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Law, Urban Space, and Precarious Property: The Governance of Poor People's Possessions

Nicholas Blomley

Alexandra Flynn

Marie-Ève Sylvestre

Nicholas Olson

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LAW, URBAN SPACE, AND PRECARIOUS PROPERTY: THE GOVERNANCE OF POOR PEOPLE'S POSSESSIONS

*Nicholas Blomley**

Alexandra Flynn†

Marie-Ève Sylvestre‡

Nicholas Olson§

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* Department of Geography, Simon Fraser University

† Allard School of Law, University of British Columbia

‡ Faculty of Law, University of Ottawa

§ J.D. Student, University of Victoria

INTRODUCTION

Law is not abstract and ungrounded, but is formed through, and productive of the spaces in which it exists. Such spaces are not abstract, but inherently social and political.¹ To fully understand the work of legal space, it is necessary to learn from those on the legal margins.² The geographies of real property law are, for most of us, taken for granted. The precariously housed, however, are forced to experience only the exclusionary territorialization of private property, without any compensatory right to territory of their own. They live the “Lockean hell”:³ not simply are they “under the power of others — to be dominated by them or dependent on them — in respect of where one may be,”⁴ but also they must negotiate the legal reality that “that there is nowhere that [they] are in charge of, nowhere that everyone else has no right to be without [their] leave.”⁵

Jeremy Waldron developed an influential analysis of space and law in this context. He notes that spaces in which the houseless can exercise their freedom, including fundamental freedoms such as the right to sleep without being disturbed by others, are hedged in by the territory of private property:

For the most part the homeless are excluded from *all* the places governed by private property rules, whereas the rest of us are, in the same sense, excluded from *all but one* (or maybe all but a few) of those places. That is another way of saying that each of us has at least one place to be in a country composed of private places, whereas the homeless person has none.⁶

The rules of private property are thus, for the houseless person, “a series of fences that stand between them and somewhere to be, somewhere to act.”⁷ While a powerful argument, we offer two supplements.

First, Waldron focuses on the liberty of the individual person, in relation to the spaces in which she is located. While this is clearly important, it misses one crucial dimension that is central to the person, but distinct: *personal possessions*. Like all of us, precariously housed people possess an array of belongings that serve multiple ends. Tents keep people dry, animals provide comfort and security, cell phones allow for interaction with others,

1. *See generally* TAYANAH O’DONNELL, DANIEL F. ROBINSON & JOSEPHINE GILLESPIE, *LEGAL GEOGRAPHY: PERSPECTIVES AND METHODS* 3–4 (2020); NICHOLAS BLOMLEY, *TERRITORY: NEW TRAJECTORIES IN LAW* (2022).

2. *See generally* ANDRE J. VAN DER WALT, *PROPERTY IN THE MARGINS* (2009).

3. Mike Davis, *Afterword: A Logic like Hell’s: Being Homeless in Los Angeles*, 39 *UCLA L. REV.* 325, 325–32 (1991).

4. Christopher Essert, *Property and Homelessness*, 44 *PHIL. & PUB. AFF.* 266 (2016).

5. *Id.* at 279–80.

6. Jeremy Waldron, *Homelessness and the Issue of Freedom*, 39 *UCLA L. REV.* 295, 300 (1991).

7. *Id.* at 302.

photo albums remind people of their loved ones. But because people are forced into legal spaces that they do not control, others may treat these belongings as obstructions, waste, ‘broken windows’, or monetary resource, and regulate accordingly.

Second, to focus only on absolute homelessness, in which people are forced into public space, is to miss the fact that the unhoused move between *multiple* spaces, that are both public and private, including sidewalks, parks, shelters, transitional housing, storage facilities, rooming houses, single-room accommodations, and other insecure rental housing. In all cases, people’s relationship to such spaces is legally precarious.⁸ In this sense, Waldron’s fundamental insight regarding title while correct, needs to be nuanced. Each of these spaces has its own regulatory logic, tied to distinctive property rules, such as landlord-tenant law, or municipal law.

Waldron’s analysis, therefore, can be usefully supplemented and extended. We do so by building on other legal geography studies that animate the effects of bylaws, laws, and practices on vulnerable people⁹ and by drawing from our current research project.¹⁰ Based in a number of mid-sized and large cities in Canada, the project builds on a detailed review of statutes, bylaws, and judicial decisions, together with interviews with precariously housed people and those private and public actors who regulate the spaces they move through. While scholars have addressed particular dimensions of this issue (such as animals owned by houseless people),¹¹ there is a lack of research at the scale of analysis we adopt.

A focus on objects, rather than persons, reveals hitherto overlooked power relations operative through law. Notionally impersonal and equitable, governing through things can become deeply oppressive and punitive, when differential property relations and access to space are foregrounded. When viewed in combination, these regulatory logics can create a pervasive and intrusive regulatory matrix, governing both people, and their possessions, sometimes independently. This matrix is often experienced by poor people as ambiguous, discretionary, and flexible, creating unpredictability and uncertainty for those governed by it. Moreover, remedies are often unavailable, or oblivious to the fact that poor people also carry their

8. Nicholas Blomley, *Precarious Territory: Property Law, Housing and the Social Order*, ANTIPODE 36, 26–37 (2019).

9. See generally MARIE-ÈVE SYLVESTRE, NICHOLAS BLOMLEY & CÉLINE BELLOT, *RED ZONES: CRIMINAL LAW AND THE TERRITORIAL REGULATION OF MARGINALIZED PEOPLE* (2020).

10. See Nicholas Blomley, Alexandra Flynn & Marie-Ève Sylvestre, *Governing the Belongings of the Precariously Housed: A Critical Legal Geography*, 16 ANN. REV. L. & SOC. SCI. 165, 175 (2020).

11. See generally Jennifer Labrecque & Christine A. Walsh, *Homeless Women’s Voices on Incorporating Companion Animals into Shelter Services*, 24 ANTHROZOËS 79 (2011).

belongings as they move from one space to another. Regulations are often complaint driven, activated arbitrarily at the discretion of the regulator, and reliant upon evaluative judgments that are easily prejudicial and ill-informed.

