

# **The Hidden Homeless: Residential Tenancies Issues of Victims of Domestic Violence**

**FINAL Report**

**June 2014**

**A Research Project by:**

**The Centre for Public Legal Education Alberta and  
The University of Alberta**

# Acknowledgements

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Report by:

Professor Lois Gander, QC  
University of Alberta



Rochelle Johansson  
Centre for Public Legal Education Alberta



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# Executive Summary

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*There's a law? I'm not aware of a law or remedies that help victims of domestic violence get or maintain rental housing! I can't think of any particular piece of legislation or even common law that provides specific protections for people who are victims of domestic violence. I am always asking the landlord, resident manager, or housing provider for an exception to their policy to be made or to change their mind on an eviction notice based on their compassion. That's our only argument.*

## **Purpose**

This study was undertaken to better understand the legal context within which victims of domestic violence operate in staying in, leaving, and finding new rental housing. Its purpose is to contribute to preventing at-risk populations from entering or returning to homelessness.

## **Research Questions**

The research questions addressed in this study are:

1. What is the legal context for victims of domestic violence in relation to rental housing?
2. Does the legal context help or hinder victims of domestic violence maintain stable rental housing?
  - 2.1 What legal problems do victims of domestic violence encounter in maintaining stable rental accommodation?
  - 2.2 What legal remedies, services, interventions and resources do intermediaries currently refer victims of domestic violence to access?
  - 2.3 What current legal remedies, services, interventions and resources are available to help?

- 2.4 What legal remedies, services, interventions and resources do the intermediaries themselves provide?
- 2.5 Do the current legal remedies, services, interventions and resources meet the needs of victims of domestic violence?
- 2.6 What additional legal remedies, services, interventions and resources are needed?

## **Research Methods**

A literature review, annotated bibliography, legislative scan and service and resource review were conducted to consider the relationship between domestic violence, residential tenancy law, and homelessness, and to consider the existing residential tenancy legal framework, its limitations and strengths, and to review legislative strategies that have been put in place in other jurisdictions.

The research was conducted through interviews with five key informants and three focus groups consisting of people actively involved in supporting victims of domestic violence in accessing rental housing or in providing that housing. The scope of this study was limited almost exclusively to violence within intimate relationships. Where inter-generational violence is referred to, it will be specifically noted.

It quickly became apparent in conducting those interviews and focus groups that while victims of domestic violence include both women and men, the preponderance of the experience of research participants is that women are most often the victims and men are most often the abusers. As a result, the particular experience of abused men is not reflected in this study. Since research participants did not make specific reference to the sexual orientation of victims and abusers in intimate relationships, any particular features of the difficulties experienced by lesbian, gay, bi-sexual, transgendered, or queer (LGBTQ) victims are not reflected in this study. For those reasons, in this report, the feminine pronoun will be used in reference to victims and the male pronoun will be used in reference to men.

## **Findings**

The study concluded that the legal context within which a victim of domestic violence finds herself as she attempts to address her need for housing is complex. She may need to engage with the criminal justice system, the family justice system, and the civil justice system. When she appears before any of a variety of courts and tribunals, she will confront an array of laws, regulations, policies, and procedures that require her to play a range of roles: claimant, complainant, witness, applicant and respondent. She will be forced to frame her life and tell her story in different ways to access the services and remedies to which she may be entitled. All of this stress occurs when her life is in a state of upheaval and her ability to cope is severely

constrained. Indeed, the law is likely the last thing on her mind as she tries to find a safe place to live and some way to meet her basic needs.

Although only a preliminary study, the findings of this research suggest that the victim's legal context, including the current law, policies, and practices regarding residential tenancies in Alberta, contribute significantly to both the continuation and escalation of domestic violence and to the homelessness of its victims. It is critical that the law be made to work for victims and their children. Several patterns emerged from the research that suggests that while the law can assist victims in moving forward effectively with their lives, in many instances, homelessness is at least "legally-facilitated" if not "legally-induced". Although many women who live on the street are victims of domestic violence, many victims of domestic violence, especially those who have children, return to their abusers, couch surf with friends or relatives, or live in their cars - their homelessness is often invisible, both hidden and exacerbated by the very measures they must take to survive.

