

December 9, 2022

**Mayor Ken Sim**

Chair of Vancouver Police Board

**Chief Constable Adam Palmer**

Vancouver Police Department

**Vancouver Police Board Members**

**Vancouver City Councillors**

**VIA EMAIL ONLY**

***Re: Urgent response regarding evictions at the Hastings Street Encampment***

Dear Mayor Sim, Chief Constable Adam Palmer, Vancouver Police Board Members and Vancouver City Councillors:

Last week, during the middle of an extreme weather alert due to the cold and falling snow,<sup>1</sup> the City of Vancouver (“the City”) and the Vancouver Police Department (“VPD”) evicted people from their shelters – their best and generally only housing option – on the 100-Block of East Hastings Street (the “Evictions”). These shelters were part of what community members refer to as the Hastings Street Encampment (the “Encampment”). The BC Civil Liberties Association (“BCCLA”) and Pivot Legal Society (“Pivot”) have serious concerns about the constitutionality of these actions and in particular the City’s unnecessary deployment of police officers.

**Evictions have constitutional consequences**

As found by the BC Court of Appeal in *Adams*,<sup>2</sup> where there was insufficient indoor shelter space, people had “a right to be free of a state-imposed prohibition on the activity of creating or utilizing shelter, a prohibition which was found to impose significant and

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<sup>1</sup> ECCC Weather British Columbia, “A major winter storm is arriving on the coast today! Please watch out for strong winds, heavy snow, blowing snow & wind chill. Be careful on the roads & have your emergency kit handy in case of power outages. Warnings: <http://ow.ly/6IE850LQhuB> #BCStorm @DriveBC”, (29 November 2022 at 9:25 AM) online: *Twitter* <<https://twitter.com/ECCCWeatherBC/status/1597642819757379586>>.

<sup>2</sup> *Victoria (City) v Adams*, 2009 BCCA 563 [*Adams*].

potentially severe health risks on one of the City's most vulnerable and marginalized populations."<sup>3</sup> This health risk is particularly acute when there is a risk of hypothermia.<sup>4</sup>

In *Adams*, that prolonged exposure to the cold weather causes life-threatening effects was uncontested.<sup>5</sup> Since *Adams*, courts in British Columbia have reiterated that this danger to people's lives will raise an associated threat to Section 7 *Charter* rights, when the enforcement of bylaws results in exposure to the elements.<sup>6</sup> Residents of the Encampment are now facing significant risks to their lives and safety, as a result of the City's recent Evictions.

To uphold the application of recent court decisions,<sup>7</sup> the City and its delegates must duly consider the constitutional and human rights of people in encampments prior to taking action to enforce a bylaw. Furthermore, the City must make the decisions related to bylaw enforcement to evict people in encampments in accordance with procedural fairness principles. This includes the provision of notice and an opportunity to be heard on the matter.<sup>8</sup>

Pivot and the BCCLA's conversations with legal observers present during the Evictions indicate that these constitutional and procedural fairness entitlements were not fulfilled by the City. Crucially, no opportunity to be heard was provided to those evicted. These requirements are also essential for public transparency and accountability.

The City's failure to duly consider the constitutional and human rights of the Encampment residents is particularly egregious during extreme weather alerts, when the housed shelter in their homes and the Encampment residents struggle to retain heat in their tents or other makeshift shelters. These acts of displacement only move potential City concerns such as visible clutter to elsewhere within the City, and they do so at the cost of human safety and wellbeing. When people's lives are put at increased risk of death for no logical benefit, the City has grievously failed to demonstrate an appropriate balancing of interests to constitute a justified infringement on the evicted residents' *Charter* rights.

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<sup>3</sup> *Ibid* at para 100.

<sup>4</sup> *Ibid* at para 28.

<sup>5</sup> *Ibid* at para 102.

<sup>6</sup> *Adams* at para 75; see also *Bamberger v Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49 at para 4 [*Bamberger*]; *Prince George (City) v Stewart*, 2021 BCSC 2089 at paras 89 & 91 [*Stewart*].

<sup>7</sup> *Bamberger*, *supra* note 6 at paras 62-63.

<sup>8</sup> See *ibid* at paras 64 & 69.

