

COURT OF APPEAL

ON APPEAL FROM THE ORDER OF THE HONOURABLE MADAM JUSTICE ROSS OF
THE SUPREME COURT OF BRITISH COLUMBIA PRONOUNCED TUESDAY,
OCTOBER 14, 2008.

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA

APPELLANT
(PLAINTIFF)

AND:

NATALIE ADAMS, YANN CHARTIER, AMBER OVERALL, ALYMANDA WAWAI,
CONRAD FLETCHER, SEBASTIEN MATTE, SIMON RALPH, HEATHER TURNQUIST
and DAVID ARTHUR JOHNSTON

RESPONDENTS
(DEFENDANTS)

AND:

THE ATTORNEY GENERAL OF BRITISH COLUMBIA and BRITISH COLUMBIA CIVIL
LIBERTIES ASSOCIATION

INTERVENORS

AFFIDAVIT

I, LAURA TRACK, lawyer, of 678 East Hastings Street, in the City of Vancouver, Province of
British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a staff lawyer and housing campaigner with Pivot Legal LLP and I am authorized to
make this affidavit on Pivot's behalf. I have personal knowledge of the facts and matters
hereinafter deposed to, save and except where same are stated to be made on information and
belief, and where so stated, I verily believe them to be true.
2. Pivot Legal Society ("Pivot") is a non-profit legal advocacy organization working in
Vancouver's Downtown Eastside (the "DTES"), one of Canada's poorest postal codes. Pivot's

offices are located in the heart of the DTES, and our work focuses predominantly on the legal issues that affect this community.

3. Pivot's mandate is to take a strategic approach to social change, using the law to address the root causes that undermine the quality of life for those most on the margins.

4. The DTES is home to a large number of marginalized individuals, including people experiencing homelessness; people with drug addictions, mental illnesses and physical disabilities; sex workers; unemployed individuals; and Aboriginal people. It is estimated that approximately 30% of the DTES population is addicted to illicit drugs, with approximately 5,000 injection drug users in the ten-block radius that describes the DTES. The HIV rate in the DTES is approximately 30%; the Hepatitis C rate is close to 90%. Mental illness and physical disabilities are also prevalent.

5. Pivot employs a client-centered approach to its advocacy work, in which people who live in the DTES are recognized for their expertise on issues of concern and relevance to their lives. Like a lawyer to a client, Pivot uses community research and documentation, through legal affidavits and focus groups, to empower marginalized persons to raise their voices and assert their interests. Pivot sets its campaign priorities according to the issues and concerns raised by the community.

6. Pivot was founded in 2001 after a period of meetings between lawyers and local residents to discuss issues of concern in the neighbourhood. At that time, the main concerns in the neighbourhood centered around law enforcement practices. Pivot's first campaign therefore focused on holding police accountable for misconduct through complaints, lawsuits, public education and policy recommendations.

7. Since 2002, Pivot has expanded its work and currently runs five different but overlapping campaigns: policing, sex work, child welfare, health care and housing and homelessness.

Pivot's Campaigns

Policing

8. The policing campaign was Pivot's first campaign and began in 2001. Pivot undertook a nine-month research program in which sworn legal statements about interactions with the Vancouver Police Department ("VPD") were taken from 50 separate individuals in the DTES. The statements alleged incidents of serious misconduct including beatings, illegal search and seizures and abusive conduct.

9. In addition to the 50 affiants, Pivot heard from dozens of other DTES residents who were, for various reasons, unwilling to swear an affidavit regarding their experiences with police. Nonetheless, those stories shaped Pivot's understanding and response to law enforcement issues in the DTES.

10. Many of those who spoke to Pivot in this period were homeless or had experienced homelessness in the past. Others were housed in unsuitable living accommodations, including single room occupancy hotels ("SROs") in the DTES. SROs are notorious for being cramped, dirty, and infested with insects and rodents, among other concerns.

11. Pivot published the results of its research in a report entitled *To Serve and Protect* in October 2002, and submitted the 50 affidavits describing specific instances of police misconduct to the Office of the Police Complaint Commissioner (the "OPCC") in June 2003. The OPCC ordered the RCMP to investigate the allegations of misconduct. Subsequently, Pivot brought a second complaint alleging that then-Chief Constable Jamie Graham had failed to cooperate with the RCMP's investigation. That complaint was upheld in 2008, and Chief Graham was found guilty of discreditable conduct.

