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Intersections between Precarious Housing and Residential Tenancy Law: A Review of *A Complex Exile* and Recent Legal Scholarship on Residential Tenancies

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The legal system invites siloed thinking about complex problems like housing precarity because it asks those engaging with it to draw lines and categorize issues. For example, residential tenancy legislation contains scoping provisions, specifying what shelter arrangements are covered by the legislation and which ones are not. But real life eschews these carefully drawn boundaries. Precariously housed individuals move between different types of shelter: from highly leveraged, owner-occupied homes to private market rentals, to social housing, to couch surfing with friends or family, to emergency shelters, to tent encampments and other living rough arrangements.

Some housing arrangements are governed by formal legal frameworks that regularly result in legal proceedings such as foreclosures and evictions. These frameworks contain a range of protections for homeowners and renters, but too often, they reinforce the power of lenders and landlords and contribute to housing precarity of residents.

Other housing arrangements are regulated by diffuse webs of rules. Residents in social housing and emergency shelters are expected to abide by codes of conduct or house rules. Those who act out risk informal sanctions, eviction and, in some cases, committal to the mental health system. Municipal bylaws may restrict individuals from camping in public spaces and these are enforced through the injunctive power of the court.¹ Statutes and bylaws criminalize subsistence activities including panhandling and travelling on public transit.² Individuals in transient forms of shelter too often experience law as a punitive force rather than a protective one.

This review essay challenges siloed thinking about housing precarity by bringing a sociological account of emergency shelters in Ottawa, Canada—Erin Dej’s book *A Complex Exile*—into conversation with recent scholarship from Canadian academics on residential tenancy law.³ One intuition underlying this essay is that we need to think about these disparate legal regimes as comprising a bigger system of housing law. Bringing these areas of law into conversation with one another allows us to identify common themes and these may inform statutory reform initiatives, changes to practice, and advocacy on related social issues. Promising innovations in one area of housing law may be relevant to the regimes that govern other shelter arrangements. Looking at housing law more holistically also enables us to identify how the different regimes leave gaps, create conflicts, and otherwise prove challenging for the individuals who navigate amongst them.

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¹ See e.g. *Vancouver Fraser Port Authority v Brett*, 2020 BCSC 876.

² Terry Skolnik, “Rethinking Homeless People’s Punishments” (2019) 22:1 *New Crim L Rev* 73 at 77-78; Student Legal Services of Edmonton, “No Fixed Address: How Transit Peace Officers and Edmonton Police Services prohibited and penalized homelessness in 2018” (December 2019), online (pdf): <<https://static1.squarespace.com/static/5b19871eee1759f2bea0f69b/t/5de31e7536172f0b2fbfc1da/1575165560055/No+Fixed+Address.pdf>> [perma.cc/ZYS2-5HY4].

³ Erin Dej, *A Complex Exile: Homelessness and Social Exclusion in Canada* (Vancouver: UBC Press, 2020).

Section I of this essay comprises a review of Dej's book and a synthesis of recent scholarship on residential tenancy law. Two themes emerge from reading these bodies of work together, and these themes are canvassed in Section II. The first theme is descriptive: home is a nuanced concept. It includes more than just shelter, it connotes social inclusion, cleanliness and safety, freedom from violence and surveillance, and it can extend to personal property. The second theme is prescriptive. Research has revealed important lessons for ameliorating the situation of precariously housed individuals. We can promote housing security for residents in a range of shelter arrangements by centering their experiences, collecting data, increasing access to legal helpers, and focusing efforts on structural and systemic change.

I. REVIEWING A *COMPLEX EXILE* AND SURVEYING THE LEGAL SCHOLARSHIP ON RESIDENTIAL TENANCIES

A. ERIN DEJ, *A COMPLEX EXILE* (VANCOUVER: UBC PRESS, 2020)

Erin Dej's book *A Complex Exile* explains how homeless shelters have come to "manage and maintain" homelessness rather than ending it.⁴ Dej draws on a rich empirical record including observations from volunteering in homeless shelters in the City of Ottawa, interviews with individuals living in the shelters and focus groups with people working in the homeless sector.⁵ She parses her data using an ambitious theoretical framework: her book engages with ideas including how distress has been recast as a medical problem, how marginalized individuals position themselves as deserving of social supports, how they are subtly encouraged to conform to mainstream ideas of virtuous living, and how the social imperative to consume plays out amongst people of very limited means.

Dej argues that homeless shelters belong to a sector that attributes the cause of homelessness to medical problems of individuals and thus focuses its energies on individualized, medicalized solutions. Personal responsibility, a hallmark of neoliberal thinking, is central to these solutions. Yet these solutions are also informed by the medical model of disease, which identifies biological causes for human problems.⁶ The medical model explains homelessness with reference to the mental health and addiction issues that are common amongst the residents of homeless shelters.⁷ Individuals who wish to escape homelessness are pressured to accept responsibility for their distress and submit to the rules, schedules, and treatment programs provided by shelters and related organizations.⁸

A conflict potentially exists between the belief that a person's problems are caused by biological factors and the belief that a person can bring about their recovery through personal effort. Dej's interviews with shelter residents indicate that many of them are able to reconcile these beliefs. The shelter residents generally accept that they have made 'bad' choices and thereby

⁴ *Ibid* at 51.

⁵ *Ibid* at 4-8 (describing her methods).

⁶ *Ibid* at 117.

⁷ In Chapter 2, Dej synthesizes the literature on the disproportionate prevalence of mental illness and addiction amongst the homelessness population. *Ibid*.

⁸ *Ibid* at 168. Terry Skolnik characterizes this pressure to comply as a form of domination, whereby homeless individuals are not truly free because they must submit to the dictates of relatively powerful actors to avoid being subject to more direct interference. See Skolnik, "Freedom and Access to Housing: Three Conceptions" (2018) 35 Windsor YB Access Just 226 at 240.

triggered or exacerbated their biological predisposition to mental health and addiction issues.⁹ And, they generally believe that they are capable of overcoming their problems by making better choices about their lifestyles.¹⁰

Dej critiques how an individualized, medical conception of homelessness saddles individuals with the primary responsibility for their recovery. She highlights two problems with this conception. First, individuals living in homeless shelters are not provided with sufficient supports to fully achieve social inclusion, regardless of their personal efforts.¹¹ Telling them they can overcome homelessness, addiction and mental health problems if they work hard sets them up for failure and unfairly attributes that failure to the individual. Second, this story about recovery through individual effort focuses the homeless sector's energies on supporting individuals as they work to overcome their medical problems. The sector's energies are thus diverted away from challenging the structural factors that contribute to homelessness, such as "poverty, a lack of affordable housing, colonialism, discrimination, and other inequities."¹²

Dej demonstrates a remarkable ability to weave together theory and empirical data. She provides her reader with detailed portraits of daily life in Ottawa's homeless shelters and then uses concepts from sociology to connect her empirical portraits to some of the big ideas that shape life in early 21st century Canada: neoliberalism, medicalization, and consumerism. At the same time, she draws out theoretical insights from the details in her empirical data. For example, she resolves the tension between the exculpatory potential of explaining homelessness as a medical problem and neoliberalism's focus on personal responsibility by carefully attending to what her interviewees say about this tension. By combining theory and data in these ways, Dej offers her readers robust intellectual tools to tackle the problem of homelessness.

For legal readers, Dej's book serves an additional function: it makes visible some of the ways that law shapes the lives of homeless people. A tendency amongst the legally trained may be to approach complex issues, like housing precarity, through the lens of formal law including statutes and case law. Thus, our attention is drawn towards shelter arrangements – like owner occupied houses and rental accommodations – that are subject to statutory regimes or that result in legal disputes before courts and tribunals. Yet, *A Complex Exile* illustrates how criminal law, mental health law and the rules of homeless organizations all regulate the lives of shelter residents, sometimes through formal legal proceedings but often by encouraging homeless individuals to avoid such proceedings by self-regulating. The diffuse nature of these rules and their relative invisibility stand in contrast to the identifiable and self-contained statutes that govern foreclosures and residential tenancy relationships across Canada.