We begin to develop this argument by outlining the multiple legal spaces that the precariously housed must negotiate (Part I)¹², then documenting the widespread seizure and destruction of people's belongings in these spaces (Part II)¹³, before noting the lack of available remedies (Part III).¹⁴ Reflecting on these findings, we then argue that the seizure of precariously housed people's belongings maintains vulnerability, exacerbating poverty (Part IV)¹⁵ while also perpetuating ongoing colonial relations (Part V).¹⁶ Finally, we reflect briefly on the different ethical and analytical insights that come from a focus on belongings (Part VI).¹⁷

I. PRECARIOUSLY HOUSED PEOPLE MUST NEGOTIATE MULTIPLE LEGAL SPACES

Whether it is on the streets or in parks, in shelters or couch surfing, in a rooming house or single-room occupancy, precariously housed people lack access to safe, adequate, and secure places to keep their personal belongings. The laws, bylaws, and less-formal rules that govern public and private spaces, combined with the lack of affordable and adequate housing (as well as lack of storage facilities), creates the reality where the possessions of precariously housed people and people who rely on public space are constantly at risk of theft, seizure, impound, and destruction by governmental and non-governmental actors alike.¹⁸ The lack of secure places to keep belongings means that many people are forced to move their personal property daily to avoid impound or theft.

For people forced to shelter outside, the category of space they occupy, whether public or private, and the formal and informal rules that govern that space, has implications for the security of their personal belongings. Public land in urban centers is regulated through municipal by-laws specific to parks, streets, and in some jurisdictions, vacant city-owned property, as well as through legislation that governs unclaimed property.¹⁹ Private land and personal property on private land is regulated through trespass legislation, municipal property maintenance bylaws that outline the public

12. *See infra* Part I.

13. *See infra* Part II.

14. *See infra* Part III.

15. *See infra* Part IV.

16. *See infra* Part V.

17. *See infra* Part VI.

18. *See* Blomley et al., *supra* note 10, at 167.

19. *See id.* at 170.

responsibilities of private property owners, and common law principles.²⁰ Cases like *R. v. Tanton*²¹—where bylaw officers seized the shopping cart and personal belongings of an unhoused individual from private property where it was stored with permission — demonstrate the ways that the possessions of unhoused people are targeted by police and bylaw on both public and private property. This is arguably still the case, despite the court’s determination that it is a violation of a person’s constitutional rights for police or bylaw to seize belongings consensually stored on private property. Taken together, the overlapping regulatory schemes governing public and private space create the reality where unhoused people have functionally no place they can safely leave their belongings without risk of impoundment or disposal.

For example, shelters appear to offer stability and security for persons and possessions. However the fact that shelters offer minimal secure storage²² (and at times no daytime storage capacity whatsoever)²³ and are exempt from landlord-tenant legislation,²⁴ means shelter-users’ rights differ little from those they have on the streets. Residents are at risk of theft and risk of losing belongings to shelter regulations and rules, and are often doubly at risk by being forced to rely on public space and its related laws and bylaws.²⁵ Shelter standards frameworks which include general storage policies and policies regarding resident belongings upon client discharge, lack the teeth of standard legislation and bylaws to ensure shelter residents are guaranteed adequate storage and rights mechanisms.

Human rights claims have arisen regarding the lack of storage in shelters, such as *Pressello v Union Gospel Mission*,²⁶ where a houseless complainant argued that a lack of storage amounted to discrimination based on his disability. The human rights claim was dismissed, however, because the shelter was able to demonstrate that their code of conduct stated that daytime storage was not available, that items left behind would be discarded, and that

20. See BLOMLEY, *supra* note 1, at 11–13.

21. [2006] B.C.P.C. 0226 (Can.).

22. See *Gunn v. The Governing Council of the Salvation Army in Canada*, 2019 B.C.C.R.T. 1082 (Can.); *Prince George (City) v. Johnny*, 2022 B.C.S.C. 282 (Can.); *Black et al. v. City of Toronto*, 2020 O.N.S.C. 6398 (Can.).

23. See *Pressello v. Union Gospel Mission*, 2017 B.C.H.R.T. 49 (Can.).

24. RESIDENTIAL TENANCY POLICY GUIDELINE: 46 TRANSITIONAL HOUSING, SUPPORTIVE HOUSING, HEALTH FACILITIES, AND REHABILITATIVE AND THERAPEUTIC HOUSING 46-1 (2023), <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl46.pdf> [<https://perma.cc/3M97-PMCW>]

25. See, e.g., EMERGENCY SHELTER PROGRAM SAMPLE POLICIES AND PROCEDURES FOR EMERGENCY SHELTERS 31, <https://www.bchousing.org/publications/Emergency-Shelter-Program-Policies-Procedures.pdf> [<https://perma.cc/7MXX-Y8KH>]

26. 2017 B.C.H.R.T. 49 (Can.).

the storage they did offer was for a substance use treatment program separate from the shelter program.²⁷

Further, while people in precarious rental housing situations technically have secure places to keep their possessions and benefit from the protections afforded to them through landlord-tenant legislation, broad regulatory gaps and power imbalances between landlord and tenant leave them vulnerable to the loss of personal property. Tenants of rooming houses and single-room occupancies, some of the only affordable options in major urban centers, are protected by landlord-tenant legislation in most jurisdictions.²⁸ However, misaligned statutes between different levels of government often leave tenants of both types of housing unsure of what their rights are, and vulnerable to power imbalances between landlord and tenant. In the City of Toronto, for example, rooming house tenants may live in a district where rooming houses are illegal according to municipal bylaw yet covered under provincial landlord-tenant legislation, leaving tenants unsure which regulatory body could best address tenancy concerns without risking their tenancy, and in turn, the security of their belongings.²⁹

II. ROUTINE SEIZURE AND DESTRUCTION OF BELONGINGS OCCURS BY MULTIPLE ACTORS

A broad range of state legislation exists that essentially permits government workers, landlords, and housing and shelter employees to seize or destroy belongings if they are determined to be in the wrong place at the wrong time.³⁰ For people sheltering outside, these types of laws manifest as street sweeps, daily displacements, and in the case of larger encampments, through court ordered injunctions or wider scale enforcement. For those in shelters, this is done through program or shelter agreements that limit shelter providers' responsibility and permit them to dispose of personal property in

