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SOME PEEVISH THOUGHTS ON HOUSING CO-OPERATIVES

Stuart Bailey*

A. INTRODUCTION

Should it come as a surprise that the people who reside in the Harmony Haven Housing Co-operative1 of North Bay occasionally make discordant music at their board and general meetings?2 Yet some legal clinics refuse to represent members of housing co-operatives who get into disputes with the boards of those co-operatives because they see

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Lots of people helped me with this article. Jack Fleming of the Peterborough Community Legal Centre and Judy Wahl of the Advocacy Centre for the Elderly provided initial material and encouragement. Jack de Klerk, a former legal clinic lawyer, sent me a relevant article he had written and Dan Cox, of the Kinna-Aweya Legal Clinic, provided a copy of an extremely relevant court decision he had obtained. Chantal Tie, of the South Ottawa Community Legal Clinic, gave me some good ideas when we met. Some people from outside of the Clinic system helped too. They include Mike Balkwill and Angus Palmer, both of whom made useful suggestions. Angus Palmer and Pat Kirton also read and commented upon drafts of this article. Finally, Maggie Keith was helpful and Bruce Woodrow sent me some relevant cases and a free legal opinion. All the opinions expressed here are, of course, my own. Aline Bedard and Cheryl Brotherston both typed and helped organize the many drafts of this article.

1. There is lots of harmony in Ontario housing co-operatives according to the list of housing co-operative names published by the Canadian Housing Federation in April of 1989. The word harmony appears in the names of four co-operatives.

2. Co-operative Homes of Prosperity and Equality Inc. in Sudbury, Solidarity Towers, financed by the U.A.W. in Windsor, the People's Co-operative in Winnipeg and The Ideal Housing Co-operative in Edmonton, are other names of housing co-operatives which may not reflect reality in a similar way, like Church of God, Family Church or Reformed Church.
housing co-operatives as a force for good in society.³ One sweeping
definition of this good is contained in the writings of the late Alex
Laidlaw, a central figure in the housing co-operative movement, who
wrote that “a well-conceived co-operative project can be curative for
one of the common ills of modern society: the loneliness of individu-
als in the mass of humanity.”⁴ All supporters of housing co-operatives
who have written in Ontario legal journals describe how the demo-
cratic process created within these co-operatives allows low income
people to get control over an important aspect of their lives.⁵ In the
article which follows, I will comment upon how these promises have
been kept from the perspective of a legal clinic lawyer, with emphasis
on the first.

3. J. Craig, “Co-op Evictions,” (June 1987) 2:2 Equity (Ontario Legal Aid Plan)
[hereinafter Craig]. Other clinics do handle these cases. Legal clinics are one of
the interest groups that Maggie Keith of C.H.A.O. wants to bring on side by
amending the Co-operative Corporations Act. See M. Keith Co-op Act Amendments:
Recommendations for Amendment, Co-operative Housing Association of Ontario
Inc., March 26, 1990, Toronto at 2 [hereinafter New Amendments]. As well the
United Tenants of Ontario Training Conference for 1990 has as a workshop
choice “Co-op Housing and Member Rights—concerns for co-op housing resi-
dents who are not fully protected by the Landlord and Tenant Act” (Toronto
United Tenants of Ontario, 1990) [brochure].

T. Fac. L. Rev. 34 at 36 [hereinafter Woodrow].

5. Woodrow, supra, note 4 at 36; J. House, “Third Force Housing in Canada:
Performance and Prospects” (1976) 14 Osgoode Hall L.J. 49 at 59 [herein-
after House] and G. Farquharson, “Government Participation in Housing—Some New Directions in Co-operative Housing,” in Law Society of
Upper Canada, Special Lectures, 1974 at 326 [hereinafter Farquharson]; J. de
Klerk “‘We’re All in This Together’—A Review of Co-operative Housing”
(Toronto: Tenants Non-Profit Re-development Corporation, 1990. [hereinaf-
ter de Klerk].
B. PROBLEMS WITH HOUSING CO-OPERATIVES

Legal clinic lawyers have as a vocation fighting for the rights of low income individuals, not groups of low income people. Affordable housing problems have solutions at both individual and group levels.\(^6\)

It can be argued that legal clinic lawyers who do only case work never do anything constructive about housing problems. This is not just because of any lack of success in applications for rent abatements, but because our work is essentially to complain on behalf of individuals, and this does not get any new housing built. My purpose in writing this article is not to suggest any solutions either, but to illustrate some problems with co-operative housing.

It can also be argued that legal clinic lawyers sometimes deal with difficult people more than with difficult legal problems. Some of our clients suffer from many obstacles, only some of which can be described as legal. Some have problems fitting into groups, or have a confrontational dispute resolution style. We must, however, take our clients as we find them.

As lawyers with the above perspective, we may find ourselves more often than not fighting with the boards of housing co-operatives. Some examples of the kinds of problems they generate can be put into two categories: those for potential co-op members; and those for co-op members.

a) POTENTIAL HOUSING CO-OPERATIVE MEMBERS

Some time ago a battered woman with children who had spent several months living in crisis accommodation contacted the Nipissing Community Legal Clinic because she had been turned down for a rent sub-

\(^6\) Sometimes a group level solution may conflict with an individual one, as anyone who has tried to get a minimum standards by-law enforced will know. Although it may benefit low income tenants as a whole to have a particularly decrepit building torn down, the people in that building will have lost a place to live as a result. A Clinic lawyer who acts for the people in the building in question should think long and hard before trying for a group level solution. For a valuable discussion of group versus individual rights see L. Apland and C. Axworthy, “Collective and Individual Rights in Canada: A Perspective on Democratically Controlled Organizations,” (1988) 8 Windsor Y.B. Access Just. at 44 [hereinafter Apland].
sized unit in a co-operative. The only reason that we could discover, after much digging, was that some people in the co-operative did not like her. This should not have been a surprise to us. As Mike Balkwill points out, gender and racial discrimination are very real dynamics in co-operative organizations, as well as in all other organizations in our society. Housing co-operatives, although they may start by claiming the high moral ground, cannot avoid claims of such discrimination. They are, like churches, made up of people.