Section I(B) synthesizes recent Canadian scholarship on residential tenancy law. These articles highlight shortcomings in the substance of residential tenancy law and its practice. Reading these pieces alongside Dej's book allows us to think more holistically about the aim of housing law—"what does it mean to provide someone with a home?"—and the legal levers available for achieving this aim across a range of shelter types.

B. RECENT CANADIAN LEGAL SCHOLARSHIP ON RESIDENTIAL TENANCY LAW

⁹ Dej, *ibid* at 119.

¹⁰ *Ibid* at 131.

¹¹ *Ibid* at 132.

¹² *Ibid* at 161, see also 132.

Over the past three years, Canadian legal scholars have produced a wealth of scholarship on residential tenancy law. The articles synthesized in this section were identified in a few different ways: some systematic and some more *ad hoc*. A research assistant canvassed academic databases (HeinOnline, CanLII) for articles published between 2019 and 2021 that included key terms (“housing,” “eviction,” “rental,” and “tenant”) and reviewed the results to identify which articles dealt substantively with residential tenancy law or practice. These articles cited other relevant work. The author came across additional scholarship more haphazardly: having seen the work presented at conferences or mentioned on social media.

Recent scholarship on residential tenancy law coalesced around five topics. First, academics are using creative methods to understand how residential tenancy dispute resolution proceedings operate in practice. Second, research is emerging on the growing trend of mass evictions. Third, researchers have studied how residential tenancy law affects victims of domestic violence. Fourth, recent research examines how the COVID-19 pandemic impacted residential tenancy law and practice. Finally, research on the provision of legal services to low-income individuals provides insights into residential tenancy law and practice.

1. RESIDENTIAL TENANCY DISPUTE RESOLUTION PROCESSES

A reoccurring concern of socio-legal scholars is to understand how law ‘on-the-books’ is put into practice. Scholars of residential tenancy are using empirical methods to understand how tenants and landlords experience the dispute resolution processes employed by residential tenancy tribunals. The research done on these tribunals underscores the power imbalance that exists between landlords and tenants: they do not come to the dispute resolution process as equals.

Sarah Buhler has used a variety of empirical methods to investigate the experiences of tenants in the Saskatchewan tribunal tasked with deciding landlord and tenant disputes. In a piece co-authored with Rachel Tang, Buhler reports on themes emerging from qualitative interviews with 20 tenants who represented themselves before the tribunal.¹³ Tang and Buhler conclude that the tribunal often reinforced the relative power of landlords and marginalized tenants. In exceptional cases, the tribunal did the opposite and challenged landlord power by reigning in their bullying behaviour. In a piece co-authored with Catriona Kaiser-Derrick, Buhler reviews a year’s worth of housing files from a student-staffed legal clinic in Saskatoon to identify themes.¹⁴ The authors determine that individual representation before the tribunal improves client outcomes and is valuable, but that the clinic could do more to effect systemic change.¹⁵

David Wiseman reports on how the licensing of paralegals in Ontario has impacted the rate at which landlords and tenants are represented at residential tenancy tribunal hearings.¹⁶ To understand this phenomenon, he studied written decisions from the Eastern Ontario’s Landlord

¹³ Buhler & Tang, “Navigating Power and Claiming Justice: Tenant Experiences at Saskatchewan’s Housing Law Tribunal” (2019) 36 Windsor YB Access Just 210.

¹⁴ Buhler & Catriona Kaiser-Derrick, “Home, Precarious Home: A Year of Housing Law Advocacy at a Saskatoon Legal Clinic” (2020) 32 J L & Soc Pol’y 45.

¹⁵ Emily Paradis similarly concluded that tenants benefit when offered legal services in matters before Ontario’s Landlord and Tenant Board, Emily Paradis, “Access to Justice: The Case for Ontario Tenants” (October 2016) at 11, online (pdf): *Advocacy Centre for Tenants Ontario* <https://www.acto.ca/production/wp-content/uploads/2017/07/TDCP_Report_2016.pdf> [perma.cc/445D-AM2Y].

¹⁶ Wiseman, “Paralegals and Access to Justice for Tenants: A Case Study” in Trevor CW Farrow & Lesley A Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Justice* (Vancouver, BC: UBC Press, 2020) at 173-191.

and Tenant Board. He concludes that the introduction of paralegals as a regulated segment of legal helpers had led to an increase in representation for landlords but not tenants. This increase in representation may exacerbate power differentials between the two groups, further disadvantaging tenants. Thus, he suggests that the introduction of paralegals may not be the best access to justice policy or that it needs to be pursued in a manner that make paralegals more affordable and user friendly for tenants.

2. MASS EVICTIONS

Mass evictions refer to when an entire building or rental complex is closed and all the tenants are forced to relocate. This is not a new phenomenon. For example, in 1986, landlords of single room occupancy hotels in Vancouver's downtown Eastside evicted tenants *en masse* ahead of the Expo 86 fair.¹⁷ However, these mass evictions are becoming more common and they pose challenges for the existing systems of residential tenancy law. The articles summarized in this section illuminate how the financialization of housing has reshaped the problem of housing precarity by driving these mass evictions.

A recent report to the Canadian Mortgage and Housing Corporation revealed the growing prevalence of mass evictions.¹⁸ Sarah Zell and Scott McCullough, the report's authors, carried out a review of the literature, a scan of eviction prevention measures, and interviews with 19 people working in the housing sector and ten with lived experiences of eviction.¹⁹ They concluded that the nature of evictions is evolving. Previous research had suggested that most evictions result from tenant's non-payment of rent, but landlord driven evictions are on the rise.²⁰ These evictions are often related to redevelopment pressures, such as when a landlord wishes to renovate a property and rent it out at a higher rate or demolish a property to build something new.²¹ The authors posit that landlord-driven evictions are the result of housing increasingly being treated as an investment opportunity as opposed to a social good.²² They call for a shift from individual supports to systemic interventions that will "reduc[e] poverty and increas[e] the availability of affordable housing."²³

Anna Lund examines the phenomenon of mass evictions from mobile home parks and argues that residential tenancy law does not sufficiently protect tenants in these situations.²⁴ She describes the individual and collective trauma that results from mass evictions by comparing

¹⁷ Rafferty Baker, "Expo 86 evictions: remembering the fair's dark side" (4 May 2016), online: *CBC News* <<https://www.cbc.ca/news/canada/british-columbia/expo-86-evictions-remembered-1.3566844>> [perma.cc/FE7R-547V]; "Terminal City" (26 May 2021) at 00h:24m:44s, online (podcast): *Canadaland Commons* <www.canadaland.com/podcast/real-estate-3-terminal-city/> [perma.cc/YYX7-4VAW].

¹⁸ Sarah Zell & Scott McCullough, "Housing Research Report: Evictions and Eviction Prevention in Canada" (May 2020), online (pdf): *University of Winnipeg Institute of Urban Studies* <https://epdscrmssa01.blob.core.windows.net/cmhcprodcontainer/sf/project/archive/research_6/evictions-and-eviction-prevention-in-canada.pdf> [perma.cc/PKV8-BLLN].

¹⁹ *Ibid* at 59 (describing interview sample).

²⁰ *Ibid* at 9 (mass evictions).

²¹ *Ibid* at 3, 26-30. Redevelopment pressures were also a common cause of mobile home park closures in Canada, see Anna Lund, "Tenant Protections in Mobile Home Park Closures" (2021) 53:3 UBC L Rev 753 at 817-30. On the tactics used by financialized landlords to increase profits from multi-family rental properties, see Martine August, "The Financialization of Canadian Muti-Family Rental Housing: From Trailer to Tower" (2020) 42:7 J of Urban Affairs 975 at 985-89.

²² Zell & McCullough, *ibid* at 8.

²³ *Ibid* at 33, 54.

²⁴ Lund, *supra* note 21.