27. *See id.*

28. *See, e.g.*, LANDLORDS, TENANTS, OCCUPANTS AND RESIDENTIAL TENANCIES INTERPRETATION GUIDELINE 21 (2022), <https://tribunalsontario.ca/documents/ltb/Interpretation%20Guidelines/21%20-%20Landlords%20Tenants%20Occupants%20and%20Residential%20Tenancies.html> [<https://perma.cc/38LL-CRNC>]

29. *See* PHILIPPA CAMPSIE, ROOMING HOUSES IN TORONTO, 1997–2018 45–55, 61–70 (2018); Lisa Freeman, Making Room: The Geography of Rooming House Regulation in Toronto (June 2013), (Ph.D. dissertation, University of Toronto) <https://tspace.library.utoronto.ca/handle/1807/68935> [<https://perma.cc/F6T8-FJZX>]; Lisa Freeman, *Governed through Ghost Jurisdictions: Municipal Law, Inner Suburbs and Rooming Houses*, 41 INT'L J. URB. & REG'L RSCH. 298, 314 (2017).

30. *See, e.g., Tanton*, [2006] B.C.P.C. at para. 14; *see also* RESIDENTIAL TENANCY REGULATION B.C. Reg. 477/2003 (2022).

certain circumstances.³¹ For those precariously housed in rental agreements or accommodations not covered by landlord-tenant legislation, complicated municipal and provincial regulatory worlds mean that people are left vulnerable to loss of tenancy and loss of belongings. The impacts of the statutes, bylaws, and rules in each of these settings are best understood when considering the visibility of people experiencing poverty, the discretion and stigma demonstrated by regulators, and the lack of transparency in the enforcement of the regulations.

Enforcement agencies are afforded discretion when determining which personal possessions are retained or spared, and which are impounded or destroyed. Words and phrases such as “obstruction,” “garbage,” “offensive,” “unsafe,” concepts like having no “market value,” are codified in landlord-tenant legislation and municipal bylaws.³² These laws permit government enforcement, private landlords, and non-profit shelter providers to make value judgements regarding one’s personal belongings without transparency or accountability regarding how those determinations are made. Paired with the stigma that exists towards people experiencing poverty and their belongings, this discretion leads to people’s possessions being destroyed based on outsider perspectives that may not take into account sentimental, emotional, survival, or other individual reasons for holding onto certain possessions.³³

Finally, the lack of clarity, consultation, and transparency in periods of enforcement, transition, or decampment has impacts on people and their personal belongings. These periods are often characterized by lack of clear communication regarding what rights a person has to their belongings, how much they are able to take with them, and what their rights are in the new location.³⁴ Similarly, residents in precarious accommodations such as rooming houses and shelters also often experience lack of clarity regarding whether their tenancy is covered by landlord-tenant legislation or of the most appropriate place to address complaints and concerns, meaning they are unaware of whether their belongings are protected by the few provisions meant to protect tenants property.

31. See Gunn [2019] B.C.C.R.T., para. 10; see also Pressello [2017] B.C.H.R.T., para. 16.

32. See e.g., CITY OF VICTORIA PROPERTY MAINTENANCE BYLAW No. 07-050 (Feb. 1, 2015); CITY OF ABBOTSFORD GOOD NEIGHBOUR BYLAW No. 1256-2003 (Aug. 31, 2020); CITY OF OTTAWA PROPERTY STANDARDS BYLAW No. 2013-416 (2017).

33. See Blomley et al., *supra* note 10, at 166, 174.

34. See Brenna Owen, *Nearly 600 Campers Moved into Temporary Housing amid COVID-19: B.C. Government*, CTV NEWS (May 21, 2020, 8:15 AM), <https://vancouverisland.ctvnews.ca/nearly-600-campers-moved-into-temporary-housing-amid-covid-19-b-c-government-1.4948366> [https://perma.cc/8A9D-MTE4].

III. PRECARIOUSLY HOUSED PEOPLE LACK MEANINGFUL AND ACCESSIBLE REMEDIES

Precariously housed and unhoused people have few available remedies when their belongings are seized or destroyed by government actors or other entities. Remedies that do exist — such as processes for recovering impounded belongings, legal mechanisms for compensation of damaged or destroyed belongings, or attempts at securing broader systemic changes — lack transparency, accessibility, include significant barriers, or provide no tangible or immediate remedy to the initial loss of belongings.³⁵

Depending on the circumstances, location, and jurisdiction, there may be processes to recover seized belongings that have not yet been destroyed. Tenancies offer the most protection, generally requiring the landlord to hold a tenant's belongings determined to be abandoned or in the event of an eviction, with the tenant able to approach the local landlord-tenant board if they have difficulties accessing their belongings.³⁶ Precariously housed and unhoused individuals living in accommodations such as shelters or some rooming house situations have no direct legal recourse comparable to landlord-tenant legislation to recover belongings and therefore must negotiate directly with the shelter provider or landlord, or pursue other legal avenues such as private claims in the tort of conversion.³⁷ Legislation that is specific to abandoned or unclaimed property does not include methods for the original owner to claim or recover their belongings, and in some cases even waives government liability for the disposal of the property.³⁸

For items seized in street sweeps or displacement of encampments, lack of transparency means that people are often unaware if their belongings have been impounded or destroyed or how to locate their belongings after the

35. People have described their experiences with Vancouver sanitation workers engaging in street sweeps, taking their possessions, and the difficulty in getting their possessions back. Jen St. Denis, *'Unprofessional and Disrespectful': Walker among Items Taken from Homeless People*, TYEE (Jan. 20, 2021), theyee.ca/News/2021/01/20/Walker-Among-Items-Taken-From-Homeless-People-Downtown-Eastside [https://perma.cc/YE74-DF3P]. In San Francisco, the Stolen Belonging project is highlighting the immediate disposal of people's belongings after these sweeps, such that it ends up becoming impossible to get one's belongings back. See STOLEN BELONGING, www.stolenbelonging.org [https://perma.cc/VP4J-CJUS] (last visited Jan. 16, 2023).

36. In cases where landlord-tenant legislation does not apply, program-users would have to rely on arguably less accessible forms of mediation such as small claims court or human rights tribunals, depending on the issue. See e.g., *Semenoff v Many Ways Home Hous. Soc'y* 2021 B.C.C.R.T. 362; *Chehresaz v. Khalesi*, 2015 CanLII 8736 (ON SCSM).

