



July 19, 2016

Reply to: DJ Larkin
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VIA EMAIL: leilani.farha@unhousingrapp.org

Special Rapporteur on adequate housing
as a component of the right to an adequate standard of living
Attention: Leilani Farha

Dear Ms. Farha,

Re: Request for Urgent Appeal -Impending forced evictions in British Columbia, Canada

We the undersigned write to request an urgent appeal to the governments of Canada, British Columbia (B.C.) and the municipality of Burnaby in B.C. (Burnaby), in relation to the impending forced eviction of approximately 100-120 homeless people who live in an informal settlement on provincial land in Victoria, B.C. and the eviction of nearly 100 low income people from their homes in Burnaby, B.C. 2015. This request is sent at a time when there are homeless camps facing eviction all over B.C. and a dire housing crisis that is disproportionately harming low-income renters.

We are deeply concerned that the failure of the governments of B.C. and Burnaby to ensure these individuals have access to adequate housing upon eviction is in violation of their human rights obligations towards these residents. In particular the lives and health of these individuals are at risk, possibly in violation of Article 11 of the International Covenant on Economic, Social and Cultural Rights (CESCR), General Comment No. 7 in relation to forced evictions by private parties and the repeated recommendations of the Committee on ESCR that Canada protect people facing forced evictions from being evicted into homelessness.¹

Case #1: Super InTent City - Eviction date August 8, 2016

For years homeless people have sheltered overnight in public spaces in Victoria and have been displaced daily at 7am. Beginning in October 2015 homeless people began to erect structures such as tents, tarps, boxes and improvised wooden structures on an open green space adjacent to the courthouse in Victoria, British Columbia on a more permanent basis. These lands are owned by the Province of British Columbia (the "Province") and are open to the public (the "Lands"). Since that time a community of homeless people has developed on the Lands, including as many as 60 tents, a cooking area, bathroom facilities and a meeting space for residents. The community has become known as Super InTent City ("Super InTent").

The residents of Super InTent are mostly homeless people from the Victoria area. It is estimated that approximately 50-60% of the residents are Indigenous people and the majority of residents have some form of physical illness or disability, mental health issue and/or addiction. The demographics of the residents of Super InTent are generally consistent with the demographics of homeless people across Victoria. A backgrounder detailing the numbers and demographics of Victoria's homeless population and shelter and housing availability is attached to this correspondence.

Residents of Super InTent set up camp on the Lands to seek refuge from daily displacement and the physical, emotional and mental exhaustion this causes. The sleep deprivation² and stress caused by daily displacement

¹ Concluding Observations, Canada 2006 at para. 63 & Concluding Observations, Canada, 2016 at sub-paras. 40(c), 40(d).

² Many Super InTent residents earn income at night, including panhandling and binning until 2-3am. Daily displacements at 7am mean that these people get little to no sleep each night.

leads some homeless people to use illicit substances to stay awake, all of which negatively affects their health, including mental health. Bylaws prohibiting people from leaving belongings in public spaces and limiting the ability to panhandle prevent residents from resting in public spaces during the day.³ Residents are also seeking refuge from the social profiling they experience on the basis of being homeless. When sheltering alone or in small groups overnight they have faced harassment by law enforcement and the public, and had services taken away such as garbage cans removed and bathrooms locked, only then to be blamed for creating a mess.

The residents have found a sense of home, community, safety and security in Super InTent. Not having to move daily has improved the physical, mental and emotional health of many residents. This stability has also allowed many to start accessing social and health services and has provided a centralized space for health and social services to meet people where they are at and provide more effective services. For example, street nurses and outreach teams hold regular hours at Super InTent.

Super InTent exists within the context of a provincial public health emergency. On 14 April 2016 the Province of B.C. declared a public health emergency as a result of a drastic increase in overdoses related to opioid use.⁴ Naloxone, an overdose reversal drug, is available to drug users and is often used by fellow drug users to save lives before emergency services arrive. There have been overdoses in Super InTent, but because of the proximity of residents and the presence of naloxone, there have been no overdose deaths in 2016 and only one fatality in 2015 (in a week where there were eight overdose deaths in Victoria outside of Super InTent).

On January 8 and February 4, 2016 residents were given notice to vacate the Lands and on February 27, 2016 residents were issued a fire order. On February 29, 2016 the Province of British Columbia and Attorney General of British Columbia (The "Province") filed court proceedings seeking an interim injunction to evict approximately 100 homeless people living on the Lands in advance of a September trial where the government seeks a permanent injunction against sheltering on the Lands on the basis of trespass and that Super InTent residents are causing a public nuisance.

