

# Creative Lawyering and the Promotion of the Rights of People Living with HIV and AIDS

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# Background / Context

- Pre-seminar Report suggested that there were significant barriers to PLHA accessing justice and that reasons for this included
  - a lack of adequately motivated and / or competent lawyers
  - the non-availability of legal aid
- Report also suggested that it was rare for voluntary sector / civil society organizations to intervene in cases on behalf of PLHA (by providing written evidence or acting as an *amicus curiae* ('friend of the court'))

# Addressing the Problem

- These problems stem from
  - Lack of understanding
  - Lack of resources, or lack of political will / motivation to allocate those resources to PLHA
  - Lack of structural mechanisms that allow beneficial intervention
- But the biggest problem is REACTIVITY. They are problems that, in part, arise from the fact that
  - The law is understood as a responsive mechanism (a means of resolving claims and disputes
  - That the role of the lawyer is understood in terms of problem-solving
- This does not necessarily the case!

# Creative Law / Creative layering

- Thinking about legal mechanisms and the role of lawyers more creatively can be beneficial
- One way of doing this is
  - through the creative use of written evidence about the experience of PLHA, and
  - using that evidence proactively and for the community rather than merely to support (reactive and individual) cases

# The Status and Function of the Affidavit

- What is an affidavit?
- What is the nature of affidavit evidence?

[16] Affidavits are limited to what the witness saw, what he or she heard or was told, or what she or he did. They should not contain argument. They should not draw inferences from the stated facts, for that is the duty of the court after all of the evidence has been heard. In the final analysis, all of the evidence must be carefully weighed in the process of finding facts that will be at the foundation of the court's judgment.

Citation: *William et al v. British Columbia et al*,  
2004 BCSC 1374

# Using Affidavits Creatively

- Research visit to Pivot Legal Society in Vancouver, Canada, December 2006. Pivot's philosophy:



- Although legal remedies for marginalization exist, the laws protecting rights and entitlements make many assumptions about the functionality, knowledge, and resources of those requiring protection.
- In reality, marginalized people are poorly integrated into the structures of mainstream society and rarely in a position to effectively participate in the formal processes necessary to challenge those structures.
- Without financial resources, and without a means to strategically and effectively advocate on their own behalf before government and the courts, marginalized persons often cannot obtain the benefits of the socially progressive developments in the law enacted during the last century.

# Using Affidavits Creatively

- One way in which Pivot seeks to put this philosophy into practice is by using affidavits to gather evidence about the lived experience of people who
  - Have experienced police brutality
  - Who are homeless, or living in poverty
  - Who are involved in commercial sex work
- People for whom the assertion of legal rights is problematic / impossible because of their socio-economically marginalized status

# How Pivot obtains Affidavits

- Pivot is a community legal organization, and takes the law TO that community

**DRUG USERS**

*Have you ever been beaten up by police?*

*Have you ever been searched by police just because of who you are or the way you look?*

*Would you like to help stop police harassment?*

**if so...tell your story!**

**SWEAR AN AFFIDAVIT!** 

**WHERE: 327 CARRALL STREET**  
**WHEN: EVERY TUESDAY, 10AM TO 12PM**

Pivot is a non-profit society dedicated to advancing the interests of illicit drug users, sex trade workers and other marginalized people through strategic legal action & public legal education.

**PIVOT**





# Example of an Affidavit

## AFFIDAVIT

This is Exhibit "A" referred to in the affidavit of Julie Shugart sworn before me at Vancouver, BC this 29 day of June 19 2003

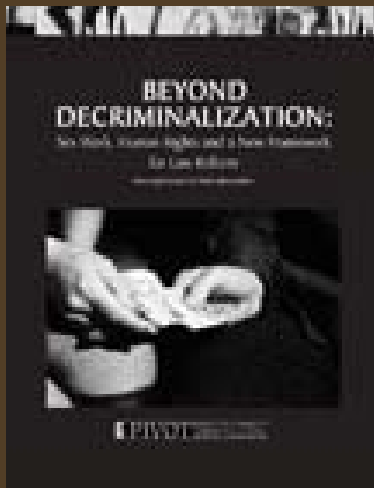
I, [REDACTED] of no fixed address, in the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

Caesi Glenn  
A Commissioner for taking Affidavits  
for British Columbia

1. I am the Affiant herein and as such have personal knowledge of the matters and facts herein set forth, except where the same are stated to be made on information and belief, and as to such facts, I verily believe them to be true.
2. I am forty-two years old. I live in Vancouver's downtown eastside. I am currently working in the sex trade and have been doing so for three years off and on. I am from the Ahousaht First Nation. I struggle with a crack addiction and am currently using. I did grade twelve but I quit one month before my grad. The only criminal record I might have is for shop-lifting twenty-two years ago. If I am not working in the sex-trade I don't have money. I am not proud of what I do. But I've made a lot of friends through the trade.