37. See *Multi-Tenant House Owners & Operators: Where Multi-Tenant Houses Are Permitted*, CITY OF TORONTO, www.toronto.ca/community-people/housing-shelter/multi-tenant-rooming-houses/multi-tenant-house-owners-operators/ [https://perma.cc/DTP4-CJAY] (last visited Mar. 26, 2022).

38. See Police (Disposal of Property) Regulation, B.C. Reg. 87/91 s. 9 (Can.).

fact.³⁹ If the items are able to be retrieved, street and traffic bylaws in some jurisdictions require the owner sign an undertaking agreeing not to place it on a street or sidewalk again, in addition to paying a fine.⁴⁰ In instances when people have been able to recover their belongings from city staff, people have reported that belongings are often missing or damaged. For example, during the eviction of a tent city in Port Alberni, residents' belongings were reportedly put in a small garbage truck, and while some of the belongings were later returned to the organizers and volunteers, much was not salvageable.⁴¹ In Toronto, city workers broke down tents and put them into garbage trucks while clearing out an encampment.⁴²

When a person's belongings are seized and subsequently destroyed, people have the option of seeking compensation through legal avenues, such as tribunals or small claims civil court.⁴³ Landlord-tenant tribunals and dispute resolution systems allow tenants to make a claim for belongings destroyed by a landlord illegally, giving tenants a possibility of compensation for destroyed belongings.⁴⁴ Although private law civil claims can lead to compensation for damaged or destroyed belongings, the actions can be lengthy, time consuming, and present significant accessibility issues for unhoused and precariously housed people who often already have limited resources and access to justice issues.⁴⁵ Human rights tribunals in Canada can grant monetary and non-monetary remedies to individuals if they experience discrimination on a protected ground (i.e. age, race, disability, gender identity) or protected social area (i.e. housing, employment).⁴⁶ However, as social conditions such as poverty is not recognized as a

39. See MEENAKSHI MANNOE, #STOP THE SWEEPS: ENDING CYCLICAL DISPLACEMENT AND CRIMINALIZED POVERTY IN VANCOUVER 34 (2022) (asking for clear instructions on how to recover seized belongings).

40. See City of Victoria Streets and Traffic Bylaw No. 09-079, s. 102(1), (4).

41. Susie Quinn, *Port Alberni Tent City Evicted Again*, VANCOUVER ISLAND FREE DAILY (Nov. 24, 2020), <https://www.vancouverislandfreedaily.com/%20news/port-alberni-tent-city-evicted-again> [https://perma.cc/Z68C-MLJN].

42. See *Toronto Police Make Several Arrests After Clashes at Lamport Stadium During Encampment Clearing*, CBC NEWS TORONTO (May 19, 2021), www.cbc.ca/news/canada/%20toronto/lamport-encampment-cleared-1.6032803 [https://perma.cc/VB3U-Y3EK].

43. See *Making a Claim with the CRT: Small Claims*, CIVIL RESOLUTION TRIBUNAL (Mar. 11, 2022).

44. See e.g., TNT-43402-13-RV (Re), 2015 CanLII 22370 (ON LTB) (where tenant was evicted, not given chance to collect property, and thus awarded compensation); see also TNL-97174-17-RV (Re), 2018 CanLII 86105 (ON LTB) (landlord sold, retained, or disposed of property before 72 hours elapsed after eviction or did not make property available to be retrieved and tenant was awarded compensation).

45. See MANNOE, *supra* note 39, at 40.

46. See *Semenoff v Many Ways Home Hous. Society*, 2021 B.C.C.R.T. 362; *Chehresaz v Khalesi*, 2015 CanLII 8736 (ON SCSM).

protected grounds in much of the country,⁴⁷ precariously housed and unhoused people would only be able to receive compensation for their destroyed belongings if they could prove that they were discriminated against based on recognized grounds, such as race, disability, or gender identity.⁴⁸ Small claims courts also offer the potential for compensation for belongings destroyed by governmental or non-governmental actors.⁴⁹ Small claims processes generally require evidence to back the claim, which could be difficult to provide in moments of crisis or when people's personal belongings are seized in their entirety. Although private law civil claims can lead to compensation for damaged or destroyed belongings, the actions are not always the most efficient means of recovery. This is because they can be lengthy, time consuming, and present significant accessibility issues for unhoused and precariously housed people who often already have limited resources and access to justice issues.⁵⁰

When precariously housed and unhoused people's belongings are seized and destroyed, they also have the option of pursuing remedies that lead to more substantial changes, rather than only compensation or the return of specific belongings. Police complaints could result in anything from policy changes,⁵¹ to an officer's reprimand, suspension, or dismissal,⁵² to the allegations being determined as unsubstantiated and thus the case being closed without remedy.⁵³ Complaints or claims about the conduct of bylaw officers or other city staff or the policies that govern them, however, generally lack similar formal processes as police complaint mechanisms.⁵⁴

47. With the important exception of Quebec's Charter of Human Rights and Freedoms, s. 10.

48. See MANNOE, *supra* note 39, at 39.

49. See *Lost, Stolen or Missing Property*, B.C. CIVIL RESOL. TRIBUNAL, <https://explore.civilresolutionbc.ca/servlet/servlet.FileDownload?file=0154t0000009L3zAAE> [<https://perma.cc/B8WB-HG7U>] (last visited Feb. 12, 2023); see also *Damage to Personal Belongings*, B.C. CIVIL RESOL. TRIBUNAL, <https://explore.civilresolutionbc.ca/servlet/servlet.FileDownload?file=0154t0000009L3yAAE> [<https://perma.cc/8GFD-A7P6>] (last visited Feb. 12, 2023); *Small Claims Court: Suing Someone*, ONTARIO, www.ontario.ca/page/suing-someone-small-claims-court [<https://perma.cc/B27T-AM3R>] (last visited Feb. 12, 2023).

50. See MANNOE, *supra* note 39, at 40.

51. See *About Us*, OFF. OF THE POLICE COMPLAINT COMM'R, opcc.bc.ca/about-us/# [<https://perma.cc/WC28-4NBZ>] (last visited Feb. 10, 2023).

