

Pivot Legal Society Statement of support for Hothouse Squat in Surrey, BC amid COVID-19

April 1, 2020

“ Housing is healthcare.

Housing is harm reduction.

Housing is a human right.

A global pandemic has plunged BC into a public health crisis. All levels of government and medical authorities have clearly directed that the primary way to protect personal and public health is to stay home. But for those who have been denied ready access to basic housing, income, and social supports—these directives are impossible to follow.

To ensure a rights- and health-based response to COVID-19, we call on the provincial and municipal governments to collaboratively ensure basic self-contained housing and accompanying resources for unhoused and inadequately-housed individuals and, until such time, to refrain from enforcement against individuals who have no choice but to occupy vacant properties in order to avoid devastating personal and public health consequences.

Decades into a housing crisis and the government policies that created it, many people are without any housing at all during COVID-19. The closure of community spaces and services means that many people now also lack access to running water and functioning toilets. Many more are crowded in shelters where social distancing is physically impossible. Yet more live in low-income housing projects such as SROs where entire floors share one or two routinely broken bathrooms.

Unhoused and inadequately-housed people *want* to follow public health directives, *want* to protect themselves and their communities, but systemic barriers make it structurally impossible for them to do so.

It is undisputed that adequate housing is a fundamental social determinant of health. The Federal Government recently enacted the *National Housing Strategy Act*, recognizing that “the right to adequate housing is a fundamental human right affirmed in international law” and that “housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities.”¹

The Provincial Government has the powers needed to provide unsheltered and inadequately housed people with self-contained units immediately. The Honourable Mike Farnworth, Minister of Public Safety & Solicitor General, now has the power to “acquire or use any land or personal property considered necessary to prevent,

¹ National Housing Strategy Act (S.C. 2019, c. 29, s. 313) at s. 4.

respond to or alleviate the effects of an emergency or disaster.”² Provincial Health Officer Dr. Bonnie Henry and the City of Vancouver have similar powers under the *Public Health Act* and the *Vancouver Charter*, respectively.³

Regrettably, and despite repeated calls to action, these powers remain unused and there is no indication that sufficient resources will be deployed to stave off the inevitable wildfire of “community spread” set to decimate impoverished communities where social-distancing is structurally impossible. Where projects are underway, most are only being made available after unhoused people have been diagnosed with COVID-19 or are clearly symptomatic.⁴ This means these spaces are only available *after* “vulnerable populations” with pre-existing health conditions have already been infected. These projects are also overwhelmingly second-tier healthcare: tent city style “COVID camps”⁵ and “social-distancing shelters,”⁶ spaces that clearly fall short of recommended best practices during COVID-19.

The Denial of Housing is the Denial of Healthcare

Housing is healthcare.⁷ Presently, we are denying it to the poorest among us who simultaneously, because of historical and present-day inequalities, are disproportionately the same people who suffer dispossession and oppression at every turn: Indigenous and racialized peoples, people with disabilities, women, members of the LGBTQ2S community, immigrants, and refugees. These are the same communities for whom special protections against discrimination have been carved out under the BC *Human Rights Code* and s. 15 of the *Charter of Rights and Freedoms*.

In addition to frustrating equality interests, the denial of housing amid a pandemic requiring social-distancing and self-isolating similarly adversely impacts the s. 7 *Charter* rights of these individuals insofar as it actively precludes them from protecting their rights to life, liberty, and security of the person. State actions that increase the risk of death and disease or that otherwise prevent individuals from safeguarding their own health and safety are unconstitutional.⁸

At a time where people around the world are being asked to limit human contact and shelter in place and during which COVID-19 presents a significant health risk to all, laws that prohibit people from occupying the spaces they need in order to protect their health and safety are inconsistent with our constitutional rights. Existing case law in BC already makes clear that laws preventing people from meeting their own basic shelter

² Minister of Solicitor General and Public Safety (Emergency Program Act), Ministerial Order No. M073; Emergency Program Act, [RSBC 1996] CHAPTER 111, s. 10(1)(d).

