and be supplied with hot and cold water. ¹³⁴ Also, every sink, shower and bathtub must have an adequate supply of water, both hot and cold. ¹³⁵

It [the plumbing] was broken before I moved in. There was a knife stuck in it. I never had any running hot water.

[Affidavit 56, Gary Donaldson, at paras. 11–15]

During the winter of 2002 or 2003, there was a period of nine days when there was no hot water in the building at all. The landlord made no attempt to repair the hot water until the tenants had been without hot water for nine days.

[Affidavit 14, Joseph Ostranski, at paras. 6–10]

Sanitary issues: toilets, sinks, communal kitchens

Lodging house operators are obligated to maintain premises in "thoroughly clean and sanitary conditions" at all times. ¹³⁶ This standard applies to all areas of the property. Many SROs in the DTES are unclean to the point of being intolerable and dangerous to tenants.

The building is very dirty. The floors are very dirty, you have to wear your shoes even in your room. [...] There is garbage, blood and shit in the bathrooms; they are filthy.

[Affidavit 40, Linus Malik, at paras. 2–11]

One day I toured several of the worst SROs with the police, and was disgusted at the living conditions in the rooms. In those buildings the communal toilets were unusable – light bulbs removed, no toilet paper supplied, floor drains plugged. No wonder people shit in the lanes! How can a society such as ours let people live in these deplorable conditions?

[2006-07-19 - FOI Request - City of Vancouver -- Robert Ross City Consultant]

Maintenance of elevators and lack of disabled access

City by-laws dictate that elevators in residential tenancies must be maintained in an operative state at all times. 137

The mobility of many seniors and individuals with physical disabilities who live in SROs depend on working elevators.

The elevator breaks down a lot. About a month ago, we went a week without an elevator. There are elders in the building who can't get out. Also, gurneys, paramedics can't get up – there are eight floors in the building. Almost every second month it stops working for a bit. [...] I have a heart condition, I am scared that I am going to get stuck in my room when the elevator breaks down.

[Affidavit 94, D.J. Joe, at para. 9]

Building security

A landlord is responsible for providing building security in the form of adequate locks on all exterior doors and windows for each unit within the premises.

In a multi-unit complex the landlord is responsible for providing locks on all entrances to common and storage areas. 138

When I first moved into my apartment there was no lock on the sliding door. I complained to management; it took them four months to put a lock on.

[Affidavit 55, Elmer Azak, at paras. 5–9]

Structural issues: leaking roofs, rotting foundations, leaking pipes

Every building used as a residential tenancy must be structurally sound and capable of sustaining its own weight.

Building foundations must be maintained in good repair while the roof of every building must be kept "weather-tight and free from leaks." All plumbing must be maintained in good working order and be free from leaks. 140

There was hole in the roof that grew bigger over several months. Because of the hole in the roof, we had to place numerous buckets to collect rain water. Insulation was falling from the roof. The water damage caused problems with mould. The landlord was aware of the rotting deck and the hole of the roof, but he did not take any action for repairs for a long time.

[Affidavit 06, Joseph Johnson, at paras. 1–2]

I need to keep my window closed. If I try to open the window, it falls into the room.

[Affidavit 141, Jean Leboeuf, at para. 17]

There are heating pipes in my room. There are holes rusted in the heating pipe in my room. When the water goes through the pipe in my room, it drains onto the floor. The water drips into my room. That's been like that for so long that I even told the previous owners about it and it hasn't been fixed.

[Affidavit 114, James Douglas Caston, at paras. 4–11]

Legal analysis

The Residential Tenancies Act SBC 2002, c. 78 establishes rights and responsibilities out of which neither a landlord nor tenant may contract. 141 Landlords are legally responsible for keeping rental premises in a certain condition. Their property must meet the "health, safety and housing standards" established by law. 142 Landlords are also prohibited from terminating or restricting a tenant's essential services or facilities, i.e. those services that are necessary, instrumental or fundamental to the tenant's use of the rental unit as living accommodation. 143 (See the "General Health Issues" section on page 52 for the municipal and provincial laws relating to standards of maintenance and health standards in SROs).

For a number of years, many people were under the mistaken belief that the City had lost a court case involving the Columbia Hotel and were therefore unable to enforce the Standards of Maintenance By-law. This case never existed. The only court case involving the By-law involved the Cambie Hotel in 1990 when the By-law was found to be within the scope of the Vancouver Charter and that the city could make necessary repairs. 144

International position on housing standards

These breaches represent not only an evasion of a municipal and provincial legal duty on the part of landlords, but a failure of the municipality and provincial government to ensure that Canada meets its international obligations by inspecting buildings and ordering appropriate repairs. In 1948, Canada along with 47 other states, voted the Universal Declaration of Human Rights into force. 145 In doing so Canada acknowledged the right of every individual to adequate housing. 146 This commitment was reiterated in 1976 when Canada ratified the International Convention on Economic, Social and Cultural Rights. Article 11 recognizes the right of all people to "adequate housing,"147 which entails adequate space, infrastructure and security. The committee responsible for drafting the provision noted that the right to adequate housing was to be granted to all people irrespective of their financial means. Clearly there is a discrepancy between Canada's international stance on housing as a right for all and the present situation on the DTES.

Denial of utilities and essential services: recommendations

- The City must begin twice-yearly standards of maintenance inspections of all occupied rental housing listed in the City's Single Room Accommodation By-law Schedule and order repairs to buildings where required.
- Where repairs are not completed as ordered, the City should use s. 23.9 of the City's Standards of Maintenance By-law to carry out the required repairs immediately upon expiry of the 60-day notice period.
- The City should bill all repairs to the owner pursuant to s. 23.11 of the Standards of Maintenance By-law and take possession of buildings where owners do not pay as required.
- The City should purchase the two hotels for renovation and re-opening as deep-core need housing promised in the DTES Housing Plan immediately, and begin setting aside funds to purchase one hotel per year each following year for the same purpose.

PART 11: GUEST RESTRICTIONS IN DOWNTOWN EASTSIDE HOTELS



Under the *Residential Tenancy Act* (the "*RTA*"), tenants have a right to be free from a landlord interfering and preventing them from having guests without cause. However, many affiants reported that guest restrictions such as the charging of guest fees, ID requirements or guest registration were common practice in SROs.

Findings

Charging tenants guest fees

Many affiants reported that the management of the SROs where they lived charged guest fees for any person coming to visit them during the day or night or, at some hotels, solely for visitors who stayed overnight. ¹⁴⁹

At the Marble Arch, I paid guest fees about a dozen times. Twice the charge was \$5 but the rest of the times it was \$10. The desk clerk would collect the fees.

[Affidavit 03, Jeffrey Scott Anderson, at para. 6]

The rule in the building is that, after visiting hours, you have to pay \$10 to have a guest visit.

[Affidavit 17, Jacob Jason Rikley, at paras. 7-8]

He works the front desk. At the Balmoral Hotel, I've seen him charge guest fees. I've also seen where a person goes in and pays a guest fee, and then leaves and returns on the same night, they have to pay a guest fee again.

[Affidavit 105, Anonymous, at paras. 10–11]

The *RTA* specifically states that a landlord is not allowed to impose restrictions on guests and cannot charge fees for daytime visits or overnight accommodation of guests. ¹⁵⁰ Landlords may not charge a guest fee, whether or not the guest stays overnight. However, as explained by the affiants above, hotels in the Downtown Eastside (DTES) continue to demand guest fees from tenants when they have visitors.

I used to work at the West Hotel, just two months short of eight years. [...] I collected rents, collected guest fees if I was working at night, served eviction notices, and wrote up eviction notices. [...] Even though guest fees became illegal, Don Parker, who became the front desk manager after I left there the first time, told all of us that [owner] Jack Spitz wanted us to collect guest fees. ... Lots of people would just pay the guest fee and would not complain or file for arbitration.

[Affidavit 52, Charles E. Gammon, at paras. 3–9]

Some affiants who knew that guest fees were illegal reported that they argued with hotel management over the payment of fees with little or no success. Some felt physically threatened when they protested against guest restrictions.

DTES tenants have little power to enforce their right to have guests and can only rely on the complaints process offered by the RTA.

I argue with the Sidhu, the desk clerk, all the time about guest fees. He is mostly in charge of the afternoon shifts. I tell him if he doesn't like me not paying, then he [can call] the cops on me because I know guest fees are illegal and they can't charge them. They always give me receipts for my guest fees. One time, I really gave them a hassle about the guest fees, and they gave me the \$10 back.

[Affidavit 63, Laurier Major, at paras. 3-4]

Other types of guest restrictions

Affiants also reported other types of guest restrictions in place at their hotels, such as ID requirements and time limits for registering an overnight guest.

I was right behind Mike [a resident], and Hugh, who works the front desk, asked me for ID. I said I didn't have ID. He said I couldn't come in. I was going in anyway, but he got up really quickly out of his chair. He weighs approximately 300 pounds. I was worried for my personal safety, so I didn't come in.

[Affidavit 141, Jean Leboeuf, at paras. 3–7]

There is also a sign outside that says "no guests allowed." Guests can come from 9 a.m. and they must be gone by 10 p.m. There is a guest registry they have to sign.

[Affidavit 20, Michael Lewis Russell, at para. 12]

I can't get my brother, son or daughter to visit me; there is a sign inside that says no visitors allowed. There are different people at the front desk every day who tell visitors they can't come in.

[Affidavit 05, Ernest Francis Williams, at para. 6]

The impact of guest restrictions

Many affiants reported that guest restrictions significantly impaired their enjoyment of their residences. The DTES has one of the higher percentages of elderly residents of the six Vancouver regions and, consequently, a large number of "shutins."151 Residents are also left unable to occasionally help friends who need a bed for the night. 152

There are a lot of seniors that live with me at the Astoria, and they have friends and family that can't come and visit them.

They are afraid to speak up against the guest fees and unsanitary living costs because they don't want to get evicted.

[Affidavit 63, Laurier Major, at paras. 3-4]

I have lived at the Astoria for almost 10 years. I use a walker or a cane to get around. I can't take the bus; I can only use taxis. [...] They charge \$10 for the guest fee at the Astoria. They won't let my niece come up to visit me unless she pays \$10.

[Affidavit 118, Anonymous, at paras. 2-8]

When my mom died, my friend wanted to come and see me with my kids. They said my kids had to leave at 10 p.m.

[Affidavit 20, Michael Lewis Russell, at paras. 12–13]

But some affiants also spoke of the positive impacts of guest fees:

A person named David Sellmaster who used to work at the West told me the reason for the guest fee was to prevent the hotel from turning into a crack hotel. I agree with him.

[Affidavit 91, Ross La Brey, at para. 29]

One reason given for the use of guest restrictions is that they control who goes in and out of the building, thereby making the building safer for its residents and staff. They may also limit overcrowding. Logically, however, often the people who can afford the cost of guest fees are those who are bringing in visitors who potentially could cause more problems, such as drug dealers. Guest fees are also sometimes used to supplement or cover the front desk staff's income, which is often well below that required by employment standards. Other ways to address security and overcrowding issues could be used without resorting to illegal fees.

Legal analysis

The failure of the complaint process to address guest fee and guest restriction issues

Although the RTA allows for tenants to make complaints about guest fees and other guest restrictions, many affiants reported that they were afraid to report because of the risk of getting an eviction notice.

One of the caretakers, Brad, who works the front door, told me that I would be evicted if I brought guests up without leaving money under the door.

[Affidavit 23, David Stone, para. 4]

At both the Arco Hotel and the West Hotel there is a guest charge of \$20 for every person who is brought into private rooms after 10 p.m. I have paid this fee on a few occasions. I have complained to management that I know this is illegal but they didn't care. I do not want my name used in any action against the landlord as I do not want to put myself at risk of being evicted.

[Affidavit 76, Anonymous, at para 7]

I don't want to be identified in this campaign because if my manager finds out I reported the guest fees he will evict me. He has done this before, mostly for hookers who are sneaking in their clients without paying the fee. He uses the excuse that you are bothering the other tenants.