52. See *Hearings*, OFF. INDEP. POLICE REVIEW DIR., www.oiprd.on.ca/hearings/ [<https://perma.cc/5DJQ-GL4H>] (last visited Feb. 10, 2023).

53. See *Complaints*, OFF. INDEP. POLICE REVIEW DIR., www.oiprd.on.ca/complaints/investigations/ [<https://perma.cc/J5LY-EKBE>] (last visited Feb. 12, 2023).

54. See *A Human Rights Review of Toronto's Multi-Tenant Homes Policies*, MAYTREE (Nov. 11, 2020), <https://maytree.com/publications/human-rights-review-toronto-mth-policies/> [<https://perma.cc/H59C-4CHH>].

If the person making the claim is not satisfied with the outcome, they could pursue legal action or a complaint to the local or provincial ombudsperson.⁵⁵ Ombudsperson/ombudsman investigations can be lengthy and are only considered if no other complaints process is available, or if other avenues have been exhausted.⁵⁶ Constitutional challenges could allow for more rights-based reviews of legislation and procedures that lead to the destruction of people's belongings.⁵⁷ However, these are years-long processes, are limited to government actions (i.e. not applicable to non-profit shelter providers), would not amount to recovery or compensation for lost belongings, and as such are practically and financially inaccessible for many people.⁵⁸

Of the limited remedies that exist to recover their belongings, receive compensation, or pursue systemic change, virtually all of them are functionally inaccessible for precariously housed and unhoused people. Some processes would require attending government offices in-person, meaning unhoused people would be required to either leave their belongings behind and risk further seizure or carry all their belongings with them to ensure their safety.⁵⁹ Some processes involve initiating and following up via internet or phone and require the ability to charge a mobile phone or require a person to make an appointment ahead of time and to provide government-issued photo identification.⁶⁰ In many jurisdictions, "abandoned" personal property or property seized by city staff in street sweeps or encampment closures must be recovered at police stations or from bylaw enforcement. Due to previous experiences of trauma, many racialized and marginalized community members may not feel safe attending a police station or

55. See *Frequently Asked Questions*, LICENSE INSPECTORS' & BYLAW OFFS. ASS'N, www.bylawbc.ca/faq.htm [<https://perma.cc/M3M6-9DKR>] (last visited Feb. 10, 2023); see also, e.g., Alex Kruger, *Toronto's Ombudsman to investigate city's clearing of encampments*, OMBUDSMAN TORONTO (Sept. 28, 2021), www.ombudsmantoronto.ca/Publications/News-Releases/News-Folder/Toronto-s-Ombudsman-to-Investigate-City-s-Clearin [<https://perma.cc/DT33-P8A7>] (stating the Toronto Ombudsman's decision to investigate the City's clearing of encampments).

56. *FAQs*, OMBUDSPERSON OF B.C., bcombudsperson.ca/faq/ [<https://perma.cc/F5JG-CUM8>] (last visited Feb. 12, 2023)

57. See *Victoria (City) v. Adams*, [2009] B.C.C.A. 563 (Can.) (holding that a municipal bylaw violated the rights to life, liberty, and security of the person of unhoused people, leading to amended bylaws allowing people to erect shelters overnight).

58. See *Bamberger v Vancouver* (Bd. of Parks and Recreation), 2022 B.C.S.C. 49, 168 (Can.) (acknowledging the "severe practical and financial barriers" to *Charter* challenges).

59. See, e.g., Nicholas Olson & Bernadette Pauly, *'Forced to Become a Community': Encampment Residents' Perspectives on Systemic Failures, Precarity, and Constrained Choice*, 3 Int'l J. on Homelessness 1, 8 (2022).

60. See *Collect my property*, HAMILTON POLICE SERV. (June 3, 2022), hamiltonpolice.on.ca/how-to/collect-my-property [<https://perma.cc/WM44-MV5C>].

contacting other enforcement entities to recover belongings.⁶¹ Further barriers exist for people with precarious migration status,⁶² or people with outstanding criminal or civil charges who may fear being reported when accessing certain remedies.⁶³

The lack of meaningful and accessible remedies means that impoundment and disposal of people's belongings by governmental actors is effectively the same, and has the same impacts, as theft by other third parties.⁶⁴ The seizure and disposal of belongings without the ability to get them back, or without access to compensation if the actions were done contrary to the statute or bylaw, means that the victim is made more vulnerable as a result. While, in theory, there are some remedies available for people whose belongings have been seized or destroyed by government actors, in practice these processes are largely inaccessible, lengthy, and rarely amount to the return of a person's belongings.⁶⁵

IV. THE TAKING AND DESTRUCTION OF POOR PEOPLE'S BELONGINGS PERPETUATES VULNERABILITY AND POVERTY

Objects, much like spaces, are more easily regulated because they are not persons. However, they are indelibly linked to personhood. The impacts of statutes, bylaws, and rules that target precariously housed and unhoused people through impoundment, disposal, and theft of their belongings is the cause of harm, trauma, and intensified marginalization.⁶⁶ The effects of these laws are counterproductive to their presumed intended goals of deterring certain behaviors in public space and addressing visible homelessness; instead, these laws criminalize poverty, perpetuating and exacerbating experiences of homelessness. Not only are these various statutes, bylaws, and rules financially unsustainable for people who are forced to continue to purchase or source new belongings, and for the organizations and branches of government that offer material and financial

61. See, e.g., Angela Onwuachi-Willig & Anthony V. Alfieri, Racial Trauma in Civil Rights Representation, 120 MICH. L. REV. 1701, 1725–26 (2022).

62. See generally Nancy Avitabile, Edna Erez, Robert C. Davis, *Access to Justice for Immigrants Who are Victimized: The Perspectives of Police and Prosecutors*, 12 CRIM. JUST. POL'Y REV. 183 (2001).

63. See generally Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1234 (2016).

64. See BERNADETTE ATUAHENE, *WE WANT WHAT'S OURS: LEARNING FROM SOUTH AFRICA'S LAND RESTITUTION PROGRAM* 26 (Oxford University Press, 2014).