Some housing co-operatives, by reason of their funding, engage in economic discrimination against legal clinic clients. Only a certain percentage of the units in a housing co-operative can be eligible for rent subsidization assistance and the boards of these co-operatives may resist pressures to accept as members any more low income people. The people in charge of processing membership applications at these housing co-operatives may ask questions about income, employment, and number of children just like many other owners of housing

7. There are other examples. A Northern Ontario housing co-operative took a membership application from a couple; he was eighteen years old, she was in her thirties. At a meeting of the board of the housing co-operative, strong opposition was voiced to accepting these people as members, but they withdrew their application for other reasons. Conversation with Angus Palmer, Housing Co-operative Development Consultant, April 11, 1990.


9. To suggest that there is some moral superiority of co-operation over competition does not take the discussion very far, but it is an essential first step, according to Apland and Axworthy. Apland, supra, note 6 at 57.

10. There are partial exceptions, of course, but they seem to prove the rule. For example, federal housing funding arrangements allowed only 30% of the units of one North Bay housing co-operative to have housing charges that were geared to income when this housing co-operative was built. Now that this figure has been increased to 50% the members have decided to increase the number of subsidized units, but only for people already housed in the co-operative who are now in need of subsidized housing. As of the end of July 1990, only one other housing co-operative in Northern Ontario had taken advantage of this increase. Conversation with Pat Kirton, Co-operative Housing Co-ordinator, July 27, 1990.
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stock, and people living on social assistance, or single parents may be excluded. This makes it hard for some proponents of housing co-operatives to argue that there is a right to housing, but does not stop them.

The Co-operative Housing Association of Ontario supports a distinction between a refusal based upon insufficient income, and one based upon the applicant being in receipt of public assistance. It also states that some co-ops engage in affirmative action to benefit members of disadvantaged groups. On a federal level, the Co-operative Housing Federation of Canada states that it has continued to press the federal and provincial governments to improve access for very low income earners to new housing co-operatives, and that increased availability of

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12. Section 2(1) of the Human Rights Code, 1981, S.O. 1981, c. 53, prohibits discrimination in relation to the occupancy of accommodation on the basis of receipt of public assistance, but proving that such discrimination has taken place may be problematic.

13. At one Northern Ontario housing co-operative the board, noticing a lack of participation in the co-operative, concluded that the source of the problem lay in the fact that there were too many single mothers, and so put a moratorium on accepting any more as members. Conversation with Angus Palmer, housing co-operative development consultant, April 11, 1990. Such a policy might contravene section 2(1) of the Human Rights Code, 1981, S.O.1981, c.53, which prohibits discrimination in relation to the occupancy of accommodation on the basis of family status. In Decision #341D, made under the Code, damages were awarded to people, including single mothers, in a case involving condominiums where the presence of children was objected to.

14. See "Recent Legislation and Judicial Decisions Affecting Housing Co-ops" Legislative Bulletin Series, No. 1, April 1988, Co-operative Housing Association of Ontario at 11 & 16 [hereinafter Legislation]. C.H.A.O. states that there is at least one case in which an Ontario Co-op was the subject of a complaint to the Human Rights Commission because of confusion between these two points.

15. See Legislation, supra, note 14 at 4. In Legislative Bulletin, Number 2 the Co-operative Housing Association of Ontario states that the Human Rights Commission has been reluctant to approve affirmative action plans of late.
rent geared-to-income subsidies has occurred. However, there is a difference between these organizations and the board of directors of individual housing co-operatives, however much the former may try to influence the latter.

b) WITHIN THE CO-OPERATIVE

People who live in housing co-operatives are not necessarily treated fairly. It seems that there is little difference between law and politics for some people who have problems in housing co-operatives. There may be lots of politics, in the worst sense, and little law at board and general meetings of housing co-operatives called to consider the termination of memberships.

Problems may occur partly because housing co-operatives are run by boards of directors, and the people who sit on such boards may have not had much power over others before, or simply do not understand what due process means. They may not be low income people, and thus may not be very caring of the problems of people who lack both spouses and money, but have children. When presented with the opportunity to determine who continues to live in a housing co-operative, some people (including and perhaps especially those who live close to the line themselves) may turn into petty despots. Cliques form and threats are issued to other co-operative members who do not show proper deference and respect. This can lead to feelings of loneliness, rather than help to cure them.

A maximum of 50 percent of the households in Ontario housing co-operatives financed under the Federal Government's Indexed Linked Mortgage Program are now eligible for rent supplement assistance.


17. The possibility of such a lack of understanding has been suggested by the Co-operative Housing Federation of Canada. See Economic Discrimination, supra, note 11.

18. See Re Alex Girvin Housing Co-operative and Booth (1985), 51 O.R.(2d) 587 where the eligibility for a rental subsidy of one member was hotly disputed by others.