[Affidavit 08, Anonymous, at paras. 3-6]

I told management that I didn't think guest fees were right, and they told me they could evict right there on the spot. They would threaten me with eviction whenever I spoke up.

[Affidavit 78, William Blair Childress, at para. 2]

In addition, front desk staff often do not issue receipts or, if they do, they issue them in the name of the guest, with the result that tenants are unable to recover the money. The hotel sometimes does and sometimes doesn't give receipts. I have spent about \$60 over the past two weeks in guest fees. I have two \$10 receipts but did not receive any receipts for the other \$40.

[Affidavit 23, David Stone, paras. 3-4]

One DTES tenant has been successful, with the aid of Pivot, in bringing his landlord in front of an arbitrator for charging guest fees and imposing guest restrictions.

On June 15, 2006, David Eby, Mr. Whitehead's solicitor from Pivot, faxed a copy of the order and a letter explaining the order to the owners of the Lucky Lodge, asking for their assistance in complying. ¹⁵³ The Lucky Lodge continues to restrict guest access for all of their tenants, including Mr. Whitehead.

On June 17, 2006, Jean came to my room and told me he had difficulty coming in because Terry, who was working the front desk had insisted that Jean have photo ID. On June 18, 2006, at 8:01pm, I was coming up the stairs with my friend Jean, and a man named Hugh was working the front desk. Hugh said he did not have to obey the arbitrator's decision because I hadn't been to Supreme Court yet and therefore Jean was not allowed in without photo ID.

[Affidavit 142, Christopher Whitehead, at paras. 14–15]

Complaint

Complaint 1

Christopher Whitehead applied for an order that his landlord at the Lucky Lodge stop restricting access to his guests and stop charging them guest fees. Mr. Whitehead had on three occasions paid \$10 to have a visitor overnight.

[Affidavit C, Christopher Whitehead]

Arbitrator's order

Order 1

The arbitrator held that a guest who "cannot show that they have a place of residence other than the tenant's room" could be considered an unauthorized occupant. However, the arbitrator held that the landlord could not restrict access and could not charge a fee for a "guest" or for a "service or facility" for that guest. Whitehead v. Park Regent Investors (18 April 2006), Burnaby 179893 (Arbitration)

Complaint 2

Mr. Whitehead found that even without guest fees, his landlord continued to restrict visitor access to his room. The following rules were enforced by the landlord: visitors were required to leave provincial ID and register their names before 9 p.m., overnight guests were not allowed to stay for more than six days in any calendar month, guests were denied in-and-out privileges after 9 p.m. and no guest was allowed in the room of a resident if the resident was not present.

[Affidavit 142,Christopher Whitehead]

Order 2

The arbitrator found that the rules were contrary to the *RTA* because they imposed restrictions on guests and ordered the landlord to comply with the *RTA*.

This decision put to rest the idea that a guest would have to show they had a place of residence other than the tenant's room before being allowed in the building.

Whitehead v. Park Regent Investors (07 June 2006), Burnaby 182900 (Arbitration)



Many affiants reported that guest restrictions significantly impaired their enjoyment of their residences. The DTES has one of the higher percentages of elderly residents out of the six Vancouver regions and, consequently, a large number of shut-ins. Residents are also left unable to occasionally help friends who need a bed for the night.

Guest restrictions in Downtown Eastside hotels: recommendations

- 1. The VPD should enforce tenancy rights of residents by informing hotels that actively post guest restrictions that such restrictions are illegal. Administrative penalties should be available to issue tickets to non-compliant buildings.
- 2. SROs that continually exercise guest restrictions should be subject to increasing fines under the RTA in order to make it too expensive for the SROs to continue such practices.
- The provisions in the RTA prohibiting retaliatory conduct such as evictions or denial of services or repairs should be strengthened so that tenants can assert their rights.

PART 12: GENERAL HEALTH ISSUES



Fifty-three affiants reported a health issue with respect to their current or past living situation. Often health concerns, including bug infestations, rodents and mould, are the result of deteriorating buildings, lack of upkeep by management and the weak enforcement of the City of Vancouver's *Standards of Maintenance By-law*.

Many of these health issues hide the true cost of failing to ensure minimum standards in housing: mould and bedbugs cause increased hospital and doctor visits; rodent issues cause fires, and along with bedbugs, result in spreading infestations that can move throughout the city. The City and the Provincial health officers have powers to remove infestations and bill property owners under the *Standards of Maintenance By-law* and the *Health Act*; however, they choose not to use that power.

Findings

Bed bugs

Thirty-one affiants identified bug infestations as an issue.

Me and my husband were living in room 608 at the West Hotel. We were infested with bed bugs. We asked the management to clean our room and to move us. They moved us to three individual rooms, and all three of those rooms had bed bugs. I got bit on the face by a bed bug, and because of it I had to be hospitalized. So, we asked management to fumigate our rooms, but they never did.

[Affidavit 41, Mary-Joe Dion, at para. 2]

There are bedbugs at my hotel. The first time I noticed the bedbugs was last summer. I told the manager, Al, that there were bedbugs. He said he would do something about it, but he didn't. I went to the Downtown Eastside Residents' Association to complain about the bugs and they made the manager fumigate. I had to leave the apartment for a day while they fumigated. The manager told DERA he would pay for my clothes to be washed, but he didn't. All of the clothes in my room and sheets had to be washed, I had to pay for that. The mattress wasn't changed. When I came back the bugs were gone. They came back in about a month.

[Affidavit 31, Dan Restoule, at paras. 3-6]

I have bed bugs. My place is infested with them. I have been up since 4 a.m. this morning because the bed bugs wake me up. I can't sleep at all. They bite me all over. I have bites all over my feet and legs.... Management does not care at all. I tell them. They just don't care.

[Affidavit 44, Mickilus Belcourt, at para. 5]

I have bed bugs in my bed, and other people have told me they have bed bugs too. I told the manager, and they told me it was my problem. They were very rude about it. They own the mattress and box-spring, so I can't throw it out.

[Affidavit 40, Linus Malik, at para. 17]

In recent years reports of bed bug problems have been on the rise in B.C. In larger urban areas in Southwestern B.C., reported cases have increased by 600 percent from 2003 to $2005.^{154}$

Bed bugs are small, brownish, flattened insects that feed solely on the blood of animals. They usually bite people at night while they are sleeping. They feed by piercing the skin with their mouths, which they use to withdraw blood. Many people develop an itchy red welt or localized swelling, which sometimes appears a day or so after the bite. Antihistamines and corticosteroids may be prescribed to reduce allergic reactions, and antiseptic or antibiotic ointments to prevent infection. The main medical concern is the risk of infection from scratching the bite area. This is particularly an issue for people whose immune systems are compromised due to HIV or Hepatitis C infection, health conditions that are very common in the DTES. 155

Using a pest control professional as part of an integrated pest management approach is a more effective method of getting rid of bed bugs. Pivot contacted several Lower Mainland pest control professionals and determined that the average price to have a room treated is between \$160 and \$245.

Responses of other major centres to bed bugs

City of Wolverhampton, UK: Council provides a free service for domestic premises for the treatment of bed bugs. An appointment can be made by contacting them. There is a chargeable service available for businesses. 156

Coventry, UK: The City Council of Coventry treats bed bugs free of charge as they are classed as a public health pest. 157

New York City, USA: If residents of New York City discover that they have bed bugs, they can contact their local office so that a work ticket for a visit by a New York City Housing Authority exterminator can be filled out. 158

British Columbia, Canada: B.C. Ministry of Health have a Health Guide containing a fact sheet on bed bugs. It details what bed bugs are, how to spot them, how they can be prevented, and how to get rid of them. Similarly, Vancouver



Bed bugs are a problem all over the Greater Vancouver Regional District (GVRD), including the DTES. Low-income residents cannot afford to replace their infested furniture as easily as others.

Coastal Health has a bed bug control pamphlet. 159 The Vancouver Area Network of Drug Users (VANDU) is currently assisting Vancouver Coastal Health with a bed bug control pilot project.

Rodents

Seven affiants reported concerns about rodent infestations.

The mice are just ridiculous. As soon as I turn my light off to watch TV, the mice are there. They eat the peanut butter off the trap but they don't get caught. I brought the mice problem to the two managers' attention last year. I moved upstairs last August and there are mice all the time.

[Affidavit 20, Michael Russell, at paras. 5-6]



Seven affiants reported concerns about rodent infestations.

There are a lot of mice – tons in the halls. The pest control comes in, but they don't do much – they leave dead mice all over the place.

[Affidavit 94, D.J. Joe, at para. 7]

Mould

Seven affiants reported concerns about mould. Moulds are microscopic fungi, a group of organisms that also includes mushrooms and yeasts. Fungi grow and reproduce rapidly, producing spores and mycelia in the process. Mould can develop from too much humidity, building leaks, refrigerator drip pans, bathroom surfaces and flooding. Mouldy smells from carpets and wood are a sign that they are home to fungi. Mould spores contain allergens and irritants. People living in houses where moulds grow are more likely to suffer from asthma or respiratory symptoms.

The hotel smelled of damp and mildew; of water damaged material; of turned food; of damaged rugs. [...] In one of the bathrooms on the second floor of the Piccadilly, a shower ran constantly, due to a faulty stop valve, for over a week. It poured hot water which created a lot of water damage, mildew and wall sweating.

[Affidavit 03, Jeffrey Scott Anderson, at paras. 13–14]

Where I live the management does not care. The manager is Amanda, and there are also other people that work there. The bathrooms are filled with mildew. Nobody cleans them or sterilizes them.

[Affidavit 95, Elizabeth Pyke, at para. 3]

Legal analysis

Case law

In an American case, a motel chain in the US was successfully sued for US\$382,000 after guests were bitten by bedbugs. The judge in this case stated the following.

Motel 6 could not have rented any rooms at the prices it charged had it informed guests that the risk of being bitten by bedbugs was appreciable. Its failure either to warn guests or to take effective measures to eliminate the bedbugs amounted to fraud and probably to battery as well . . . a Chicago hotel that permits unsanitary conditions to exist is subject to revocation of its license, without which it cannot operate under the Chicago Municipal Code sections 4-4-280, 4-208-020, 050, 060, 110. We are sure that the defendant would prefer to pay the punitive damages assessed in this case than to lose its license. 160

While no Canadian equivalent to this case exists, it follows the basic principles of tort law that if an SRO operator is aware of a bed bug infestation and neglects to inform a tenant, that failure to inform would render the operator negligent and subject to civil damages. However, under the *Residential Tenancy Act (the "RTA")*, tenants are prevented from suing landlords in court for injuries sustained due to a landlord's negligent operation of a building. All claims must go through arbitration.

Municipal by-laws and provincial legislation

Section 28 of the *RTA* states that a tenant has the right to quiet enjoyment including reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit.

Section 32 of the *RTA* sets out a landlord's duty to repair and a tenant's duty to repair and keep premises clean. According to the *RTA*, a landlord must keep a rental unit healthy, safe and "suitable for occupation." A landlord has to make repairs that are needed for a tenant's health and safety. ¹⁶¹ Furthermore, landlords are required to keep rental units suitable for occupation by hiring a pest control professional to take care of any bug infestation.

However, hotel owners are not the only group responsible. The City has power under the *Standards of Maintenance By-law*

No. 5462 to protect affordable housing and, consequently, they share responsibility for conditions in SROs. This By-law can be used to rectify the bed bug situation by enforcing basic levels of maintenance for rental accommodation, including minimum standards of comfort and safety.

