

April 2023

'Somebody's street': Eviction of Homeless Encampments as a Reflection of Interlocking Colonial and Class Relations

Jessica Braimoh
jbraimoh@yorku.ca

Erin Dej

Carrie Sanders

Follow this and additional works at: <https://digitalcommons.osgoode.yorku.ca/jlsp>



Part of the [Law Commons](#)

Citation Information

Braimoh, Jessica; Dej, Erin; and Sanders, Carrie. "Somebody's street': Eviction of Homeless Encampments as a Reflection of Interlocking Colonial and Class Relations." *Journal of Law and Social Policy* 36. (2023): 12-22.

<https://digitalcommons.osgoode.yorku.ca/jlsp/vol36/iss1/2>

This Article is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Journal of Law and Social Policy by an authorized editor of Osgoode Digital Commons.

“Somebody’s street”: Eviction of Homeless Encampments as a Reflection of Interlocking Colonial and Class Relations

JESSICA BRAIMOH, ERIN DEJ & CARRIE SANDERS*

Homelessness, as a construct, is premised on settler colonial technologies of land ownership and private property. Encampments, as one of the most visible forms of homelessness, compel us to confront how our socio-legal processes undermine human rights and perpetuate inequity and oppression. How municipalities engage in the legal governance of encampments, often through eviction, exclusion, and criminalization, is a result of interlocking colonial and classist political economies. Borrowing from Collins’ “matrix of domination” and Smith’s “ruling relations”, this article examines the management and ultimate eviction of *No Place Like Home*, a tent encampment in a mid-size city in Western Canada. Drawing on fifty-four interviews with people experiencing homelessness, law enforcement, and other community members, as well as legal documents that ultimately led to the eviction of the encampment, we unpack the political domination of encampments that legitimize and prioritize the desires and social position of the housed population over the human rights of encampment residents. We argue that in their efforts to retain public property as an exclusive commodity for housed people, political actors used three tactics through which to justify the displacement of unhoused people and ultimately the denial of encampment residents as rights holders: 1) the invisibilization of Indigenous Peoples, and Indigenous women specifically, experiencing homelessness; 2) the construction of fire safety in the encampment as a public concern; and, 3) the prioritization of perceptions of safety among the general public to the detriment of the safety of encampment residents. Illuminating the intersection of colonial and class-based regimes embedded in the legal governance of encampments provides an avenue through which to advocate for the human rights of encampment residents.

Encampments are a type of informal settlement¹ that exist along a continuum of experiences of homelessness. Encampments describe an area where a group of people erect tents or temporary structures. Some encampments are informal while others have clearly defined rules and resource sharing strategies. Homelessness refers to individuals or families who do not have safe, permanent, and affordable housing and who do not have the means of acquiring housing immediately. While encampments are among the most visible forms of homelessness, the continuum ranges from absolute homelessness to being at risk of homelessness due to a personal crisis or when facing eviction that will lead to homelessness, for example. Most people’s homelessness status fluctuates along the continuum, sometimes frequently over a short period of time. Someone may be at risk of homelessness, then find themselves in an emergency shelter, later becoming absolutely homeless, and then may be provisionally accommodated through, for example, a shelter hotel.² While media accounts and public uptake on homelessness focus almost exclusively on visible

* Corresponding author: Jessica Braimoh (email address: jbraimoh@yorku.ca).

¹ Leilani Farha & Kaitlin Schwan, *A National Protocol for Homeless Encampments in Canada* (UN Special Rapporteur on the Right to Housing, 2020).

² Stephen Gaetz *et al.*, *Canadian Definition of Homelessness* (Toronto: Canadian Observatory on Homelessness Press, 2012).

homelessness,³ in reality unsheltered homelessness is only a fraction of the homelessness and housing need in Canada.⁴ A conservative estimate shows that 235,000 people experience homelessness in Canada each year,⁵ with women, Indigenous Peoples, people of colour, youth, and 2SLGBTQ+ people, among others, underrepresented in the statistics as they are more likely to be part of the hidden homeless.⁶ Moreover, 1.7 million people in Canada are in core housing need, meaning that they spend more than thirty percent of their household income on housing, leaving them vulnerable to homelessness.⁷

The COVID-19 pandemic has exacerbated pre-existing inequities among people who are homeless or housing insecure, leaving more people on the brink of homelessness.⁸ There is significant concern about rising rates of homelessness as the long-term social and economic effects of the pandemic unfold and more people struggle to access income and maintain housing.⁹ Emerging evidence suggests that encampments are growing as a direct result of the COVID-19 pandemic as shelter capacity reduced significantly to allow for safe distancing practices and outbreaks developed in many shelters across the country.¹⁰ These concerns are valid, as research from Ontario reveals that people who are homeless are five times more likely to die from COVID-19 than housed people.¹¹ This, coupled with the parallel drug-poisoning crisis,¹² has left underserved people in a dire situation and has created the conditions for people to seek out alternative means of support and care, including in encampments.

Scholarship on how tent encampments emerge is divergent in terms of its description of the causes and conditions of encampments, especially as it relates to resident autonomy. Some scholars draw attention to this form of homeless habituation as a politically motivated response by people experiencing homelessness to create housing alternatives that offer “safety, privacy, and

³ For a discussion see Barbara Schneider, Kerry Chamberlain & Darrin Hodgetts, “Representations of Homelessness in Four Canadian Newspapers: Regulation, Control, and Social Order” (2010) 37:4 *Journal of Sociology & Social Welfare* 147; Solina Richter *et al*, “Homeless Coverage in Major Canadian Newspapers, 1987-2007” (2011) 36:4 *Canadian Journal of Communication* 619.

⁴ Wellesley Institute, *Precarious Housing in Canada* (Wellesley Institute, 2010), online: <https://www.wellesleyinstitute.com/wp-content/uploads/2010/08/Precarious_Housing_In_Canada.pdf> [perma.cc/27NW-7355].

⁵ Stephan Gaetz *et al*, *The State of Homelessness in Canada 2016* (Toronto: Canadian Observatory on Homelessness Press, 2016).

⁶ Lynn M. Harter *et al*, “The Structuring of Invisibility Among the Hidden Homeless: The Politics of Space, Stigma and Identity Construction” (2005) 33:4 *Journal of Applied Communication Research* 305; Nicholas Pleace, “Exclusion by Definition: The Under-Representation of Women in European Homelessness Statistics” in Paula Mayock & Joanne Bretherton, eds, *Women’s Homelessness in Europe* (London: Palgrave MacMillan, 2016) 105.

⁷ Canadian Mortgage and Housing Corporation, *Core Housing Need Status: Housing in Canada* (Canadian Mortgage and Housing Corporation, 2019), online <<https://www.cmhc-schl.gc.ca/en/professionals/housing-markets-data-and-research/housing-research/core-housing-need>> [perma.cc/DA92-3DHA].

⁸ Nick Falvo, *The Long-Term Impact of COVID-19 Recession on Homelessness in Canada: What to Expect, What to Track, What to do* (Calgary: Employment and Social Development Canada, 2020).

⁹ *Ibid.*

¹⁰ Klea Bogdani, “Advocates Explain why Encampments Have Become the Shelter of Choice for Many During the Pandemic,” *TRNTO* (15 January 2021), online: <<https://trnto.com/encampments-shelters-toronto-pandemic>> [perma.cc/9NWV-8XFJ].

¹¹ Lucie Richard *et al*, “Testing, Infection and Complication Rates of COVID-19 Among People with a Recent History of Homelessness in Ontario, Canada: A Retrospective Cohort Study” (2021) 9:1 *CMAJ Open* E1, online: <<https://www.cmajopen.ca/content/9/1/E1.short>> [perma.cc/E6KD-B53F].