19. The earlier limit was 30%. Co-operatives Canada '89, and Overview of Canada's Co-operative Sector, (Ottawa: Canadian Co-operative Association, 1989) at 7.
The housing co-operatives financed under the provincially delivered federal-provincial non-profit housing program can have up to 100 percent of their units subsidized, and must have at least 40 percent.\(^{20}\)

In Ontario, the percentage of assisted units in housing co-operatives is usually 40 percent.\(^{21}\) In some co-ops, like Ashwood Co-operative Homes, 75 percent of units are assisted, according to one proponent of co-operative housing.\(^{22}\) The Co-operative Housing Association of Ontario states that approximately 40 percent of co-op units are subsidized on a geared-to-income basis under federal and provincial programs, and the great bulk of co-op units are occupied by persons whose income is at or below the median in society.\(^{23}\)

Many of the co-operative housing cases the Nipissing Community Legal Clinic has dealt with so far have involved single mothers on social assistance. This may be just a coincidence. These people get into trouble for either disturbing their neighbours, or failing to participate. In the occupancy agreement provided for housing co-operatives by the Co-operative Housing Association of Ontario, these grounds are that:

a) The member has in the opinion of the board, substantially or repeatedly failed to participate in the Co-op in accordance with paragraph 3.02 of this By-law.

b) The member has, in the opinion of the Board, substantially or repeatedly interfered with the enjoyment by other members of the use of their units contrary to paragraph 5.02 of this By-law.\(^{24}\)

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21. de Klerk, supra, note 5 at k-6.


24. Article 10 (Termination of Occupancy by Co-op) section 10 (b) and (c) (Termination by Default) Occupancy Agreement, Gneiss Housing Co-operative, North Bay, Ontario.
i) **Disturbing Neighbours**

There may be some inherent people difficulties that housing co-operatives aggravate. Some of the most difficult landlord and tenant situations we deal with at legal clinics involve clients who live upstairs or downstairs from their landlords. Many housing co-operatives do not consist of detached units, and therefore bring people physically close together. Disputes become exceedingly personalized and difficult to resolve when people deliberately do little things to annoy each other, (or large things like run off with each other's spouses while continuing to reside in the co-operative) and live closely enough together for this to make a difference. The law, after all, is mostly a list of prohibited actions; it cannot be used to make some people be nice, or others feel less lonely. Several of the reported cases concerning housing co-operatives involve neighbours.\(^{25}\)

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25. The following are Ontario cases involving members of housing co-operatives for which judgments are readily available.

- **Re Alexandra Park Co-operative and Barry** (December 17, 1985), York #M119270/85 (Ont. Dist. Ct.) [unreported] (from Bruce Woodrow).
- **Re Alex Girvin Housing Co-operative Inc. and Campbell and Bookal** (August 24, 1989), York #186091/89 (Ont. Dist. Ct.) [unreported] (from Bruce Woodrow).
- **Re Alex Girvin Housing Co-operative Inc. and Booth** (1985), 51 O.R. (2d) 587 (Dist. Ct.).
- **Re Bamburgh Circle and Laban** Landlord and Tenant Case Index (Toronto: Ontario Legal Aid Plan, 1989); (January 11, 1988), York (Ont. Dist. Ct.) [unreported].
- **Re Bamburgh Circle Housing Co-operative Inc. and Laban** Landlord and Tenant Case Index (Toronto: Ontario Legal Aid Plan, 1989); (June 7, 1988), York, #M164415/89 (Ont. Dist. Ct.) [unreported].
- **Re Don Area Co-operative Homes and Lee et al.** (1979), 26 O.R. (2d) 40 (Co. Ct.).
- **Re Instead Co-operative Inc. and Sabo** (June 14, 1989) York (Ont. Dist. Ct.) [unreported] (from Bruce Woodrow).
ii) **Failure To Participate**

Legal clinic clients who live in housing co-operatives usually did not move there because of any great prior commitment to the ideals of co-operation\(^{26}\). Low cost housing may have been the sole attraction, not the opportunity to collectively administer the housing. It may be possible to build a sense of community among such people in housing co-operatives,\(^{27}\) but such a sense is not a necessary result of a move into a co-operative.\(^{28}\) Such sense is a rare commodity in our society,\(^{29}\) and arguably cannot be created through compulsory participation. Yet the latter is precisely what some legal clinic clients in housing co-operatives complain of. An alleged failure to participate has been involved in more than one attempt by a housing co-operative to terminate an occupancy interest.\(^{30}\)

\(^{26}\) However, Angus Palmer notes that many co-operatives run orientation meetings for applicants before interviewing anyone, let alone selecting them. Angus Palmer, Housing Co-operative Development consultant, note dated June 26, 1990.

\(^{27}\) de Klerk states that, by and large, housing co-operatives are a particular kind of social housing community that work as mixed communities, which implies that some housing co-operatives do not. *de Klerk*, supra, note 5 at k-8.

\(^{28}\) For a long time, housing co-operatives have been touted as being superior to public housing because of the ownership they gave to people who lived in them, but concrete proof of this assertion is not readily available. See *Woodrow*, supra, note 4, *House*, supra, note 5, and *Farquharson*, supra, note 5.

\(^{29}\) See *Balkwill*, supra, note 8. Axworthy and Apland state that the legal structure which emphasizes the protection of individual interests in capitalist society has put "proponents of community" on the defensive. *Apland*, supra, note 6 at 45.

\(^{30}\) *Alexandra*, supra, note 25 at 8 and 9 and *Girvin and Booth*, supra, note 25 at 601. The Advocacy Centre for the Elderly has also dealt with such a case. J. Wahl, letter dated December 1, 1989.
If the important members of a housing co-operative make it abundantly clear that they do not like another member, it may be unfair to expect that member to participate in the democratic life of the co-operative. Unfortunately, there exists little certainty concerning what democracy is from a procedural standpoint in the literature on co-operatives. A review of this literature shows that the people who have written about democracy in co-operatives have used the term in several different senses. The review which follows is not intended to add anything new to this literature, but only to clarify some of the debates. Nor is it intended to propose a model of democratic procedure for co-operatives to use; I leave this task up to others.