The Standards of Maintenance By-law applies certain standards for lodging houses and the responsibility of their owners. Sections 21.10, 21.15 and 21.16 require that the lodging house operator maintain the lodging house in a condition that is clean and sanitary, free of pests, and in good repair at all times. Furthermore, it states that except where provided by a tenant, every lodging house operator has to provide sufficient bedding, mattresses and towels to all sleeping and housekeeping units, and maintain such in a clean and sanitary condition. Mattress covers are also to be provided and maintained in a clean and sanitary condition. Finally, except where provided by the tenant, every lodging house operator who provides furnished accommodations must maintain such furnishings in a clean and wholesome condition.¹⁶²

The City's Health By-law No. 6580 s. 5 ("Health By-law") states that property owners must keep their buildings repaired and maintained in a condition that will prevent them from becoming infested with pests. It also states that property owners must take steps to eliminate any infestation that occurs. 163 Provincial health law mandates the same, and the health department can do the repairs and bill the owners under its authority through the Health Act.

The City, Vancouver Coastal Health, and landlords/hotel owners are all responsible for correcting bed bug, rodent and

mould problems. If a landlord fails to act, a health inspector can be called. Health inspectors and the City have authority pursuant to the Health Act, Standards of Maintenance By-law and Health By-law to force landlords into taking the necessary steps. Section 9 of the Health By-law sets out enforcement principles and penalties. Section 9.1 states that if there is a violation of any provision of the by-law, the Medical Health Officer may take steps to rectify the situation in accordance with the bylaw. 164

As seen in the case of bed bugs, if the City and Provincial governments continue to ignore the increasing bed bug problem, a significant amount of government money will be required to address the health impacts. This will cost taxpayers far more in the long run than enforcement will in the short

General health issues: recommendations

- Tenants should be allowed to avoid the arbitration process in cases of alleged negligence by landlords, permitting tenants to sue in small claims court or B.C. Supreme
- Vancouver Coastal Health must aggressively inspect and prosecute infestations of mould, bugs and rodents. If landlords refuse to do necessary repairs, the repairs should be done by Vancouver Coastal Health or the City and billed to the landlord as required.
- The City and the Province should immediately offer subsidised or free bed bug spraying for tenants.

PART 13: ENFORCEMENT OF BY-LAWS



The current failure of municipal and provincial officials to enforce minimum health and safety standards for SRO buildings is resulting in damage to and closure of what limited deep-core need housing remains in Vancouver. The current emphasis of enforcement appears to be placed on closing offending buildings, rather than rectifying outstanding issues and punishing landlords for failures to maintain. The following are five examples of by-law and provincial legislation enforcement actions that have resulted in the loss of many deepcore housing rooms in Vancouver. All of these incidents have taken place since September 15, 2005.

The Pender Hotel

Number of rooms: 36 Date: September 15, 2005



The Pender Hotel. Tenants were detained in a parking lot beside the building without washrooms from 11 a.m. to 7 p.m.

Vancouver police and fire departments raided the Pender Hotel, allegedly in search of a crystal methamphetamine lab, on September 15, 2005. No evidence of any lab was found in the building. During the raid, conducted without a search warrant, every locked door in the hotel was kicked in, including the front door. The tenants of the building were detained in a parking lot beside the building without water from 11 a.m. to 7 p.m. The detained tenants had keys and offered them to the investigating officers and fire officials, but the keys were refused. When the raid was complete, the police and fire officials left without completing any repairs. No security was offered for the tenants of the building whose doors were damaged. No medical treatment was provided at any point for any of the tenants. Shortly after the raid, the Pender Hotel closed, forcing its 36 tenants to find new accommodation or to sleep on the streets.

I am 56 years old. I have lived at the Pender Hotel for two years. My rent is \$325. I am on assistance. Today I heard a big bang on my door. I got up and opened the door and there was a police officer with his gun out and pointed at me. He told me to get out of my room and go down to the end of the hallway. I asked if I could put some pants on and he said no. I am wearing a bath robe right now and sandals. Another police officer at the end of the hall told me to go downstairs. The police officer at the end of the hall told me that there is suspicion there is a meth lab in the building.

[Brian Sutton, Affidavit 82, at paras. 1-4]

The DERA people came around with some water. There is no washroom and they won't tell us what is happening. The police officers told me that I am contaminated. They won't tell me the nature of the contaminant or why I am not being medically treated.

[Brad Dmytryshyn, Affidavit 81, at para. 6]

I came down at about 2:30 p.m. and an officer stopped me right out front. The police officer told me that I was possibly contaminated and that I had to be detained. They took me around to a parking lot beside the hotel. They told me that if I attempted to leave I would be placed under arrest for obstruction.

[Dale Brown, Affidavit 85, at para. 7]

The Lucky Lodge

Number of rooms: 63 Date: May 2006 to present

Every business in Vancouver, including residential hotels, requires a business license to operate. Each year, every business applies for a license and pays the appropriate business license fee. In the event that the City does not approve of the manner in which a business is operated, the license inspector may refer an application to City council for approval or refusal of the license in question after a hearing.

In May 2006, as a result of a Vancouver police undercover investigation called Project Haven, the Lucky Lodge was referred to the City Business License Panel due to allegations of welfare fraud and the alleged purchase of stolen property by individuals involved in the management of the building. City staff recommended that the business license not be granted. If the license was not granted, the building would be operating illegally and the landlords would be required, by law, to evict all of the tenants in the building and cease operating the business as soon as possible.

On July 17, 2006, with the Lucky Lodge continuing to operate without a valid business license, the Ministry of Employment and Income Assistance (MEIA) representatives at the Dockside welfare office refused to issue rent or deposit cheques to two homeless individuals who applied to rent a room at the Lucky Lodge. Lawyers at Pivot Legal Society were informed that MEIA would no longer be issuing cheques to individuals who wished to move into the Lucky Lodge. The current tenants in the building were to be moved out into existing low-income stock elsewhere. The MEIA plans to sever its relationship with the Lucky Lodge once the building is empty, and those housing places will be lost as a result.

Knowing that the Lucky Lodge could close is very stressful. The uncertainty leads me to bouts of depression because I don't know where I would live.

[Affidavit 142, Christopher Whitehead, at para. 36]



The Lucky Lodge. In July 2006 the Ministry of Employment and Income Assistance began refusing to issue rent or deposit cheques to homeless people applying to move into the hotel.

Burns Block

Number of rooms: 18 Date: March 30, 2006



The fire department's inspectors gave notice to all Burns Block tenants to remove their possessions and vacate the building because of fire code violations.

Vancouver Fire Department inspectors visited the Burns Block hotel for a "routine inspection" on March 30. By 3 p.m. the fire department's inspectors had given notice to all tenants to remove their possessions and vacate the building by 5 p.m. because there were fire code violations in the building. The violations cited were: poorly maintained sprinkler and alarm systems, blocked fire exits, and permanently (screwed) closed windows exiting to fire escapes. A spokesperson for the fire department alleged that the owner had refused to make necessary repairs and acknowledged that if the building owner had cooperated by making the requested repairs, the building would have remained open. ¹⁶⁵

Although the inspectors called the inspection routine, it clearly was not. ¹⁶⁶ Indeed, it was the building's first inspection of this kind by the fire department in almost two years. Typically, if the City's Neighbourhood Integrated Service Team (NIST) identifies safety problems, it issues orders for the problems to be corrected, then follows up with subsequent inspections. This procedure allows people to remain in their homes. The Burns Block is now on the market for \$2.5 million, having been purchased by the owner for \$550,000. ¹⁶⁷

Powell Rooms

Number of tenants: 13 Date: July 19, 2006

An order was issued by the Vancouver Coastal Health Authority to the effect that all tenants residing at Powell Rooms must vacate the premises until the building complied with the requirements of Vancouver *Health By-law* 6580.¹⁶⁸ Section 2.2(b) of the *Health By-law* states that a medical health officer may, by a notice in writing, order the occupants to vacate the building because:

- of the number of occupants;
- of a lack of cleanliness;
- of the presence of a contagious or infectious disease or any other cause;
- the unfitness of part or all of a building has made it a nuisance or a danger to the health of its occupants or the public.

The tenants at the Powell Rooms had seven days to vacate the premises and find alternate accommodation. ¹⁶⁹ Tenants who refused to move out were threatened with arrest. At the time of the order, there were 13 tenants on the premises, including a terminally ill man. ¹⁷⁰ The reasons cited on the order for the closing of the lodging house were:

- a lack of hot water (18°C);
- bed bug, cockroach and mouse infestations;
- washrooms that did not work due to broken fixtures; and
- a huge accumulation of garbage/refuse at the rear of the premises.¹⁷¹

Representatives from the Downtown Eastside Residents Association (DERA) and Pivot did a subsequent inspection of the building and confirmed that there was no hot water in the building. However, the bug and rodent infestation could not be confirmed. They found that the washrooms were in working order, except for a broken tap handle on one sink. The reported



PAUL RYAN PHOTO

Repairs carried out by local community groups saved Powell Rooms from closure on July 25 2006, after the City of Vancouver and Vancouver Coastal Health did not utilize their by-law enforcement powers to improve and retain the building.

accumulation of garbage appeared to be a small amount of garbage, beside a dumpster, related to "dumpster-diving" activity in the back lane.

Additional reasons for closure were given to Pivot by the health officer who issued the notice to evict, including that:

- toilets had been ripped from the wall;
- copper pipes were ripped out of the wall and missing;
- the top floor was occupied by a Vietnamese gang for the use of prostitution and drug sales; and
- there was an insurmountable amount of refuse at the rear of the hotel. 172

All of these assertions were later found by Pivot to be inaccurate or grossly exaggerated. 173 The medical health officer who had signed the order had never personally visited the premises before issuing the eviction notice.¹⁷⁴

On July 25, 2006, a number of organizations in the DTES, volunteers and members of the community, rallied to support Powell Rooms and made significant improvements to the premises within 24 hours. The hot water tank was repaired, tenants were relocated to allow the cleaning of rooms, a pest control service and a fire inspection service were sent in to inspect the premises, and a refuse removal service was called to remove the refuse in the back lane along with refuse collected from the rooms.175

As a result of their efforts, the order to vacate and close the hotel was not enforced and 13 people avoided homelessness. The repairs carried out by the community groups were all inexpensive and well within the mandate of the Vancouver Coastal Health to make under the *Health Act* as an alterative to closing the building. No City inspector had made any repair orders for the building since November 2001.

American Hotel

On August 1, 2006, every resident of the 37-unit American Hotel, located at 928 Main Street in Vancouver, received an eviction notice giving them until September 30, 2006 to move out of the building. The eviction notices listed renovations as the reason for the eviction, including repair of plumbing and electrical systems in the building. In fact, a representative of the owner announced in the Globe and Mail and on CBC Radio One that the owner's true intent was to bulldoze the building and build market housing. 176

The eviction notices themselves were illegal, and written on invalid, out-of-date forms. In addition, the landlord had failed to get any of the required permits for the renovation as



Every resident of the American Hotel received an eviction notice giving them until September 30, 2006 to move out of the building. The eviction notices listed renovations as the reason for the eviction including repair of plumbing and electrical systems in the building.

described on the forms, failing to satisfy the requirements of the Residential Tenancy Act that all permits be obtained before evicting for renovations.¹⁷⁷

As of September 14, 2006, the City had failed to take any enforcement action against the owner of the American Hotel for his publicly stated intent to convert the American Hotel to market housing outside the provisions of the Single Room Accommodation By-law. That by-law would require him to find equivalent alternative housing for every resident in the building and pay a fee of \$5,000 per room converted to market housing. At press time it was not clear that the VPD would intervene to ensure that tenants could remain in their residences.

Despite a widely publicized breach of provincial and municipal laws intended to protect low-income residents, neither level of government has intervened to protect the residents of the American Hotel from this illegal eviction or to protect this critically important low-income housing stock from destruction and illegal conversion to market housing.

Enforcement of by-laws: recommendations

The City and Vancouver Coastal Health should use their by-law enforcement power to improve and retain housing, rather than damage and remove housing from the lowincome housing pool. [See recommendations from Part 10 on page 45.]