Esther Sullivan's ethnographic account of mobile home park closures in Florida and Texas to a Canadian case study, the closure of Calgary's Midfield Mobile Home Park.²⁵ She offers four characterizations of the legal interests of mobile home tenants that deserve better protection in tenancy law: a right to protection from discrimination, a right to housing, a property right and a home interest. She concludes with recommendations ranging from strengthening the notice and compensation provisions in provincial legislation to helping tenants to become the owners of the mobile home parks in which they live.

3. RESIDENTIAL TENANCY LAW AND DOMESTIC VIOLENCE

A rich thread in the recent scholarship examines how residential tenancy law shapes the experiences of domestic violence survivors. This research underscores the interconnection of housing with other social issues, like family violence. Given the gendered nature of family violence, this research suggests that seemingly neutral tenancy laws may be experienced differently depending on the identity, including the gender identity, of the renter. This research also points towards the idea that access to shelter does not provide a resident with all the benefits of a home if that shelter is a place of violence.

Jonnette Watson Hamilton compares the amendments that 9 jurisdictions made to their residential tenancy statutes to enable domestic violence survivors to terminate their tenancies early.²⁶ She surmises that these amendments have probably improved the situation for renters, though they are difficult to evaluate given the paucity of data collected on them. She identifies the need for further reforms to address additional legislative shortcomings, such as preventing landlords from terminating the tenancies of survivors following incidents of domestic violence in rented premises.²⁷ She notes that some of the challenges facing the survivors of domestic violence

²⁵ Esther Sullivan, *Manufactured Insecurity: Mobile Home Parks and Americans' Tenuous Right to Place* (Oakland: University of California Press, 2018).

²⁶ Hamilton, "Reforming Residential Tenancy Law for Victims of Domestic Violence" (2019) 8 Annual Rev of Interdisciplinary Justice Research 245. See also the three reports that Lois Gander authored for the Centre for Public Legal Education Alberta on the intersections between domestic violence and residential tenancy law: Lois Gander & Rochelle Johannson, "The Hidden Homeless: Residential Tenancies Issues of Victims of Domestic Violence" (June 2014) at 6, online (pdf): *Centre for Public Legal Education Alberta & University of Alberta* <<https://www.cplea.ca/wp-content/uploads/2015/01/FINAL-Report-The-Hidden-Homeless.2014Jun05.pdf>> [perma.cc/VX4C-GT4V] (examining how "the law, legal process, and policies of housing and legal services agencies are implicated in what can quickly become a downward slide into homelessness for victims of domestic violence."); Lois Gander, "Domestic Violence: Roles of Landlords and Property Managers" (February 2017), online (pdf): *Centre for Public Legal Education Alberta* <<https://www.cplea.ca/wp-content/uploads/2017/04/HTE-DV-Roles-LL-and-PM-FinalReportFEB2017.pdf>> [perma.cc/Z37R-MKDM] (exploring the role that property managers and landlords can play in helping tenants who are experiencing domestic violence); and Lois Gander & Megan Siu, "Domestic Violence Resources for Landlords and Property Managers" (July 2018), online (pdf): *Centre for Public Legal Education Alberta* <<https://www.cplea.ca/wp-content/uploads/DVresources-for-LLandPMsFinalJuly2018.pdf>> [perma.cc/4UN2-G8WT] (reporting on efforts to support landlords in their work with victims of domestic violence). Following the publication of the first Gander report, Jennifer Koshan and Jonnette Watson-Hamilton wrote a series of posts dealing with the legal issues raised by Gander. These posts have been collected into an e-book: Jennifer Koshan and Jonnette Watson Hamilton, "Landlords, Tenants and Domestic Violence: An ebook collection of ABLawg posts concerning residential tenancies and victims of domestic violence" (6 December 2017), online (pdf): *ABLawg* <https://ablawg.ca/wp-content/uploads/2017/12/DV_Law_Ebook.pdf> [perma.cc/8ZA3-ZFA8].

²⁷ Watson Hamilton, "Reforming Residential Tenancy Law", *ibid* at 262.

are the result of how residential tenancy law intersects with other areas of law, such as exclusive possession orders granted under civil protection legislation.

Jennifer Koshan picks up on the topic of legal intersections in an article that maps the different pieces of Alberta legislation and justice sector programs that aim to protect survivors of domestic violence, including the *Residential Tenancies Act*.²⁸ She offers that: “while domestic violence laws have become more expansive and explicit over time, creating greater possibilities for protective remedies, there are also more intersections resulting in complexities in the legal landscape.”²⁹ For example, the legislative drafters have included varying definitions of what constitutes domestic or family violence into different statutes, resulting in confusing inconsistencies. A survivor of domestic violence could terminate a tenancy early after being subject to emotional abuse, but that type of abuse would not qualify them for an emergency protection order under Alberta’s *Protection Against Family Violence Act*.³⁰ Koshan identifies specific statutes and practices that would benefit from reform but emphasizes the importance of examining the legal system holistically to identify intersections and gaps.

4. RESIDENTIAL TENANCY LAW DURING THE PANDEMIC

Scholars have started to examine how COVID-19 has impacted residential tenancy law and practice. The pandemic has “illuminated and exacerbated pre-existing inequities,”³¹ and this body of research highlights, again, the differential impact of seemingly neutral laws on different populations and points to the potential and limits of legal reform as a tool for addressing housing precarity.

Leilani Farha and Kaitlin Schwan contributed a chapter on housing to an edited volume on the pandemic.³² They highlight the disproportionate impact of the pandemic on homeless individuals, victims of family violence, and low-income renters. Early in the pandemic, homeless individuals were subjected to a range of policy responses, but permanent housing solutions were notably absent. The stay-at-home orders resulted in an increase in family violence while at the same time isolating the victims from “social supports and avenues for access to justice.”³³ Low-income tenants faced eviction when sufficient income supports and other government interventions were not forthcoming.³⁴

Sarah Buhler researched how Saskatchewan’s residential tenancy tribunal responded to the pandemic by analyzing 1850 eviction decisions released by the tribunal in 2020.³⁵ To mitigate the

²⁸ Koshan, “Mapping Domestic Violence Law and Policy in Alberta: Intersections and Access to Justice” (2021) 58:3 *Alta L Rev* 521; *Residential Tenancies Act*, SA 2004, c R-17.1. This article was written as part of a bigger, multi-jurisdictional mapping project, see Jennifer Koshan, Janet Mosher and Wanda Wiegers, *Domestic Violence and Access to Justice: A Mapping of Relevant Laws, Policies and Justice System Components Across Canada*, 2020 CanLIIDocs 3160.

²⁹ Koshan, *supra* note 28 at 524.

³⁰ Koshan, *ibid* at 526, 539, 545; *Protection Against Family Violence Act*, RSA 2000, c P-27.

³¹ Leilani Farha & Kaitlin Schwan, “The Front Line of Defence: Housing and Human Rights in the Time of COVID-19” in Colleen M Flood *et al*, eds, *Vulnerable: The Law, Policy and Ethics of COVID-19* (Ottawa: University of Ottawa Press, 2020) at 357.

³² *Ibid* at 355-366.

³³ *Ibid* at 361-62.

³⁴ *Ibid* at 363-64.

³⁵ Buhler, “Pandemic Evictions: An Analysis of the 202 Eviction Decisions of Saskatchewan’s Office of Residential Tenancies” (2021) 35 *JL & Soc Pol’y* 68. Reporting on Alberta’s eviction moratorium, see Jonnette Watson Hamilton, “Residential Tenancies in Alberta: Evictions for Non-Payment of Rent No Longer Suspended” (30 April 2020), online

impact of the pandemic on tenants, Saskatchewan implemented a temporary eviction moratorium that forbid landlords from evicting tenants except in urgent situations, such as when a tenant was violent or destroyed property.³⁶ During the moratorium, Buhler reports that the overall number of reported evictions dropped, but there was an increase in the number of evictions brought for urgent reasons. Buhler suggests that landlords may have strategically characterized evictions as urgent to get around the moratorium.³⁷ Following the end of the moratorium, some predicted the number of evictions would spike. Buhler's research indicates that this spike did not materialize.³⁸ She hypothesizes that tenants may have prioritized rent payments, notwithstanding the financial strains caused by COVID, landlords may have worked with tenants to address rental arrears, or tenants may have been informally evicted, without engaging the tribunal process.³⁹ Finally, Buhler reports on the impact of the tribunal decision to hear all matters by telephone. This change in practice did not impact the rate at which tenants participated in hearings: tenants appeared at 37% of hearings prior to the pandemic and at 38% of hearings during the pandemic.⁴⁰

5. RESIDENTIAL TENANCY LAW AND LEGAL SERVICES FOR LOW INCOME PEOPLE

Other scholarship touches on the legal regulation of the landlord and tenant relationship, though residential tenancy law is not its focus. Many tenants are low-income and when they access legal services they turn to duty counsel, legal clinics or legal aid programs. Thus, research on these forms of legal service delivery provides important insight into residential tenancy law and practice and suggests how they might be improved.