12. As a result of the 50 complaints regarding police misconduct brought forward by Pivot on behalf of residents of Vancouver's DTES, several VPD policies have been changed. The most significant change was to the VPD's "breach" policy, which governs the practice of arresting and relocating people to other locations without charges. Two other changes to VPD policies involve seizure of property and keeping police notebooks. These changes came about as a result of the RCMP's investigation of Pivot's complaints.

13. Also stemming from Pivot's work was an inquiry into the police complaint process by retired judge Joe Wood. The inquiry examined the failings of the current *Police Act* and the police complaints system in ensuring proper oversight of Vancouver's police and made recommendations for reform of the process. Those recommendations have been largely incorporated into amendments to the *Police Act* submitted for first reading in the BC legislature in February 2009.

14. Pivot has published several policy papers on the issue of accountable policing. Pivot's commentary article "The political power of police and crackdowns: Vancouver's example" was published in the *International Journal of Drug Policy* in 2006. "Towards more effective police oversight" was published in 2004 and endorsed by the City of Vancouver Peace and Justice Committee.

15. Pivot has printed and distributed over 60,000 "Statement for Police" rights cards, which set out in clear and simple language, citizens' rights when they are arrested. Cards have been published in both English and French and distributed throughout Vancouver and across Canada since 2002.

16. In response to concerns that the OPCC is unable to sufficiently investigate allegations of police misconduct, Pivot, together with the British Columbia Civil Liberties Association, decided to boycott the police complaints process in 2008. Pivot published a booklet entitled *How to sue the police and private security in the Small Claims Court* and holds regular workshops to assist people alleging police misconduct to use this process.

17. Pivot continues to engage with the community on law enforcement issues, particularly in the DTES. Pivot participates in regular meetings between the police and the community at a local community centre and is consulted for its expertise by a wide range of community organizations and individuals. Pivot is also regularly asked by media to comment on police-related issues and has a reputation for expertise on this issue.

Sex Work

18. After policing, the next issue drawn to Pivot's attention by the DTES community was the criminalization of sex work. During the research Pivot undertook for the policing campaign, it

became clear that women's issues with respect to policing in the neighbourhood often involved women's work in the survival sex trade. Pivot launched its sex work campaign in 2002 and formed a Sex Work Law Reform Committee comprised of lawyers and volunteers to assist with this work.

19. As with the policing campaign, Pivot's sex work campaign began with the voices of community members. Participants gathered in locations in the DTES and were invited to share their experiences working in the sex trade and their thoughts about the current criminal law. Statements were collected in affidavit format. In addition to the affidavits, focus groups and consultations between sex workers and Pivot staff also took place. Many of the participants were homeless or had experienced homelessness in the past. A great many more were living in unsuitable accommodations, including single room occupancy hotels in Vancouver's DTES.

20. The result of this initiative was publication of the report *Voices for Dignity: A call to end the harms caused by Canada's sex trade laws* in March 2004. The report included the voices of the affiants, constitutional argument and policy recommendations. Pivot presented the report to Parliament and met personally with then Justice Minister Irwin Cotler.

21. Following on *Voices for Dignity*, Pivot again engaged the expertise of the DTES community by considering the other legal and regulatory changes that would be required if sex work was decriminalized in Canada. Pivot facilitated individual and group discussions with sex workers and owners of escort agencies and massage parlours, taking their concerns and experiences as the starting point for legal analysis.

22. Through this work, Pivot gained an understanding of the many ways in which the various areas of the law could be adapted to a context in which sex work was decriminalized. In particular, areas of labour and employment law, occupational health and safety, tax, family, business and regulatory, municipal and immigration laws were considered and analyzed. The result was publication of *Beyond Decriminalization: Sex work, human rights and a new framework for law reform* in June 2006.

23. In 2007, Pivot lawyer Katrina Pacey was retained by an organization of sex workers to launch a constitutional challenge to Canada's criminal laws pertaining to adult sex work. Pivot's Sex Work Law Reform Committee assisted in the work of bringing the case to court.

24. In December 2008, the organization bringing the law suit was denied standing by the British Columbia Supreme Court. The group, assisted by Pivot, is appealing the lower court's refusal to hear their challenge to the laws.

Child Protection

25. In October 2006, Pivot began researching BC's child protection system. In keeping with Pivot's practice of relying on the expertise of the community and the people directly affected to identify legal issues of concern, the research involved interviews, focus groups and sworn affidavits from parents who had been involved in the child protection system.