The biggest legal problem that victims of domestic violence appear to face in obtaining and maintaining rental accommodation is dealing with the financial obligations that have arisen with respect to the accommodation. Victims often have little or no income of their own with which to pay for damages, overdue rent, and utility payments. If she is applying for a new place to live, she will require a new security deposit, new rent, and will face moving or other expenses. And, since physical abuse is often coupled with financial abuse, the victim may find that the bills are in her name while credit cards, bank accounts, or other assets are in the name and under the control of the abuser. Yet it is often the victim that the landlord pursues for overdue rent and damages. The result is that the victim may be left with such a bad tenancy record that she cannot acquire the reference she needs to obtain new accommodation. She will also likely have acquired a bad credit rating, a measure often used by prospective landlords in deciding whether or not to rent to a potential tenant. While some government assistance is available to help with some of these costs, research participants reported that eligibility requirements can be a barrier for some women and that financial assistance amount is too little to meet the real needs of victims.

To address her problems, a victim may turn to non-market housing, including shelters and various forms of social housing for help. If she has children, she will find that she will be given priority for this assistance as soon as an appropriate space becomes available. But she will quickly discover that there are long waiting lists for places in all forms of non-market housing. In the interim, she may be sent to a hotel at government expense. While that may provide her with some immediate relief, she and her children will not likely be able to resume any sort of normal life while there. Perhaps crowded with her children in one room, distant from schools, friends, and other resources and support networks, the victim may find herself in an increasingly unsatisfactory situation. Research participants report that victims will often return to the home they share with the abuser.

Ironically, where the victim has a share in any matrimonial assets, her predicament may be worse than if she does not. Matrimonial assets may not be readily accessible yet their existence

may be a complete bar to her accessing both social housing and the very legal services she needs to liquidate those assets.

Unable to access non-market housing or what assets she might have, the victim may be driven back to the abuser or onto the couches of family members or friends. In doing so, she may expose her hosts to the risk of violating policies governing their own housing. If her family or friends live outside the boundaries of the area that is served under a housing management body, she may find that she no longer qualifies for the benefits it provides, shut out by the only solution she's been able to find.

Even if the victim is able to access non-market housing, including shelters, special staged housing, or social housing, she may have difficulty meeting some of the conditions attached to that option. Violation of conditions or policies can lead to eviction from these forms of housing, making it even harder for the victim to secure safe, let alone "acceptable"<sup>1</sup>, accommodation.

Immigrants, aboriginal, childless victims, and victims with criminal records, face even more barriers. Isolation, cultural factors, communication problems, and the priorities of various housing and legal service agencies further impede the ability of those victims to find appropriate housing. Research participants report an increasing number of immigrant, aboriginal, and childless victims in their caseloads and that those victims' situations are increasingly complex.

As the victim attempts to deal with the myriad issues that she confronts in addressing her situation, she will likely go through one or more efforts to reconcile with her abuser. If those efforts are unsuccessful, she will likely find her opportunities for obtaining safe and acceptable housing increasingly reduced: attempts to reconcile while in social housing may put her in conflict with its policies resulting in her eviction. That eviction may, in turn, bar her from obtaining that housing in the future. If she leaves the housing on her own, her subsequent application for a unit will likely go to the bottom of whatever waiting list the housing agency might have.

The law, legal process, and policies of housing and legal services agencies are implicated in what can quickly become a downward slide into homelessness for victims of domestic violence. The cascading and calamitous effect of the law often begins when someone complains to the landlord about noise emanating from an apartment. The landlord may then evict both the victim and the abuser for breaching the covenant that prohibits interfering with the rights of other tenants. Should the victim or someone concerned about the victim call the police, the landlord may take the mere presence of the police on the premises as grounds for terminating the lease. The prospect of being evicted may discourage a victim from reporting an incident, exposing her to the very real risk that the violence will escalate.