(blog): *ABlawg* <<https://ablawg.ca/2020/04/30/residential-tenancies-in-alberta-evictions-for-non-payment-of-rent-no-longer-suspended/>> [perma.cc/3545-5CAA].

³⁶ Detailing eviction moratoriums in Canada's provinces and territories, see "COVID-19: eviction bans and suspensions to support renters" (25 March 2020), *Canadian Mortgage and Housing Corporation* online: <www.cmhc-schl.gc.ca/en/consumers/renting-a-home/covid-19-eviction-bans-and-suspensions-to-support-renters> [perma.cc/6KBM-T6Z5].

³⁷ Bulher, *supra*, note 35 at 85-86.

³⁸ Predicting that the spike may still be coming, see Ricardo Tranjan, "With more than 250,000 households in arrears, it's time for rent forgiveness" (20 March 2021) *Policy Options* online: <policyoptions.irpp.org/magazines/march-2021/with-more-than-250000-households-in-arrears-its-time-for-rent-forgiveness/>

³⁹ Following the end of the eviction moratorium in Alberta, the government imposed a duty on landlords to attempt to negotiate a payment plan with tenants before evicting them, see Jonnette Watson Hamilton, "Can an Alberta Landlord's Duty to Make Reasonable Efforts to Negotiate a Meaningful Payment Plan with Residential Tenants before Evicting Tenants be Enforced?" (25 May 2020), online (blog): *ABlawg* <<https://ablawg.ca/2020/05/25/can-an-alberta-landlords-duty-to-make-reasonable-efforts-to-negotiate-a-meaningful-payment-plan-with-residential-tenants-before-evicting-tenants-be-enforced/>> [perma.cc/X7R9-BVfV].

⁴⁰ Bulher, *supra*, note 35 at 81. But see "Digital Evictions: The Landlord and Tenant Board's experiment in Online Hearings" (June 2021), online (pdf): *Advocacy Centre for Tenants Ontario & Tenant Duty Counsel Program* <<https://www.acto.ca/production/wp-content/uploads/2021/06/Digital-Evictions-ACTO.pdf>> [perma.cc/M3CG-RCSX] (raising concerns about the impact of digital hearings on tenants living with low-income, and those who are illiterate, English as a second language, or suffering from mental health issues); Omar Ha-Redeye, "Bad Faith Abounds at Landlord Tenants Tribunal" (11 July 2021), online (blog): *Slaw* <<http://www.slaw.ca/2021/07/11/bad-faith-abounds-at-landlord-tenants-tribunal/>> [perma.cc/H3BX-VA9U] (raising similar concerns). In June 2022, the Advocacy Centre for Tenant's Ontario filed a human rights complaint on behalf of an elderly tenant who had difficulty accessing the online system, Tyler Griffin, "Landlord and Tenant Board's 'digital first' system harms vulnerable renters, advocacy group says" *CBC* (29 June 2022) online: <www.cbc.ca/news/canada/toronto/landlord-tenant-board-digital-first-vulnerable-residents-1.6505433> [perma.cc/UQ87-YY92].

Megan Parisotto argues that the government may be obliged to fund legal counsel when it evicts tenants from public housing.⁴¹ Analogizing from case law that required state funded counsel for parents at risk of losing their children, she argues that evictions from public housing fulfill the three-part test for state-funded counsel. These evictions (i) are triggered by government action, (ii) engage a tenant's rights to life, liberty and security of the person under section 7 of the *Charter* and (iii) often cannot be conducted fairly unless the tenant is provided with counsel.⁴² Thus, a person facing eviction from public housing has a legal basis for demanding state funded legal counsel.

Matthew Dylag uses survey data collected from a random sample of Ontario adults to explore why so few individuals (just over 15%) with legal problems seek formal legal advice.⁴³ He infers that individuals are unlikely to seek legal advice unless they recognize their problem as being legal in nature.⁴⁴ Dylag notes that individuals with housing problems seek legal advice at comparatively high rates (just over 40%). He posits that it might be more apparent that an eviction has legal implications, as compared to other problems for which individuals are less likely to seek advice, such as debt, where just over 21% of people with a problem seek legal assistance.⁴⁵

Frederick Zemans and Justin Amaral examine how cuts to legal aid funding have impacted access to justice in Ontario.⁴⁶ One impact they note is that the increased caseload on legal clinics has hampered their ability to carry out community organization work, such as “rallying tenants around housing rights.”⁴⁷

Anne Levesque examines how a new framework for Ontario's legal aid system—proposed in Bill 161—will impact access to justice for that province's Francophone population.⁴⁸ She reaches a similar conclusion to Zemans and Amaral, observing that: “underfunding is the biggest threat to legal work on systemic issues.”⁴⁹

Sarah Buhler and Michelle Korpan argue that more empirical research is needed on how legal representation impacts marginalized communities and offer some guidance on how to conduct such research.⁵⁰ They criticize existing (primarily American) research for focusing too much on litigation outcomes and argue that empirical research is needed on a broader range of

⁴¹ Parisotto, “Expanding the Constitutional Right to State-Funded Legal Counsel to Address British Columbia's Housing Crisis” (2019) 24 Appeal 79.

⁴² *Ibid* at 91; analogizing from *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46, 1999 CarswellNB 305.

⁴³ Matthew Dylag, “Informal Justice: An Examination of Why Ontarians Do Not Seek Legal Advice” (2018) 35:1 Windsor YB Access Just 363.

⁴⁴ *Ibid* at 369.

⁴⁵ *Ibid* at 375-76. But see Zell & McCullough, *supra* note 18 at 72, reporting that many tenants do not see eviction as a legal issue.

⁴⁶ Zemans & Amaral, “A Current Assessment of Legal Aid in Ontario” (2018) 29 J L & Soc Pol'y 1.

⁴⁷ *Ibid* at 23, citing Melina Buckley, “Moving Forward on Legal Aid: Research on Needs and Innovative Approaches” (June 2010), online (pdf): *The Canadian Bar Association* <http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/Moving-Forward-on-Legal-Aid.pdf> [perma.cc/2L57-PGGJ] at 9.

⁴⁸ Anne Levesque, “Les Cliniques Juridiques Communautaires de L'Ontario et L'Accès à la Justice en Français” (2020) 98:2 Can Bar Rev 211.

⁴⁹ Levesque, *ibid* at 235 (translated from French: “...la plus grande menace au travail d'ordre systémique des cliniques est le sous-financement.”).

⁵⁰ Buhler & Michelle C Korpan, “Measuring the Impacts of Representation in Legal Aid & Community Legal Services Settings: Considerations for Canadian Research” (2019) 56 Alta L Rev 1117.

impacts including how clients experience legal services and the impact of legal representation on systemic issues.⁵¹

II. A THEMATIC READING OF A *COMPLEX EXILE* ALONGSIDE CANADIAN SCHOLARSHIP ON RESIDENTIAL TENANCY LAW

When *A Complex Exile* is read alongside the scholarship on residential tenancy law, two themes emerge: housing is a nuanced concept and there's a promising roadmap for addressing housing precarity in Canada. To flesh out these themes, this section draws on additional literature on housing and homelessness, beyond the book, articles and chapters reviewed above.