65. See MANNOE, *supra* note 39, at 27.

66. Yale D. Belanger et al., *Homelessness, Urban Aboriginal People, and the Need for a National Enumeration*, 2 ABORIGINAL POL'Y STUDS. 4, 11 (2013).

support,⁶⁷ they actively cause harm to those people frequently subjected to their enforcement. Interconnected physical and mental harms caused by the loss of belongings intensify and lengthen people's experiences of homelessness and marginalization by impeding their ability to secure stable arrangements such as shelter, employment, food, and health services.⁶⁸ The seizure and destruction of poor people's belongings is thus counterproductive, unsustainable, and actively perpetuates the vulnerability of people already experiencing poverty and housing precarity.

When precariously housed and unhoused people have their personal belongings seized and destroyed by government actors it increases their experiences of marginalization through physical harm. The loss of critical survival belongings such as tents, sleeping bags, medication, and food can have significant impacts on one's physical wellbeing by exacerbating health issues.⁶⁹ The loss of mobility aids,⁷⁰ harm reduction supplies and naloxone,⁷¹ and both legalized and criminalized substances can often be life-threatening, increasing risk of injury, disease transmission, withdrawal, and overdose. Similarly, some people may forego important medical treatment out of fears their belongings would be seized when they were seeking medical care.⁷² The impoundment and destruction of people's personal belongings also impact people's ability to earn an income and sustain themselves. Bylaws that target the collection of waste and recyclables or the use of shopping carts⁷³ can impact the financial autonomy of people who engage in recovery of recyclable and other sellable items to generate an income. Loss of phones, government-issued ID, legal and medical documents and laboratory requisitions, and art supplies are other examples of items taken by government actors that impact people's ability to survive, access services, deal with legal matters, and generate income, all contributing to physical harms and subsequent increased vulnerability.⁷⁴

67. See Jen St. Denis, 'Unprofessional and Disrespectful': Walker Among Items Taken from Homeless People, TYEE (Jan. 20, 2021), <https://thetyee.ca/News/2021/01/20/Walker-Among-Items-Taken-From-Homeless-People-Downtown-Eastside> [<https://perma.cc/NC7T-UTH3>].

68.

69. See MANNOE, *supra* note 39; see also Joshua Daniel Phillips, *From Losing Everything to Finding Community: How Homeless People Narrate Their Lived Experiences* (2014) (Ph.D. dissertation, Dep't of Speech Comm'n in the Graduate School, Southern Illinois University Carbondale).

70. See St. Denis, *supra* note 67.

71. See Quinn, *supra* note 41.

72. Nicholas Blomley, et al., *Governing the Belongings of the Precariously Housed: A Critical Legal Geography*, 16 ANN. REV. L. & SOC. SCI. 165, 168 (2020).

73. City of Ottawa Shopping Cart Bylaw No. 2013-252, ss 13-15.

74. See MANNOE, *supra* note 39, at 30-1.

There is an intimate connection between the physical and mental harms caused by the seizure and disposal of the personal belongings of precariously housed and unhoused people. The loss of survival supplies and shelter, such as through the seizure of a tent or impound of a vehicle used for sleeping, directly impacts a person's physical wellbeing, and relatedly, impacts their feelings of safety of having a relatively stable place to sleep, live, and shelter from the elements.⁷⁵ The impoundment and destruction of any belongings with emotional value, whether or not they are integral to one's immediate physical survival, can also have lasting mental, emotional, and psychological impacts through feelings of hopelessness, constant stress, alienation, and community breakdown.⁷⁶ This can be seen in the loss and seizure of pets, cellphones, family photos and heirlooms, cultural objects, personal journals and art, or a deceased relative's ashes.⁷⁷ Regardless of what the object is, the loss of one's belongings can have lasting mental and psychological impacts and threaten that person's sense of identity, security, and autonomy, making precarious people even more vulnerable.⁷⁸

Just as the destruction of personal belongings has impacts on a person's mental wellbeing due to the actual loss of the physical object, the stigmatization informing that process also impacts one's emotional, mental, and psychological well-being. Statutes and bylaws that rely on the discretion of the enforcement entity in determining whether belongings are "unsightly," "deleterious to the neighbourhood," "unmarketable" or filth, junk, or refuse permit enforcement entities to make value judgments on a person's belongings, and by association on the person themselves and their ability to make decisions for themselves.⁷⁹ This contributes to further marginalization through both destroying belongings but also through stigmatization of their existence in public space. Further, this discretion afforded to officials is likely to disproportionately affect the possessions of people at the intersections of poverty, race, disability, and colonial trauma who are, because of their overlapping identities, considered more expendable and less worthy of respect.

Recent judicial and institutional recognition of the difficulties precariously housed and unhoused people face regarding the security of their

75. See *Vancouver (City) v. Wallstam*, 2017 B.C.S.C. 937 (Can.), para. 61.

76. See *MANNOE*, *supra* note 39, at 26.

77. See *id.* at 30–31; see also Wawmeesh Hamilton, *VPD Accused of Losing Indigenous Mother's Ashes During Downtown Eastside Street Cleanup*, CBC NEWS (May 26, 2021), www.cbc.ca/news/canada/british-columbia/vpd-accused-losing-indigenous-mother-s-ashes-1.6041188 [<https://perma.cc/R53L-C7ZY>].

78. See Blomley et al., *supra* note 10, at 174.

79. See, e.g., Barret Katuna et al., *Rules vs. Rights? Social Control, Dignity, and the Right to Housing in the Shelter System*, 9 SOC'YS WITHOUT BORDERS 25 (2014).

belongings could be the first indication of an evolving legal landscape around people experiencing homelessness and their relationship to their personal property. Recent court decisions in Canada have acknowledged the “substantial hardship” experienced by people forced to move their belongings daily,⁸⁰ and that dismantling an encampment without giving reasonable notice to the residents to collect their belongings amounted to “serious harm on vulnerable people.”⁸¹

V. THE DISPOSSESSION OF PRECARIOUSLY HOUSED PEOPLE PERPETUATES COLONIALISM

Statutes, bylaws, and rules that permit officials to seize and destroy the belongings of precariously housed and unhoused people must also be considered in the context of the historic and ongoing colonialism and displacement of Indigenous people across the continent, not the least because of Indigenous people’s overrepresentation in unhoused populations. Canada’s history of settler colonialism has included laws and policies with the ideology of removal, displacement, dispossession, and genocide of thousands of unique Indigenous communities.⁸² Canada’s major urban centers are “crucial sites of displacement” of what were often historic Indigenous communities.⁸³ This seizure of land and resources, and simultaneous displacement of Indigenous communities, is a purposeful tool of advancing colonial economic objectives.⁸⁴