If the police are called but the incident is not considered sufficiently serious to warrant arresting the abuser, he may simply be cautioned. If there is concern that the violence may continue or escalate, the victim may be able to get a protection order. A common remedy sought by victims

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<sup>1</sup> The Canadian Mortgage and Housing Corporation (CMHC) defines acceptable housing as housing that is adequate in condition, suitable in size and affordable. See [http://cmhc.beyond2020.com/HiCODefinitions\\_EN.html#\\_acceptable\\_housing](http://cmhc.beyond2020.com/HiCODefinitions_EN.html#_acceptable_housing). Accessed on February 27, 2014.

is an emergency protection order (EPO). The EPO may include provisions barring the abuser from being at the victim's residence or contacting her. It may give the victim exclusive possession of the residence even if it is jointly owned or the abuser is named as a tenant on the lease. The order can also direct a peace officer to accompany the victim to get her personal belongings from the residence if she is no longer living there. Either the police or the victim can apply for an EPO. While the police can request the order by phone, they do not appear to make use of this route in Edmonton. Legal Aid Alberta offers services that can help victims, including providing victims with assistance in getting these or other types of restraining orders. While some legal help is offered by Legal Aid to victims regardless of income, most services are contingent upon the victim meeting income guidelines (which include assets).<sup>2</sup>

If the nature of the violence warrants, the abuser may be arrested. The abuser will then be entitled to a bail hearing<sup>3</sup> and may be released from custody pending trial. Often the release is on conditions that include having no contact with the victim or prohibiting the abuser from being at the residence. If the abuser fails to abide by the conditions of his release, the police may be able to arrest him for violating those conditions even if there is no further act of actual violence.

If the victim has managed to secure a unit in non-market housing, her situation is often precarious. Though many of the policies and procedures of those forms of housing are well-intended, they often contribute to the victim's slide into homelessness. Policies prohibiting the use of cell phones may impede the victim's ability to access legal and other services she needs. Crime-free policies and policies restricting the presence of males over the age of 18 may interfere with attempts by the couple to reconcile, efforts to maintain parental relationships with affected children, or to establish new relationships. Some forms of housing have requirements with respect to the behavior of children, attendance at treatment programs, and expectations regarding the victim's daily routines.

In some instances, housing rules are established by legislation, such as the *Alberta Housing Act* (RSA 2000). Under this legislation, housing agencies are at times given unsupervised discretion with respect to applying those rules; the victim has little or no recourse to contest her eviction for an alleged violation of them. In other instances, the rules are established by the agency providing the housing. Where those rules go beyond the provisions of the *Residential Tenancies Act* (SA 2004), they may lead to evictions that might not, in fact, be legally permissible. However, victims have little recourse to legal assistance, even legal information, by which to clarify their rights.

Where the violence of the abuser has led to damages to the premises, the landlord is entitled to consider the tenant to have breached the tenant's covenant not to permit significant damage to the premises. The victim and the abuser can both be evicted even if the victim has played no role in inflicting the damage. The victim can be evicted even if the abuser is barred by court order from being on the premises. Under the current law, the victim's only recourse is to refuse to vacate the premises, forcing the landlord to go to the Residential Tenancy Dispute Resolution

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<sup>2</sup> Assistance from Legal Aid Alberta is not free. Recipients must agree to repay the cost of their legal representation they receive.

<sup>3</sup> Properly called a judicial interim release hearing.