C. DEMOCRACY AND HOUSING CO-OPERATIVES

The idea that if a co-operative is small enough, the members will be encouraged to participate fully in it, is posed repeatedly in the literature. Democracy will be direct rather than indirect, proponents of this theory state, because every person will share in the making of the decisions which determine how the co-operative will operate.

It is essential to see that this vision of democracy is not necessarily descriptive of reality. In housing co-operatives smallness does not guarantee democracy; the late Alex Laidlaw, a visionary in the co-operative housing field, has pointed out how some small co-operatives are controlled by small groups of people, whereas some large ones are quite democratic.

31. Forcing a member to participate in the life of a housing co-operative may have the same result as forcing that person to enjoy him or herself at a party. The practice has an Orwellian ring to it; as do some others of housing co-operatives. Oickle, supra, note 25 at 11.

32. A book called Beyond Participation is now available at The Co-op Housing Bookstore in Toronto. It sums up two years of debate among Toronto housing co-operatives on the question “should participation be compulsory or not”. Co-opervations (Newspaper published by Co-operative Housing Federation of Canada, summer 1990).


34. D. Leland, Democratic Control in Large Co-operatives (xerox) (Saskatoon: Co-operative College of Canada, May 1977) [hereinafter Leland].

a) ELITE DEMOCRACY

Another definition of democracy is provided by elite democratic theory. According to proponents of this theory, power inevitably becomes concentrated in the hands of a small group of people in any large organization.\(^3\)\(^6\) It does seem to offer a closer fit with the reality of co-operative housing. In some co-operatives, political power is said to be concentrated in the hands of minorities,\(^3\)\(^7\) which is characteristic of voluntary organizations.\(^3\)\(^8\) According to Balkwill, a consultant with a lot of experience in co-operatives, there is an "elite" in each housing co-operative.\(^3\)\(^9\)

It has been pointed out that the business carried on at the meetings of co-operatives is not particularly exciting,\(^4\)\(^0\) so there are good reasons for lack of member involvement. Anyone who has been to a meeting of a maintenance committee of a housing co-operative would have to agree that this is a more explanatory theory of housing co-operatives than the first one.

Under the elite theory of democracy, participation for the sake of human development can be dismissed as being not very important.\(^4\)\(^1\) In a housing co-operative, decision-making authority is, after all, concentrated by legal structure in a few positions on the board of directors.\(^4\)\(^2\) This echoes reality in many cases for, as Apland and Axworthy point out, the democratic processes in co-operatives are quite elitist.\(^4\)\(^3\)

\(^{36}\) See Leland, supra, note 34 at 3.

\(^{37}\) See Axworthy, supra, note 33 at 147.


\(^{39}\) Balkwill, supra, note 8 at 2.


\(^{41}\) This point has been made by elite democratic theorists. Some such theorists are Schumpeter, Dahl and Berelson. See Macpherson, The Life and Times of Liberal Democracy, (Oxford: Oxford University Press, 1977) at 79. The following writers have also taken this position in the context of co-operatives: W. Hamilton, "Democracy in Co-operatives," Canadian Co-operative Digest, vol 13, no.1. spring 1970 at 14 and E. Smith, "Member Control of Co-operative Associations," The Co-op Manager, Saskatoon: vol. 7, no. 6, Nov.-Dec. 1963.

\(^{42}\) See Balkwill, supra, note 8 at 6.

\(^{43}\) Apland, supra, note 6 at 73.
According to members of the elite school, if a particular elected person is seen not to be looking after the business of the co-operative properly, he or she will not be re-elected. This is all the participation that may be seen as necessary in some housing co-operatives, as long as members participate in some other aspect of the co-operative, such as the social committee, or help by doing maintenance work. Besides, proponents of this position add, compulsory participation does not work and harms housing co-operatives.

b) PARTICIPATORY DEMOCRACY

Participatory democratic theory gives a more normative interpretation of what is meant by democracy. It has strong ties to the philosophy of the 1960's, and is important to many supporters of housing co-operatives. The baby boom of co-operative housing in Ontario, which occurred in the mid 1970's to early 1980's, owes much to this philosophy. It places, in Balkwill's words, ultimate decision-making authority in the collective hands of the entire membership.

Members of the participatory democratic school view democracy as a process which changes its participants in beneficial ways rather than just as a machine which is used by voters to select leaders. Some rely heavily on ideas expressed by J. S. Mill, who viewed the improvement of citizens' faculties as one of the prime functions of the state. He proposed that all qualified citizens should enjoy the prospect of self-

44. See Balkwill, supra, note 8 at 6 and see New Amendments, supra, note 3 at 5-6. This interpretation has received judicial support as Apland and Axworthy point out. Apland, supra, note 6 at 75.


46. See Participation, supra, note 45.

47. Rather than the technocratic one that courts have adopted, in the opinion of Apland and Axworthy. See Apland, supra, note 6 at 74.

48. de Klerk, supra, note 5 at k-7.

49. See Balkwill, supra, note 8 at 13.

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government through participation in government. Although J. S. Mill saw a danger that the process which resulted might not be very efficient, he thought the sacrifice as worthwhile. The mere casting of a ballot leaves a person in much the same state as she or he was in before, and participatory theorists do not see this as being a satisfactory state of affairs. Some people who are involved in housing co-operatives see participation as essential, and co-operatives generally espouse a participatory democratic model of governance, according to Apland and Axworthy. Keith summarizes the arguments made in favour of compulsory participation.