¹² Laura MacKinnon, Eugenia Socías & Geoff Bardwell, “COVID-19 and Overdose Prevention: Challenges and Opportunities for Clinical Practice in Housing Settings” (2020) 119 *Journal of Substance Abuse Treatment* 108153, online: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7532988/#>> [perma.cc/A2WS-77SW].

stability.”¹³ This framing taps into nuanced dynamics shaping homelessness as a choice,¹⁴ and alerts us to the ways that people experiencing homelessness respond to the structural conditions shaping their lives.¹⁵ For example, Sparks finds that the emergence of homeless encampments in Seattle was not a reaction to overcrowding in local shelters, but rather people’s active attempts to avoid the shelter system in order to resist processes of marginality and exclusion.¹⁶ Others argue that tent encampments function as a form of “poverty management” used by cities to contain and seclude unhoused people in marginal spaces thereby facilitating their exclusion from other public spaces.¹⁷ In this framing, encampments are akin to other socio-spatial responses to homelessness that perpetuate the exclusion of unhoused people from desirable public spaces.¹⁸ Both positionings tap into the deeply localized context that creates the conditions for encampments. Combined, the scant literature on encampments in the global North is only beginning to tell the story of how and why tent communities are emerging and how they are being managed, including encampment evictions and legal opportunities to resist these practices.

I. THE STUDY: NO PLACE LIKE HOME

No Place Like Home was a homeless encampment located in a city we call Aster Falls in Western Canada.¹⁹ The encampment housed roughly fifty people impacted by homelessness for over two years (2017-2019). Initiated by a Notice of Application made by the Municipality of Aster Falls, the Provincial Supreme Court ordered the removal of camp residents and their belongings from the space.²⁰ Our data shows that police, bylaw officers, and private security were used to enforce this court injunction which led to the arrest of several camp residents and their supporters. In the end, not all camp residents were housed in alternative arrangements, yet the land where the encampment was removed was returned to a community park.²¹ In this article, we draw on

¹³ Samir Junejo Suzanne Skinner & Sara Rankin, “No Rest for the Weary: Why Cities Should Embrace Homeless Encampments” (2016) 4 Homeless Rights Advocacy Project at 2.

¹⁴ Cameron Parsell & Mitch Parsell, “Homelessness as a Choice” (2012) 29:4 Theory and Society 420.

¹⁵ Ingrid Gould Ellen, “What do we Know About Housing Choice Vouchers?” (2020) 80 Regional Science and Urban Economics 103380.

¹⁶ Tony Sparks, “Neutralizing Homelessness, 2015: Tent Cities and Ten Year Plans” (2017) 38:3 Urban Geography 348.

¹⁷ Geoff DeVertuil, “The Local State and Homeless Shelters: Beyond Revanchism?” (2006) 23:2 Cities 109; Geoff DeVertuil, Jon May & Jürgen Von Mahs, “Complexity not Collapse: Recasting the Geographies of Homelessness in a ‘Punitive’ Age” (2009) 33:5 Progress in Human Geography 646; Chris Herring & Manuel Lutz, “The Roots and Implications of the USA’s Homeless Tent Cities” (2015) 19:5 City 689.

¹⁸ Vincent Del Casino Jr. & Christine Jocoy, “Neoliberal Subjectivities, the ‘New’ Homelessness, and Struggles Over Spaces of/in the City” (2008) 40:2 Antipode 192; Natasha Kuzmack & Larissa Muller, “Siting Homeless Shelters in Calgary: Impacts of the New Land Use Bylaw and the Local Development Process” (2010) 19:2 Canadian Journal of Urban Research 1; Bill O’Grady, Stephen Gaetz & Kristy Buccieri, “Policing Street Youth in Toronto” in Stephen Gaetz *et al*, eds, *Youth Homelessness in Canada: Implications for Policy and Practice*, (Toronto: Canadian Observatory on Homelessness Press, 2013) 335.

¹⁹ To protect the identity of study participants we have altered all identifying information, including the name of the encampments, the city where the research took place, the surrounding area, and organizational names. After much deliberation, we also decided to anonymize the traditional territory upon which the City resides and the adjacent First Nations reserve. We believe it is imperative to acknowledge and name the Indigenous lands where this encampment is located but came to realize that it would jeopardize the anonymity of our participants, in particular one of the Indigenous women who experienced homelessness.

²⁰ Notice of Application, 2018

²¹ Local News Report, “Grounds of Former tent city to become park honoring [Aster Falls] founding family” (2020).

interviews with people across three stakeholder groups, people experiencing homelessness, other community members, and police, to understand how the eviction of this encampment was understood and experienced. We supplement this research with an analysis of the textual data (e.g., court documents). Specifically, we examined three court documents: 1) The Notice of Application made by the Municipality of Aster Falls (hereafter *the Notice*); 2) the Response to Application made by the defendants (i.e., encampment residents and their legal counsel) (hereafter *the Response*); and 3) the resulting court injunction outlined by the Provincial Supreme Court (hereafter *the Safety Orders*). Analyzing these court documents allowed us to examine how the seemingly neutral operation of these socio-legal processes diverged from study participants' experiences and understandings of the encampment eviction.²² Our analysis focuses on the interlocking colonial and classist processes which organized the seemingly neutral institutional and criminal-legal processes that worked to dismantle *No Place Like Home*. This article contributes to an emerging body of scholarship that problematizes the mechanisms by which the enshrined rights of unhoused people are violated.²³

In this article, we argue that contestations over the emergence and socio-legal management of *No Place Like Home* reflect and consolidate interlocking power relations of colonialism and classist processes which inequitably shape people's rights to land, property, and claims over public space. The ideological assertions that emerge through these interlocking processes allow for techniques of criminalization, exclusion, and invisibilization of people who are homeless, in particular Indigenous Peoples. To this end, we focus on three tactics used to evict *No Place Like Home* in an effort to delegitimize unhoused people as rights holders in relation to the land and space. These tactics include: 1) the erasure of Indigenous Peoples, and Indigenous women specifically, who are homeless; 2) the construction of fire safety in the encampment as a public concern; and 3) the prioritization of general public safety over encampment resident safety. We conclude with a discussion about the impact of these analytic insights for social policy and legal reform.

II. POWER RELATIONS AND ENCAMPMENTS

This research draws on Patricia Hill Collins' notion of the "matrix of domination" and Dorothy Smith's notion of "ruling relations" to investigate how power relations organize the manifestation, contestation, and regulation of encampments.²⁴ For Collins, the matrix of domination describes the overall arrangement of power in a particular society, which enters people's lives through intersecting systems of oppression (e.g., classism and racism).²⁵ According to Collins, intersecting power relations do not just exist abstractly in the social world but instead are organized through the following interconnected domains: structural, disciplinary, hegemonic, and interpersonal.²⁶

²² Dorothy E. Smith, *Institutional Ethnography as Practice* (Toronto, ON: Rowman and Littlefield, 2006).

²³ Farha & Schwan, *supra* note 1; Nicholas Olson & Bernadette Pauly, "Homeless Encampments: Connecting Public Health and Human Rights (2021) 112:6 Canadian Journal of Public Health 988.

²⁴ Patricia Hill Collins, *Black Feminist Thought: Knowledge Consciousness and the Politics of Empowerment*, 2nd ed (New York, NY: Routledge, 2000); Dorothy E. Smith, *Texts, Facts, and Femininity: Exploring the Relations of Ruling*, (New York, NY: Routledge, 1990).

²⁵ Patricia Hill Collins, "The Difference That Power Makes: Intersectionality and Participatory Democracy" (2017) 8:1 *Investigaciones Feministas* 19 at 22.

²⁶ Patricia Hill Collins, *Another Kind of Public Education: Race Schools, the Media, and Democratic Possibilities* (Boston, MA: Beacon Press Books, 2009).

The structural domain considers the ways that intersecting power relations become institutionalized in law and policy whereas the disciplinary domain considers how - through this legal/policy framework - intersecting power relations enter bureaucratic processes. The hegemonic domain considers the cultural realm examining discourse or ways of thinking and speaking about particular issues that reflect and reproduce intersecting power relations (*e.g.*, media, school curriculum). Finally, the interpersonal realm draws attention to how individual actions, including among those who are oppressed, participate in the subordination of others.

The matrix of domination can be used to interrogate how different forms of oppression organize the experiences of people who are homeless. For example, Hunt shows how access to sexual education and sexual health services among Two-Spirit, street-involved and homeless youth is organized through the “dual context of colonial oppression which is rooted in heteropatriarchy.”²⁷ Drawing on Collins’ matrix of domination, one could argue that health services function as a disciplinary technique by which broader systems of oppression are managed. Sexual health services become a proxy by which hetero and cisnormative logics intersect with settler colonialist processes to exclude and further subordinate other gender and sexual realities while imposing specific kinds of familial relations and practices.