26. Many of the parents interviewed had experienced homelessness, and many more had lived or were currently living in unsuitable accommodations. Housing was identified as a primary concern for a large number of the people Pivot consulted and interviewed. Parents' housing situations impact their ability to provide a stable environment for their children, and unstable housing was named as a reason for child apprehension in numerous cases.

27. Pivot published its report into how the child protection system impacts families in the DTES, *Broken Promises: Parents speak about B.C.'s child welfare system*, in February 2008.

28. Currently, Pivot is setting up a legal clinic, the Jane Doe Legal Network, to assist women who have experienced violence to address legal issues.

Housing and Homelessness

29. Pivot's housing and homelessness work began in 2002 when Pivot provided legal support to more than 200 homeless people camped around the vacant Woodward's building. The encampment became a rallying call for greater access to social housing. Woodward's is scheduled to reopen in 2009 with 200 units of non-market housing for low-income individuals.

30. In 2006, Pivot published a major report on housing and homelessness in the DTES entitled *Cracks in the Foundation: Solving the Housing Crisis in Canada's Poorest Neighbourhood* (“*Cracks in the Foundation*”). The 84-page report was based on and incorporates the affidavit evidence of 160 low-income and homeless individuals, following the philosophy that people living in housing crisis know best the issues they face and the barriers that prevent them from accessing quality housing.

31. *Cracks in the Foundation* addresses, among other things, the lack of affordable housing in Vancouver, the increase in the incidence of homelessness, the ongoing loss of affordable units in the DTES in particular and Vancouver in general, the poor conditions prevalent in many of the buildings available to low-income people in Vancouver, various illegal practices by landlords and shortcomings of the *Residential Tenancy Act*. The issues raised in *Cracks in the Foundation* have formed the basis of Pivot’s ongoing housing campaign work.

32. In 2008, Pivot published *Cultural Divide: A neighbourhood study of immigrant rental housing in Vancouver*. Pivot researchers canvassed residents of four inner city residential buildings to assess issues arising in that community. Seventy-seven tenants participated, identifying issues of overcrowding and lack of affordability as major concerns.

33. Also in 2008, Pivot published a report on the growth of the private security industry and its impacts on poor and homeless residents of the DTES. *Security Before Justice: A study of the impacts of private security on homeless and under-housed Vancouver residents* involved interviews, surveys and focus groups with 160 DTES residents inquiring into their interactions with private security guards. The results showed that poor, unemployed and homeless individuals were far more likely to have frequent and negative interactions with security guards than people with employment and housing.

Strategic Litigation

34. Pivot has commenced several strategic legal actions related to housing and homelessness.

35. Pivot brought a Petition in the Supreme Court of British Columbia seeking a declaration that City of Vancouver bylaws prohibiting homeless people from sheltering themselves are unconstitutional. The City of Vancouver declined an invitation to stop enforcing these bylaws

after the court's decision in *Adams v. Victoria (City)*, so the case will be proceeding to hearing this spring.

36. Pivot is representing a former tenant of the Picadilly Hotel in an action against the City of Vancouver for negligent enforcement of its *Standards of Maintenance Bylaw* in respect of that building. The building's owners and managers are also named as defendants for their failure to maintain the building to an adequate standard. The Picadilly Hotel was ordered closed for fire code violations in 2007.

37. Pivot has also assisted numerous tenants at the Residential Tenancy Board.

- a. Pivot assisted tenants from the Golden Crown Hotel in recovering an illegal rent increase;
- b. Pivot assisted tenants from the Burns Block Hotel in collecting damages from their landlord after the Vancouver Fire Department closed the building with two hours' notice to the tenants;
- c. Pivot assisted tenants of the Empress Hotel in improving the conditions in their building, resulting in an order that the landlord repair a non-functioning elevator;
- d. Pivot assisted nine tenants of the Lucky Lodge in gaining standing at a business license hearing. This was the first time that tenants were given standing at such a hearing in Vancouver. Normally, only the applicant for the license is permitted to speak. Pivot made submissions on the tenants' behalf and persuaded the City to keep the building open with the condition that the building's original owners, who were accused of welfare fraud at the time, not be permitted into the building;
- e. Pivot assisted advocates with the Downtown Eastside Residents Association in preparing legal arguments for a case against owners of the Pandora Hotel after the roof of that building collapsed. In February 2008, the Residential Tenancy Branch awarded over \$170,000 to the effected tenants.

International Work

38. In 2008, Pivot made two submissions to the United Nations regarding Canada's failure to honour its commitments under international law with respect to housing rights.