According to participatory democratic theory, political power is delegated to elected people, subject only to a positive or negative vote at election time. Instead, it comes from below, states Laidlaw, since decision-making procedures reach down to the general membership. This is where supreme authority exists in housing co-operatives

51. Indeed, according to Bonner, democracy is "difficult and dangerous" because people often fail to see the common interest and to serve it, which in turn is due to a lack of education. A. Bonner, British Co-operation (Manchester Co-operative Union Ltd., 1970) at 489. [hereinafter Bonner] Some legal clinic clients have suffered as a result of a failure of members of housing co-operatives to see this common good.


54. Apland, supra, note 6 at 73.

55. She sets out the following arguments in favour of eviction for persistent failure to participate in the operation of the co-operative if this is set out in the by-laws. They include that:

1) Participation is what co-ops are all about.
2) Participation is a powerful means of education, skills development and leadership training.
3) Participation ensures democratic control.

New Amendments, supra, note 3 at 5.

56. Speaking, supra, note 35 at 5, and see also Bonner, supra, note 51 at 489.
according to the Ontario Co-operative Corporations Act.\textsuperscript{57} The importance of Laidlaw's inspiration to housing co-operatives has been acknowledged often as many Canadian housing co-operatives are named after him.\textsuperscript{58}

The pattern he saw developing back in 1973 involved a strong emphasis on community facilities,\textsuperscript{59} and most of the new housing co-operatives the author has seen have a community centre building.

i) \textit{Education}

Authors like the late Alex Laidlaw who have written about co-operatives put an emphasis on education,\textsuperscript{60} and in doing so owe a debt to J. S. Mill.\textsuperscript{61} The importance of devices for educating the members of co-operatives has been acknowledged; co-operative education is one of the six International Co-operative Alliance principles.\textsuperscript{62} Co-operative housing resource groups place importance on educating the members of housing co-operatives, which is in keeping with the thought of Laidlaw that there needs to be an educational process before a co-operative is started.\textsuperscript{63} Perhaps members of housing co-operatives can be educated to act fairly.

\textsuperscript{57} R.S.O. 1980, c. 91. See “Co-operatives”, \textit{Canadian Encyclopedic Digest}, Title 33.1 ss. 19–32.

\textsuperscript{58} See Co-operative Housing Federation of Canada, list of Housing Co-operatives, April, 1989.


\textsuperscript{61} The favour is returned; J. S. Mill wrote praises in favour of the developmental aspects of co-operatives. See \textit{Parry, supra}, note 52 at 30.


\textsuperscript{63} See \textit{Housing, supra}, note 60 at 4.
ii) *Persecution of Minorities*

The second danger of representative government, according to J. S. Mill, is that the interests of minorities can easily be ignored. Minorities for the purpose of this article are low income people, especially single mothers. Not only are many people not sufficiently developed to vote properly, according to J. S. Mill, but a way is required to ensure that private voting results in the public interest. Balkwill points out the danger in the unwillingness of the majority of members in a housing co-operative to make decisions by any method other than majority rule. Axworthy and Apland state that collective organizations do not have a monopoly on truth and do not therefore have a right to coerce dissentients into submission. However, if a majority votes or threatens to vote to terminate a membership in a housing co-operative, great power is exerted.

**D. THE DEMOCRATIC PROCESS – SOME PROBLEMS**

It can be argued that the method set up by housing co-operatives to settle disputes between the co-operative and its members has all the advantages of mediation or alternative dispute resolution. If disputes have to go through some sort of committee before being referred to a directors' and then a general meeting, then perhaps some may be settled because the parties have to talk to each other, and the burdens and delays of legality will be avoided. However, as legal clinic lawyers, we may see the current system as suffering from all the flaws of alternative dispute resolution or mediation. Members of disadvantaged groups, like single mothers, are in an inherently weak bargaining position, and may inevitably lose in mediation. By the time a co-op board is considering eviction, good faith, which is necessary for mediation to work, is in short supply. Finally, the whole process may take

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64. See Balkwill, supra, note 8 at 7.

65. Apland, supra, note 6 at 51. However, the approach taken by these authors is to emphasize collective rather than individual rights, which perspective raises, as they acknowledge, some extremely sensitive issues.

66. These steps are made available by the by-laws and occupancy agreements of housing co-operatives set up by accredited resource groups.


68. See New Amendments, supra, note 3 at 7.
longer than if courts are resorted to initially. The Co-operative Housing Association of Ontario agrees with this last criticism of the current system as a kind of alternative dispute resolution or mediation, at least when occupancy charges are in arrears.

Especially interesting is whether a housing co-operative has a duty to accommodate a member thought by others to be a nuisance. This is a difficult problem because judicial notice has been taken of the fact that people who are obnoxious to other housing co-operative members may have difficulty in finding other places to live. If such a duty does not exist, it appears that a housing co-operative may terminate a member’s occupancy interest for not getting along with other members. This assumes, of course that the housing co-operative follows all of the proper procedural steps. These are contained in the By-laws of that co-operative, the Co-operative Corporations Act, and Part III of the Landlord and Tenant Act. The housing co-operative must eventually go to the Ontario Court (General Division) to terminate a member’s occupancy interest, or, in other words, evict. This would occur if the member had appealed to both board of directors and the membership, and lost, but still wanted to stay in the unit.