A. A HOME IS MORE THAN “A ROOF AND FOUR WALLS”

Housing is foundational to an individual's wellbeing, both mental and physical, as well as their “safety, security and dignity”.⁵² But being housed is not the same thing as being sheltered. An important theme running through Dej's book and many of the pieces on residential tenancy law is the idea that home is something more than “a roof and four walls”.⁵³ Home means social inclusion. It means cleanliness and safety. It stretches beyond the shelter to include personal property.

1. HOME IS SOCIAL INCLUSION

Home connotes social inclusion. Jesse Thistle crafted a definition of Indigenous Homelessness for the Canadian Observatory on Homelessness that equates homelessness with being isolated from important relationships: “individuals, families and communities isolated from their relationships to land, water, place, family, kin, each other, animals, cultures, languages and identities.”⁵⁴ Dej draws out the myriad of ways in which individuals lacking permanent, stable shelter are isolated from important relationships. For example, gender segregated sleeping quarters in shelters and other residential programs prevent couples from being together.⁵⁵ At the same time, she finds that shelters and social services can provide unhoused individuals with a sense of home by creating spaces that foster relationships and communities.⁵⁶ One of her interviewees describes the shelter he is living in as his home *because* of the relationships with the other people who live there.⁵⁷ Residents in tent encampments have voiced similar sentiments about the importance of the relationships in those communities.⁵⁸

For tenants, part of what makes a rented shelter a home is the relationships they form with their neighbours. American researcher Matthew Desmond has described how tenants contribute to

⁵¹ *Ibid* at 1119.

⁵² Farha & Schwan, *supra* note 31 at 358.

⁵³ Buhler & Tang, *supra* note 13 at 218.

⁵⁴ Thistle, *Definition of Indigenous Homelessness in Canada* (Toronto, ON: Canadian Observatory on Homelessness Press, 2017) at 6, cited in Dej, *supra* note 3 at 29.

⁵⁵ Dej, *supra* note 3 at 62.

⁵⁶ *Ibid* at 90.

⁵⁷ *Ibid* at 99-100.

⁵⁸ Mark Zion, "Making Time for Critique: Canadian 'Right to Shelter' Debates in a Chrono-Political Frame" (2020) 37:1 Windsor YB Access Just 88 at 98.

the social fabric of a community, whereas their evictions have negative repercussions for the neighbours and the communities they leave behind.⁵⁹ Sullivan details how social ties bind the residents of mobile home parks together and one of the many losses they experience during mass eviction is the severing of these relationships.⁶⁰ Lund found evidence of a close-knit community existing in Midfield Mobile Home Park prior to its closure: these relationships enabled the elderly tenant population to age in place.⁶¹ Zell and McCullough report that older tenants are less able to resist evictions when they are socially isolated.⁶² Social isolation also puts tenants at greater risk of ongoing domestic violence. In a report on how landlords can help victims of domestic violence, Lois Gander recommends that they foster community ties in their rental properties by sponsoring social events.⁶³

2. HOME IS CLEAN AND SAFE

A shelter fails to be a home if it does not meet sufficient standards of health and cleanliness or if the residents living there otherwise feel unsafe.⁶⁴ Buhler and Tang note that habitability issues – “pests, mold, improper heating, faulty windows” – were common amongst the tenants they interviewed and also documented instances of landlords illegally entering suites to harass tenants.⁶⁵ Zell and McCullough suggest that, in some instances, landlords may purposefully harass tenants to encourage them to terminate their tenancy without a formal eviction.⁶⁶ Tenants are often unaware that these situations give them a right to seek relief under the residential tenancy legislation or they are reluctant to exert their rights because they fear reprisal from their landlords.⁶⁷

Residential tenancy law fails to ensure tenant safety in a second way: it facilitates the eviction of victims of domestic violence, compounding the trauma they experience. Some of these women end up in shelters: Dej notes that “intimate partner violence is among the leading causes of women’s homelessness.”⁶⁸ Watson Hamilton details how recent amendments made in a number of Canadian jurisdictions enable the victims of domestic violence to end tenancies early.⁶⁹ Yet landlords can still evict victims of domestic violence on the basis of the perpetrator’s actions.⁷⁰ In Buhler and Tang’s interviews with tenants, they heard from women who had been evicted after being subject to domestic violence. As one tenant put it, the other residents in her building, “were tired of hearing me be beaten and stabbed...”⁷¹

⁵⁹ *Evicted: Poverty and Profit in the American City* (New York: Broadway Books, 2017) at 70, 296.

⁶⁰ Sullivan, *supra* note 25 at 78, 102, 119–22.

⁶¹ Lund, *supra* note 21 at 774 (70% of residents in Midfield were seniors).

⁶² Zell & McCullough, *supra* note 18 at 68.

⁶³ Gander, “Domestic Violence”, *supra* note 26 at 40.

⁶⁴ Dej notes that the idea of precarious housing includes shelters that are deemed “unsafe”, Dej, *supra* note 3 at 100.

⁶⁵ Buhler & Tang, *supra* note 13 at 219-220; *The Residential Tenancies Act, 2006*, SS 2006, c 22.0001, s 45 (prescribing the conditions under which landlords can enter a rental unit), 49 (setting out the landlord’s obligation to repair and maintain the rental unit). See also Paradis, *supra* note 15 at 46.

⁶⁶ Zell & McCullough, *supra* note 18 at 31.

⁶⁷ Buhler & Tang, *supra* note 13 at 221; Paradis, *supra* note 15 at 46.

⁶⁸ Dej, *supra* note 3 at 138 citing CK Baker *et al*, “Domestic Violence, Housing Instability and Homelessness: A Review of Housing Policies and Program Practices for Meeting the Needs of Survivors” (2010) 15:6 *Aggression and Violent Behavior* 430; see also Watson Hamilton, “Reforming Residential Tenancy Law”, *supra* note 26 at 245.

⁶⁹ Watson Hamilton, “Reforming Residential Tenancy Law”, *ibid* at 258.

⁷⁰ *Ibid* at 262-264. Other shortcomings she points to include the variation and uncertainty around who qualifies as a “tenant” and the inability in most jurisdictions to terminate the tenancy for one co-tenant, but not the other, *ibid* at 259-62.

⁷¹ Buhler & Tang, *supra* note 13 at 219; see also Zell & McCullough, *supra* note 18 at 24.

Residential tenancy law not only facilitates the eviction of victims of domestic violence, it also makes it more difficult for them to secure replacement shelter. Social housing legislation may deprioritize tenants, who have previously had their tenancies terminated for breaches of residential tenancies legislation.⁷² Thus a tenant who is evicted as a result of domestic violence may be deprioritized for social housing, even if they were the victim and not the perpetrator of the abuse. Tribunal officers may hold victims of domestic violence liable for property damage caused by a perpetrator and if they are unable to pay the resulting judgment, that default could be reflected on their credit report. Private landlords may refuse to rent to a tenant who has a negative credit score.⁷³

Dej's work also reminds the reader that domestic violence is not the only violence to which residents may be subject. One of her interviewees was subject to a "home takeover", which describes a situation "when a legitimate tenant or homeowner is threatened physically, financially or psychologically when people will not leave their home."⁷⁴ Legal tools designed to address domestic violence, like the early termination amendments, may not provide any relief to individuals who face other types of violence. In her review of case law on domestic violence, Watson Hamilton found an instance of an individual who was not allowed to use the early termination provisions to escape violence perpetrated by his roommate and her boyfriend because his relationships with the perpetrators fell outside of the relationships contemplated by the legislation.⁷⁵

Behaviour short of outright violence or harassment can leave residents feeling insecure. Dej writes about the high levels of video surveillance employed at emergency shelters coupled with strict rules governing the schedules and behaviors of people living there. Surveillance and disciplinary rules exist in the tenancy context, too. Zell and McCullough note that social housing and private landlords require tenants to abide by rules, policies or lease addendums which leave them feeling as though they can be evicted "at any time for any reason."⁷⁶ Even well-meaning policies can have severe, negative consequences for tenants. For example, victims of domestic violence may run afoul of social housing prohibitions on male visitors when they attempt to reconcile with a partner or navigate shared parenting arrangements.⁷⁷ Such a breach can lead a landlord to evict the tenant. Terry Skolnik has observed that "to experience homelessness is to be a guest in a world of hosts, where one's freedom depends on others' benevolence and good will."⁷⁸ Residential tenancy law provides tenants with some protections, but these fall short of meaningful security of tenure and tenants continue to live with an uncomfortable level of contingency.