The residents, in their defence, have asserted that there are not enough shelter beds or housing to meet the needs of Victoria's homeless population, that they would face greater safety risks if removed from Super InTent and that Super InTent has allowed them to create a beneficial community and to connect residents with local authorities and others.

On April 5, 2016 the Chief Justice of the Supreme Court of British Columbia denied the Province's application for an interim injunction, finding that the evidence overwhelmingly weighed in favour of the Super InTent residents.⁵ In doing so he stated that "there is no right to housing under the *Charter* [the Canadian Constitution]", but that the rights of homeless people must be considered in adjudicating whether to evict residents from their encampment.

³ For example section 102 of Victoria's *Street and Traffic Bylaw (Consolidated)*, 09-079 prohibits anyone from placing, or leaving on any street or other public place, any object or thing likely to be a nuisance. This can include shopping carts and bags of Victoria's homeless population. Section 103 prohibits people from obstructing a sidewalk by squatting, sitting, kneeling or lying down between 8:00am and 9:00pm in several downtown areas where homeless people frequent. Section 103 explicitly prohibits and controls panhandling or "soliciting" by disallowing sitting or lying down.

⁴ In particular, the mixing of fentanyl into illicit heroin, oxycodone, methamphetamine, and other drugs that are used by many people within the province including substantial numbers within the homeless population. In the Island Region, where Victoria is located and which includes all of Vancouver Island, the Gulf Islands and Powell River, there were 38 deaths from illicit drug overdoses in the first four months of 2016, compared with a total of 22 in all of 2015.

⁵ In finding that the evidence overwhelmingly supported Super InTent, the Chief Justice noted physical and mental health improvements, better sleep, access to meals and services, improved safety and conflict resolution systems, relationship building with government authorities and other community members, decreased harm relating to illicit drug use.

The Province again filed an application seeking an interim injunction to remove the residents of Super InTent on June 3, 2016. The Court awarded the interim injunction on July 5, 2016. The basis for the Court's decision is Province's evidence of the failure of Super InTent to comply with fire orders, and deterioration in sanitation and safety at Super InTent. Residents of Super InTent challenged this evidence as they believe it does not properly take into consideration the fire, safety and sanitation risks they face when they are forced to live alone and are displaced every day.

The residents of Super InTent will now be evicted no later than August 8, 2016. This date was chosen based on evidence that a new housing facility with 140 units will open prior to August 8, 2016. There is no obligation on the Province, however, to ensure that this facility is available on time, that residents are consulted to ensure that this option is adequate and appropriate, or to have in place a plan to move dozens of people and their belongings when the facility opens. This order does not recognize the need for permanent housing for the close to 1400 people counted in shelters, institutions, and sleeping rough in Victoria on one night during the 2016 Homeless Count.

The Court Order further required that residents register themselves with government within 3 days of the Order in order to be eligible for housing and disallows any other homeless person from setting up in Super InTent after July 5, 2016. Super InTent remains at full capacity even when vacancies are created by people moving to housing and shelter options. There will continue to be a need for a tent city after August 8.

Given that Super InTent will be evicted prior to trial in September 2016, there is a serious risk that residents will be dispersed and unable to defend against the permanent injunction sought by the Province, which the residents argue is unjustified on the basis of nuisance and trespass and is a breach of their Constitutional rights to life, liberty and security of the person.

Residents believe that, prior to evicting Super InTent, the Province should:

1. Ensure that no one is evicted from Super InTent back into absolute homelessness in the streets, parks and alleys of Victoria;
2. Protect residents from arbitrary eviction by ensuring that all residents have access to adequate housing upon eviction and are consulted with in the planning of that housing to ensure that it meets their needs including accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education in keeping with General Comment No. 4; and,
3. Provide residents with a plan for a respectful and cooperative move into housing once it is available rather than evicting Super InTent as of August 8 if there are residents who remain in the camp who require housing or time to transition.

Case #2 Demolition of low-income housing in Burnaby, B.C.

Between 2012 and 2014, demolitions in the Metrotown neighbourhood of Burnaby, B.C. ("Metrotown"), which is a Burnaby's lowest-income neighbourhood rose to about 300 units, and they continue to rise each year. 234 units have been demolished on one block in question, around Dunblane and Imperial streets, which represents about one-third of total units to be demolished in Metrotown in 2016-17. Based on a conservative estimate of two people per unit, there are potentially 1,400 residents facing eviction. Between 2014 and 2015, two condo development corporations bought up every apartment building in a one-block area of Metrotown. These companies are planning and undertaking the demolition of fifteen buildings containing 234 apartment units, and the displacement of nearly five hundred working class people and families living on just one block.