## **Heavy police presence and use of force along the Encampment**

Legal observers posted along Hastings Street have witnessed a heavy VPD presence and use of force recently and during the Evictions. Witnesses also described VPD officers enforcing the seizure of people's belongings by City delegates, using aggressive behaviour to scare bystanders, threatening to arrest Encampment residents, using routine arrests as a tactic to disperse and essentially evict people from the Encampment, and arresting people residing along Hastings Street with excessive force. For example, videos captured police officers using violent dispersal tactics along the Encampment in August 2022.<sup>9</sup>

In the BCCLA's previous letter of December 1, 2021, to the Vancouver Park Board regarding the use of police to evict people from the CRAB Park encampment, we stated:

“We find this heavy-handed approach completely inhumane, unnecessary and contrary to the City of Vancouver's commitment to decriminalizing poverty and supporting community-led safety initiatives. The latter includes not relying on the police to address matters of homelessness.”<sup>10</sup>

We are disheartened by the continued and heavy use of police with regard to encampment evictions, and we strongly urge the City to prohibit the deployment of such cruel and unnecessary tactics against a highly vulnerable community.

## **From forced evictions and criminalization to respect for human rights**

The City's actions are a prime example of anti-homelessness bylaws expressly being “used to punish people who are visibly poor and have no choice but to spend their time in public spaces”, as articulated by the 2022 report recently commissioned by the Office of the Federal Housing Advocate (the “OFHA Report”).<sup>11</sup>

In the same document, the OFHA Report recommends that rather than criminalizing encampment residents, governments need to “recognize those experiencing homelessness

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<sup>9</sup> Vancouver Area Network of Drug Users, “TODAY at 2:45PM: @vancouverpd constables attacked and violently arrested DTES residents, VANDU and @pivotlegal organizers after a day of peaceful observation of the Hastings Tent City decampment.” (9 August 2022 at 6:02 PM), online: *Twitter* <<https://twitter.com/VANDUpeople/status/1557170436336603136?cxt=HHwWgMCqid-QL5wrAAAA>>.

<sup>10</sup> British Columbia Civil Liberties Association, “Letter to Vancouver Park Board re CRAB Park Injunction”, (1 December 2021), online (PDF): BCCLA <<https://bccla.org/wp-content/uploads/2021/12/Letter-to-Vancouver-Park-Board-re-Crab-Park-Injunction.pdf>>.

<sup>11</sup> Alexandra Flynn, Joe Hermer, Caroline Leblanc, Sue-Ann MacDonald, Kaitlin Schwan, Estair Van Wagner. 2022. *Overview of Encampments Across Canada – Executive Summary*. The Office of the Federal Housing Advocate at 8 [OFHA Report].

as human beings claiming their rights within failed systems and fulfill their obligations to respect human dignity".<sup>12</sup> As part of a right to housing approach, the OFHA Report's recommendations to governments include the following:

- Prohibit forced evictions while de-centring policing and law enforcement;
- Ensure the meaningful participation of encampment residents;
- Ensure that encampment conditions meet basic human rights requirements; and
- Ensure that outcomes and actions are compliant with the human rights of encampment residents, including Indigenous human rights.<sup>13</sup>

The City has entirely failed to take a human-rights approach with respect to the eviction process. Instead, these latest Evictions accompanied by a generally heavy police presence demonstrate a callous disregard for the human rights, constitutional rights, and general welfare of Vancouver residents.

### **Contextualizing winter Evictions and Indigenous displacement**

People who are being evicted from the Encampment have no adequate place to go for proper housing. This is the stark reality of the ongoing housing crisis, which is particularly acute in Vancouver.<sup>14</sup> The City's emergency sheltering locations are only open for a limited time during the night, which leaves people exposed to the elements throughout the day. Pivot and the BCCLA reiterate our concerns expressed in the letter cited below, prepared by Pivot Legal Society ("Pivot") and signed by the BCCLA, describing the inadequacy of the City's current Winter Housing Plan.<sup>15</sup> We also refer you to Pivot's press release regarding the Evictions.<sup>16</sup>

Moreover, the emergency sheltering locations are not housing. Numerous court cases have now recognized that shelter beds are not accessible or "suitable" for many people living outside.<sup>17</sup> Unhoused people frequently cannot access shelter beds even where they are

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<sup>12</sup> *Ibid* at 11.

<sup>13</sup> *Ibid* at 11-17.

<sup>14</sup> OFHA Report, *supra* note 11 at 5.

<sup>15</sup> See attachment: Pivot Legal Society, "RE: Winter Housing Plan for People Who Shelter in Public Space", (22 November 2022), online: Pivot Legal Society <[https://www.pivotlegal.org/winter\\_housing\\_plan\\_for\\_people\\_who\\_shelter\\_in\\_public\\_space](https://www.pivotlegal.org/winter_housing_plan_for_people_who_shelter_in_public_space)>.