3. HOME IS PERSONAL PROPERTY

Another nuance in the idea of home is that personal property can be central to a precariously housed individual's sense of home and personhood. Sometimes, one's personal property is one's home. A tent might be a home.⁷⁹ In a land-lease mobile home park, the tenant's mobile home is an

⁷² Koshan, "Mapping Domestic Violence Law", *supra* note 28 at 540.

⁷³ Watson Hamilton, "Reforming Residential Tenancy Law", *supra* note 26 at 265.

⁷⁴ Dej, *supra* note 3 at 67.

⁷⁵ Watson Hamilton, "Reforming Residential Tenancy Law", *supra* note 26 at 256-57.

⁷⁶ Zell & McCullough, *supra* note 18 at 32.

⁷⁷ Gander & Johannson, *supra* note 26 at 7.

⁷⁸ Skolnik, "Freedom and Access to Housing: Three Conceptions" (2018) 35 Windsor YB Access Just 226 at 236.

⁷⁹ Arguing a tent is a home, despite a court finding otherwise for the purposes of applying section 8 of the *Charter*, see Sarah Ferencz, Nicholas Blomely, Alexandra Flynn & Marie-Eve Sylvestre, "Are Tents a 'Home'? Extending

item of personal property. During mass evictions, tenants are frequently forced to abandon their mobile homes, often without any form of compensation.⁸⁰ Other household goods matter, too. Margaret Radin observes that people become emotionally invested in property because they connect it to their own understanding of themselves.⁸¹ Radin's observation should resonate with anyone who has carefully packed away a treasured family heirloom or a childhood memento. Precariously housed individuals can experience deep attachment to their personal property but face a heightened risk of losing it.

Individuals in temporary shelter often lack secure places to store their personal property, and thus their property is more easily stolen or destroyed. In the case of *R v. Picard*, an individual residing in a tent described taking turns with his girlfriend to stay with their tent at all times to guard against anyone "taking their stuff."⁸² Yet even constant vigilance does not guarantee the safety of one's personal property. Municipal bylaws may authorize the removal of a homeless person's belongings, by characterizing them as waste or trash.⁸³ The City of Abbotsford infamously spread chicken manure over the belongings of individuals living in a tent encampment, as those individuals scrambled to salvage their property.⁸⁴

Renters' personal property can be imperiled during the tenancy, especially in premises that suffer from habitability issues. Mold or a flood can destroy the tenant's belongings. Household goods may need to be discarded if they become infested with pests.⁸⁵ Exterminators using chemicals or heat may damage a tenant's belongings.⁸⁶ Belongings may also be damaged during renovations.⁸⁷

When a tenancy ends, a landlord may seize, sell or destroy a tenant's belongings. Landlords may be able to seize and sell a tenant's property to satisfy rental arrears, but the usefulness of this remedy is limited given the low resale value of most household goods.⁸⁸ Instead, landlords may prefer to lock tenants out of the premises and either dispose of the tenant's personal property or hold it hostage to pressure the tenant to pay arrears.⁸⁹ Buhler and Kaiser-Derrick note that Saskatchewan recently amended its residential tenancy legislation to make it easier for landlords to sell or dispose of a tenant's property.⁹⁰ They cite this amendment as an example of how the legislation prioritizes the interests of landlords over those of tenants.⁹¹

Section 8 Privacy Rights for the Precariously Housed" (2022) [forthcoming in McGill L J] (discussing *R v Picard*, 2018 BCPC 344, appeal quashed 2020 BCCA 107).

⁸⁰ Lund, *supra* note 21 at 795-97.

⁸¹ Radin, "Property and Personhood" (1982) 34 Stan L Rev 957 at 959-61.

⁸² *R v Picard* (PC), *supra* note 79 at para 15.

⁸³ Ferencz *et al*, *supra* note 79 at 7 citing City of Vancouver, City Land Regulation By-law No. 8417, online: <<https://bylaws.vancouver.ca/8417c.pdf>> [perma.cc/DVQ6-BW4Q].

⁸⁴ *Abbotsford (City) v Shantz*, 2015 BCSC 190 at para 107-115, aff'd 2015 BCCA 142.

⁸⁵ See *e.g. Slowski v Dorval*, 2021 SKORT 972 at paras 22-23, where the tenant discarded food, clothes, shoes and bedding which had been damaged by mice.

⁸⁶ See *e.g. BA v K&S Enterprises Ltd*, 2017 SKORT 211 at para 7, where the tenant claimed for damage to personal goods caused by the exterminator's chemical spray.

⁸⁷ Zell & McCullough, *supra* note 18 at 77.

⁸⁸ See *e.g. Civil Enforcement Act*, RSA 2000, c C-15, s 104; *The Residential Tenancies Act, 2006*, SS 2006, c 22.0001, s 12 (seizure requires a court order unless goods are worth less than \$1500).

⁸⁹ *Wilderdijk-Streutker v Zhao*, 2017 ABPC 24 at para 50 (landlord pays new tenants to dispose of old tenants' personal property); *Krueger v Jaipaul*, 2013 ABQB 650 at para 20 (landlord hires agent to dispose of old tenant's personal property).

⁹⁰ *The Residential Tenancies Act, 2006*, SS 2006, c 22.0001, s 85 as amended by the *Residential Tenancies Amendment Act*, SS 2018 c 33, s 7.

⁹¹ Buhler & Kaiser-Derrick, *supra* note 14 at 66.

Tenants who are able to remove their goods from the rental premises following eviction may choose to store them in self-storage facilities while they look for replacement housing.⁹² Yet, the risk of losing their goods remains. Self-storage companies may seize, sell or dispose of a tenant's belongings if the tenant falls behind on rent. In his Milwaukee study, Desmond found that 70% of tenants who moved their goods to self-storage facilities following an eviction fell behind on the storage fees resulting in the storage companies' selling or disposing of the tenants' belongings.⁹³

Finally, treasured personal property can be the cause of an eviction. Zell and McCullough report that tenants are being evicted for having undeclared pets in their rented premises.⁹⁴ Other tenants make compromises with respect to the quality or cost of the homes they rent to ensure that they are allowed to keep their pets with them. These compromises may indirectly lead to further housing instability if the premises prove to be either uninhabitable or unaffordable.

B. A ROADMAP TO HOME

If we want to provide residents in a range of shelter arrangements with the benefits of home, we have a roadmap about how to achieve this goal. This section synthesizes some of lessons that we can carry forward from Dej's book and the scholarship on residential tenancy law.

1. CENTRE THE RESIDENT EXPERIENCE

The perspective of residents must be centered when developing solutions to housing precarity. Dej recommends that we consider "how people who are homeless experience these systems, interventions, and relations with professionals and para-professionals."⁹⁵ This recommendation runs through the legal literature on residential tenancy law, too. The experiences residents have with tribunals and legal supports can either empower or disempower residents from using the law to exert control over their housing situation and their lives.⁹⁶ Failure to attend to these experiences risks undermining any efforts at reform.

The tenant experience is key to understanding how tribunals actually operate. Many tenants do not participate in tribunal hearings, even when they risk eviction, and their absenteeism may be partly explained with reference to their experiences with the justice system. Tenants may already have a deep distrust of the legal system, due to past negative experiences with it.⁹⁷ Some tenants have little faith in public institutions and prefer to go along with an eviction notice rather than challenging it.⁹⁸

Tenants who do participate in hearings often find that their experiences reinforce their negative view of the legal system. Buhler and Tang report that while some tenants had positive tribunal experiences, many did not: landlords were able "to attack their character, lie about events, and generally intimidate them", and tribunal members only rarely put a stop to this behaviour.⁹⁹

⁹² See *e.g.* *SWT-84577-16 (Re)*, 2016 CanLII 44316 (ON LTB) (tenants move goods into self-storage facility after leaving premises due to habitability issues).