PART 14: THE RESIDENTIAL TENANCY ACT



Difficulty accessing protections and remedies under British Columbia's *Residential Tenancy Act (the "RTA")* was a significant issue reported by affiants, as well as Pivot lawyers and volunteers who acted as counsel and advocates for tenants in their applications and proceedings under the *RTA*.¹⁷⁸

Barriers to accessing the RTA

Few offices and little support

Affiants reported that individuals arriving at the Burnaby Residential Tenancy Office (RTO) face multiple-hour waits due to a demand for services that far exceeds the RTO's resources. Even for routine administrative tasks, such as the filing of applications, waits are regularly two to three hours. The result is often that individuals are functionally unable to enforce their rights under the *RTA*.

On January 12, 2006, she knocked on my door at about 9 a.m. and told me that I had until 5 p.m. to be out of the building. I went to the residential tenancy office in Burnaby and asked them what I should do about it. They told me they couldn't do anything because it was 4:15 p.m. and too late to file anything.

[Affidavit 131, Samantha Leigh Perrault, at para. 24]

Friday, December 19th, 2003, they turned off the gas for the stoves. Nobody could complain because it was the Friday before the week Christmas break – the tenancy office was closed. They gave us a microwave instead.

[Affidavit 62, Joseph Ray, at para, 14]

Taking into account my trips to and from the court house and my time waiting to be served at the registry I estimate that the filing process for these documents took approximately five hours.

[Affidavit K, Karin Stredulinsky, at para. 8]

Over the last four years, the RTOs in Surrey, Kelowna, Vancouver and Nanaimo have been closed. Only the offices in Burnaby and Victoria have been left to serve landlords and B.C.'s one million tenants. It is very difficult to access the protections the *RTA* provides, especially for those with limited education, mental health problems, addictions and little access to transportation. For instance, a resident of the DTES will spend their entire daily social assistance allotment to make a trip to the Burnaby RTO and back.

Exemption of certain housing

The *RTA* does not apply to certain types of housing which are more likely to be rented by lower-income persons and, as a result, these persons are left with little security in their tenancy relationships. These include:

- housing cooperatives;
- a living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation;

- emergency shelters and transitional housing; and
- accommodation for rehabilitative treatment or services.

Under section 2 of the Residential Tenancy Regulation, B.C. Reg. 477/2003, most non-profit housing is exempt from certain provisions of the RTA, including stipulated allowable rent increases and the timing and notice of rent increases. Section 2 states:

Rental units operated by the following are exempt from the requirements of the RTA for assignment and subletting, as well as rent increases if the rent of the units is related to the tenant's income:

- (a) the B.C. Housing Management Commission;
- (b) the Canada Mortgage and Housing Corporation;
- (c) the City of Vancouver;
- (d) the City of Vancouver Public Housing Corporation;
- (e) the Greater Vancouver Housing Corporation;
- (f) the Capital Region Housing Corporation;
- (g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:
 - (i) the Government of British Columbia;
 - (ii) the B.C. Housing Management Commission;
 - (iii) the Canada Mortgage and Housing Corporation. 179

This exemption prevents tenants from appealing rent increases that are based on mistaken assumptions about a tenant's income level. For example, one affiant, Lori Hawkins, who lives in a Vancouver Native Housing Society building with her two grandchildren, had her rent increase by \$150 a month with no notice and no increase in her income. Because her building is exempt from the RTA, Ms. Hawkins was not able to appeal the rental increase.

I am concerned about [the rental increase] creating endangerment within families and within my family.

[Affidavit 46, Lori Hawkins, at para. 16]

Complexity of dispute resolution processes

Affiants reported abandoning the arbitration process out of frustration with the bureaucratic process for seeking remedies to landlord abuses.

I took the eviction notice that they had given me to the Residential Housing people, and they told me that the notice on which my eviction was written was obsolete, and that the landlord had to give me a new form. However, I got threatened by the management to leave. They threatened me with violence, taking my stuff, and calling the police. I knew I had rights and I was ready to stand up for them. I didn't pursue the wrongful eviction.

[Affidavit 37, Jonathan Smith, at paras. 1–2]

Tenants who wish to enforce their rights under the RTA must navigate a complex legal and bureaucratic landscape, often without the aid of a lawyer or advocate. To get relief through the RTA process in B.C., individuals must be prepared to spend significant amounts of time and money overseeing a lengthy and demanding process.

Among a host of other barriers, there are significant "frontend" and "back-end" problems with RTA process. At the frontend, fee waiver provisions under the RTA, and the B.C. Supreme Court (i.e. to enforce RTA orders) are not clearly identified or brought to the attention of low-income tenants. Individuals who lack knowledge of fee waivers cannot take advantage of them. Subsequently, they cannot access the RTA system.

At the back-end, tenants who wish to enforce orders made under the RTA must be prepared to file those orders with either the B.C. Supreme Court or B.C. Provincial Court. Due to the refusal of many landlords to obey initial judgments made under the RTA, this is often the only way to enforce an arbitration order.

Unenforceability of the RTO

Multiple affiants reported difficulty enforcing residential tenancy protections under the RTA.

Later in the morning on Thursday the 6th of July I went to the Provincial Court Registry to file the Residential Arbitration Order and Certificate of Service for the Melynchuck file. [...] I was not allowed to file these documents because I had not completed a Change of Address form, and I was missing the original copy of the Decisions and Reasons of the Arbitrator. I returned to the Pivot office, filled out a Change of Address form and found the original Decisions and Reasons. I then returned to the Provincial Court Registry. Again I was not allowed to file the documents. The clerk asserted that only Residential Arbitration Orders can be filed and that Decisions and Reasons of the Arbitrator were insufficient. I returned to the Provincial Court Registry this morning on Friday July 7th. Upon receiving service I was told for a third time that I was unable to file the [Residential Arbitration Order and Certificate of Service for the Melynchuck file]. My attempt to file them was dismissed because I was unable to swear that an appeal had not been filed against the Residential Arbitration Order.

[Affidavit K, Karin Stredulinsky, at paras. 2-6]

Under the amended *RTA*, administrative penalties for repeated violations apply only in situations where a landlord has violated the rights of many tenants, not just one. For a single tenant wishing to enforce a dispute resolution decision, the RTO suggests that tenants involve the police, or sue in small claims for amounts owing. However, police are reluctant to become involved involved (see "Police and emergency response" section on page 37). The net effect is that even where a tenant has been able to wade through the enormous complex-

ities of the dispute resolution process, the *RTA* is rendered unenforceable against a landlord.

The lock on my storage locker was broken. A 1930s bicycle and some records were stolen from my locker. I reported the theft to the superintendent and he didn't do anything about it. I went to the police and they didn't do anything about it.

[Affidavit 4, Allan Young, at para. 8]

The (not-so-simple) RTO arbitration flow chart

The residential tenancy process is supposed to be simple and accessible to anyone living in a rental situation. The flow chart below shows that this is not the case, and that the complex bureaucratic process involved in filing for arbitration can deter a tenant wishing to enforce his or her rights. Time off work assumes minimum possible wait times and may be longer.

Prerequisites 1. Know your tenancy rights and 2. Be able to read, write and that the arbitral system exists. speak in English or French. Day 1 [\$50-\$100 for filing + transit + photocopies = \$108.50] [½ day off work total] 5. Go to the RTO in Burnaby or Gov't Agent or Access Centre between 3. Find the Application for Arbitration 8:30 a.m. and 4:30 p.m., Monday to Friday form to start the process. • Take the morning or afternoon off work. · From RTO website. • Get money for return transit from Vancouver (2 Zones, \$3.25 each way). • From RTO in Burnaby if you don't • Find the RTO office on the fourth floor of an unmarked building on Kingsway. have computer access. 6. See an RTO officer. 6a. Can't afford the fees? 4. Complete Application for Arbitration • Wait in line at reception. There is one recep- Complete Application to (RTO Form 12) properly. tionist for the whole office. Average wait: 10 Waive Filing Fees (RTO to 20 minutes. Form 17). • Claim from landlord within 1 year. Get a number. Forgot to bring documen- Claim damage deposit only after • Wait your turn. Average wait to see RTO tary proof of income? Go giving forwarding address in writing. • Attach documentary evidence employee: 2 to 3 hours. home or to the welfare Submit your forms to the RTO officer and pay. office to get proof of including photos. • If forms are rejected by RTO employee and you income and return to Make two copies of all evidence. have to restart, return to step 4. step 5.



Days 2-5 [\$108.50 + transit = \$114.50] [1 day off work total]

7. Go home and wait 3-4 days for processing.

8. Return on the date given to you by the RTO office to pick up your forms.

- Take the morning or afternoon off work.
- Get money for return transit from Vancouver (2 Zones, \$3.25 each way).

8a. Need a different date or time?

- Wait in line at reception. There is one receptionist for the whole office. Average wait: 10 to 20 minutes.
- Get a number.
- Wait your turn. Average wait to see RTO employee: 2 to 3 hours.
- See an RTO officer and request that another random date and time be assigned to you. If that date doesn't work for you, repeat the step.

9. Pick up your forms

- Wait in line at reception. There is one receptionist for the whole office. Average wait: 10 to 20 minutes.
- A date and time for your arbitration has been assigned to you, anywhere from two weeks to six weeks from the date you filed.

Days 6-30 [\$114.50 + title search + corporate search = \$139.50]

10. Serve your landlord within 3 days (weekends and holidays included)

- Give the forms to a person at the front desk of your residence.
- If there is no person at the front desk, give the papers to the manager or owner of your building.
- If you don't know who the manager or owner is, do a title search for your building and find out who the owner is for \$15.00. Send the owner a registered letter for \$10.00 or serve the owner in person.
- If the owner is a corporation, find out where the registered office of the corporation is through the B.C. Corporate Registry by mailing a request to them. If you have to mail a request, you will need to refile because more than 3 days will have passed. Return to step 5.

11. Collect additional evidence

- Get a lawyer or notary public to swear affidavits for witnesses that cannot attend the hearing during the business day.
- Serve copies of additional evidence to the manager or owner.
- Send copies by fax to the RTO. If you don't have access to a fax machine or don't know the fax number, go to the RTO and file with reception.

11a. Has your landlord started harassing you for filing?

- Report the matter to the police.
- When the police do not act because this is a landlord/tenant matter, report the harassment to the arbitrator at your hearing.
- When you report the harassment to the arbitrator at your hearing, the arbitrator will refuse to exercise jurisdiction over s. 95 of the Residential Tenancy Act, the penalties for harassment section, because it is a police matter under the Offence Act.
- Ignore the harassment and move on to step 12.

Day 30 [\$139.50 + transit = \$146.00] [1.5 days off work total]

12. Attend the hearing

- Take the morning or afternoon off work to attend the hearing.
- Get money for return transit from Vancouver (2 Zones, \$3.25 each way).
- The hearing is scheduled for exactly 1 hour. Time in excess of 1 hour will be rescheduled for another day.
- The arbitrator will wait 10 minutes before starting without you.
- If the landlord does not attend, you must prove service. Explain how you served the landlord. If the arbitrator feels you have not served the landlord properly, return to step 3 and refile.
- Provide your evidence to the arbitrator.
- The arbitrator will reserve her or his decision for up to 30 days and will mail it to you.

Day 60 [\$146.00 + photocopies = \$148.00]

13. Pick up your arbitration decision from the mail.

- If your landlord collects your mail and distributes it, hope that your landlord provides you with your copy of the decision.
- If you don't receive the decision, return to the RTO and get a copy of the decision from the receptionist. Average wait time: 10 to 20 minutes. \$6.50 for transit.

13a. If you lost: request a review if you have additional information not available on the day.

• Repeat steps 4–10 for the review hearing forms.

14. If you won: Serve the decision and order to your landlord.

- Make a photocopy of the decision and order.
- Give it to your landlord.

15. Wait 14 days, giving the landlord opportunity to apply for review, pay the amount ordered, or take the steps ordered by the arbitrator.

Day 74 [\$148.00 + filing fee (small claims) = \$208.00] [2 days off work total]

16a. After 14 days, if the landlord has not obeyed the arbitrator's order and has not filed for appeal, and the order is for money

- Make two copies of the order.
- Go to the Small Claims Court Registry at Robson Square during business hours between 8:30 a.m. and 4 p.m., Monday to Friday.
- Take a number. Average wait: 5 to 30 minutes.
- File the order in Small Claims Court. Complete a "Notice of Change of Address" form. The filling fee is \$60.00.