It has been decided that a member of a Saskatchewan housing co-operative may not apply for judicial review of a decision to terminate membership until after that member has appealed to a general membership meeting. The court stated that it did not want to interfere in

69. Backgrounder, supra, note 67 at 2.

70. See C.H.A.O. Brief, supra, note 23 at 13. Besides, only the Co-operative Housing Federation of Toronto currently trains housing co-operative coordinators in the techniques of mediation. Conversation with Angus Palmer, housing co-operative development consultant, August 12, 1990.

71. Oickle, supra, note 25 at 18.

72. This is what happened in Hugh Garner, supra, note 25. A child of the Hamid’s had verbally abused and threatened the gay occupants of an adjoining unit. His parents were unwilling to accept and assume responsibility for his actions.

73. R.S.O. 1980, c. 91.


the workings of a democratic entity. In Ontario, at least one court has refused to grant injunctive relief to a member of a housing co-operative before the holding of such a meeting.

The possibility of oppression in a democratic organization was noted by Farquharson, writing in 1974, just nine years after the first big housing co-operative project in Canada was built. He wrote that a member of a housing co-operative may want some protection should he be unpopular. House, writing in 1976, stated that a person could be expelled from a housing co-operative on trivial grounds, as long as they are set out in writing and 51 per cent of the members back the expulsion resolution. Jack Craig is of the opinion that a majority vote, regardless of the basis for it, appears to be sufficient to evict someone from a housing co-operative.

Several unpopular housing co-operative members have come to the courts for protection. Courts have not deferred to internal decision-making within co-operatives in at least two cases. In Re Alex Girvin

77. Apland and Axworthy concur with this "hands off" approach when they suggest that because membership in co-operatives is voluntary, unlike some trade unions, and because of the strong democratic bases of these organizations, their decisions should be beyond reproach. Apland, supra, note 6 at 52. This appears to be inconsistent with their statement on the previous page that it would be repugnant and dangerous to suggest that collective organizations have a monopoly on truth, and, therefore, a right to coerce dissidents into submission. However, they do state twenty-five pages later that democratic decision-making cannot ignore questions of legal procedure.

78. Pioneer, supra, note 25. Woodrow states that this case shows that management is the responsibility of the board of directors, and that members can interfere with this responsibility only by following one of two specific statutory provisions from the Co-operative Corporations Act. Woodrow, letter dated June 25, 1990. However, in Oickle, supra, note 25 the court found that recourse to it rather than to the general membership was entirely proper because of how difficult this would have been for the member in question, who had very few friends in the co-operative (pages 15 and 16). See also Girvin and Booth, supra, note 25.

79. This was Willow Park, a 200 unit Winnipeg project built in 1965.

80. Farquharson, supra, note 5 at 329.

81. See House, supra, note 5 at 58.

82. See Craig, supra, note 3 at 2.

83. Woodrow cites three cases where there was judicial deference to the results of this process; Girvin and Booth, Alexandra Park and Hugh Garner, supra, note 25. Letter dated June 25, 1990.
Housing Co-operative Inc. and Booth\textsuperscript{84} the respondent was a single mother on social assistance. The court twice took notice of the rumours and suspicions concerning her living arrangements which existed in the housing co-operative.\textsuperscript{85} It refused to put her out of possession because, in part, these rumours and suspicions had been behind the Board's termination of her occupancy rights, rather than any evidence.\textsuperscript{86} The member did not have to appeal to a general meeting before applying for a judicial remedy.

There were also procedural problems with the co-operative's actions in \textit{Re Castlegreen Co-op and Lester and Hazel Oickle}, a case which involved a housing co-operative member who was, in the words of the deciding judge, a particularly difficult man to deal with.\textsuperscript{87} This war veteran with a medical disability called other members of the housing co-operative names and wrote them letters using abusive and obscene language.\textsuperscript{88} This did not make him popular with these members, who finally decided to throw him out. They did so after a review of his file,\textsuperscript{89} and not because of any violation by him of the co-operative's by-laws or rules or regulations in the housing agreement.\textsuperscript{90} The court gave the Oickle's relief from forfeiture, but on the condition that Mr. Oickle's objectionable behaviour must cease.\textsuperscript{91}

In other cases, courts have not been so helpful to unpopular members. \textit{Re Chautaugua Co-operative Homes Inc. and Aida Wilson}\textsuperscript{92} involved a single parent co-operative member who was, to use the judge's words, in a difficult and sometimes lonely struggle to survive in financially straitened circumstances.\textsuperscript{93} The housing co-operative tried to evict her

\textsuperscript{84} Girvin and Booth, supra, note 25.
\textsuperscript{85} Ibid. at 593, 604.
\textsuperscript{86} Ibid. at 604.
\textsuperscript{87} Oickle, supra, note 25 at 3.
\textsuperscript{88} Ibid. at 4.
\textsuperscript{89} Ibid. at 12.
\textsuperscript{90} Ibid. at 11.
\textsuperscript{91} Ibid. at 20.
\textsuperscript{92} Chautaugua, supra, note 25 at 20.
\textsuperscript{93} Ibid. at 25.
because her housing charges were in arrears and neighbours complained that her child interfered with their quiet enjoyment. The court found some evidence of high-handedness and hostility on the part of the co-operative, and expressed some sympathy but found no procedural unfairness.

Several lawyers who work within the clinic system have provided me with stories of how unpopular co-operative members have been treated shabbily by co-operatives, although the treatment may not have resulted in an eviction where there was legal clinic involvement. It seems that a failure to participate in the life of the housing co-operative in question often characterises the situations of people who come to legal clinics for help.