⁹³ Desmond, *supra* note 59 at 132.

⁹⁴ Zell & McCullough, *supra* note 18 at 25.

⁹⁵ Dej, *supra* note 3 at 190.

⁹⁶ Buhler & Korpan, *supra* note 50 at 1129; Wiseman *supra* note 16 at 187.

⁹⁷ Zell & McCullough, *supra* note 18 at 73.

⁹⁸ Buhler & Tang, *supra* note 13 at 216.

⁹⁹ *Ibid* at 225.

Zell and McCullough heard reports of tribunal members subjecting tenants to undignified, and sometimes even cruel, treatment at hearings.¹⁰⁰

Tenants are more likely to access legal assistance when the workers providing the help take steps to ensure tenants have a positive experience. Wiseman hypothesizes that tenant may not be using paralegals because they are not sufficiently user friendly.¹⁰¹ He contrasts paralegals with duty counsel and clinic lawyers, who proactively engage with tenants.¹⁰² Yet there is room for duty counsel to improve, too. In a study evaluating Ontario's tenant duty counsel program, Emily Paradis heard that some duty counsel lawyers could improve their customer service by using plain language, adopting a less abrasive tone and refraining from becoming so focused on the law that the human client is forgotten.¹⁰³

Buhler and Korpan suggest that empirical research on legal services for marginalized groups should evaluate their experience of the service: did they feel respected and as though they had been treated fairly?¹⁰⁴ This work reinforces the importance Dej puts on social inclusion—services designed without attention to promoting social inclusion can reinforce the exclusion of precariously housed individuals by dehumanizing them, degrading them, and feeding into a self-perpetuating cycle where they respond to such negative treatment by pre-emptively excluding themselves.¹⁰⁵

One way to center the residents' experience when developing housing solutions is to center residents in the groups doing this work.¹⁰⁶ For example, Dej calls on funding bodies to support and “promote research opportunities for people with lived experience of homelessness”.¹⁰⁷ Levesque notes a strength of the law clinic model in Ontario is that clients and former-clients are commonly included on the boards governing the clinics.¹⁰⁸ Zell and McCullough see an important role for collective organizing by tenants and report that renters found the peer support available through tenant groups to be “profound and empowering.”¹⁰⁹ A powerful initiative might be to organize residents with a range of different shelter experiences and empower them to collectively tackle the problem of housing precarity.

2. INCREASE ACCESS TO LEGAL HELPERS

Several authors argue that more needs to be done to ensure that residents can access legal representation. Buhler and Kaiser-Derrick report that most tenants accessing clinic services in Saskatoon had already been evicted and recommend that duty counsel be provided to tenants facing eviction to ensure they receive timely assistance.¹¹⁰ Ontario already has a tenant duty counsel program, provided through the Advocacy Centre for Tenants.¹¹¹ A recent evaluation of

¹⁰⁰ *Supra* note 18 at 75.

¹⁰¹ *Supra* note 16 at 186.

¹⁰² *Ibid* at 187.

¹⁰³ *Supra* note 15 at 72.

¹⁰⁴ *Supra* note 50 at 1119-20.

¹⁰⁵ *Supra* note 3 at 18, 186.

¹⁰⁶ Buhler & Kaiser-Derrick, *supra* note 14 at 66. Sarah Hamill points to the exclusion of tenant voices from Canadian social housing policy as a fundamental weakness of the sector, see Sarah E Hamill, “Caught between Deference and Indifference: The Right to Housing in Canada” (2018) 7 *Can J Hum Rts* 67 at 84.

¹⁰⁷ *Supra* note 3 at 194.

¹⁰⁸ *Supra* note 48 at 233.

¹⁰⁹ *Supra* note 18 at 89.

¹¹⁰ *Supra* note 14 at 65; see also Zell & McCullough, *ibid* at 96.

¹¹¹ Paradis, *supra* note 15 at 24; Zemans & Amaral, *supra* note 46 at 6.

the program recommended that it be expanded so that more tenants facing landlord applications could receive representation, but it also noted that more needed to be done to enable tenants to bring applications to address landlord breaches.¹¹² Buhler and Korpan suggest examining the impact of other legal services providers, such as students.¹¹³ Zeman and Amaral note that community legal workers, social workers and paralegals have an important role to play in legal service delivery.¹¹⁴ Wiseman cautions that licensing paralegals to practice residential tenancy law is only a first step towards providing tenants meaningful access to justice and more needs to be done to make paralegals an affordable and user-friendly option for tenants.¹¹⁵ Lund, Zell and McCullough recommend establishing a central hub aimed at providing tenants with access to information and relevant support programs.¹¹⁶

Residents in other shelter arrangements may also benefit from greater access to legal help, but the types of problems they face and the nature of the assistance they require may differ. For example, they may need assistance defending against tickets or criminal offences, getting bail or contesting mental health proceedings. They may face other problems that are less obviously legal, especially with respect to how the rules and policies governing shelters and related services are implemented. As Dylag noted, in the absence of formal legal proceedings, residents may fail to recognize that these problems are legal. Legal helpers could assist residents to recognize the legal aspects of these problems and help them to advocate for solutions.

3. COLLECT MORE DATA

One obstacle to reform is the lack of data available. Buhler and Korpan argue that research allows us to evaluate legal services, to identify how the services could be improved, and to justify and guide the allocation of resources.¹¹⁷ Zell and McCullough highlight numerous gaps in the data available on evictions, noting that “comprehensive, quantitative and localized” data is necessary if we wish to understand how to respond to and prevent evictions.¹¹⁸ Informal evictions, which take place without any legal proceedings, are particularly difficult to track.¹¹⁹ Likewise, shelter residents are governed by legal frameworks in ways that lack visibility because they do not result in formal proceedings. For example, Dej notes that staff threatened to commit disruptive residents as a way of controlling undesirable behaviors, however actual committals were rare.¹²⁰ But even when a formal legal process is engaged, a lack of publicly available information makes it difficult for researchers to study the outcomes. Decisions from committal proceedings may be inaccessible.¹²¹ Many residential tenancy tribunals either do not publish any decisions or only

¹¹² Paradis, *ibid* at 19.

¹¹³ *Supra* note 50 at 1133.

¹¹⁴ *Supra* note 46 at 23-25.

¹¹⁵ *Supra* note 16 at 188.

¹¹⁶ Lund, *supra* note 21 at 806-07; Zell & McCullough, *supra* note 18 at 93.

¹¹⁷ *Supra* note 50 at 1121.

¹¹⁸ *Supra* note 18 at 98, 106. They provide a list of topics they believe require further research starting, *ibid* at 107. See also Paradis, *supra* note 15 at 18-22 (recommending that the tenant duty counsel program, Landlord and Tenant Board and Legal Aid Ontario all collect data).

¹¹⁹ Buhler, *supra* note 35 at 73; Zell & McCullough, *ibid* at 106.

¹²⁰ *Supra* note 3 at 58.

¹²¹ Discussing Alberta’s mental health review panels see Erin Nelson, “Alberta’s Mental Health Review Panels: Accountable, Transparent Adjudication” (2022) 59:3 *Alta L Rev* 563 at 576-78.

publish a small number of them. Watson Hamilton describes this “lack of knowledge about how the law is applied in individual cases... [as] an additional structural barrier to access to justice.”¹²²

4. FOCUS ON SYSTEMIC AND STRUCTURAL CHANGE

A Complex Exile and the legal scholarship on residential tenancy law suggest that energy and resources should be redirected from individualized solutions to effecting structural and systemic change. Dej provides a number of examples of how different stakeholders can effect structural change: governments could implement poverty reduction measures and build affordable housing; non-profit organizations could develop programs that promote social inclusion; researchers and treatment providers could incorporate the expertise of individuals who have lived experiences of homelessness, mental health issues and addiction; and all actors could implement the Calls to Action in the Truth and Reconciliation Commission’s Final Report.¹²³ Dej worries that the medicalization of homelessness has diverted energy from structural change and towards individual therapy.