16b. After 14 days, if the landlord has not obeyed the arbitrator's order and has not filed for appeal, and the order is for the landlord to obey the Residential Tenancy Act.

- Make two copies of the order.
- Go to the B.C. Supreme Court Registry at Robson Square during business hours between 8:30 a.m. and 4 p.m., Monday to Friday.
- Average wait: 5 minutes.
- File the order. There are no forms or filing fees required.

17. Serve the entered order to your landlord. See step 10. There is no time limit.

18. Wait 5 days.

Days 80–100 [\$148.00 + \$62 filing fee (B.C. Supreme Court) = \$210.00] [2½ days off work total]

19. If your landlord still has not obeyed the arbitrator's order, which is now a B.C. Provincial Court order or a B.C. Supreme Court order:

- Don't file for arbitration again; the arbitrator will not assume jurisdiction over s. 95 of the *Residential Tenancy Act*, which has penalties for ignoring arbitrator's orders.
- Don't call the police; they will not assume jurisdiction over landlord/tenant disputes because of the arbitral system in place.
- For B.C. Supreme Court: Complete and file an Application and Notice of Hearing form. Pay the \$62 filing fee. Can't afford the fee? Make an application for indigent status by appearing before a B.C. Supreme Court judge in chambers and bringing proof of income.
- Serve the application on your landlord. Attend the application hearing and prove the landlord is in violation. Hearing may not take place for up to 12 weeks. Get an order from a judge. Enforce that order through the police or sheriff's department.
- For B.C. Provincial Court: Complete and file an SCR Form #12 Summons to a Payment Hearing. There is no filing fee. Attend the hearing and review your landlord's financial assets before a judge. If the judge issues a payment schedule, the landlord is given time to pay. Hearing may not take place for 3 to 4 weeks.



Day 130-150 [\$208.00 + \$31 affidavit fee and \$41 filing fee = \$280.00] [3 days off work total]

20. The landlord ignores the Small Claims Court payment hearing orders after appearing before a judge.

- Repeat step 18 and request a garnishing order. Hearing may not take place for 3 to 4 weeks.
- · After you get the garnishing order, prepare an affidavit in support of a garnishing order after judgment. Fill out a garnishing order. File the affidavit and garnishing order in the court registry. There is a fee for having someone in the registry swear the affidavit and there is a fee for filing the garnishing order. Can't afford the fee? You'll need to fill out an application to waive fees again in Small Claims Court, but if you have indigent status, you'll be OK.
- Serve the garnishing order on the garnishee (that is, the bank, or the employer, or whoever you have named in the order).
- The garnishee pays the money to the court (if there is any money).
- If there is any money paid into court, you serve the garnishing order on the debtor and file an affidavit of service and collect your money.
- If there is no money paid into court, repeat step 20.

21. The landlord ignores the B.C. Supreme Court order after appearing before a judge.

- Repeat step 18 and request a contempt order. Hearing may not take place for 3 to 4 weeks.
- If you are successful, police will enforce judgment.

The Residential Tenancy Act: recommendations

The RTA has weaknesses that limit a tenant's protection. Even where there are protections, it is very difficult for tenants to access them.

- 1. The RTO should open additional offices to serve tenants, including an office in the DTES. In the alternative, a member of the RTO should be available to provide information, accept filings and conduct arbitrations on a daily basis at a regular location in the DTES.
- 2. There should be no exceptions to the applicability of the RTA for tenants who pay rent. To this end, s. 2 of the Residential Tenancy Regulation, B.C. Reg. 477/2003 should be struck down.
- 3. Tenant fees for accessing dispute resolution procedures should be automatically waived for specific SRO addresses in B.C. that house lower-income persons.
- 4. Arbitration should be available on an emergency basis for situations such as illegal evictions or landlord theft of property.

PART 15: GUEST REGISTRIES AND PRIVACY RIGHTS



Many SROs, shelters, transition houses and other forms of housing in the DTES keep detailed lists of residents' names, dates of birth and even, on occasion, social insurance numbers. In addition, information such as names, date of birth and photo ID are often required from visitors to these buildings.

Findings

The collection and disclosure of this information, by private and public operators, raises serious questions about the privacy rights of the individuals whose information is collected. This section examines the practice of collecting this information and disclosing it, particularly to the Vancouver Police Department, with regard to the *Canadian Charter of Rights and Freedoms* sections and B.C. privacy law statutes implicated by these practices. They are based on current SRO, shelter and transition house policy and current police policy in Vancouver.

The reason for concern about the disclosure of low-income housing residents' names to police without consent is that individuals should not be deterred from seeking shelter simply because they fear that they may have an outstanding arrest warrant. Individuals' privacy rights in Vancouver should not depend on their economic status.

Low-income resident information collection and disclosure requirements in the City of Vancouver

Lodging house operators in Vancouver are compelled under the Vancouver *License By-law* to keep a record of the name, previous address, room number and time at which possession is taken up in the building for each resident of the lodging house. ¹⁸⁰ Another subsection of this same by-law provision requires this information to be given to the police without the consent of residents if the police request it:

- (3) The register . . . referred to in subsection (1) . . . shall: [. . .]
- (b) upon request be made available for inspection by the Inspector or the Chief Constable.

In short, the definition of lodging house is targeted directly at SRO accommodation and other forms of low-income rental housing where kitchen sinks and bathrooms are not contained within the unit. Under the by-law, a "lodging house" is defined as any building with three or more units or separately occupied or intended to be occupied as rental living accommodation.

The definition excludes one-family dwellings, duplex dwellings and self-contained suites or bachelor/studio apartments. The definition for "lodging houses" also includes "rooming houses," which are defined in the by-law as buildings containing rooms used exclusively as sleeping units, where lodging for three or more persons is provided. The definition of "rooming houses" explicitly does not include "temporary" accommodation.

These definitions as written do not encompass temporary housing like shelters and transition homes. There is no distinc-

tion between SRO buildings run by non-profit or government agencies and privately owned and operated SROs.

No other forms of housing, such as apartment buildings or housing cooperatives, have this information collection and disclosure requirement.

Researchers for this report could not find any provincial or municipal statutory provisions requiring agencies operating emergency shelters, transition housing or special needs residential housing to collect or disclose any similar information from those facility's residents. ¹⁸¹

Vancouver Police Department policy on requesting personal information of low-income residents without consent

According to Training Bulletin 2006-03-14, the official City of Vancouver Police Board policy on requesting disclosure of personal information from SRO operators without the consent of residents is as follows:

Officers attending lodging or rooming houses may ensure as per the City License By-law No. 4450 Section 19.3, that the lodging house operator has within the premises a log book. 182

Despite the admonishment that officers "shall not use City License By-law No. 4450 as a method to conduct criminal investigations within the common areas of a lodging house," the Training Bulletin concludes that an "appropriate course of action" for police officers is to use City License By-law No. 4450 as a method to conduct random investigations of lowincome rental housing residents as follows:

Check the names on the hotel room roster [by running the names through the VPD database system in order to determine if anyone is wanted on a warrant or is breaching their probation or UTA / Recognizance Orders. 183

There is no distinction in the policy between SRO tenant names and the list of visitors who may have attended the SRO to visit the tenants of the building. One affiant wrote about how the policy affects her at home:

Police come to my door at all hours of the night. They check the register at the front desk of my hotel to see how many guests I have had during the day or at night. I have to pay a ten dollar guest fee. [. . .] The police come to check if I still have company and who I have registered to bring into my room.

[Affidavit L, Anonymous, at para. 17]

Legal analysis

B.C. privacy legislation

In B.C., the private sector – including all low-income housing operators – are governed by the privacy rules found in the Personal Information Protection Act (the "PIPA"). 184

Restrictions on collection of data

The PIPA places restrictions on the collection of personal information by private parties; for example, the collection of a tenant's or tenant's visitor's name and date of birth by an SRO operator. The main restriction requires an individual's consent before information can be collected. 185 If the intended use of the information is not obvious, the person collecting the data must tell the person the reason why the information is being collected. Limited exceptions to the consent requirements are provided for in the PIPA; however, an exemption exists where the collection is required or authorized by law. 186

Restrictions on disclosing data without consent

Similar restrictions exist on disclosures of collected information to third parties, like the police. Although other exceptions for disclosure exist in the PIPA, the primary exemptions involving disclosure without consent to the police include disclosures of information:

- required for an investigation or "proceeding" where consent would interfere with that investigation or proceeding (s. 18(c), PIPA);
- required to assist law enforcement in investigating a specific offence to determine whether the offence has taken place, or to prepare for the laying of a charge or the prosecution of the offence (s. 18(j), PIPA); or,
- · required or authorized to be disclosed by another law (s. 18(o), PIPA).

Application to the SRO tenant registry data

Section 19.3(1) of the License By-law - by requiring lowincome rental housing operators to collect and disclose to the police the personal information of all residents in their buildings - creates a situation where the collection and disclosure of this information to the police is not limited by the PIPA because it is required by law and exempt under s. 18(o) of the PIPA.

Application to information provided by visitors to an SRO

There are no municipal, or provincial or federal law require-

ments for managers of SRO buildings to collect names of people who visit residents of those buildings, and no requirements to disclose that information on request to any third parties, including the Vancouver police; however, many buildings do collect those names and require photo identification.

While managers of SRO buildings are legally required to collect tenant information, there are no legal requirements for collection of visitor information. Therefore, relevant *PIPA* standards apply for both collection and disclosure of visitor names. As a result, visitors must be told why their names are being collected, if the intended use is not obvious.

Further, the landlord must get the consent of the visitor before disclosing the visitor's personal information to any third party. The only time consent is not required is if the landlord wishes to disclose the information to the police who are investigating a specific offence as part of their investigation. In other words, a landlord cannot simply hand over the list of visitors' names and birth dates to the police on request; the landlord must, under the *PIPA*, ensure that the police are seeking information relating to a specific offence or investigation before disclosing that information without the consent of the visitor in question.

Application to information provided to transition housing operators or shelter operators

Special Needs Residential Facilities, transition houses and shelters are all expressly excluded from the definition of "Lodging House" under the *License By-law*. ¹⁸⁷ As a result, the information collection and disclosure requirements of that by-law do not apply to these forms of low-income housing. Because the collection and disclosure of such information is not required by law, the information collection and disclosure requirements of the *PIPA* apply.

There are obvious operational requirements of running transitional housing, shelters, and special needs residential facilities ("SNRF") that require the collection and disclosure of personal data, such as name and date of birth, of residents. For example, SNRFs often house individuals who have physical and mental illnesses, and, as such, must collect personal data in order to ensure that the right individual is getting the appropriate care. However, any use that is not obvious, for example, provision of the names of the resident to the police for a name check, must be disclosed to the resident. If the resident refuses to consent to such disclosure, all services must continue to be provided to the resident. Willingness to "cooperate" with police requests is not necessary to the running of a transition house,



There are no municipal, or provincial or federal law requirements for managers of SRO buildings to collect names of people who visit residents of those buildings, and no requirements to disclose that information on request to any third parties, including the Vancouver Police; many buildings do collect those names and require photo identification, however.

shelter or special needs facility. As is the case with visitors to an SRO, the operator of the facility cannot simply hand over the list of the facility's residents' names and birth dates to the police on request – the operator must, under the *PIPA*, ensure the police are seeking information relating to a specific offence or investigation before disclosing that information without the consent of the resident in question.

Consequences of illegal collection or disclosure of names

There are no penalties under the *PIPA* for breaching a person's privacy. The only penalties under the *PIPA* are for failing to follow a commissioner's order, or intentionally doing something to hide information from the commissioner or an applicant. The *Act*, in structure, allows private operators to breach a person's privacy until they receive an order from the Privacy Commissioner not to breach privacy, requiring a person whose privacy is breached to sue the person who breached their rights with compensation limited to "actual damages." 189

Limits on information disclosure under the Vancouver Charter

Courts have placed limits on the power of the City to order businesses to disclose information to the police on demand. The regulatory power of the City granted by the *Vancouver Charter* does not include a right to inspect any information held by any licensee at any time.