The Co-operative Housing Association of Ontario denies that there is a substantial problem with abusive majorities overrunning minorities, in their brief on the proposed amendments to the Co-operative Corporations Act. The Association concluded that “Even if a board and membership together were acting abusively, the courts would not sanction an eviction on any improper grounds.” The C.H.A.O. Brief does state that members have applied under Section 178 of the Co-operative Corporations Act for an order requiring directors to behave in accordance with by-laws, and under the Statutory Powers Procedure Act, but no details are supplied. The latter Act is applicable to housing co-operatives, according to Farquharson.

94. Chautaugua, supra, note 25.
95. Ibid. at 24-26.
96. Jack Fleming and Chantal Tie are two; Judith Wahl tells of a case taken by the Advocacy Centre for the Elderly which ended with their client being ostracized, but not evicted. Letter dated December 1, 1989.
97. These proposed amendments have never made it to the Order Paper, but have languished at the Ministry of Financial Institutions for about four years. See New Amendments, supra, note 3 at 1. C.H.A.O. is not able to predict when they will be dealt with by Cabinet.
98. C.H.A.O. Brief, supra, note 23 at 10.
100. R.S.O. 1980, c. 484.
101. C.H.A.O. Brief, supra, note 23 at 17. The boards of housing co-operatives were corrected by courts in Girvin and Booth, supra, note 25 and Oickle, supra, note 25.
102. See Farquharson, supra, note 5 at 57.
In March of 1990 Maggie Keith of the Co-operative Housing Association of Ontario made some interesting suggestions for amendment\(^\text{103}\) of the Co-operative Corporations Act.\(^\text{104}\) She argued in her Memo to C.H.A.O. members that housing co-operatives should only be able to evict for specific causes,\(^\text{105}\) which causes she recommended should be incorporated in a new Co-operative Corporations Act. She stated "... boards of directors sometimes evict for causes that violate the rights of the members and are not allowed for in the by-laws."\(^\text{106}\) No suggestions for statutory amendments are made here, aside from supporting Maggie Keith’s. Neither the C.H.A.O.-supported amendments\(^\text{107}\) nor her practical suggestions are now statute law in Ontario, although Maggie Keith has proposed a process of consultation for the consideration of these suggestions by affected parties.\(^\text{108}\)

In a recent edition of the Co-operative Housing Association of Ontario’s Legislative Bulletin Series, the authors emphasize the importance of a housing co-operative scrupulously observing its own by-laws and behaving in a fair manner towards the member in the process of deciding whether to evict.\(^\text{109}\) Examples are given of three situations where a court refused to evict because the housing co-operative in question had not followed proper procedure,\(^\text{110}\) but none where the

103. New Amendments, supra, note 3.
104. R.S.O. 1980, c. 91.
106. Ibid. at 2.
107. These proposed amendments are summarized by Brian Iler. See Iler, supra, note 75 at 23.
110. They happened when, in the words of the authors:

1. A director signed a complaint about noise and then failed to declare a conflict and voted on the motion to terminate occupancy.

2. Acting under a provision in the by-laws permitting the Board to give a member abbreviated notice to appear before the Board in case of emergency, a co-op gave a member only an hours notice. The courts held that, however tense the situation at the time, there was really nothing that was a true emergency.

3. A notice to appear before the Board did not identify specific complaints, but only talked in general language about the member having been noisy, etc. The courts held that members must know what they are accused of in detail.
board in question acted unfairly. They express no final opinion concerning whether relief from forfeiture is available to a member evicted from a housing co-operative, except that the courts do not generally concern themselves with this issue. Indeed, the authors appear to be of the opinion that a court to whom an eviction decision is appealed will act like a court faced with an application for judicial review.

It may be that courts will not interfere with a housing co-operative that rigorously adheres to the procedure required by The Co-operative Corporations Act, the Landlord and Tenant Act, and its own by-laws and occupancy agreement in evicting members. There is some uncertainty over whether relief from forfeiture is available in housing cooperatives. However, the distinction between cases where procedural rights have been violated, and those where important substantive rights have been ignored, can be a very hard one to make. A glimpse at the situations where judicial review has been granted shows that courts will sometimes intervene if they do not like the result of a decision-making process, all the while objecting to the way in which it was made. The decisions provided to me by Bruce Woodrow, who normally acts for housing co-operatives, and not for housing co-operative

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111. See Legislation, supra, note 14 at 19-20. Relief from forfeiture was granted in Oickle, supra, note 25. The authors state that recent cases have indicated that no matter how quickly the landlord acts in terminating the tenancy, if the landlord was incorrect or the circumstances otherwise appropriate, the courts may grant relief from forfeiture. However, they do not indicate how to find these cases.

112. The authors state that there are now several cases where the courts have specifically said that they disagreed with the decision of the board or of the members, but have granted an eviction order, after determining that the co-op had observed the proper procedures. See Legislation, supra, note 14 at 19. I have not been able to find such statements by judges in the cases available to me, although I found one in which a judge expressed polite regret at being unable to substitute a judicial decision for one of a housing co-operative Board. See Alexandra, supra, note 25 at 10.

113. R.S.O. 1980, c. 91.


115. Woodrow cites three cases to the effect that it is not; Girvin and Bookal, Garner and Arcadia, supra, note 25. Letter dated June 25, 1990.