³ Provincial Health Officer Notice, *Public Health Act* S.B.C. 2008, Chapter 28, section 52 (2, March 17, 2020); *Public Health Act*, S. 31(1)(b); By-law No. 1266, A By-law to declare a State of Emergency in Vancouver

⁴ Jung, Angela, ‘Vancouver securing hotel rooms in preparation of COVID-19 outbreak among the homeless’, CTV (March 24, 2020), online: <http://ctv.news/FETg8Cl>

⁵ Egan-Elliott, Roxanne, ‘Homeless moved from parks to hotel rooms’, Times Colonist (March 30, 2020), online: <https://www.timescolonist.com/news/local/homeless-moved-from-parks-to-hotel-rooms-1.24109431?>

⁶ Howell, Mike, ‘Why Coal Harbour, Roundhouse community centres opened for homeless during pandemic’, Vancouver Courier (March 31, 2020), online: <https://www.vancourier.com/opinion/why-coal-harbour-roundhouse-community-centres-opened-for-homeless-during-pandemic-1.24110030>

⁷ “Housing, the front line defence against the COVID-19 outbreak,” says UN expert, online: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>

⁸ Canada (Attorney General) v PHS Community Services Society, 2011 SCC 44 [PHS] at para 136; Canada (Attorney General) v Bedford, 2013 SCC 72 at para 60.

and stability needs can be struck down for violating s. 7 of the *Charter*.⁹ The legal analysis sways more heavily in favour of unsheltered and inadequately housed people in a declared state of emergency where public health directives are clear that the refuge of a home is a frontline defence.

Should people's efforts to shelter in otherwise vacant properties be subject to enforcement by government, police, or private security (whether pursuant to the *Criminal Code* or the *Trespass Act*), those individuals may well have recourse to the defence of necessity. COVID-19 arguably presents a risk of "imminent peril" and unsheltered and inadequately-housed people have clearly been given "no reasonable legal alternative." Ultimately, the harm those individuals would face if forcibly removed from (or prevented from accessing) their occupied locations likely far outweighs any harm experienced by government as a result of vacant properties being temporarily occupied on an emergency basis.¹⁰

Such actions are being taken out of a desperate need to ensure personal and collective health—they cannot be criminalized in these unprecedented times. We expect that as community desperation sets in and COVID-19 spreads, many more such actions will occur.

In the interests of *Charter* and human rights and the health and safety of our community, we urge government actors to adopt a policy of non-enforcement and moreover ensure that resources be provided to those who are sheltering in occupied locations (i.e. food, sanitation supplies, a safe supply of drugs as necessary, harm reduction resources, garbage disposal, etc.).

Rather than enforcement and legal action, government actors must spend their limited financial resources procuring the spaces and resources required to allow people to meaningfully social distance, self-isolate, and quarantine as required.

No one should be forced through government action or inaction to go without the basic means to protect themselves during this pandemic. This includes not being trapped in "contagion centres of any kind", be it SROs, shelters, crowded city sidewalks, immigrant detention¹¹, or remand.¹²

Housing is healthcare. Housing is harm reduction. Housing is a human right.

⁹ *Abbotsford (City) v. Shantz*, 2015 BCSC 1909 (CanLII), <<http://canlii.ca/t/glps4>>, retrieved on 2020-04-01; *British Columbia v. Adamson*, 2016 BCSC 1245 (CanLII), <<http://canlii.ca/t/gx69n>>, retrieved on 2020-04-01; *Vancouver (City) v. Wallstam*, 2017 BCSC 937 (CanLII), <<http://canlii.ca/t/h443w>>, retrieved on 2020-04-01

¹⁰ *Perka v. The Queen*, 1984 CanLII 23 (SCC), [1984] 2 SCR 232, <<http://canlii.ca/t/1lpfj>>, retrieved on 2020-04-01

¹¹ Migrant Rights Network "63 Migrant Workers Infected by COVID-19 Due to Government & Employer Negligence!", online: <https://migrantrights.ca/63-migrant-workers-infected-by-covid-19-due-to-government-inaction/>

¹² Parkes, Debra "COVID-19 and the crisis in corrections", *The Vancouver Sun*, (March 31, 2010), online: <https://vancouversun.com/opinion/op-ed/debra-parkes-covid-19-and-the-crisis-in-corrections/>