Housing precarity is directly connected to colonialism and the ongoing displacement of Indigenous peoples. In part because of this violent legacy, Indigenous peoples are disproportionately represented in encampment populations.⁸⁵ As Jesse Thistle explains:

Racism and discrimination aimed at Indigenous peoples are firmly entrenched in Canadian society, producing impenetrable systemic and societal barriers, such as a lack of affordable and appropriate housing, insufficient and culturally inappropriate health and education services, irrelevant and inadequate employment opportunities, and a crumbling infrastructure in First Nations, Inuit, and Métis communities. The fiduciary abandonment of Indigenous communities by the state, which has greatly

80. *Bamberger v. Vancouver (Board of Parks and Recreation)*, 2022 B.C.S.C. 49 (Can.), para. 194.

81. *Prince George (City) v Johnny*, 2022 B.C.S.C. 282 (Can.), para. 46.

82. See SHIRI PASTERNAK ET AL., *Canada Is a Bad Company*, in *DISARM, DEFUND, DISMANTLE: POLICE ABOLITION IN CANADA* (2022).

83. Doug Anderson & Alexandra Flynn, *Rethinking “Duty”: The City of Toronto, a Stretch of the Humber River, and Indigenous-Municipal Relationships*, 58 *ALTA L. REV.* 107, 112 (2020).

84. See *id.*

85. See *Prince George (City) v. Stewart*, 2021 B.C.S.C. 2089 (Can.) at 69–70.

contributed to Indigenous homelessness, is manifested by chronic underfunding by the federal, provincial, and territorial governments of Canada.⁸⁶

Contemporary laws that displace precariously housed and unhoused individuals have their roots in these colonial policies of displacement, seizure, and extraction. While contemporary municipal bylaws that restrict sheltering in parks or on sidewalks are not exclusively directed at Indigenous populations, the reality is that a disproportionate number of Indigenous people experience homelessness and poverty⁸⁷ and thus these laws continue to disproportionately impact Indigenous people. Additionally, statutes that perpetuate displacement, seizure, and destruction of belongings are rooted in colonial concepts of land and property that ignore Indigenous legal traditions and concepts of land, treaties, and the fact that much of what is known as Canada is unceded territory.⁸⁸ Further, many of the rationales adopted by those who devalue precariously housed and unhoused people and their possessions echo those that have been used to deny and denigrate Indigenous people's relation to land and resources. For example, colonial notions of "use" and "improvement" that dispossess Indigenous people⁸⁹ seem strikingly similar to characterizations of precariously housed people as having inappropriate relations to property. Colonial arguments for the "civilizing" of Indigenous people through the adoption of 'appropriate' relations to property also resonate with similar arguments made by state officials concerning precariously housed people. Particular possessions that have been devalued — both in our study and beyond — are belongings of cultural importance, such as tobacco, objects for smudging, and ceremonial tents, which have been taken and destroyed by municipal officials.⁹⁰

86. JESSE THISTLE, DEFINITION OF INDIGENOUS HOMELESSNESS IN CAN. 7 (2017), <https://www.homelesshub.ca/sites/default/files/attachments/COHIndigenousHomelessness-summary.pdf> [<https://perma.cc/9HKY-Q7UA>].

87. See Paula Arriagada et al., *Indigenous People in Urban Areas: Vulnerabilities to the Socioeconomic Impacts of COVID-19*, STATISTICS CANADA (May 26, 2020), www150.statcan.gc.ca/n1/pub/45-28-0001/2020001/article/00023-eng.htm [<https://perma.cc/J387-3GZ2>]; Belanger et al., *supra* note 66, at 5; *Disproportionate number of Black, Indigenous, Latin people counted in Metro Vancouver Homeless Survey*, CBC NEWS (Aug. 5, 2020), www.cbc.ca/news/canada/british-columbia/vancouver-homeless-count-disproportionate-black-indigenous-1.5675414 [<https://perma.cc/F9GY-R48U>].

88. *Acknowledging Traditional Territories*, BCCAMPUS OPEN EDUCATION <https://opentextbc.ca/indigenizationfoundations/chapter/acknowledging-traditional-territories/#:~:text=Ninety%2Dfive%20percent%20of%20British,the%20Crown%20or%20o%20Canada> [<https://perma.cc/AU7S-LFNY>] (last visited Feb. 9, 2023).

89. BRENNA BHANDAR, *THE COLONIAL LIVES OF PROPERTY: LAW, LAND, AND RACIAL REGIMES OF OWNERSHIP* 33–75 (Duke Univ. Press, 2018).

90. See Anderson & Flynn, *supra* note 83, at 107.

Understanding the current regulatory matrices that exist in cities regarding the personal belongings of people experiencing poverty and homelessness can only be done when one understands the historic and ongoing genocide of Indigenous peoples. In this Essay's view, people experiencing poverty and subsequent seizure of their belongings must be involved in the process of reforming and improving a system that historically has intentionally excluded their perspectives. Processes that ignore or tokenize people with lived experience inevitably lead to interventions that exacerbate existing problems. Indigenous Peoples must be involved in these processes, with resources allocated to ensure support in decision-making, such as through Indigenous cultural supports, literacy supports, translation, mobility, food, personal protective equipment (PPE), and access to information.⁹¹ Additionally, they should be provided with independent legal advice outlining the specific rights of Indigenous Peoples.⁹²

VI. A FOCUS ON OBJECTS REVEALS OVERLOOKED POWER RELATIONS OPERATIVE THROUGH LAW

Notionally impersonal and equitable, governing through things can become deeply oppressive and punitive, when differential property relations and access to space are foregrounded, we have argued. Constitutional protection of the person ensures, usually, that individuals are less likely to be the overt target of regulation. That is the reason why vagrancy — the crime of being publicly poor — has been removed from statute.⁹³ However, objects remain governable. While most of us can secure our personal possessions by virtue of secure title, the precariously housed find their possessions constantly targeted, as noted above.