<sup>16</sup> Pivot Legal Society, "Hastings Tent City Residents Decamped While City Under Weather Warning", (29 November 2022), online: Pivot Legal Society <[https://www.pivotlegal.org/hastings\\_tent\\_city\\_residents\\_decamped\\_while\\_city\\_under\\_weather\\_warning?fbclid=IwAR0kNPzwYavpe08yLX2s6ialtb7V8S4IUoPWQLJqiy1BJ3MoBj5uSZHSUXQ](https://www.pivotlegal.org/hastings_tent_city_residents_decamped_while_city_under_weather_warning?fbclid=IwAR0kNPzwYavpe08yLX2s6ialtb7V8S4IUoPWQLJqiy1BJ3MoBj5uSZHSUXQ)>.

<sup>17</sup> See *Bamberger*, *supra* note 6 at para 151; *Stewart*, *supra* note 6 at paras 69-74; *Abbotsford (City) v Shantz*, 2015 BCSC 1909 at paras 81-82.

empty because these spaces are high-barrier, unsafe, or otherwise do not meet their needs. No housing was offered to those residents evicted from the Encampment. In the words of one evicted resident who was interviewed by legal observers, “They don’t care where we go, they just don’t want us here.”

A mat on a floor, or a chair in a “warming center”, is not sufficient to fulfil a government’s obligations to unhoused and inadequately housed community members. The Mayor and Council of this City must embrace the right to “adequate” housing as set out in international law, and as now recognized under the federal *National Housing Strategy Act*. This includes, among other features, the right to: security of tenure, affordability, habitability, accessibility, and cultural adequacy.<sup>18</sup>

It is essential to contextualize the deliberate removal and displacement of people from a public space situated on the unceded and un-surrendered lands of the x<sup>w</sup>məθk<sup>w</sup>əyəm (Musqueam), Skwxwú7mesh (Squamish) and səliłwətaʔl (Tsleil-Waututh) nations. As has been recognized in the OFHA Report, encampments are directly connected to ongoing colonial violence and Indigenous people are over-represented in encampments in Vancouver.<sup>19</sup> The British Columbia Supreme Court also recognized this reality.<sup>20</sup>

Indeed, the many Indigenous residents of the Hasting Street Encampment should not be subjected to further state-enforced displacement. The City’s actions demonstrate a violent pattern of ongoing colonialism without addressing the root causes of why people are living in the Encampment. How can the City claim to be a “City of Reconciliation”<sup>21</sup> and to be taking action to implement the United Nations Declaration of the Rights of Indigenous Peoples<sup>22</sup> when it continues to actively use violence and displacement against Indigenous people?

Pivot and the BCCLA urge the City to act with compassion, human rights accountability, and transparency. We implore the City to immediately cease the Evictions of all people sheltering at the Encampment and to act swiftly to implement the recommendations of the OFHA Report. Until such time that the City can fully demonstrate that suitable and accessible alternative housing has been provided to each and every individual evicted, and

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<sup>18</sup> National Housing Strategy Act (SC 2019, c 29, s 313) S 49(a), online: <<https://laws-lois.justice.gc.ca/eng/acts/n-11.2/FullText.html>>.

<sup>19</sup> OFHA Report, *supra* note 11 at 5.

<sup>20</sup> *Stewart*, *supra* note 6 at paras 69-71.

<sup>21</sup> City of Vancouver, “City of Reconciliation”, (8 July, 2014), online: <<https://vancouver.ca/people-programs/city-of-reconciliation.aspx>>.

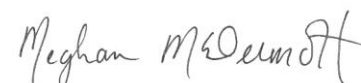
<sup>22</sup> City of Vancouver, “Council approves groundbreaking UNDRIP strategy for Vancouver”, (25 October, 2022), online: <<https://vancouver.ca/news-calendar/council-approves-groundbreaking-undrip-strategy-for-vancouver.aspx>>.

that such evictions are done in compliance with the constitutional and procedural fairness rights of all individuals, the BCCLA and Pivot Legal Society will continue to stand in solidarity with the Encampment residents, who are fighting on the street for their survival and dignity.

Sincerely,



Ga Grant  
Staff Litigation Counsel  
BC Civil Liberties Association



Meghan McDermott  
Policy Director  
BC Civil Liberties Association



Anna Cooper  
Staff Lawyer  
Pivot Legal Society

**CC: The Honourable David Eby, Premier of British Columbia**

**The Honourable Ravi Kahlon, Minister of Housing and Government House Leader**