Residential tenancy law can individualize structural problems, by shifting the focus from poverty, discrimination and the lack of affordable housing to fights about the appropriate outcomes in individual cases. Buhler and Kaiser-Derrick acknowledge this risk but argue that providing representation on individual cases is still valuable.¹²⁴ Representing individual tenants is “meaningful both in solidarity with tenants’ everyday survival, and also as resistance, and witness, to unjust housing conditions and improper manifestations of power by landlords.”¹²⁵ And individual representation can effect systemic change. Buhler and Korpan offer that “the presence of lawyers may shape legal precedent, deter frivolous suits, provide education to judges, embolden clients to assert their rights in the future, and prevent judges from only hearing and favouring more powerful parties.”¹²⁶ Legal clinics can connect individual and collective struggles.¹²⁷ At the same time, there is a point at which work on individual case files consumes time and resources that might be better spent on efforts to effect systemic and structural change. Zeman, Amaral and Levesque note that the trade-off between these two types of work has become more acute because of funding cuts to legal clinics.¹²⁸

Individual representation can only go so far: law reform may be necessary. Buhler and Kaiser-Derrick argue that the residential tenancy legislation should be overhauled with the aim of addressing the power differential between landlords and tenants.¹²⁹ Lund, Zell and McCullough echo this recommendation and have argued specifically for strengthened notice and compensation provisions as well as mechanisms for enforcing compliance with the residential tenancy legislation.¹³⁰ Watson Hamilton identifies how governments could amend residential tenancy legislation to avoid compounding the harms suffered by domestic violence survivors.¹³¹ Koshan cautions that reforms made to residential tenancy legislation should be reviewed alongside related

¹²² Watson Hamilton, “Reforming Residential Tenancy Law”, *supra* note 26 at 250.

¹²³ For a complete list of Dej’s recommendations, see Dej, *supra* note 3 at 194-195.

¹²⁴ *Supra* note 14 at 62.

¹²⁵ *Ibid* at 65.

¹²⁶ *Supra* note 50 at 1132.

¹²⁷ Buhler & Kaiser-Derrick, *supra* note 14 at 66.

¹²⁸ *Supra* note 46 at 23; Levesque, *supra* note 48 at 235.

¹²⁹ *Supra* note 14 at 66.

¹³⁰ Lund, *supra* note 21 at 803, 806; Zell & McCullough, *supra* note 18 at 90.

¹³¹ “Reforming Residential Tenancy Law”, *supra* note 26 at 266-67.

pieces of legislation to ensure that any reforms do not create troublesome gaps, inconsistencies or conflicts.¹³²

Legal reforms could benefit emergency shelter residents, too. This process might be more challenging because the body of rules that govern them is more diffuse. But changes to criminal law, mental health law and municipal bylaws could all be important.¹³³ For example, in 2021, the City of Edmonton voted to stop the practice of ticketing people on transit for loitering.¹³⁴ The decision came following media coverage of and empirical research on how the tickets disproportionately impacted unhoused individuals.¹³⁵ A helpful step might be for researchers to map the disparate areas of law that govern residents in shelters and review them for how they impact the different components that comprise a home including relationships, safety, cleanliness, privacy, and personal property. In other words, it might be helpful to examine these rules as elements of housing law.

The legal system can only do so much. Housing insecurity is shaped by systems of power including “colonialism, racism, and sexism.”¹³⁶ Initiatives like housing first policies and developing affordable housing can address these root causes of housing insecurity.¹³⁷ Housing initiatives must be alive to the underlying structures that create power imbalances between landlords and tenants. Thus, Farha and Schwan argue for a gender-based analysis of housing policy.¹³⁸ Buhler and Kaiser-Derrick argue in favour of decolonizing housing policy.¹³⁹ Zell and McCullough argue that housing needs to be reconceptualized as human right rather than as a commodity.¹⁴⁰ There is also a place for collective action, including rent strikes, organizing tenants’ unions and coalition-building with other aligned groups.¹⁴¹

III. CONCLUSION

Residential tenancy law is commonly linked to housing precarity because evictions lead to homelessness. Zell and McCullough observe that, “most people who experience eviction do not

¹³² *Supra* note 28 at 545. Koshan makes this observation with respect to legislation impacting survivors of domestic violence in Alberta, including that province’s *Residential Tenancies Act*, RSA 2000 c R-17; however, it is advice that has broader application.

¹³³ On needed mental health law reforms, see Nelson, *supra* note 122 at 583-86.

¹³⁴ Chris Chacon, “Loitering tickets will no longer be handed out at Edmonton transit facilities” (8 July 2021) online: *Global News*: <<https://globalnews.ca/news/8014785/edmonton-loitering-tickets-transit-ets/>> [perma.cc/9FLF-BR3D].

¹³⁵ Student Legal Services of Edmonton, *supra* note 2.

¹³⁶ Buhler & Tang, *supra* note 13 at 214.

¹³⁷ Buhler & Kaiser-Derrick, *supra* note 14 at 66.

¹³⁸ Farha & Schwan, *supra* note 32 at 363.

¹³⁹ *Supra* note 14 at 66.

¹⁴⁰ *Supra* note 18 at 100. See also Emily Paradis, “If You Build It, They Will Claim: Rights-Based Participation and Accountability in Canada’s National Housing Strategy” (1 June 2018) Submission to the National Consultation on a Human Rights-Based Approach to Housing, online (pdf): *Maytree Foundation* <<https://maytree.com/wp-content/uploads/Paradis-submission-Rights-based-participation-and-accountability-1-June-2018.pdf>> [perma.cc/X3HS-LAXZ]; Hamill, *supra* note 106 at 91-93. On the difficulty of realizing a right to shelter, see Zion, *supra* note 58 at 101-107.

¹⁴¹ Jamie Shilton, “Who Owns the City? Pension Fund Capitalism and the Parkdale Rent Strike” (2021) 35 *J Law & Soc Pol’y* 1 at 16-20; August, *supra* note 21 at 991; Claire Brownell, “Renters across Canada are banding together to fight high housing costs and evictions” (8 January 2021) *Macleans* online: <www.macleans.ca/news/renters-across-canada-are-banding-together-to-fight-high-housing-costs-and-evictions/> [perma.cc/XC7S-GQAW].

become homeless. But at the same time, in the literature on homelessness, evictions are cited as one of the most common pathways to homelessness.”¹⁴² Several of the tenants interviewed by Buhler and Tang had travelled this path.¹⁴³

Reading Dej’s book alongside recent scholarship on residential tenancy law reveals that tenancy law is linked to housing precarity in ways that extend beyond the pathway from eviction to homelessness. Home is a nuanced idea that people experience in degrees. Social relations give people a sense of home in situations of extreme precarity including tent encampments and emergency shelters. Conversely, tenants with greater security of tenure may not experience the full benefits of home if their premises suffer from habitability issues, if they are subject to violence or surveillance or if their personal property is imperiled.

If we take seriously the idea that home is more than just shelter, that commitment would have important implications for what we ask our legal system to do. Residential tenancy legislation must safeguard a tenant’s peaceful enjoyment of their premises and it must guard against the unjustified termination of the tenancy. The statutes and policies governing emergency shelter residents need to be re-examined through the lens of housing. Law reform is needed, but attention must also be paid to how law is implemented. Already, tenants struggle to enforce existing rights and landlords breach their obligations with relative impunity. More resources are needed. Attention to the residents’ experiences is important. At the same time, the bigger picture must be kept in focus because without meaningful structural and systemic change, home will remain an elusive goal for too many people in the territory now called Canada.

¹⁴² Zell & McCullough, *supra* note 18 at 39.

¹⁴³ *Supra* note 13 at 228; see also Desmond, *supra* note 59 at 69.