39. Pivot partnered with students from the University of British Columbia, the Carnegie Community Action Project and the Impact on Communities Coalition to bring a formal human rights complaint to the UN Commission on Human Rights regarding displacement of long-time residents of Vancouver's DTES.

40. Pivot also made submissions to the UN Universal Periodic Review, which reviews member-states' human rights records. The submission sets out the various ways in which Canada, the province of British Columbia and the City of Vancouver have failed to honour their international legal obligations to protect citizens' right to housing.

41. In June 2007, Pivot's housing campaign lawyer at that time, Mr. David Eby, was invited to present on Vancouver's housing issues to the UN-funded Centre on Housing Rights and Evictions. Mr. Eby's presentation was attended by representatives of the International Olympic Committee, UN Habitat, the UN Special Rapporteur for Housing, the UN High Commissioner for Human Rights and Amnesty International.

42. Following the presentation in Geneva, Pivot was asked to host the United Nations Special Rapporteur for Housing for his visit to Vancouver in October 2007 as part of his fact-finding mission to Canada. This involved consulting community groups and organizing presentations to the Rapporteur on his identified issues of interest (homelessness, women, Aboriginal people and the Olympics), community consultation and media outreach.

Pivot's Expertise on Issues of Housing and Homelessness

43. In 2007, Pivot was invited to sit on the Inner-City Inclusive Housing Table (the "Table"), set up by the Vancouver Olympic Organizing Committee to address housing-related commitments made by the Committee in Vancouver's bid for the Olympics. A diverse range of perspectives were represented at the Table, including landlords, developers, government, non-profits and community groups. The Table produced a report setting out

25 recommendations that would assist Canada's three levels of government in meeting the housing commitments made in the Olympic bid.

44. Mr. Eby is a member of Vancouver Mayor Robertson's Homeless Emergency Action Team, which has been meeting weekly since December 2008 to find solutions for Vancouver's homelessness crisis.

45. Pivot has made dozens of presentations to various groups and organizations on homelessness and housing, including

- a. University of British Columbia law school students;
- b. members of the BC Federation of Students;
- c. Council of Canadians supporters; and
- d. various community organizations (e.g.: West End Residents Association).

46. Pivot is also often asked to speak at housing and homelessness-related events.

47. Pivot is consulted as an expert on an ongoing basis by print, radio and television media, including Vancouver's major daily newspapers, national newspapers, local and national television news programs, mainstream and independent radio programs and independent news and commentary sources.

Community Engagement

48. Pivot's participation is sought at virtually every community forum and event related to housing and homelessness in the DTES. Pivot has worked in collaboration with countless community members and organizations towards an end to homelessness and improved living conditions for residents of the DTES. Some of the organizations Pivot has worked with closely include: Carnegie Community Action Project, Streams of Justice, Vancouver Area Network of Drug Users, United Native Nations, Multilingual Orientation Service Association for Immigrant Communities, Lifeskills Community Centre, Impact on Communities Coalition, Downtown Eastside Women's Centre, Low Income Land Use and Housing Coalition, Tenants Resource and

Reply to: Bruce Elwood
belwood@arvayfinlay.com

Our File No: 2656-001

March 3, 2009

VIA FAX

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Attention: Ron A. Skolrood

Dear Sirs/Mesdames:

Re: *City of Victoria v. Adams et al.*
BCCA Victoria Registry No. CA36551

We have recently been asked by PIVOT Legal LLP to bring an application to intervene in this appeal in support of the position of the respondents.

My understanding is that the parties have agreed that the Attorney General of British Columbia will be filing a factum before the respondents, as if the Attorney General were an appellant. I anticipate that PIVOT may have a unique perspective on some of the issues the Attorney General may be arguing, as well as those raised by the City of Victoria.

For these reasons, I am asking for your agreement that, while the City filed its factum some time ago, the 14 days for PIVOT to file and deliver an application for leave to intervene will begin to run when the Attorney General files his factum.

Yours truly,

ARVAY FINLAY

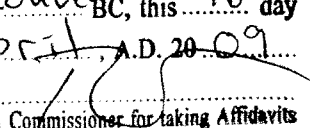
Per: 

Bruce Elwood

BCE/mt

c.c. PIVOT Legal

This is Exhibit A referred to in the
Affidavit of Laura Track
Sworn before me at the City of
Vancouver BC, this 16th day
of April, A.D. 2009


A Commissioner for taking Affidavits
for British Columbia

COURT OF APPEAL

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THE CORPORATION OF THE CITY OF VICTORIA

APPELLANT
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