This redevelopment has been triggered and encouraged by the City of Burnaby zoning amendments that favour condominium towers over existing low-rise rental buildings and demolition permits

granted by Burnaby, as well as the lack of a municipal rental replacement policy, a policy to protect existing low-income housing or an effective tenant relocation plan. The spot rezoning of the Dunblane block will be the model for the displacement of renters from the neighbourhood as a whole if Burnaby passes its draft development plan to upzone and “revitalize” this area as a new “downtown core.”⁶ Furthermore, Burnaby has refused to allow a homeless shelter in the city, despite availability of provincial funding for a shelter.⁷

This process has been named “demoviction”: the eviction of tenants, mostly low-income tenants, seniors and racialized people, by the demolition of not only their homes, but also their entire communities.⁸ The demovictions crisis is far more widespread than this square block but this block is a representative sample of the crisis facing all renters in this area of Burnaby, B.C.⁹

For twelve days in July one building was illegally occupied by homeless individuals and community supporters with view to saving this housing and stopping the tide of demovictions.

We are concerned that these demovictions are “development-based evictions” identified by the UN,¹⁰ and are not in keeping with the CESCR Article 11, the General Principles and Guidelines on Development-Based Evictions and Displacement,¹¹ and General Comment No 7, including the obligation on states to “ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies.” Furthermore, the UN has twice recommended that action be taken across Canada to protect people facing forced evictions from being evicted into homelessness.¹²

Those who have already been evicted or are facing eviction are hundreds of working class people, pensioners, low-income residents, and refugee families. We believe that these evictions are putting people’s health and social security at risk and that those who are more vulnerable to poverty - women and single parents, families with young children, people with disabilities and on income assistance, low-wage workers, new migrants and refugees - are most affected,¹³ for examples of this please see the attached backgrounder.

A 2016 survey of 60 units, within the 206 that are currently being demovicted or are under threat of demoviction, shows that 81% of people surveyed said the demoviction was negatively impacting their lives,¹⁴ including stress and anxiety, and future loss of health care access, community and social support networks.¹⁵ Of the households recently demovicted in February 2016, 62% of them had not found alternative housing less than a month before their eviction. No one surveyed had

⁶ <http://thevolcano.org/2016/05/16/grassroots-demovictions-report-warns-of-metrotowns-collision-course-with-mass-displacement-by-ivan-drury/>

⁷ <http://www.theglobeandmail.com/real-estate/vancouver/burnabys-development-boom-displacing-low-income-residents/article30608560/>, see also Stop Demovictions at 19.

⁸ Stop Demovictions Burnaby Campaign, “A Community Under Attack: The displacement of vulnerable Metrotown residents by the City of Burnaby’s Demoviction development policies”, May 2016, Burnaby, B.C., unceded Tsleil-Waututh, Kwikwetlem, Qayqayt territory at 5.

⁹ Stop Demovictions at 6, 9.

¹⁰ Implementation Of General Assembly Resolution 60/251 of 15 march 2006, entitled “Human Rights Council” Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, A/HRC/4/18 Annex 1 at para. 8 [Development-based Evictions].

¹¹ Development-based Evictions

¹² Concluding Observations, Canada 2006 at para. 63 & Concluding Observations, Canada, 2016 at sub-paras. 40(c), 40(d).

¹³ Stop Demovictions at 8.

¹⁴ Stop Demovictions at 7.

¹⁵ Stop Demovictions at 15.

been contacted by the City of Burnaby to offer support in any form.¹⁶ Many tenants stated that they have contacted in City of Burnaby repeatedly and no one surveyed has received a helpful or positive response from the City.¹⁷

Those affected do not have adequate recourse under Canadian law. Burnaby has jurisdiction to legally rezone the Metrotown area and is now using that rezoning to justify their position that they cannot deny demolition permits for this area. This rezoning occurred with very little public consultation and no plan for the displaced residents.¹⁸ We believe that Burnaby mayor and council have abdicated their responsibility in this matter, stating that it is a dispute between the developer and the former residents.