The matrix of domination, and in particular the hegemonic domain, is also helpful for thinking about how everyday language about homelessness is embedded in power relations. For example, according to Thistle, “Indigenous homelessness is not defined as lacking a structure of habitation; rather, it is more fully described and understood through a composite lens of Indigenous worldviews.”²⁸ To better understand the experience of Indigenous homelessness, one must critically consider how homelessness is connected to the historical and ongoing colonial project to displace and separate Indigenous Peoples and communities from their land and sever the web of All My Relations, which describes one’s connection to language, kin, culture, and land. The interlocking power relations of capitalism and colonialism invisibilize understandings of homelessness outside of the absence of a physical structure. Crucially, power relations are not static; Thistle’s definition of Indigenous homelessness works to re-centre Indigenous ways of knowing in our collective understandings of homelessness.

Extending Collins’ notion of the matrix of domination is Smith’s understanding of “ruling relations.” Both conceptualizations draw attention to the historical and social context through which power relations emerge, yet Smith’s notion differs from Collins’ in two ways. First, Smith’s conceptualization highlights the ways that marginalized and vulnerable people participate (voluntarily or not) in the power relations that dominate them.²⁹ For example, Dej’s research found that a common strategy that people experiencing homelessness used to protect themselves from humiliation, victimization, and criminalization was to avoid public spaces, thereby pre-emptively excluding themselves from the broader social exclusion they face daily.³⁰

²⁷ Sarah Hunt, *An Introduction to the Health of Two-Spirit People: Historical, Contemporary and Emergent Issues* (Prince George: National Collaborating Centre For Indigenous Health, 2016).

²⁸ Jesse A. Thistle, *Definition of Indigenous Homelessness in Canada* (Toronto: Canadian Observatory on Homelessness Press, 2017) at 6.

²⁹ Naomi Nicholas, “Gimme Shelter! Investigating the Social Service Interface From the Standpoint of Youth” (2008) 11:6 *Journal of Youth Studies* 685; Naomi Nichols & Jessica Braithmoh, “Community Safety, Housing Precariousness and Processes of Exclusion: An Institutional Ethnography from the Standpoints of Youth in an ‘Unsafe’ Urban Neighbourhood” (2018) 44:1 *Critical Sociology* 157; Roxana Ng, *The Politics of Community Service: Immigrant Women, Class and State* (Halifax, NS: Fernwood, 1988).

³⁰ Erin Dej, *A Complex Exile: Homelessness and Social Exclusion in Canada* (Vancouver: UBC Press, 2020).

Second, Smith's notion considers how ruling relations become textually mediated, or put another way, are coordinated through texts that then get taken up by institutional processes in ways that organize our everyday lives. For example, Nichols shows how the work that young people do to secure and maintain housing reveals "cracks", or system failures, that are made possible by the coordinated textual policies of multiple public institutions including social assistance, education, and the immigration system. Using ruling relations as an analytical tool unearths how these "cracks" are produced through a "complex of densely enmeshed policies and procedures" that in practice maintain positions of disadvantage for particular groups.³¹

If we are to fully realize housing as a fundamental human right,³² we must recognize the power relations and related processes that organize how, if, at all, people gain access to and create adequate housing. Keeping interlocking power relations in view is important for thinking about solutions to encampments. How can municipalities and city officials engage with encampments from a rights-based lens in ways that acknowledge and respond to the oppressive conditions that produce these settlements in the first place? This question challenges municipalities and city officials to critically examine how colonialism and classist processes can be undone so that unhoused people can exercise their rights and governments can realize their obligations in ways that actualize promises of adequate housing. We argue that encampments offer an opportunity to investigate the interlocking colonial and class relations that people experiencing homelessness encounter.

III. ENCAMPMENTS AND THE REGULATION OF SPACE

As a manifestation of the matrix of domination,³³ settler colonialism is an ongoing structural process that institutionalizes and legitimizes the oppression of Indigenous Peoples while simultaneously making visible and invisible their existence and everyday realities. Importantly, the land relations shaping responses to encampments cannot be separated from ongoing practices of colonialism and capitalism in Canada. Indigenous Peoples' rights to and use of land have been the continued target of the state by all levels of government, from broken treaties to the reserve system, to the ongoing control of public land without consultation and leadership by the First Nations, Métis, and Inuit Peoples who have occupied the land since time immemorial. Settler colonialism works to remove Indigenous Peoples from their land, instituting rules that organize if, and how, they may use and occupy it.³⁴ For example, under the *Indian Act* a reserve system was created that partitioned portions of less desirable land to Indigenous Peoples.³⁵ As part of this *Act*, the pass system (applied in some areas of the Prairie West) criminalized First Nations Peoples if they left the confines of the reserve without proper documentation.³⁶ Drawing on logics of racial

³¹ Naomi Nichols, *Youth Work: An Institutional Ethnography of Youth Homelessness*, (Toronto: University of Toronto Press, 2014) at 37.

³² U.N. General Assembly Resolution 44/25, *Convention on the Rights of the Child* (20 November 1989); U.N. General Assembly Resolution 2200A (XXI), *International Covenant on Economic, Social and Cultural Rights* (16 December 1966)[ICESCR]; *National Housing Strategy Act*, S.C. 2019, c. 29, s. 313; *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.

³³ Collins, *supra* note 25.

³⁴ Joseph Robert, *21 Things you may not Know About the Indian Act* (Vancouver: Page Two Books, 2018).

³⁵ *Indian Act* (R.S.C., 1985, c. I-5). Thomas King, *The Inconvenient Indian: A Curious Account of Native People in North America* (Toronto: Anchor Canada, 2012).

³⁶ Chelsea Vowel, *Indigenous Writes: A Guide to First Nations, Métis & Inuit Issues in Canada* (Winnipeg: HighWater Press, 2016).

inferiority, the pass system attempted to institutionalize the racial segregation of First Nations Peoples.³⁷ Williams' documentary *The Pass System* demonstrates that while in many ways the government continues to control Indigenous Peoples and communities, they fought against the pass system, along with residential schools, the 60's scoop, and all other strategies of cultural genocide, despite continuous pressure to assimilate.³⁸ Settler colonialism as an ongoing structure of power requires a new system and narrative to make sense of and guarantee the land for settlers; this is done through the creation of Indigenous landlessness while simultaneously commodifying the same land for settlers.³⁹ As Tuck and Yang suggest, "In the process of settler colonialism, land is remade into property and human relationships to land are restricted to the relationship of the owner to his [sic] property."⁴⁰ In a similar line, Paradis reflects that homelessness only exists within a framework of land ownership and where there is a division between public and private property;⁴¹ the *Indian Act* and broken treaties exemplify the ways that land ownership is mobilized through colonial rule and is imposed on the land and the people who occupy it. These relations rely on logics of race and racialization to inequitably organize people's access to commodified land.⁴²

Efforts to remove people experiencing homelessness from public space are wide, expansive, and informed by this colonial context.⁴³ Municipal laws across Canada, for example, prevent unhoused people from engaging in subsistence activities like panhandling,⁴⁴ target people who are homeless from being in public spaces, and regulate how unhoused people create shelter.⁴⁵ In the context of COVID-19, these punitive responses to homelessness have increasingly turned towards encampments. In June 2021, for example, the encampment in Trinity Bellwood's Park in Toronto, Ontario was dismantled, and camp residents were evicted.⁴⁶ Despite widespread critique of the para-militarized tactics to destroy the small camp, a few weeks later the City of Toronto used the same strategy on three other encampments located in public parks. As Toronto Mayor John Tory explained, "You cannot have unsafe, unhealthy, illegal encampments in public parks in particular, but on other private property as well".⁴⁷ Mayor Tory's comments alert us to the

³⁷ Laurie Barron, "The Indian Pass System in the Canadian West, 1882-1935" (1988) 13:1 *Prairie Forum* 25.

³⁸ Alex Williams, *The Pass System: Life Under Segregation In Canada* (Toronto: V Tape, 2015).

³⁹ Evelyn Nakano Glenn, "Settler Colonialism as Structure: A Framework for Comparative Students of U.S. Race and Gender Formation" (2015) 1:1 *Sociology of Race and Ethnicity* 52.