116. In Re Bamburgh Circle and Laban, supra, note 25 the court intervened on behalf of a member of a housing co-operative by dismissing the co-operative’s application because the ends of natural justice were not complied with, but the court described the housing co-operative’s error as a technicality.
members, \(^{117}\) are careful to reserve a role for judges in ensuring that housing co-operatives have acted according to the rules of due process. The concept of natural justice is an elastic one in housing co-operative cases.\(^{118}\)

One of the few resources generally available in the area is *A Legal Handbook For Housing Co-operatives*.\(^{119}\) The chapter on evictions in this looseleaf binder was written with the assistance of Bruce Cameron, a Toronto lawyer. The text states, in reference to the *Landlord and Tenant Act*,\(^{120}\)

> Part IV of the legislation is designed to be protective of tenants. It is a necessary protection since, without it, there would be very little to restrain a landlord from treating a tenant unfairly. The protection needed by tenants is not needed by Co-op members since decisions are made by, or can be appealed to the membership.

Some details are given on how housing co-operatives can avoid treating their members unfairly,\(^{121}\) but following the by-laws of the co-operative is emphasized, and no mention of the danger of oppression by majorities is made. There is no legal handbook for members of housing co-operatives.

Brian Iler writes that some housing co-operatives have taken advantage of the lack of substantive and procedural safeguards for their


\(^{118}\) In *Re Bamburgh Circle and Laban*, *supra*, note 25, a failure of natural justice occurred because Mr. Laban was not given time by the members of his co-operative to prepare his appeal. When they decided to go ahead and terminate his occupancy interest at their general members meeting anyway, he refused to make submissions. There was a similar unseemly rush in *Girvin and Booth*, *supra*, note 25 and a similar result. Both parties were successful in their appeals to the courts. In *Oickle, supra*, note 25 the housing co-operative member was a victim of surprise; he was not presented with all the evidence that was used against him at the board level (at 13) and thought that he had cleared up his problems in the housing co-operative. (at 14).

\(^{119}\) *A Legal Handbook For Housing Co-operatives*, (Ottawa: Co-operative Housing Federation of Canada, 1983) [hereinafter *Handbook*].

\(^{120}\) R.S.O. 1980. c. 232.

\(^{121}\) See *Handbook, supra*, note 119 at 10.4–10.5. (*The Members Rights*).
occupants. Other authors have also commented upon the legislative vacuum that exists in Ontario. As far back as 1974, G. Farquharson stated that special legislation is needed to set out the basic concept of non-profit housing co-operatives, and some intelligent ways of filling this legislative vacuum have been suggested by Bruce Woodrow. Woodrow's optimism may be unwarranted, however, if he believes that directors of housing co-operatives will always succeed in adhering to the rules of natural justice when they conduct a hearing to determine whether a notice to vacate ought to be issued. A separate part of the legislation will not solve all of the problems in this area. Besides, the Ontario legislature has not seen fit to take many suggestions made to it in this area.

The Co-operative Housing Association of Ontario argues that housing co-operatives which were not set up by accredited co-operative housing resource groups are more prone to abuses. However, using the model by-laws and occupancy agreement developed by the C.H.A.O. does not eliminate abuses. The problems which this article discusses have come up in North Bay housing co-operatives, all of which were set up by an accredited co-operative housing resource group.

122. _Iler, supra_, note 75 at 22–23.
124. See _Farquharson, supra_, note 5 at 328.
125. _Woodrow, supra_, note 4.
126. He may be correct when he states that housing co-operative directors will attempt to do so. _Woodrow, supra_, note 4 at 45.
127. The Province of Saskatchewan has recently enacted a _Co-operatives Act_ S.S. 1989, c. C-37-2 which contains a separate part XXIII concerning housing co-operatives. A separate part in the Ontario legislation, unless it pays attention to the concerns raised in this article, will not solve all of the problems that separate housing co-operatives from other co-operatives. Some issues involving housing co-operatives in Saskatchewan are put under the jurisdiction of the provincial Rentalsman. It is unclear whether housing co-operatives in Saskatchewan are any better off as a result.
128. Woodrow's suggestions have gone unheeded as have these ones supported by the Co-operative Housing Association of Ontario and referred to earlier.
The Co-operative Housing Federation of Canada has held workshops which help participants to fairly solve the internal problems of housing co-operatives. Assistance is also provided to Ontario co-operative housing co-ordinators through the Co-operative Housing Association of Ontario and the Co-operative Housing Federation of Toronto.

The existence of a good housing co-ordinator can go a long way towards ensuring that problems of the sort discussed in this article do not happen. The same holds for co-operative resource groups, who must somehow survive in the very competitive housing industry and cope with uncertain funding, yet remain true to the ideals of co-operation. One Northern co-operative resource group sells housing co-ordinator services to the housing co-operatives which it has set-up. At the very least this puts another layer of administration between housing co-operative members and the co-ordinator of the housing co-operative in question. At worst it may reduce the opportunities for participation which are touted as distinguishing co-operative housing from a standard landlord and tenant situation and contribute to the takeover of housing co-operatives by the resource groups set up to serve them. Alex Laidlaw wrote in 1972 that there needs to be a mother society to aid new housing co-operatives, as without it each new co-operative would have to invent the wheel all over again, but it is important to ensure that the mother behaves properly and knows when to let go.

CONCLUSION
Keith correctly suggests that co-operatives need to educate their members to act fairly. It is outside of the scope of this article to suggest how this can be done. Credit must be given to the Co-operative Hous-

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132. Housing, supra, note 60 at 5.

133. New Amendments, supra, note 3 at 7.
ing Federation of Canada, the Co-operative Housing Association of Ontario, the Co-operative Housing Federation of Toronto and various other member resource groups and to some housing co-operative coordinators for trying hard to educate the boards of Ontario housing co-operatives. However, some housing co-operatives are run by people who may not want to accept such encouragement. Until the law is changed to ensure that these people do, which may not be possible, legal clinics will continue to have cases from housing co-operatives. The problem of people acting unfairly to others is a very old one.