We believe that:

1. The housing at risk of demolition needs to be preserved until there is replacement housing at a price low-income people and families can afford. This should be done through city-funded housing outreach, support, and advocacy programs, by using city money to buy a building for emergency housing and dedicating city-owned lands to develop social housing that is affordable to people on welfare and pension;
2. Those occupying the building slated for demolition should be protected as an informal settlement, allowing those who have been evicted and those who are homeless in Burnaby to live there without threat of arrest until alternative housing is available;
3. Burnaby requires laws to protect low-income housing, to ensure replacement housing that is adequate and affordable and ensure that people are not demovicted into homelessness;
4. Burnaby City Council should declare a moratorium on rezoning properties currently used as residential rentals and begin a community planning process that is focused on current residents who are most vulnerable to displacement.

We are concerned that both of these cases are examples of human rights violations being perpetuated against vulnerable populations as a result of Canada's ongoing housing crisis. Residents living in Super InTent are visibly homeless and their eviction will take place in the public eye but without adequate protections for their human rights unless there is swift action taken. The demovictions in Burnaby, however, are a stark example of who is being made 'hidden homeless' and how local governments are driving this process. We believe that action is needed at all levels of government to protect these communities from the evictions they are facing.

For further information please contact DJ Larkin, Pivot Legal Society, at dj@pivotlegal.org or 1-604-340-8422.

Yours truly,

Stephen Portman, Advocacy Lead, Together Against Poverty

TAPS is the only organization in Victoria providing free, face-to-face legal advocacy for people with income assistance, disability benefits and tenancy issues. Stephen has been a key supporter of Super InTent since 2015.

Eko Goldberg, Homes Not Hate

Homes not Hate is a grassroots network of people who believe the appropriate response to Super InTent is to work with its residents to provide safe, decent, and affordable homes, rather than the widespread social profiling of homeless people, poor-bashing, and hate speech that has been directed against the Super InTent residents.

¹⁶ Stop Demovictions at 7, 20.

¹⁷ Stop Demovictions at 20.

¹⁸ <http://www.cknw.com/2016/06/01/no-vacancy-demovictions-and-the-changing-face-of-metrotown/>

Ivan Drury, Alliance Against Displacement

The Alliance Against Displacement is a grassroots organization made up of volunteers from Vancouver, the Lower Mainland, and reaching out the rest of British Columbia. We are fighting for housing justice.

DJ Larkin, *Barrister & Solicitor*, Pivot Legal Society

Pivot Legal Society is a human rights organization that uses the law to address root causes of poverty and social exclusion. DJ's work focuses on representing people who are homeless and marginally housed.

Backgrounder

The actual number of homeless people in B.C. is unknown and all government metrics for measuring homelessness result in drastic underestimations of homelessness. All metrics fail to capture people who are 'hidden homeless': individuals who are couch-surfing or otherwise without security of tenure, are living in unsafe or overcrowded conditions, trade sex or other labour for shelter, or sleep in cars. By some estimates, about 80% of Canada's homeless are hidden and unaccounted for.¹⁹ Across B.C. it is estimated that over 50,000 people are homeless and another 65,000 are at risk of becoming homeless as a result of poverty and a lack of affordable housing.²⁰

Case #1: Homelessness and shelter/housing availability in Victoria, British Columbia

The 2016 Greater Victoria homeless count, conducted in February 2016, identified 1,387 people sleeping outside or residing in temporary shelters in Greater Victoria.

Among respondents in the 2016 homeless count 32.6% identified as Indigenous - compared to the 5% of the region's general population that is Indigenous. 36.9% became homeless as youths (under 18 years), 48.7% reported addictions, 30.4% reported physical disability, 37.6% a mental health issue and 18.9% a brain injury. This count is an estimate, generated over one 12-hour period, and is an underestimate.²¹

In the 2016 Victoria homeless count, 61.8% of people surveyed reported either welfare or disability as their source of income, meaning that they receive between \$235 and \$531.43 total income per month when they are homeless and, if they were housed, would receive \$375 a month for rent. As of 2015, the average rent in Victoria was \$941 and the vacancy rate was between 0.0% and 0.6%. By all indications vacancy rates are not increasing, while rents continue to rise significantly.

Victoria's emergency shelter services run usually at or beyond capacity - meaning added floor mats in hallways and public rooms to accommodate more people. In fiscal year 2014-2015 the Victoria shelters operated through provincial funding operated at 115% capacity. There is a long waitlist for limited social housing and basically no low-income rental housing available. As of March 2015, 277 people were on the waitlist for supportive housing and 1,502 households waiting for subsidized social housing, 40% of those people are seniors. As of August 2015 the number of referrals for supportive housing each month exceeded the number of units available, adding to the ongoing waitlist. Between 2012 and 2015 it took a median of 240 days from referral to supportive housing; however, many on the referral list wait longer and experience barriers to navigating the system, meaning they do not become housed at all.