⁴⁰ Eve Tuck & K. Wayne Yang "Decolonization is not a Metaphor" (2012) 1:1 *Decolonization, Indigeneity, Education, & Society* 1 at 5.

⁴¹ Emily Paradis, "'I would like us to unite and fight for our rights together because we haven't been able to do it alone': Women's homelessness, disenfranchisement, and self-determination" in Jennifer Kilty, ed, *Within the Confines: Women and the Law in Canada*, (Toronto: Women's Press, 2014) at 52.

⁴² Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Durham: Duke University Press, 2018).

⁴³ Jacqueline Kennelly & Paul Watt, "Sanitizing Public Space in Olympic Host Cities: The Spatial Experiences of Marginalized Youth in 2010 Vancouver and 2012 London" (2011) 45:5 *Sociology* 765; Don Mitchell & Lynn A. Staeheli, "Clean and Safe? Property Redevelopment, Public Space and Homelessness in Downtown San Diego" in Setha Low & Neil Smith, eds, *The Politics of Public Space* (New York: Routledge 2006) 144.

⁴⁴ O'Grady *et al*, *supra* note 18.

⁴⁵ *Ibid*; Joe Hermer & Elliot Fonarev, "The Mapping of Vagrancy Type Offences in Municipal By-Laws," *Research Matters* (22 July 2020), online: <<https://www.homelesshub.ca/blog/mapping-vagrancy-type-offences-municipal-laws>> [perma.cc/AQH3-X4HC].

⁴⁶ Liam Casey, "Toronto mayor defends homeless encampment clearing amid criticism," *Global News* (23 June 2021), online: <<https://globalnews.ca/news/7973445/trinity-bellwoods-park-homeless-encampment-eviction-john-tory/>> [perma.cc/9PP7-WQAV].

⁴⁷ *Ibid*.

blurriness classifying people's rights to public and private space and the difficulties of unhoused people to exist on either.⁴⁸

Constructing encampments as always harmful and unsafe to people who are homeless, and the broader community while ignoring the myriad ways that emergency shelters may be unsafe and the lack of access to safe, suitable, and affordable housing, has worked to justify a criminalized response to homelessness.⁴⁹ Importantly, it is not only people themselves who traverse and use public and private land; their belongings are also contested, regulated, and surveyed.⁵⁰ People who are homeless regularly come into contact with law enforcement for simply responding to the conditions shaping their own lives.⁵¹ These tactics further stigmatize marginalized people by dehumanizing people who are homeless, developing long criminal records, and “leave underlying social problems completely untouched”.⁵²

Responding to encampments through a safety lens obscures the interlocking power relations shaping unhoused people's rights to housing and access to public space. Society must begin to challenge what “public” means if these notions work to push unhoused people without wealth and property out of view. As Mitchell argues:

The rights of homeless people do not matter (when in competition with ‘our’ rights to order, comfort, places for relaxation, recreation and unfettered shopping). Simply because we worked hard to convince ourselves that homeless people are not really citizens in the sense of free agents with sovereignty over their own actions. Anti-homeless legislation helps institutionalize this conviction by assuring the homeless in public [have] no place to be sovereign.⁵³

The contested negotiation over the right to public space must consider the hegemonic power relations that invariably structure where people experiencing homelessness are allowed to be. It has become increasingly evident that some municipalities are creating by-laws and regulations that leave people with *no* permissible space to exist at all.⁵⁴ Indeed, there have been instances across Canada where people experiencing homelessness are literally driven out of the City by police and

⁴⁸ See e.g. Kate Bueckert, “Mixed reception’ from residents as A Better Tent City asks to move from Kitchener to Breslau,” *CBC News* (2 June 2021), online: <<https://www.cbc.ca/news/canada/kitchener-waterloo/a-better-tent-city-move-kitchener-woolwich-1.6049979>> [perma.cc/4BUV-9NP2] (on the mixed public reaction to the relocation of the Better Tent City in the Region of Waterloo).

⁴⁹ Sharon Chamard, “Homeless Encampments” *Center for Problem-Oriented Policing* (2010), online: <http://www.popcenter.org/problems/homeless_encampments> [perma.cc/S2RA-XJ3X].

⁵⁰ Nick Blomley, Alexandra Flynn & Marie-Eve Sylvestre, “Governing the Belongings of the Precariously Housed: A Critical Legal Geography” (2020) 16:1 *Annual Review of Law and Social Science* 165.

⁵¹ Tony Robinson, “No Right to Rest: Police Enforcement Patterns and Quality of Life Consequences of the Criminalization of Homelessness” (2019) 55:1 *Urban Affairs Review* 41; Forrest Stuart, “From ‘Rabble Management’ to ‘Recovery Management’: Policing Homelessness in Marginal Urban Space” (2014) 51:9 *Urban Studies* 1909; Stuart, *Down and Out and Under Arrest: Policing and Everyday Life in Skid Row* (Chicago: University of Chicago Press, 2016).

⁵² Steve Herbert & Catherine Beckett, “‘This is Home for Us’: Questioning Banishment From the Ground Up” (2010) 11:3 *Social & Cultural Geography* 231 at 242.

⁵³ Don Mitchell, “The Annihilation of Space by Law: The Roots and Implications of Anti-Homeless Laws in the United States” (1997) 29:3 *Antipode* 303 at 321.

⁵⁴ Blomley, *supra* note 50; Jennifer Wolch & Geoff DeVerteuil, “New landscapes of urban poverty management” in Jon May & Nigel Thrift, eds, *Timespace: Geographies of Temporality*, (London: Routledge, 2001) 149.

left alone in rural or remote areas, a practice known as 'dumping' or 'starlight tours', which has been targeted towards Indigenous Peoples experiencing homelessness especially.⁵⁵

A. PEOPLE EXPERIENCING HOMELESSNESS AS RIGHTS HOLDERS

In addition to the debates over unhoused people's rights to public space, encampments draw attention to unhoused people's rights – or lack thereof – to the use of property. In 2019 Canada enshrined the right to housing through the *National Housing Strategy Act*, which articulated for the first time in Canadian law that housing is “essential to the inherent dignity and well-being of the person.”⁵⁶ The right is collective rather than individual in nature and creates a legal obligation on the federal government to implement policies that progressively realize the right to housing, including maintaining the *National Housing Strategy*, allowing rights holders to meaningfully participate in addressing systemic housing issues and appointing a Housing Advocate to oversee the work. The national right to housing is concomitant with Canada's pre-existing international human rights obligations, including the *ICESCR* that “recognize the right of everyone to an adequate standard of living... including adequate food, clothing and housing, and to the continuous improvement of living conditions.”⁵⁷ Provincial and territorial human rights codes list housing and accommodation as grounds for protection, yet there is nothing in these *codes* surrounding encampments, or housing located in outdoor public/private spaces.⁵⁸ As such, human rights law is applicable to, but to date has not adequately protected, the rights of encampment residents, namely because of property relations structured by capitalism and other forms of oppression.⁵⁹ A review of the BC Human Rights Tribunal website brings these power relations into view. As the website states, “Human rights in housing depend on whether you are renting, buying property, or own a strata.”⁶⁰ Where do unhoused people fit in this understanding of housing rights? Baron's argument of homelessness as a problem of normative understandings of property is useful for answering this question. As Baron suggests:

It is difficult to keep objects that, as a practical matter, one has no right to put anywhere. [...] The "no-rights" thus add up: no right to be anywhere; no right to have anything; no right to keep what you do have, etc. The whole of "no property" is, in this sense, greater than the sum of its parts, a complex legal state in which one is literally a shadow, a photographic negative of the complex constellation of qualities and attributes that constitute wealth.⁶¹

⁵⁵ Joshua Freistadt, “No Dumping: Indigenoussness and the Racialized Police Transport of the Urban Homeless” in Evelyn Peters & Julia Christensen, eds, *Indigenous Homelessness: Perspectives from Canada, Australia, and New Zealand*, (Winnipeg: University of Manitoba, 2016) 67; Sherene Razack, “‘It Happened More Than Once’: Freezing Deaths in Saskatchewan” (2014) 26:1 CJWL 51.

⁵⁶ *National Housing Strategy Act*, *supra* note 32, preamble.