8. I ended up giving in because I think that he would have killed me if I didn't. It felt like I was trapped with him in his car all night. He wouldn't put on a condom. This was the second time that I have been raped. He finally let me go at around 5:30 am. I walked home, he let me take my clothes with me.
9. "I wouldn't wish this upon anyone."
10. Based upon my experience as a sex trade worker, I think that the bawdyhouse law is silly. I think that if you could share a place with a friend, someone that looks out for you, then fewer women would be raped. Fewer women would go missing.
11. If you're paying for your own rent, why shouldn't you being able to do what you want in your own home? What you do in your own home is your own business. It's better to be doing this work in your own home where a partner or friend could help you if you got into trouble than being out on the streets where you could end up dead.

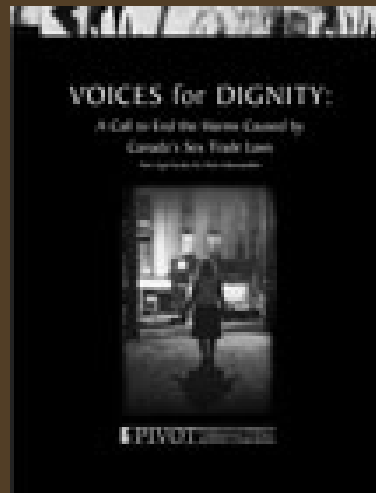
# What Pivot does with the Affidavits



## **Cheap Rooms Off the Block? Rare deal could save Eastside SRO.**

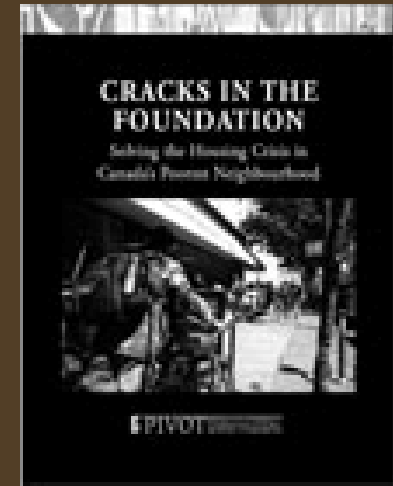
**By Tom Sandborn  
Published: March 20, 2007**

By Monday morning, when demonstrators gathered outside the Carl, Eby was able to announce an imminent deal to save the Rooms as affordable SRO housing.



The RCMP found that 11 of Pivot's 50 complaints were substantiated and noted in its report to the OPCC that some Vancouver "officers failed to substantively and meaningfully fulfill their legislated duty to account during this public trust investigation.

**Only Magazine, Tuesday  
April 3, 2007**



## **Pivot unveils sex worker study SEX LAWS / Sullivan refuses to meet with researchers**

Tom Sandborn / Xtra West / Thursday, June 22,  
2006 *DEMANDING FAIR TREATMENT: Pivot Legal Society  
Katrina Pacey (left) and researcher John Lowman want  
parliament to repeal Canada's archaic solicitation  
laws (Michelle Mayne photo)*



# Key Points

- Affidavits are acknowledged to be evidence (not just anecdote): they have LEGITIMACY
- The evidence of experience is powerful, because it is taken from real people
- The more evidence there is, the harder it is to deny that there is a problem – cumulative
- Affidavits show that legal techniques can be used creatively, proactively and politically to
  - Raise consciousness
  - Achieve change
- There is every reason to think that affidavits could be used to do this for PLHA

## Acknowledgements:

- Government of Canada Faculty Research Programme
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## Contact:

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[http://www.keele.ac.uk/research/lpj/Law\\_HIV-AIDSPROJECT/index.htm](http://www.keele.ac.uk/research/lpj/Law_HIV-AIDSPROJECT/index.htm)