The only information that the City can require a business to disclose is information the City is seeking related to

measuring the compliance with a by-law requirement. 190

In other words, the City must have an articulated purpose in the legislation related to the compliance of a by-law for tenant's identities in low-income housing to be disclosed to the police. This by-law, that gives the City unrestricted authority to inspect SRO registries would be struck as ultra virus, or beyond the powers given to the City by the police.

The equality rights of lodging hotel tenants

Aside from being beyond the power of the City under the Vancouver Charter, the differential treatment of lodging hotel tenants in comparison with those who do not occupy lowincome housing violates the tenants' equality rights as set out in s. 15 of the Canadian Charter of Rights and Freedoms, which



A landlord cannot simply hand over the list of visitors' names and birthdates to the police on request; a landlord must, under PIPA, ensure the police are seeking information relating to a specific offence or investigation before disclosing that information without the consent of the visitor in question.

requires equal protection and benefit under the law without discrimination for all Canadians.

The Supreme Court of Canada has set out a test to determine whether a given piece of legislation results in discrimination:

- 1. Does the law treat a group differently than others, because it imposes a burden, or withholds a benefit from that
- 2. Is the group treated differently on the basis of protected grounds, such as sex, race, religion etc.; and
- 3. Is the differential treatment discrimination, because the law fails to take account of the group's disadvantage, needs, circumstances or human dignity?¹⁹¹

(1) Treating low-income housing tenants differently

The City License By-law imposes a burden on low-income housing tenants by stripping from them the protections of the provincial Personal Information Protection Act. Only people who rent low-income housing are subject to the release of their personal information without consent or warrant to the police.

(2) Differential treatment on the basis of protected grounds

Residents of low-income housing in Vancouver disproportionately represent a variety of members of protected groups, including people with disabilities, Aboriginal people, people with substance abuse problems, and refugees, among others. 192 Limited jurisprudence also suggests that economic disadvantage could be considered an "analogous ground" of discrimination. 193

(3) Discrimination

Rather than taking the actual circumstances of the majority of lodging hotel residents into account, most of whom have not committed any criminal act, the effect of the by-law in question is to reinforce the stereotypical association of socioeconomic status with criminality. The by-law also affects how safe lodging hotel tenants feel in their very own home, an interest which is integral to every citizen's sense of security. This differential treatment of lodging hotel residents results in a violation of human dignity. Thus, the burden imposed by the City on these tenants yields a form of discrimination that is prohibited under s. 15 of the Charter.

Section 1: This violation of the rights of lodging hotel residents cannot be justified

Section 1 of the *Charter* allows a government actor to justify violating someone's equality rights or other Charter rights if the following two conditions are met:

- 1. The objective of the legislation is pressing and substantial; and
- The means chosen to achieve the legislative objective are reasonable and demonstrably justifiable in a free and democratic society.

For the second condition to be met, the means chosen must be proportional to the objective of the legislation.

(1) The objective of the legislation

As mentioned earlier, there does not appear to be an articulated purpose for this section of the *Licensing By-law*, beyond general crime prevention, suggesting that the objective of the legislation cannot properly be evaluated.

(2) Proportionality

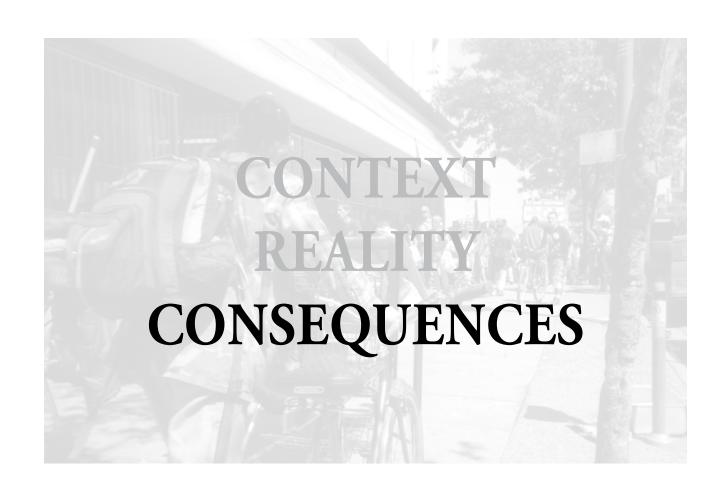
The Supreme Court of Canada has indicated that a law which requires the state to act as the sole antagonist, as opposed to one which merely balances group interests, places a greater onus on the government to ensure that the measures taken are as minimally impairing as possible. ¹⁹⁴ A law which, for the sake of investigative expediency, discriminates against a disadvantaged group by jeopardizing their sense of security while in their own home, when similar measures are not used in any other socio-economic form of housing, cannot be said to be minimally impairing.

Conclusion

Section 19.3 of the City of Vancouver *License By-law* violates the *Vancouver Charter* and the *Canadian Charter of Rights and Freedoms* by giving the City excessive powers to force disclosure of personal information collected by operators of low-income housing to the police and stripping low-income housing residents of their rights under the *PIPA*.

Guest registries and privacy rights: recommendations

- 1. The requirement under the City of Vancouver *License By-law* for Lodging House operators to disclose the personal information of residents to the Vancouver Police Department on request should be eliminated.
- Administrative penalties should be provided under PIPA for breaches of privacy that are not dependant on the breach of privacy causing "actual damage," and which can be implemented and enforced by the Privacy Commissioner on finding a breach of privacy.
- 3. A police policy requiring officers to request only information about specific tenants, visitors or residents when investigating a specific offence should be implemented. Police "fishing expeditions" using guest registries, visitors' lists and shelter registries should be eliminated.



PART 16: EXPERIENCING HOMELESSNESS



The homeless affiants in this project, particularly those currently living in the Downtown Eastside (DTES), identified multiple barriers to obtaining adequate accommodations, including: limited affordable housing vacancies, insufficient shelter beds and facilities, limited washroom facilities, limited social assistance, insufficient access to drug treatment, insufficient access to mental health support workers, lost/stolen identification, physical disabilities and limited opportunities to earn an income. Homeless affiants gave evidence suggesting they live in third-world conditions in the developed world, without access to washrooms, cooking facilities, phones or other basic services. Even when housed affiants were included, only 31 of the 159 affiants in this project had a phone number at which they could receive messages or personal telephone calls.

Findings

Identification and access to shelter and services

Homeless affiants reported that they were frequently victims of theft, often resulting in the loss of their personal identification. Eight affiants identified barriers to housing and social services resulting from lack of proper identification.

A couple hours after arriving in Vancouver, I was resting at the park in front of the Greyhound bus station on Main Street and Terminal Avenue. While I was resting someone stole my backpack including all of my personal effects and identification. Following this incident I have been unable to find a place to stay because all of the places I have tried have required me to have picture identification. Some of the places I have attempted to stay include the Cambie Hostel, the Cobalt Hotel, the Chelsea Hotel, and the Balmoral Hotel. For the next six months I stayed in Crab Park on Main Street. I have been living on the street since then. A couple weeks after I arrived in Vancouver I attempted to obtain help from the Portside Human Resources office on Main Street. I gave them my social insurance number and completed an application for social assistance. They refused to help me because I had no identification.

[Affidavit 01, Arthur Ford Callahan, at paras. 2-5]



Homeless affiants described being harassed by the police and private security guards when they sought shelter in public places.

I want to get back on Hep C treatment but I can't because I don't have my birth certificate.

[Affidavit 35, James Bridge, at para. 8]

I can't get a job, even though I have had callbacks from employers, because all of my identification was stolen from my purse about a month ago and I don't have my social insurance number memorized.

[Affidavit 35, Sarah Upshaw, at para. 6]

Policing the homeless

Homeless affiants described being harassed by the police and private security guards when they sought shelter in public places. Examples of harassment included arbitrary seizure of belongings without notice and issuing by-law infraction tickets to homeless people who were camping.

Around May of this year I was camping in Grandview Park at Commercial and Charles near Britannia Centre in Vancouver, British Columbia. There were three tents total with five people camping in the park. I was camping because I had nowhere else to go. I was not on assistance at that time because I hadn't been a resident of the province for 90 days. I was living on panhandling and busking at that time and soup kitchens.[...]The police officer filled out a ticket for \$179. The by-law violation was illegal camping. She dropped the ticket at my feet.

[Affidavit 99, Kris John Keats, at paras. 3–15]

I had to set up in one of the camping spots near the Cambie Bridge, across from the sand volleyball courts. There were about nine of us camped out there. Around the middle of June, I came back to the camp, and everything was gone. One individual from the camp was there and said that the cops came along and told him that he had an hour and a half to move his stuff, or it would be taken. The cops are usually parked out in the parking lot near Science World. They knew we had camps down there, they had come down there before. They came down when I first moved there. There were two detectives that came down and checked us out. A woman who was living in the camp with us, called city hall after the camp was cleaned out. She said that they told her, at city hall, that nobody knew anything about it, and nobody claimed responsibility for it.

[Affidavit 45, Richard Winslow Alexander, at paras. 5-7]

Access to shelters

Two affiants expressed concern about the difficulty in finding a shelter that has open beds. While 181 new emergency shelter beds were added by the City from 2000 to 2006, ¹⁹⁵ there was an increase of more than 600 homeless people on the streets of Vancouver from 2003 to 2005 alone. 196

My friend has called all of the shelters on the list of shelters I have with me to find space, and all of the shelters are full. I will stay in a tent in Stanley Park tonight.

[Affidavit 28, Sarah Upshaw, at para. 5]

Last night, I was at the Contact Centre right behind Carnegie Centre. I go there when the shelters are full, which is most of the time. The Contact Centre closes at 6 a.m. [...] Most people get in, but there are some people who don't get in at all, maybe one or two. The last resort is the Contact Centre, you can stay there for the night, but they only allow ten chairs and you can't lie down. You can sleep, if you sit in a chair. [. . .] There are big lines to get into the shelters, so you often get turned away. If you do you can go back at midnight, and if someone doesn't show up, you have an opportunity to get their bed. But, there is usually about 7-10 people who want to get one of their beds, and only about three people who won't show up. There just aren't enough beds for the number of homeless people out there.

[Affidavit 80, Dave Lindsay, at paras. 3-1]

Shelter conditions

Five affiants noted their preference for staying outside due to concern about undesirable conditions in some shelters. Concerns included bug infestation, theft, illness, shelter rules and conflicts with shelter staff.

At the Salvation Army, you need to give your social insurance number ("SIN"). The Balkan House will let you stay but you have to keep coming back on a daily basis to see if there is a room and they want you to apply for welfare. If you've applied for welfare you can stay on a monthly or other basis. I wasn't allowed to stay at the Haven because I wouldn't give them my SIN. The Catholic Charities will let you stay for a night, and then you have to go to welfare before they will allow you to return. You can stay at the Union Gospel Mission, there are people who have stayed there on an extended period of time. They do a religious service, and if you want to eat, you must attend the service. It is a half-hour service.

[Affidavit 22, William Simpson, at paras. 7–11]

We get kicked out of the shelters too early in the morning. It varies, some are at 6 a.m., others at 7:30 a.m. Over Christmas holidays they let us stay in later.

[Affidavit 110, Dwayne Gibbins, at para. 4]

Since we got to Vancouver, all six of us have been staying in a bachelor apartment. Social Services came and said that the place was unfit for the children, and ordered us to leave. They told us to find a shelter by ourselves, and to phone the welfare system if we cannot find one. However, I do not feel that the shelters are fit for the children, as they are unsanitary and unsafe.

[Affidavit 74, Robin Joyce, at para. 7]

Two affiants expressed a preference for living in their cars to living in shelters.

Now that I am unemployed, I only live in my van. I drive to different locations around Vancouver to park overnight when I sleep. It is a 1991 Dodge Ram with 500,000 kilometres. My vehicle insurance will be expiring on July 26, 2005. I am unable to renew my insurance because I do not have the money. I do not have any savings.