⁵⁷ *Supra* note 32 at Art. 11(1).

⁵⁸ *Ontario Human Rights Code*, RSO 1990, c H 19, 2(2); *British Columbia Human Rights Code*, RSBC 1996, c 210, 10(1); *Nova Scotia Human Rights Act*, RSNS 1989, c 214, 5(1)(b).

⁵⁹ Bhandar, *supra* note 42.

⁶⁰ British Columbia Human Rights Tribunal, “Human Rights and Duties in Housing”, online: <<http://www.bchrt.bc.ca/human-rights-duties/housing/index.htm>> [perma.cc/P7KT-JME3].

⁶¹ James B. Baron, “Homelessness as a Property Problem” (2004) 36:2 *The Urban Lawyer* 273 at 284-85.

We are all deeply entangled in interlocking and unique systems of domination and oppression.⁶² However, people living in encampments are subjected to severe forms of exclusion because of their location within the matrix of domination and the ruling relations that seek to control their lives. The management of campers' bodies, their use of space, and their belongings get drawn into socio-political processes that reaffirm housed people's possession and control over social space.⁶³ Our article offers an opportunity to consider how the discourse of safety in the management of one encampment in Western Canada functioned to maintain these systems of domination. Throughout, we argue that the production of safety is not a neutral endeavour but rather one tempered by the failure of governments to recognize the rights of people who are homeless.

IV. METHODOLOGICAL & ANALYTICAL APPROACH

This article draws on fifty-four in-depth interviews with people in a mid-size urban community in Western Canada called Aster Falls. The study investigated perceptions and experiences of homelessness, safety, and security among three stakeholder groups: people experiencing homelessness (N=18); law enforcement (N=16); and service providers (N=6) and other community representatives (*i.e.*, business owners, residents' associations, and other residents) (N=14). Ethical approval was granted by the Research Ethics Board at Wilfrid Laurier University.

Drawing on principles of participatory research,⁶⁴ two people local to Aster Falls with lived experience of homelessness were employed as research coordinators on the project and assisted in: 1) developing interview questions, 2) recruiting people with lived experience to participate in the project, 3) data analysis, and 4) knowledge mobilization. Under their leadership, interviews involving people with lived experience of homelessness took place in community organizations that were considered safe or neutral and participants were provided with a twenty-dollar honorarium. Based on input from the research coordinators, we also held two focus groups: one with people with lived experience of homelessness and another with community stakeholders and service providers. Among participants with lived experience of homelessness, our sample includes thirty-three percent self-identified Indigenous participants. Ten participants self-identified as men and eight participants were identified by the researchers as women. Participants with lived experience of homelessness most often reported experiencing homelessness for more than one year.

Interviews were transcribed verbatim and analyzed using NVivo 12, a qualitative data analysis software program. The researchers collaboratively created a codebook that sought to identify and classify participants' perceptions of homelessness, crime, safety, and security. The qualitative analysis focused on coding interviews across stakeholder groups concurrently. We took this approach to engage in a 'conversation' across stakeholder groups to ensure that one group's narrative did not dominate the direction of the analysis. Doing so meant recognizing the power dynamics shaping relations among and across the stakeholders. The research coordinators provided feedback at each step of the analysis process, and their insight was incorporated before moving onto the next stage of analysis.

⁶² Devon W. Carbado, "Colorblind Intersectionality" (2013) 38:4 *Signs: Journal of Women and Culture in Society* 811.

⁶³ Herbert J. Gans, "The Sociology of Space: A Use-Centered View" (2002) 1:4 *City & Community* 329.

⁶⁴ Lived Experience Advisory Council, *Nothing About us Without us: Seven Principles for Leadership and Inclusion of People with Lived Experience of Homelessness*, (Toronto: The Homeless Hub Press, 2016).

V. FINDINGS

A. INDIGENOUS WOMEN'S CLAIM TO THE LAND

“I started *No Place Like Home*.”⁶⁵

Encampments are so contested in Aster Falls that debates abound within and across stakeholder groups even about who or which group led to their emergence. Of note within the narratives was the role Indigenous women played. In the quote above, this Indigenous woman tells us that she started the *No Place Like Home* encampment which provided homes to approximately fifty people between 2017-2019. This assertion was corroborated by many participants with lived experience of homelessness who held strongly to this narrative that Indigenous women from Aster Falls who were experiencing homelessness were central to the erection of the encampment as a place to mourn the deaths of friends and loved ones who also experienced homelessness. As the participant describes, the encampment was initiated, led, and managed by women, and Indigenous women specifically, “And you have to understand our camp went national right away because we were the only camp ever that was 70% women. That’s a high percentage.” Despite these claims by unhoused people, accounts from the community stakeholder group revealed the most inconsistencies regarding who formed the encampments. For example, one service provider explained the emergence of the first encampment like this:

You’ll hear different stories from different people on how *Red Hill*⁶⁶ came to be ...The stories that I heard from folks who worked at the City was actually that they wanted to create a flytrap on *Red Hill* and by-law was pushing folks there. So that’s one end of the story... [Another part of the story is about] four Indigenous women, and they were basically trying to mourn, and being told to move along and so they just planted. And then I’m wondering too if there’s truth to both sides and that’s when by-law or when the City people made a decision, let’s just pool them all here.⁶⁷

This participant draws our attention to the agency and control that unhoused people, in particular Indigenous Peoples, exhibit in responding to the realities of their lives as well as to how municipalities create spaces – a ‘flytrap’ – to contain marginalized populations.⁶⁸ The final comment made by this participant suggesting that there may be “truth to both sides” of these stories of the encampment alerts us to socio-legal processes shaping the use and right to land that is reminiscent of the reserve system. Here, Collins’ understanding of the matrix of domination as a by-product of the interrelation between the structural domain (*e.g.*, laws and policies) and the disciplinary domain (bureaucratic processes of bylaw and “City people”) is useful for understanding how *No Place Like Home* came to be. This participant also draws attention to how the settler colonial context presumes the City’s legitimacy to usurp how Indigenous Peoples use the (*i.e.*, *their*) land. Despite their resistance (*e.g.*, “they just planted”), Indigenous women are

⁶⁵ Indigenous woman, interview code PWLE01.

⁶⁶ *Red Hill* is a pseudonym for the first visible encampment in the City of Aster Falls.

⁶⁷ Interview code SP03.

⁶⁸ DeVertuil, May & Von Mahs, *supra* note 17.

denied stewardship over the land as these spaces are under the control of the state and private actors.⁶⁹

In another account, a community member explained that people who are homeless were duped by outsiders into creating *No Place Like Home*. He says:

[An activist group] actually initiated it, they populated it by putting ads out on Craigslist into coming camping. It happened and they will deny us, we have all the evidence we know what happened. So they do this because they want to promote their agenda.⁷⁰

This political organization is identified by housed community members as a central reason for the development of *No Place Like Home* and, as such, as a means for further exploiting and misguiding marginalized people to participate in “their agenda” to reclaim public space through demonstrations and direct-action campaigns. It is a narrative shared among other participants, one which placed political agency on this organization while downplaying and often sidelining, the agency of local people with lived experience of homelessness, especially Indigenous women. In fact, the woman who helped initiate the camp explained that it existed as a site of resistance to efforts which aim to take power away from people who are homeless, and Indigenous women in particular:

I’ll be damned if someone’s going to bully me today or bully any of my friends. These guys on the streets are my family. When I hit the streets and had to be homeless, who do you think looked after me and showed me how to live out there?... You can remove tent city but you can’t remove this society... I make people stand up and fight. I gave them the knowledge to fight and why it’s right.⁷¹

The erasure of Indigenous women’s leadership role and Indigeneity in general in creating this encampment is concomitant with historical and ongoing gendered settler-colonial practices. These efforts to disappear Indigeneity, and Indigenous women, in particular, functions as a form of epistemic violence – “the remotely orchestrated, far-flung, and heterogeneous project to constitute the colonial subject as Other”⁷² – and impacts public understanding of who occupied this encampment and experiences homelessness in Aster Falls. This erasure does more than ignore the role Indigenous women had in initiating this camp; it also minimizes the effects of settler-colonial relations. The Indigenous woman who helped to begin the camp explained to us that she is able to take on the hateful and even violent reactions from some community members because, “I’ve got nothing to lose. Just me and my dog. You took my baby, the other one we don’t really talk a lot. But really, I’ve got nothing left to lose. I’m a martyr, you touch me, we win.”⁷³ The colonial system creates intergenerational trauma that has fractured this woman’s family and so many other Indigenous families. Not only does the colonial project participate in cultural genocide, but as this woman describes, it objectifies her very body. Her corporeal existence becomes marked as a tool

⁶⁹ Bhandar, *supra* note 42.