In part, this is because the belongings of the precariously housed make them particularly visible to officials. The same municipal and provincial laws that make it extremely difficult to exist with personal property in parks, on streets, and on certain forms of private property, permit municipal workers to immediately seize and destroy the belongings of unhoused people forced to shelter outdoors.⁹⁴ This is illustrated in *Grand Forks (City) v*

91. See *Hastings Tent City Decampment Report Card*, PIVOT LEGAL SOC'Y (Aug. 9, 2022), https://assets.nationbuilder.com/pivotlegal/pages/3655/attachments/original/1660010600/Hastings_Tent_City_Decampment_Report_Card_Final_Results_%28WEB_COPY%29.pdf?1660010600 [https://perma.cc/82RF-KNEB].

92. See *id.*

93. See Joe Hermer, *The Mapping of Vagrancy Type Offences in Municipal By-Laws*, HOMELESS HUB (July 22, 2020), <https://www.homelesshub.ca/blog/mapping-vagrancy-type-offences-municipal-laws> [https://perma.cc/KQ6B-K4YZ].

94. See *Interview with Former DPW Worker Disclosing Human Rights Violations. Theft and City Workers Profiting off Items They Take in the Sweeps*, STOLEN BELONGING PROJECT

Jennings,⁹⁵ where the visibility of a family living out of a van led to community members pressuring government officials to enforcement and eventually seeking an injunction, the risks of being a target of enforcement of bylaws and injunctions are often increased based on visibility to the greater public. Visibility attracts the enforcement of streets and parks bylaws that target unhoused people, such as daytime sheltering bans. Enforcement perpetuates vulnerability through loss of belongings, fines, and displacement which contributes to further visibility.⁹⁶ Municipal and provincial legislation regulating a person's ability to exist in public and private space, therefore, constitutes a cycle of enforcement creating vulnerability which leads to more enforcement. This creates an invidious choice for many unhoused people: divest yourself of vital belongings, and risk the attendant costs, or retain these possessions, become visible to the state, and face the risk of their seizure.

The connection between visibility and enforcement is still an issue for people using shelter programs.⁹⁷ As shelters often lack secure places for people to keep their belongings, shelter-users are still expected to carry the majority or entirety of their belongings with them during the day, making them more visible and therefore more vulnerable to enforcement.⁹⁸ This means that shelter-users are subject to both the rules and restrictions on their belongings in both shelters and on the streets, and in some sense could put their belongings doubly at risk of being lost or destroyed.⁹⁹ When people are housed or able to access storage, visibility and stigma immediately become less of an issue.

The visibility that comes with carrying one's belongings attracts the enforcement of laws regulating a person's ability to exist in public and private spaces. This enforcement manufactures vulnerability in these same people through loss of belongings, fines, and displacement which can contribute to further visibility. As such, these laws create a counterproductive, resource intense, and harmful cycle of visibility, vulnerability, and enforcement. This can perhaps be most clearly seen in

(2019), www.stolenbelonging.org/dpw-disclosure?rq=immediate [<https://perma.cc/2T4A-A6WR>].

95. See 2020 B.C.S.C. 1809 (Can.).

96. Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 84 AM. SOCIO. REV. 769, 792 (2019).

97. See Andrea Brighenti, *Visibility: A Category for the Social Sciences*, 55 CURRENT SOCIO. 323 (2007); see also Mariè-Eve Sylvestre, Céline Bellot, Philippe Antoine Couture Ménard & Alexandra Caroline Tremblay, *The Law is Also a Question of Visibility: The Occupation of Public Spaces and the Legal Paths of Homeless People in Montreal and Ottawa*, 26 CANADIAN J. L. & SOC. 531 (2011).

98.

99. See MANNOE, *supra* note 39, at 27.

what are commonly known as “street sweeps” in many North American cities. Street sweeps include the daily practice of city staff and police seizing possessions of people who rely on public space. Such actions are justified as the regulation of objects, rather than the targeting of people, given the rationale of cleaning or maintaining city property, or removing “obstructions.”¹⁰⁰

CONCLUSION

Waldron showed how purportedly neutral regulations concerning public space can lead to unhoused people having no places where they can legally be.¹⁰¹ We build on this important analysis by centering belongings, concluding that to understand the injustices of houselessness and poverty we need to attend carefully to the variegated geographies of property control, and their effect not only on the abstract person, but also their belongings. We must be attentive to the legal treatment of poor people and their things, particularly given the disproportionate effects of poverty and the ongoing displacement of Indigenous peoples.

While personal belongings have significance for all people, they are particularly important to people experiencing poverty and homelessness, both in terms of offering them a certain ability to survive, particularly in outdoor spaces, but also in their importance to personhood, identity, and autonomy. While our belongings are important to us all, it can be argued that they are of greater significance to the poor: this is because they are all they have. The loss of these belongings, therefore, can be of more profound significance.¹⁰² Housed people’s residential and personal property are afforded significant protections, in part because of the importance attributed to residential property, while the personal property of poor people is subject to exclusionary rules that impact their ability to exist in certain spaces. And precisely because precariously housed people are obliged to move between multiple regulatory spaces, over which they have limited control, their possessions become subject to the rule of others.

Studying the governance of people and their belongings is important to understand how legislation contributes to the marginalization of people with

100. *See id.* at 9.

101. Jeremy Waldron, *Homelessness and the Issue of Freedom*, 39 UCLA L. REV. 295, 300 (1991).

102. In Chris Herring’s study of San Francisco, unsheltered individuals reported that the destruction of their property represented the biggest threat to their survival on the streets. He adds that “this always involved either a police presence, the threat of police being called, or leveraging anti-homeless ordinances to provide legal cover for property confiscation.” *See Herring, supra* note 96, at 790.

low-income, perpetuating cycles of displacement, removal, and destruction. Legislation that impacts poor people's belongings impact their stability and thereby their ability to secure and maintain personal arrangements such as shelter, employment, or health services. Further, a study of the governance of people's belongings can increase understanding of equality issues present in the regulation of property in general. Housed people's residential and personal property are afforded significant protections, in part because of the psychological importance attributed to residential property, while the personal property of poor people is subject to exclusionary rules that impact their ability to exist in urban spaces, whether public or private.