[Affidavit 13, Bob Preston, at para. 5]

Access to washroom facilities

Seven homeless affidavits described issues with accessing washrooms as required, due to restrictions on privately owned public restrooms in restaurants and malls, and a lack of truly "public" washrooms open 24 hours.

I am currently living on the streets. I go to food lines. For bathrooms, I walk into public places.

[Affidavit 11, Randy Darling, at paras. 14–20]

At night I have problems finding washrooms. The Health Contact Centre washroom is open all night.

[Affidavit 46, Shawne Little, at paras. 6-9]

I stay in different places outside, usually a different place every night, away from the public. I'll go anywhere. I find it really difficult to find public washrooms, and any of the places that are around close really early.

[Affidavit 33, Gordie Goodman, at para. 4]

Public urination and defecation in the DTES

On July 19, 2006, the City responded to Pivot's request for records relating to lane sanitization in the DTES. These records included letter correspondence between Mr. Robert G Ross, the City's Engineering Services' DTES coordinator, and Mr. T. R. Timm, the general manager of the City's Engineering



Five affiants noted their preference for staying outside due to concern about undesirable conditions in some shelters, including bug infestation, and theft.

Services. Among other things, this correspondence documents issues concerning lanes in the DTES particularly with regard to discarded syringes, garbage and human excrement.

The chronology of letters dated May 2005 to June 2006 speak to a continuing and mounting problem with defecation in the DTES as the result of a lack of public washrooms for the City's growing homeless population.

Legal analysis

Homeless people have very few rights in Canadian law. As a famous English judge named Lord Denning noted in Southwark London Borough Council v. Williams, the law prefers the protection of private property over the rights of the homeless: "If homelessness were once admitted as a defence to trespass," he wrote, "no one's house could be safe." 197

Vancouver's laws are no exception to this preference for property owners over the homeless. For example:

• Private property is rendered off limits to homeless individuals by the Trespass Act of B.C., which prohibits individuals from walking or camping on private property without the permission of the owner. Violators are subject to criminal and civil penalties in B.C. Courts. 198

Letter dated	Correspondence to General Manager of City's Engineering Services re: Human Excrement in the DTES
May 2, 2005	"As you know a lack of toilet facilities for street people is still a concern [] I [have] asked the consultant who is doing our syringe management study to give me a proposal to undertake a survey of defecating patterns in the Downtown Eastside."
June 1, 2005	"The hot topic for me in May was the issue of people defecating and urinating in lanes."
July 2, 2005	"Unexpectedly, I worked more hours in June than any month since November 2002 [] The issue that consumed so much of my time last month was the problem of people defecating in lanes."
August 2, 2005	"I must start by reiterating my concern that we appear to be making no headway in the Downtown Eastside [] the alleys still smell of urine and excrement. [] As in the previous month, most of my time in July was spent on the problem of people defecating in lanes. There is considerable frustration in the community regarding this problem."
September 1, 2005	"Most of my time was spent on the issues around accessible public toilets and clean up of excrement in the lanes. I have been putting together a comprehensive report on the shortage of toilet facilities in both the Downtown Eastside and the Granville Corridor."
October 3, 2005	"I have investigated possible procedures for cleaning up feces in public places and concluded that the best way to deal with feces and urine in the Downtown Eastside and Granville Corridor is to continue with the nightly flushing program by the Sanitation Branch."
March 31, 2006	"Another Downtown Eastside issue which keeps me awake at night is the challenge of dealing with the toilet needs of street-entrenched people [] my efforts have been frustrated by a lack of acceptable options and a lack of interest in providing funds not only for the facilities, but also for the high levels of supervision that would be required."
June 2, 2006	"Conditions on the Downtown Eastside streets and lanes continue to show no signs of improvement. [] The lanes appear to have more excrement and feces than ever before."

- Public property, such as parks, are only accessible to the public, including the homeless public, during daytime hours under the City *Parks Control By-law*. ¹⁹⁹ The same by-law also prohibits "loitering" and "tak[ing] up a temporary abode over night" in City parks. ²⁰⁰
- Building a shelter for protection from the elements, whether it is a tent or lean-to, is forbidden on all City property, whether parkland or otherwise, under the City Land Regulation By-law and the City Parks Control Bylaw.²⁰¹
- Loitering in a public place that "in any way obstructs
 persons who are in that place" is a summary offence under
 s. 175 of the *Criminal Code* of Canada. 202 Loitering is
 defined by the Ontario Court of Appeal as "requir[ing] an
 element of idly standing around." 203
- Public urination and defecation is banned by the City Health By-law.²⁰⁴

The cumulative effect of these various laws is that there is nowhere, in the entire City, for a person who is homeless and unable to find emergency shelter to sleep without violating at least one law, and likely multiple laws. The ultimate result is the criminalization of an essential human behaviour, with no personal wrongdoing on the part of the homeless individual. This raises issues of the constitutional legitimacy of the City's anti-vagrancy by-laws, pursuant to the *Canadian Charter of Rights and Freedoms*.

Application of the *Charter*

Section 7 of the *Canadian Charter of Rights and Freedoms* states that "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." To determine whether a government law like the City anti-vagrancy bylaw violates s. 7, a reviewing court would use two legal tests.

First, the court would ask if there has been a deprivation of an individual's right to life, liberty or security of the person as a result of government action. Security of the person encompasses both the physical and psychological integrity of an individual. The right to security of the person is breached when there has been a serious infringement of the physical or psychological integrity of an individual with a "serious and profound effect" on an individual's mental well-being, causing a level of stress which is more than the ordinary stress of everyday life.

Second, the court would ask whether this deprivation of

life, liberty or security of the person was in accordance with the principles of fundamental justice. The principles of fundamental justice are those concepts which are the basic tenets of the justice system. ²⁰⁶ As part of the principles of fundamental justice, courts²⁰⁷ have held that legislation which is arbitrary and unfair violates the principles of fundamental justice. ²⁰⁸

If there is no deprivation or the deprivation is in accordance with justice, the law is in accordance with the requirements of the *Charter*. If there is a deprivation, and the deprivation is not in accordance with justice, the law will be struck down by the Court, or the Court will require some positive action on the part of the government.

The Supreme Court of Canada has recently held that s. 7 does not impose a positive obligation on the government to provide certain services to individuals.²⁰⁹ This case suggests that the government is under no legal obligation under the *Charter* to provide individuals with housing. Instead the Supreme Court stated that s. 7 guarantees that the government will not be allowed to deprive individuals of life, liberty or security of the person through their positive actions.

Application of the Charter to Vancouver's by-laws

Deprivation of security of the person

Being homeless creates tremendous psychological stresses. Homeless individuals worry about shelter, food, health, safety and sanitation. These hardships and concerns are greatly exacerbated by laws which effectively force homeless people to choose between survival and violating the law. Homeless people need sleep, but are unable to spend their nights in parks. Homeless people need refuge from the elements, but are unable to construct shelters anywhere. Homeless people need to undertake bodily functions, but have no access to washrooms. In addition to creating suffering by imposing barriers to survival, the by-laws impose further stress by instilling fear of fines and criminalization in the homeless for undertaking activities which they have no choice but to do.

The by-laws also violate the physical integrity of homeless people. By prohibiting loitering and the occupation of specific areas the by-laws discourage the homeless from assembling, despite the fact that there is safety in numbers for these people. Physical assault is a very real threat faced by homeless people. A 2002 study found that 45.7 percent of street youth reported being assaulted compared with 6.3 percent of their non-homeless peers. ²¹⁰ The by-laws are also potentially harmful to the health, and thus the physical integrity, of the homeless. Exposure to the elements and sleep deprivation are factors

which place the homeless at a significant risk of illness.

While a positive duty may not exist on government to provide housing under s. 7, there is a negative duty to refrain from making the plight of the homeless more taxing to their security of the person than necessary. Citizens must be able simply to exist somewhere without facing some form of criminal or civil penalty. Furthermore, if the government will not provide housing, it must recognize it is necessary for homeless people to construct their own shelters in order to escape the elements. Finally, if public washrooms are not provided or accessible it is to be expected that people will have to resort to urinating in public places and that such a biologically essential behaviour cannot be criminalized. Such criminalization of a person's very existence is a deprivation of the right to the security of that person.

Is the violation of security of the person in accordance with the principles of fundamental justice?

The Supreme Court has held that the principles of fundamental justice will be violated by laws that are arbitrary and unfair.²¹¹ The unreasonableness of these by-laws stems from their overly broad application and manifest unfairness.

The laws in question apply indiscriminately to all citizens of Vancouver. By failing to distinguish between those citizens who are homeless and those with housing, laws are being applied to people who are unable to abide by them.²¹² It is reasonable to expect individuals with access to housing to abide by these laws; it is unreasonable to apply the same standards to those who are homeless, however. The laws in question regulate activities, such as urinating and sleeping, in which all members of society engage but which homeless people, as a function of their homelessness, are unable to carry out in private. If every member of our society had a house, these types of laws would be constitutionally legitimate. However, while there are

members of our society who do not have the luxury of having a private home in which they can find shelter, get sleep or undertake their bodily functions, laws prohibiting them from engaging in such activities are unfair, and are not constitutionally valid.

Experiencing homelessness: recommendations

- 1. The City of Vancouver, with senior levels of government, must provide adequate emergency shelter and social housing to meet the needs of the population, in accordance with the mandates of the City Housing Action Plan.213
- 2. If regional and local governments are unwilling to provide sufficient safe emergency shelter accommodation and/or social housing sufficient to allow everyone who wants shelter to find it. space must be provided for individuals forced to live outside to camp legally within city boundaries.
- Public washrooms must be introduced in Vancouver on a large scale, ensuring that people who are homeless have access to this basic sanitary service.
- Individuals living outside must be provided with reasonable notice before their possessions are seized by police or the City. Property seized from public property by police or city officials should be itemized and held for 60 days before being disposed of.
- Initiatives that assist individuals in applying for replacement identification and expediting applications for identification made by individuals who are homeless must be introduced by all levels of government. Fees for ID should also be waived.
- Phone service companies must be required by regulators to make a greater effort to ensure that all Canadians have access to basic phone service.

PART 17: ECONOMIC CONSEQUENCES OF HOMELESSNESS FOR VANCOUVER



"Homelessness will likely increase unless existing low-income housing is preserved or replaced, as the existing low-income housing is the most affordable in the city and the region. Social dysfunction is likely to increase as well, if the SROs are not replaced with social housing and supportive housing is not built in the Downtown Eastside and throughout the city and region."