⁷⁰ Interview code C13.

⁷¹ *Supra* note 65.

⁷² Gayatri Spivak, “Can the Subaltern Speak?” in Cary Nelson & Lawrence Grossberg, eds, *Marxism and the Interpretation of Culture* (Illinois: Board of Trustees of the University of Illinois, 1988) 271 at 280.

⁷³ *Supra* note 65.

of resistance, where she does not even have her body “left to lose” because it too has been subject to colonial rule.⁷⁴

One-third of participants with lived experience of homelessness in our study reported being Indigenous. This figure reflects official point-in-time count data from this City and the overrepresentation of Indigenous Peoples in the homeless population across Metro Vancouver.⁷⁵ However, in our interview data, we find that across law enforcement and community stakeholder groups perceptions of the scale of Indigenous homelessness were inconsistent and, in some cases, rendered invisible. For example, one service provider explains that the homeless population in Aster Falls “is really diverse” and includes “lots of Indigenous People[s].”⁷⁶ Yet in another instance, a police officer responding to the question about how much of the homeless population is Indigenous in Aster Falls says:

Oh God, very, very low, although I haven't actually looked at it, because we have the [First Nations reserve] here, and they are engaged as a community. None of that group is in our homeless population. I would say we are very, you know, white non-ethnic homeless group. Now, to be honest, you can be First Nations with 1/16th genetically First Nations, or genetically ethnic or Indigenous. So, to me I see your name or look at you, you don't look Indigenous, to any of us, that doesn't mean that you're not. I'm not saying that we don't have any but to me, most of them, scream sorta of white, Caucasian you know, it doesn't scream to me, that it's a real First Nations Indigenous homeless population.⁷⁷

Racialization of Indigenous Peoples is deeply embedded in colonial processes that seek to control and classify Indigeneity.⁷⁸ This police officer's reliance on observable racial cues to assess who constitutes “a real First Nations Indigenous homeless Person” echoes arbitrary colonial delineations of who counts as a “status Indian” under *the Indian Act* and is therefore recognized as First Nations by the state. How status is allocated has a long history of sexism and racism and is part of a larger project to assimilate, and engage in the cultural genocide, of First Nations People.⁷⁹ This account is reflective of ideas about Indigeneity that permeate Canadian consciousness in ways that have grave implications for how Indigenous Peoples make political claims.⁸⁰ If Indigenous Peoples are positioned as less visible, it is easier to claim that they have no rights. Like this account, the four legal documents we analyzed as part of this article omit any discussion of Indigenous Peoples as part of the *No Place Like Home* encampment, or the homeless population in Aster Falls. Failing to acknowledge Indigeneity perpetuates the landlessness and displacement of Indigenous Peoples and permits municipalities to ignore human rights obligations specific to Indigenous

⁷⁴ Tricia McGuire-Adams, “‘This is What I Heard at Naicatchewenin’: Disrupting Embodied Settler Colonialism” (2021) 6:1 *Journal of Indigenous Wellbeing* 7.

⁷⁵ BCNPHA & Thomson Consulting, *2017 Homeless Count in Metro Vancouver. Final report*, online: <<http://www.metrovancouver.org/services/regional-planning/homelessness/HomelessnessPublications/2017MetroVancouverHomelessCount.pdf>> [perma.cc/88LV-K7A7].

⁷⁶ Interview code SP01.

⁷⁷ Interview code P03.

⁷⁸ Chris Andersen, *Race, Recognition, and the Struggle for Indigenous Peoplehood* (Vancouver: UBC Press, 2015); Bonita Lawrence, *'Real' Indians and Others: Mixed-Blood Urban Native Peoples and Indigenous Nationhood* (Vancouver, UBC Press, 2004).

⁷⁹ Vowel, *supra* note 36.

⁸⁰ Andersen, *supra* note 78; Mark Rifkin, “Settler Common Sense” (2013) 3:3 *Settler Colonial Studies* 322.

Peoples.⁸¹ Returning to Collin’s notion of the hegemonic and interpersonal domains organizing the matrix of domination,⁸² these omissions are deeply rooted in the colonial ideology of Indigenous Peoples and traditions as less-than, and in the ‘Othering’ of Indigenous Peoples. As one Indigenous woman described, “When you grow up, if you don’t look like them, talk like them, wear what they wear, drive what they drive, you’re not good enough.”⁸³ *The United Nations Declaration on the Rights of Indigenous People*, which Canada has endorsed, affirms Indigenous Peoples as unique rights holders and specifies that Indigenous groups “shall not be forcibly removed from their land,”⁸⁴ have the right “to the improvement of their economic and social conditions,”⁸⁵ which includes housing, and “to be actively involved in developing and determining health, housing, and other economic and social programs.”⁸⁶ These rights create a legal obligation to Indigenous land and self-determination for Indigenous encampment residents. More than this, the human rights legislation embodies the spirit not only of individual rights from a legal perspective but affirms the sacredness of the land for its stewards.

Our analysis of instances where Indigenous homelessness was described also reveals the subtle ways that exclusion is created through the intersection of colonialism and class inequity. Several Indigenous women spoke to us about the harm and violence they experienced that mirrors the state-sanctioned colonial violence Indigenous Peoples have endured for centuries. One Indigenous woman noted “you literally get shunned and shot at,”⁸⁷ and another commented that the eviction of the encampment created a breakdown in the camp’s “tight knit” community⁸⁸ so that people feel “lost.”⁸⁹ Yet, in the account below a community member describes systemic responses to homelessness without recognizing how the system of colonialism has contributed to the economic peril facing some Indigenous communities and the colonial tools that are used to respond to homelessness. The participant says:

If you look at [nearby major urban downtown core] or you look at our homeless population in Aster Falls or you look at almost any population in any of the communities you will not see an East Indian. We’ve got a really big East Indian population here. And why is that? Because it’s culturally unacceptable, we’ve made it culturally acceptable [here] you will see a hugely disproportional First Nations representation. You won’t see an East Indian standing and you probably won’t see an ethnic Chinese and we’ve got a huge Chinese population, huge East Indian population, they’re not there you know. It’s not culturally okay to go that way.⁹⁰

This participant believes that for some groups asking for help or seeking services is thought to be shameful and unacceptable which, for them, helps to elucidate why these groups are less visible or formally counted as part of the homeless population. Indeed, research reveals that varying

⁸¹ Thistle, *supra* note 28; Farha & Schwan, *supra* note 1.

⁸² Collins, *supra* note 25.

⁸³ *Supra* note 65.

⁸⁴ United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UNGAOR, 61st Sess, Supp No 53, UN Doc A/Res/61/295 (2007) [UNDRIP], Art. 10.

⁸⁵ *Ibid* at Art. 21(1).

⁸⁶ *Ibid* at Art. 23.

⁸⁷ Interview code PWLE06.

⁸⁸ *Ibid*.

⁸⁹ Interview code PWLE07.