In response to Super InTent, the Province opened 40 temporary shelter spaces that are currently funded to September 2016, 38 transitional housing spaces currently funded to February 2017, and converted a former youth detention centre 10.5 kilometres from downtown into a temporary shelter. All of these facilities are currently still operating but are at maximum or near maximum capacity, with a waitlist of several hundred people seeking space at these facilities.

In August the Province has stated that 140 units of housing will become available. Nonetheless, there is still not enough shelter and housing to meet the needs of Victoria's homeless population, including Super InTent residents. Furthermore, many Super InTent residents face serious personal barriers to accessing housing and

¹⁹ Stop Demovictions at 18.

²⁰ 'At risk of becoming homeless', is defined by the Canadian Observatory on Homelessness as 'insecurely housed' and by the Canadian Mortgage Housing Commission as in 'core housing need.' This applies to households where more than 30% of gross household income is spent on sheltering and/or residents are living in inadequate or unsafe conditions.

²¹ Based on the number of "unique individuals" - meaning different people - accessing shelter services, 1,784 people accessed shelter during the fiscal year 2012-13; 1,919 in 2013-14; and, 1,725 in 2014-15. These figures do not include people who do not access shelter and may be an indication that the February 2016 homeless count results are an undercount of Victoria's homeless.

shelter, including mental and physical health challenges, addictions, histories in Canada's "Indian Residential Schools", and histories of trauma, incarceration and abuse. As well, there are many systemic barriers to accessing shelters. People can be banned from shelter services entirely and for those who are not, people face: fear of violence in shelters (especially for women, gay men, trans people and gender non-conforming people); shelter rules that exclude couples, families and pets, that allow high level of surveillance and police presence, or that are impossible to follow for people with mental health concerns and addictions; lack of privacy; lack of storage for belongings; fear of communicable disease transmission (including scabies, tuberculosis, flu); and, shelter curfews that interfere with the need to earn income. Those barriers means that even where there may exist an open shelter mat or bed, that space may not be accessible to many people on the basis of disability, gender, Indigenous heritage, personal safety and personal history.

Case #2: Demovictions

The residents who live in Metrotown's lower income three story type apartments are working class community members. They are the young families, the elderly, individuals with low or fixed incomes, and immigrants or refugees.²²

For example, many government assisted refugees arrive facing language barriers, have come to Canada without money or a source of income, and require cultural support and settlement services. All of this is very challenging within the context of the Vancouver-area's (including Burnaby) extremely high housing prices. Refugees are eligible for rental assistance for 1 year at a rate of \$375 for a single person or \$700 for a 4-person family. This is far below the average cost of housing in the area. Nonetheless, many refugee families found housing and a supportive community in the low-income housing in Burnaby that is now being demovicted. The strain on settlement workers who are unable to find housing for newly arrived refugees led them to call on the federal government to slow the arrival of Syrian refugees at the end of 2015. The demovictions are directly impacting the ability of refugees to settle in B.C. and are limiting Canada's ability to accept refugees fleeing conflict zones.²³

Rents for the housing being constructed are approximately two to three times higher than that of the buildings being demolished. Low-income seniors are being evicted repeatedly, without a relocation plan and are unable to pay the drastically increased rents in the area.²⁴

Many of those evicted are moving into homelessness because they've been unable to find housing in the tight market in Burnaby and surrounding areas. Burnaby's rental vacancy rate, as of 2015, hovers between 1 and 1.4%.

For the few people offered alternative housing by the developers, they were offered units in a building that is also slated for demolition within the next year or two, meaning they will face the same fate in mere months.²⁵ The development company has also offered alternative housing if tenants agree to leave Burnaby and pay significantly more in rent, neither of which is reasonably possible for most tenants who already pay well over 30% of their income on housing and who rely on local services and amenities for their health and well-being.²⁶

Many of those who have been or are facing demoviction fear that they will face discrimination in trying to access housing after being evicted. This is particularly true for people with disabilities, refugees, low-income families with children and individuals with complex health needs.

²² <http://thevolcano.org/2015/10/13/metrotown-demolitions-displace-communities/>

²³ Stop Demovictions at 13.

²⁴ <http://www.cknw.com/2016/06/01/no-vacancy-demovictions-and-the-changing-face-of-metrotown/>

²⁵ <http://thevolcano.org/2016/02/04/housing-insecurity-and-uncertainty-is-the-new-normal/>

²⁶ Stop Demovictions at 14.