- City of Vancouver, Housing Plan for the Downtown Eastside, 2005, p. 16

The Greater Vancouver Regional District released its *Homeless Count* ("*GVRD Homeless Count*") in September 2005.²¹⁴ According to the report, street homelessness doubled in Vancouver between 2002 and 2005, rising from 628 people in 2002 to 1,291 persons in 2005 (see the "Experiencing homelessness" section on page 72). With the continuing closure of SRO units, Vancouver's last defence against a homelessness crisis, homelessness will continue to increase in the city. The cost of this increase in homelessness will be passed along to taxpayers in the form of increased government spending in social services, health care, and criminal law enforcement.²¹⁵

Direct costs of increased homelessness

The following is a brief analysis of the increased costs directly associated with elevated levels of homelessness:

 The B.C. Government spends 33 percent more on the provision of health care, criminal justice and social services to a homeless person than to a socially housed unemployed individual.²¹⁶

- The cost of a bed at St. Paul's psychiatric ward is \$500 per day and a bed in a Provincial correctional institution costs \$155–\$200 per day. According to the City of Vancouver, the costs of supportive housing vary from \$20–\$38 per day, depending on the quality of the housing provided. For 800 people from Vancouver's street homeless population to be housed in supportive housing, the cost would range from \$6–\$11 million per year, depending on the type of supportive housing. For that same group to be jailed would cost more than \$45 million per year.
- A B.C. study has found that the combined service and shelter costs of homeless people ranges from \$30,000 to \$40,000 on average per person for one year (including the costs of staying in a homeless shelter, healthcare, and incarceration). In contrast, the combined costs of service and housing for housed individuals in a social housing facility were found to be \$22,000 to \$28,000 per person per year.²²⁰
- An American study in New York City showed that

including costs for shelter use, hospitalization and incarceration, homeless people with severe mental illness used about \$40,451 per person per year in services. Placement in supportive housing at a cost of \$17,277 reduced service use by those homeless individuals by \$16,281 per housing unit, per year, resulting in a net cost of \$995 per unit per year over the first two years of providing that housing unit.221

Indirect costs of increased homelessness

Increasingly, the tourism industry and downtown business associations in Vancouver are recognizing the impact that increased homelessness has on their bottom line. The Downtown Vancouver Business Improvement Association (DVBIA) estimates Vancouver hotels have lost convention contracts worth \$500,000 due to increased homelessness and visible poverty. The DVBIA's director of crime prevention noted in a recent newspaper article:

Visitors see [panhandling] and it makes them wonder about the social fabric of the community. It makes them feel concerned for their security.²²²

Vancouver Civic Theatres, the City of Vancouver and downtown business associations have spent extra money increasing private security to guard against panhandling and people sleeping in stairwells and alleys.²²³ Philip Barnes, the general manager of the upscale Hotel Vancouver, has spent \$60,000 to upgrade hotel security systems and increase outdoor lighting. He notes:

We've had to take steps now we don't believe we should have to take. We lock the public bathrooms [in the hotel] at night because we've had people sleep in them or do drug deals in them. 224

Rick Anderson, the president and CEO of tourism Vancouver recently said:

Cruise ship passengers arrive and this is their first impression - panhandling. It's a strong impression; it gets in the way of tourists wanting to stay in Vancouver, and it's slowly eroding Vancouver's reputation as a safe travel destination. 225

Increased homelessness, and the disorder associated with this problem in Vancouver, is already costing this city's residents economically through increased tax burdens for policing and healthcare, increased business costs in providing security, and decreased business revenues for the tourist industry and downtown Vancouver businesses. Further study is required to determine the extent of the economic burden that increased homelessness has placed and will continue to place on Vancouver residents and businesses.

ENDNOTES

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- 141 RTA, supra note 83 at s. 5(1)&(2).
- 142 RTA, supra note 83 at s. 32(1)(a).
- 143 RTA, supra note 83 at s. 27 and Residential Tenancy Policy Guideline 22.
- 144 Carline Holdings Ltd. v. Vancouver (City), [1990] B.C.J. No. 1876.
- 145 United Nations, online: United Nations http://www.un.org/Overview/rights.html.
- 146 *Universal Declaration of Human Rights* article 25, online: United Nations http://www.un.org/Overview/rights.html>.
- 147 International Covenant on Economic, Social and Cultural Rights article 11, online: Office of the High Commissioner for Human Rights http://www.unhchr.ch/html/menu3/b/a_cescr.htm.
- 148 RTA, supra note 83 at s. 28; RTR, supra note 93 at s. 5(1); Residential Tenancy Policy Guideline, supra note 138, at 6, Right to Quiet Enjoyment, p. 6-2; RTA, s. 30(1).
- 149 See also Affidavit 117, Robert Raymond, at paras. 4, 11; Affidavit 78, William Blair Childress, at para. 3; Affidavit 84, Cindy Uhrich, at para. 13; Affidavit 87, Donna Jesso, at para.18; Affidavit 62, Joseph Ray, para. 12.
- 150 Schedule to the RTA Regulations, s. 9(1); s. 5(1) of the RTA.
- 151 Socio-Economic Profile of Vancouver Downtown Eastside, online: B.C. Stats http://www.bcstats.gov.bc.ca/data/sep/van/van_main.asp.
- 152 See Affidavit 47, William Dick, at para. 3, where William was threatened by the manager for having a friend over for coffee.
 153 Letter from David Eby & Christopher Whitehead to Lucky Lodge (18)
- June 2006). 154 BC Health File #95, online: B.C. Health Guide http://www.bchealth-
- guide.org/healthfiles/hfile95.stm>.

 155 Online: Harvard School of Public Health http://www.hsph.harvard.
- edu/bedbugs/>.
- 156 Online: Wolverhampton City Council http://www.wolverhampton.gov.uk/environment/pests_nuisance/pests/bed_bugs.htm.
- 157 Online: Coventry City Council http://www.coventry.gov.uk/ccm/ content/city-services-directorate/public-protection/environmental-health/bed-bugs.en>.
- 158 Online: New York City Housing Authority http://www.nyc.gov/html/nycha/html/residents/bedbugs.shtml.
- 159 Online: Vancouver Coastal Health http://www.vch.ca/environmental/docs/2005_08_guide_bed_bug_control_pamphlet.pdf>.
- 160 Mathias v. Accor Econ. Lodging, Inc., 347 F.3d 672.
- 161 RTA, supra note 83 at s. 32.
- 162 SoM By-law, supra note 133.
- 163 City of Vancouver *Health By-law* No. 6580 (2006), online: City of Vancouver http://www.city.vancouver.bc.ca/bylaws/79234v3.pdf [*Health By-law*].
- 164 *Ibid*.
- 165 Online: The Tyee http://thetyee.ca/News/2006/04/12/SROHotel/.
- 166 Online: Pivot Legal Society http://www.pivotlegal.org/News/ pivotpost1.6.2.htm>.
- 167 Ibid.
- 168 Health By-law, supra note 163 at s. 2.2(b).
- 169 Health By-law, supra note 163.
- 170 Letter from David Eby to the Vancouver Coastal Health Authority (23 July 2006).

- 171 Ibid.
- 172 Ibid.
- 173 Ibid.
- 174 *Ibid*. 175 *Ibid*.
- 176 Matthew Kwong "Eviction notices a surprise" *The Globe and Mail* (19 August 2006) S3; Interview of Robert Woodroff & David Eby by Rick Cluff (22 August 2006) on *Early Edition*, CBC Radio, Toronto, CBC Radio Archives.
- 177 RTA, supra note 83 at s. 49(6).
- 178 Please note that the Government of British Columbia is currently in the process of revising the RTA. For more information see Bill 27 2006, Tenancy Statutes Amendment Act, 2006 (the "Amended RTA"), online: The Legislative Assembly of British Columbia http://www.legis.gov.bc.ca/38th2nd/1st_read/gov27-1.htm. This section has been drafted with consideration to the Amended RTA.
- 179 RTR, supra note 93 at s. 2.
- 180 City of Vancouver *License By-law* No. 4450, s. 19.3, online: City Of Vancouver http://www.city.vancouver.bc.ca/bylaws/76166v9.pdf>.
- 181 The City of Vancouver defines Special Needs Residential Housing as housing that "provides specialized care services to their residents" bringing it outside of the definition of "rental housing." City of Vancouver 2005 Survey of Low Income Housing in the Downtown Core (14 July 2006), online: City of Vancouver http://www.city.vancouver.bc.ca/commsvcs/housing/pdf/SRO2005.pdf.
- 182 Vancouver Police Department Training Bulletin 2006-03-14.
- 183 *Ibid*.
- 184 Personal Information Protection Act, S.B.C. 2003, c. 63 [PIPA].
- 185 Ibid. at s. 10(1).
- 186 Ibid. at s. 12.
- 187 License By-law, definition of "Lodging House" supra note 169.
- 188 PIPA, supra note 184 at s. 56.
- 189 PIPA, supra note 184 at s. 57.
- 190 International Escort Services Inc. v. Vancouver (City), (1988), 55 D.L.R. (4th) 194 (B.C.S.C.); Royal City Jewellers and Loans Ltd. v. New Westminster (City), [2006] B.C.W.L.D. 2170 (B.C.S.C.).
- 191 Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497.
- 192 Dartmouth / Halifax (County) Regional Housing Authority v. Sparks, (1993) 101 D.L.R. (4th) 224 at para. 33.
- 193 Falkiner v. Ontario (Director of Income Maintenance, Ministry of Community & Social Services), (2000), 188 D.L.R. (4th) 52 (Ont. Div. Ct.), Dartmouth / Halifax (County) Regional Housing Authority v. Sparks, (1993) 101 D.L.R. (4th) 224 (N.S.C.A.).
- 194 Irwin Toy v. Quebec, [1989] 1 S.C.R. 927.
- 195 Davidson, Jill, *Homelessness in Vancouver*. City of Vancouver: World Planners Congress (June 2006) 8.
- 196 GVRD, Homeless Count, supra note 9 at 43.
- 197 Southwark London Borough Council v. Williams, [1971] Ch. 734.
- 198 Trespass Act, R.S.B.C. 1996, c. 462, s. 4(1).
- 199 City of Vancouver *Parks Control By-law*, s.3(b) & 4(iii). [*Parks Control By-law*]
- 200 Ibid. at s. 10.
- 201 *Ibid.* at s. 11, and City of Vancouver City Land Regulation By-law No. 8735
- 202 Criminal Code, supra note 98 at s. 175(1).
- 203 R. v. Gauvin, (1984), 11 C.C.C. (3d) 229 (Ont. C.A.).
- 204 Health By-law, supra note 163 at s. 4.21.
- 205 Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 at s. 7.
- 206 British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights), [1999] 3 S.C.R. 868, 131 B.C.A.C. 280, 70 B.C.L.R. (3d) 215.
- 207 Ibid.
- 208 Rodriguez v. British Columbia (Attorney General), [1993] 3 S.C.R. 519, 82 B.C.L.R. (2d) 273, [1993] 7 W.W.R. 641.

- 209 Gosselin c. Quebec 2005 SCC 15, 250 D.L.R. (4th) 483, 331 N.R. 337, [2005] 1 S.C.R. 238.
- 210 Canadian Broadcasting Corporation program The Fifth Estate, online: Canadian Broadcasting Corporation http://www.cbc.ca/fifth/main_ nowayhome hazards.html>.
- 211 Rodriguez v. British Columbia, supra note 208.
- 212 The authors note that a persuasive s. 15 Charter of Rights and Freedoms equality argument could also be made if homelessness were recognized by the court as a ground of discrimination, but that the stronger argument is the s. 7 argument due to the refusal to date by the Supreme Court of Canada to suggest that the Charter carries with it certain economic rights for marginalized populations.
- 213 See Housing Plan for the Downtown Eastside, online: City of Vancouver, http://www.city.vancouver.bc.ca/commsvcs/housing/pdf/dteshousing- plan.pdf>.
- 214 GVRD, Homeless Count, supra note 9.
- 215 Eberle, Homelessness Causes & Effects, supra note 46.
- 216 Eberle, *Homelessness Causes & Effects, supra* note 46.
- 217 Eberle, Homelessness Causes & Effects, supra note 46. Includes operating & capital costs for both residential and support services.

- 218 City of Vancouver Housing Centre, Homeless Action Plan (Vancouver, City of Vancouver: June 2005) p. 7.
- 219 Ibid.
- 220 Eberle, Homelessness Causes & Effects, supra note 46.
- 221 Dennis Culhane et al., "Public Service Reductions Associated with Placement of Homeless Persons with Severe Mental Illness in Supportive Housing", (2002) 13 Housing Policy Debate, Issue 1 at p. 107.
- 222 John Bermingham, "Panhandlers could face new rules" The Province (20 August 2006), A4.
- 223 Gwen Preston, "Beggars, drug dealers kill convention business" Vancouver Sun (18 August 2006) A1; "Downtown parkade security beefed up" CBC, (16 June 2006) online: CBC news website http:// www.cbc.ca/canada/british-columbia/story/2006/06/16/bc_parkade-security20060616.html>.
- 224 Gwen Preston, "Beggars, drug dealers kill convention business" Vancouver Sun (18 August 2006) A1.

NOTES

"When the world arrives in Vancouver in 2010, what kind of city will they find?"

- Mayor of Vancouver, Sam Sullivan in his inaugural speech, 2005