⁹⁰ Interview code C14.

cultural differences around what information people should share outside the family, expectations around familial obligations, fear of stigma, and distrust in public institutions act as barriers to accessing social support services.⁹¹ Yet, when describing First Nations populations, the participant implies that it is culturally acceptable to seek services and “get a handout.” This is a harmful myth that is a product of, and reproduces, structural violence against Indigenous Peoples.⁹² A lack of attention to, and ultimate erasure of, the colonial context shaping Indigenous Peoples’ lives hinders an ability to see homelessness, poverty, and intergenerational trauma as a reflection of historical and ongoing colonialism. As one Indigenous woman noted, this inability of the community to perceive the state of homelessness in the city and the community's often violent response to homelessness is willful and strategic in nature, “They misunderstand everything, it’s not even that they misunderstand, they don’t care to really understand. I don’t think they do misunderstand. They’re just not interested in learning or knowing.”⁹³ The erasure of Indigeneity and the broader colonial context described by Indigenous women in this study must be seen as part of institutional “racist historical exclusions” that function to hide—and sometimes put in plain view—Canada’s ongoing colonial project.⁹⁴

Contrary to some interview data showing that people experiencing homelessness, including Indigenous Peoples, are part of the homeless community in Aster Falls and were central to the development of *No Place Like Home*, in other accounts Indigeneity was made to disappear. This disappearing of Indigeneity within explanatory narratives of homelessness is important when we consider how the encampment was legally governed. As Smith suggests, the attempted disappearance of Indigenous Peoples “enable[s] nonindigenous peoples’ rightful claim to land. [...] It is acceptable to singularly possess land that is the home of [I]ndigenous [P]eoples, because [I]ndigenous [P]eoples have disappeared.”⁹⁵

B. RELATIONS OF CLASS AND THE CONSTRUCTION OF “SAFETY”

*My survival strategy is to stay unnoticed.*⁹⁶

To maintain colonial domination, Canada needs to redefine the land in ways that continually symbolically, ideologically, materially, and legally erase Indigenous Peoples’ stewardship and rights.⁹⁷ Class relations are imperative to a reorganization of the land through a colonialist lens in

⁹¹ Salim Ahmed *et al*, “Barriers to Access of Primary Healthcare by Immigrant Populations in Canada: A Literature Review” (2016) 18:6 *Journal of Immigrant and Minority Health* 1522; Angela Kalich, Lyn Heinemann & Setareh Ghahari, “A Scoping Review of Immigrant Experience of Health Care Access Barriers in Canada” (2016) 18:3 *Journal of Immigrant and Minority Health* 697; Miriam Stewart *et al*, “Multicultural Meanings of Social Support among Immigrants and Refugees” (2008) 46:3 *International Migration* 123.

⁹² Vowel, *supra* note 36 at 115.

⁹³ *Supra* note 87.

⁹⁴ David G. Embrick & Wendy Leo Moore, “White Space(s) and the Reproduction of White Supremacy” (2020) 64:14 *American Behavioral Scientist* 1935 at 1941.

⁹⁵ Andrea Smith, “Indigeneity, Settler Colonialism, White Supremacy” in Daniel Martinez Hosang, Oneka LaBennett & Laura Pulido, eds, *Racial Formation in the Twenty-First Century*, (Berkeley: University of California, 2012) 66 at 69.

⁹⁶ Interview code PWLE04.

⁹⁷ Arundhati Virmani, “National Symbols under Colonial Domination: The Nationalization of the Indian Flag, March-August 1923” (1999) 164 *Past & Present* 169; Jeff S. Denis, “Contact Theory in a Small-Town Settler-Colonial Context: The Reproduction of Laissez-Faire Racism in Indigenous-White Canadian Relations” (2015) 80:1 *American*

that they allow for the exchange and control of space based on understandings of property (*i.e.*, the land) and ownership (*i.e.*, rights). As our analysis shows, despite these colonial strategies, Indigenous Peoples continue to exist and use their land confirming Kauanui's claim that "indigeneity itself is enduring [...]; [I]ndigenous peoples exist, persist, and resist."⁹⁸ Nevertheless, colonial capitalism must continually enact itself to maintain power and perpetuate oppression(s). In this section, we show how the discourse of "safety" taken up by the criminal legal system evades the knowledge and embodied experiences of safety among unhoused people in ways that reiterate class relations structured through settler colonialism. Once constructed as unable to use/be on the land, "safety" becomes a proxy for managing public space for everyone but the unhoused.

Our analysis shows the subtle and problematic ways that camp residents' concrete concerns for their own safety faded into the background of the text-mediated institutional response to the encampment. In this first account, a camp resident describes feeling like the community's response to securing her safety is not a priority. She says:

When I was living in tent city, my tent was on fire and I was stuck in there, and it took [the fire department] twenty minutes to get there. And if I didn't get out when I did, I would have died, 'cause there was a propane tank that exploded in there. And that's why I've lost all my respect for them. Six cop cars showed up like right away, and then twenty minutes till the fire department came.⁹⁹

In another example, a camp resident understands the strategies for managing the safety of camp residents to be about broader forms of governance. They say:

I think there should be oversights and stuff, maybe there should be fire inspections and things like that [in the encampment], but I think that those people become an arm of the government enforcing body; it becomes more than just a fire chief looking for fire hazards it becomes a way for the government or the institutions involved - to maintain a stranglehold and to try and control and get rid of Tent Cities.¹⁰⁰

Likewise, a service provider explains that the community concerns around safety are not really about the well-being of people experiencing homelessness. In their words,

the community is going to put everything aside in the wake of safety, regardless of what it does to human life [of unhoused people] in the process. I definitely hear about, not as much the money involved [to address these safety concerns], but the argument of "people have made their own decisions", and "we're not responsible to take care of them."¹⁰¹

Sociological Review 218; Cole Harris, *A Bounded Land: Reflections on Settler Colonialism in Canada* (Vancouver: UBC Press, 2020); Daniel Rück, *The Laws of the Land: The Settler Colonial Invasion of Kahnawa:ke in Nineteenth-Century Canada*. (Vancouver: UBC Press, 2021).

⁹⁸ J. Kēhaulani Kauanui, "'A Structure, Not an Event': Settler Colonialism and Enduring Indigeneity" (2016) 5:1 *Lateral*, online: <<https://doi.org/10.25158/L5.1.7>> [perma.cc/J3M9-JRC7].

⁹⁹ Interview code PWLE05.

¹⁰⁰ *Supra* note 96.

¹⁰¹ Interview code SP04.

Combined, these three quotes provide evidence of the disconnect between the institutional discourse regarding concerns for camp resident's safety, and the implementation of "safety" practices that are simultaneously insufficient (slow response from the fire department), insidious (safety and surveillance), and are ultimately concerned with preserving the safety of other members of the community, rather than that of the unhoused. Underneath these perceptions is a settler-colonial structure that asserts settlers as sovereign over the land and positions other land claims as only and always existing in opposition to settler rule, thereby justifying the continued landlessness and erasure of those living in encampments – and more specifically of Indigenous Peoples.¹⁰²

The state maintains and legitimizes the colonial capitalist social order. For example, in the name of "community safety," our interviews with police officers reveal how safety and security among camp residents is transformed into broader social control processes that work to sideline their embodied actualities. Here, one police officer shares how despite his knowledge of camp residents' need to use restricted items for safety and security, their work functioned to subordinate these experiences. The police officer says:

Every week, our team, fire department, there was a nurse ..., there was Provincial Housing representatives ... did what we called a "walk-through." One of the main concerns that had happened was fires because *in order to keep warm, people would steal propane tanks* - I'm assuming they were stolen because they had no means to purchase them; it was never proved though. A lot of propane tanks were brought into the camp from various ways and they would light them in their tents and that became a safety concern, we had quite a few fires down there resulting from this. [...]. But then police are going in there regularly with fire. *At this point it's basically, the police's role is to keep the peace to make sure that the fire department and all the people going and walking through are safe.*¹⁰³

Policing of the encampment helped to safeguard the safety of "people going and walking through" *No Place Like Home*, not those who lived there. Taken together, these insights show how knowledge and embodied experiences of safety among unhoused people are sidelined by the institutions responsible for securing collective safety.

Textually mediated processes institutionalized community concerns over safety.¹⁰⁴ The City of Aster Falls filed an application¹⁰⁵ in 2018 with the Supreme Court of British Columbia to address continued fire safety concerns at *There's No Place Like Home* and to seek authority on existing Consent Orders around health and safety.¹⁰⁶ The defendants, comprised of at least four camp residents, argued in *the Response* that the City of Aster Falls prioritized fire safety over any other form of safety, failed to adhere to existing orders requiring the provision of "approved" intent heaters to occupants, and subsequently banned camp residents' current sources of heat (*e.g.*,

¹⁰² We thank an anonymous reviewer for this insightful observation.

¹⁰³ Interview code P01 (emphasis added).

¹⁰⁴ Dorothy E. Smith, *The Everyday World as Problematic: A Feminist Sociology* (Boston: Northeastern University Press, 1987).

¹⁰⁵ *Notice of Application* (2018). Full citation details have been removed to support anonymity.

¹⁰⁶ *Fire Services Act Order (2018); Fire Safety Regulations (2017)*. Full citation details have been removed to support anonymity.

open candles, propane tanks).¹⁰⁷ The defendants argued that these actions by the City created serious health and safety concerns including the risk of hypothermia for camp residents.¹⁰⁸

The *Safety Orders* did not concede to camp residents' documented claims about their safety but instead maintained that the risk of fire, in particular, was tied to the material items residents had in the encampment that could make "the resulting risk of fire and its rapid spread [sic] untenable."¹⁰⁹ The concerns around safety were not bound by the edges of the encampment, but rather also problematic for *other* community property and spaces despite the camp being relatively separate from other buildings. From this interpretation, camp residents produced unsafety for the community and thus the encampment needed to be managed by the state. Among other conditions, the *Safety Orders* maintained the prohibition of cardboard or wooden pallets from being under tents in the encampment; these sanctions reduced residents' capacity to live in dry and more stable structures. Our interviews with camp residents show why these items were needed and the class relations that made accessing "approved" specialized equipment difficult, if not impossible, given their class position. Here, one participant explains how in the face of these economic realities, wooden pallets and other prohibited items became a substitute for these approved items:

We were getting pallets and it was muddy and stuff, so we were laying pallet pathways in between the tents, and lifting our tents off of the ground and the mud and the wet so that it wasn't cold underneath, and putting it on wood and then the fire safety [came], "you can't have any wood, you can't have more than one tarp, it's going to start a fire, you can't have this and you can't have that". Then they said, "and you can't light fires, and you can't have candles in your tents, and you can't have this." Then we're asking, "what can we use like cuz we don't have money to go buy special heaters for tents, like what can we do?" And they wouldn't say anything, they didn't tell them what they can do, but sure could keep saying "you can't, you can't, fires would start because of a candle", but it's because they are trying to stay warm.¹¹⁰

As described by this participant, the conditions surrounding homelessness made purchasing specialized kinds of (safe and approved) equipment for camp residents impossible. Camp residents were not provided with support on how to purchase approved items that would keep them warm. Instead, the municipal response of "you can't" left residents with limited legal options to prevent fire and freezing. These regulations also precluded Indigenous Peoples from performing a ceremony, such as holding a sacred fire, which is especially important given its place as a space of mourning. Ultimately, the court granted the City authority to address several fire safety concerns in the encampment including the removal of gasoline containers and the restriction of propane tanks, the removal of wooden structures, wooden pallets, and the limitation and control over other materials (*e.g.*, tarps, garbage, and furniture).¹¹¹ Further to these allowances, the City was permitted to increase police presence in the encampment to prevent occupant resistance to the *Safety Order*. As the Justice stated, "to risk freezing or burning to death is a choice no one should

¹⁰⁷ *Response to Application* (2019) at 2.

¹⁰⁸ *Fire Safety Order* (2019) at 46.

¹⁰⁹ *Ibid* at 38.

¹¹⁰ *Supra* note 87.

¹¹¹ *Supra* note 108 at Schedule A.

have to make.”¹¹² While the safety concerns of camp residents were ostensibly heard, the resulting *Safety Order* failed to address how camp residents’ “choices” were organized through class relations that criminalized their attempts at survival.

Unlike the narratives of camp residents, our textual analysis finds that the City’s understanding of safety shifted to consider the encampment as a source of unsafety for the housed community. The City argued that the noncompliance of camp residents to other existing *Orders* exacerbated the fire and health risk to “the occupants of the Encampment, first responders and those who may visit the Encampment.”¹¹³ Our interview data reveal similar sentiments of safety concerns that housed people, businesses, and law enforcement had related to the encampment. For example, when asked about the present state of homelessness in the City, one police officer said that the encampment was a “hot button issue” in the City and that, “people [were] feeling unsafe cause there's like some daycares, there's businesses around and then there's a lot of effects that [the encampment] caused, and disruption to that neighbourhood.”¹¹⁴ Our goal here is not to refute the perception and experiences of (un)safety among study participants. Instead, these observations draw attention to how class relations enter the production and maintenance of safety. Like camp residents’ concerns of safety, in this account class divisions start to come into view as central to shaping public perceptions of unsafety with regards to the encampment. Safety concerns organizing this “hot button issue” were not about the well-being of camp residents, or the economic disparities they faced that made producing safety in the encampment difficult. Instead, the encampment was seen as a threat to the use of public space by housed people. Extending Rifkin’s notion of “settler common sense,” this shift to protect the safety of housed people is only possible when “access to Indigenous territories come to be lived as given, as simply the unmarked, generic conditions of possibility for occupancy, association, history and personhood.”¹¹⁵

In another example, a service provider describes how class differences organize the general public’s perception of *their* safety in relation to the encampment, I would say there's hot spots. So where people might feel unsafe is probably in the downtown which is referred to as ‘the ghetto’. So the camp was here. But it's always been an area where people have called it ‘the ghetto’. I think that would probably be an area where they'd feel nervous.¹¹⁶

Classifying the encampment as located in the “ghetto” reveals how class relations shape public perceptions of safety. In this interpretation, the encampment is understood as a threat to public safety because it is a visible and known site of poverty. Invisible in these public interpretations are accounts from camp residents of how, though the encampment, they are enduring systems of oppression like settler-colonial capitalism. Responding to these public concerns, the *Safety Orders* revealed that the pursuit of “safety” is not a neutral endeavour but rather one embedded in the (re)production of class differences. As one camp resident put it: “I don't think there should be so many rules put in place to protect the general public from what is considered or viewed to be a harm when in reality it’s just a bunch of people coming together trying to maintain their own

¹¹² *Ibid* at 78.

¹¹³ *Supra* note 105 at 12.

¹¹⁴ *Supra* note 65.

¹¹⁵ Rifkin, *supra* note 80.

¹¹⁶ *Supra* note 76.

safety.”¹¹⁷ In practice, class-based discourses of safety shaped the subsequent *Orders* (i.e., “rules”) that work to confirm the public perception of unsafety and criminality while obscuring the concrete safety concerns among camp residents.

VI. CONCLUSION

In this article we examine the socio-legal processes shaping the management and eviction of unhoused people from the *No Place Like Home* encampment. In so doing, we show that the destruction of “home” for unhoused people, particularly Indigenous Peoples, is embedded in a complex system of power organized by a set of ruling relations that continually draw on the intersection of colonial and class-based regimes.¹¹⁸ Our analysis centered on two key observations. First, we examined how the erasure of Indigenous homelessness in this community and the emergence of this encampment as a site of Indigenous women’s resistance and mourning is part of the colonial project that requires Indigenous landlessness and the invisibilization of Indigenous Peoples. Second, we illuminate how the *Safety Order* used to dismantle the encampment occurred in ways that positioned people experiencing homelessness outside of formal efforts to produce and maintain “safety”. “Safety” for the broader public dominated the legal governance of this encampment and worked to rationalize the exclusion of unhoused people and the criminalization of homelessness. As we have demonstrated, the clearing of this encampment happened against the backdrop of historical and ongoing colonial practices that seek to turn land into a commodity that only some are afforded the rights to use. Class relations come into view in this second part of the analysis and draw our attention to the ways that colonialism and capitalism operate intersectionally to justify the historic and ongoing invisibilization, exclusion, and criminalization of unhoused people, particularly those who are Indigenous.

To study encampments without accounting for the significance of the colonial capitalist social order is to participate in the power relations that produce the conditions unhoused people in our research describe as trying to survive. In this article, we show how, through these interlocking systems of domination, the erasure of Indigenous resistance, and Indigenous homelessness more generally, reproduces the conditions whereby landlessness and displacement are justified. It is in this context that one participant told us that though he did stay at *No Place Like Home*, he “didn’t want to camp on somebody’s street.”¹¹⁹ Understanding how the legal governance of encampments are informed by these interlocking systems of domination may help to inform policy and legal reform in Canada and elsewhere that seeks to enshrine housing as a fundamental human right.

¹¹⁷ *Supra* note 96.

¹¹⁸ *Supra* note 24.

¹¹⁹ *Supra* note 96.