Service to get an order terminating the tenancy. There are legal services that may be able to help the victim with the hearing, but these services are only available if the victim meets income guidelines.<sup>4</sup> At that hearing, the landlord will need to provide evidence of the breach and the victim will be able to tell her story. The Hearing Officer can grant the requested order, refuse to grant it, or grant a conditional order allowing the tenancy to continue if those conditions are met. The most significant benefit to the victim of forcing the landlord to get an eviction order may be the time she gains to make alternate housing arrangements. However, research participants seldom mentioned that this strategy is being used for gaining even this temporary reprieve.

The victim's problems are prolonged by the legal processes required to settle the ongoing financial obligations of the abuser and to liquidate any assets that may be available to assist her in getting re-established. The very fact that the victim has assets, even though she cannot access them, can be a complete barrier to the victim's ability to qualify for social housing, financial subsidies, and the legal services she needs to resolve these issues. In any event, accessing her legal remedies takes time and is arduous, unpredictable, and expensive. Until the legal issues related to the breakdown of her domestic relationship are resolved, the victim is in legal limbo.

As the doors to non-market housing close on her, the victim will turn to family and friends for shelter, couch-surfing in situations that might put the homes and well-being of those others at risk. Their own housing may be over-crowded or subject to occupancy rules that are violated by the victim's presence. As her options run out, the victim may be forced to split up her family and to seek increasingly unsafe and unsuitable shelter, which may mean living in a car or on the streets. Many simply remain hidden from view, relying on their wits, prostitution, and crime to keep a roof over their heads.

As this downward trajectory suggests, the ability of victims to obtain and maintain rental accommodation on leaving an abusive situation is impeded by the very nature of their victimization, further victimizing them. That the law and legal processes accelerate this slide is a denial of her basic human rights to a safe and secure home.

## **Recommendations**

1. All levels of government need to take immediate action to facilitate the development of more non-market housing, including emergency shelters, staged shelters, and social housing and to ensure that this housing addresses the needs of the full range of victims of domestic violence and their children.
2. Victims of domestic violence need to be provided with increased financial assistance to adequately meet financial obligations with respect to their accommodations.

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<sup>4</sup> The Edmonton Community Legal Centre (<http://www.eclc.ca/what-we-do.html>) and Student Legal Services of Edmonton (<http://www.slsedmonton.com/about/>) offer summary legal advice and representational services for tenants who are in a dispute with their landlord. Tenants must meet income guidelines.

3. Laws and policies that govern housing need to be reformed to effectively respond to the variety of needs of victims. Victims can be at various stages in addressing the violence in their relationships so laws, policies, and legal processes need to be nuanced. In particular, consideration should be given to
  - a. reviewing the legislative provisions regarding security deposits. Consideration should be given to reducing the amount to half a month's rent, or replacing security deposits with provisions that require tenants to prepay first and last month's rent so that the victim's funds are not tied up pending the return of the deposit;
  - b. no longer holding a victim responsible for damages that she did not cause, particularly when they are caused by someone under an EPO or other form of restraining order forbidding them to be on the premises or evidence that the domestic relationship has ended;
  - c. no longer holding the victim responsible for criminal activity on the premises particularly when those are acts of violence against the victim or when they are caused by someone under an EPO or other form of restraining order forbidding them to be on the premises;
  - d. eliminating the asset element of needs tests for accessing various services when those assets are not accessible to the victim;
  - e. revising the policies with respect to crime free multi-housing so that the victim is not held responsible for behaviour she is unable to influence, let alone control;
  - f. revising policies of non-market housing to better reflect the dynamics of domestic violence so that victims are not penalized for attempting to reconcile with the abuser, to keep her family together, and to enter into new relationships;
  - f. establishing public oversight of the exercise of discretion by providers of non-market housing;
  - g. clarifying the application of the *Residential Tenancies Act* and the *Alberta Housing Act* to various forms of non-market housing;
  - h. providing the victim the option of remaining as the tenant of a rental property while evicting the abuser where domestic violence on presentation of evidence confirming the violence; and
  - i. expanding legal remedies and housing options for victims of financial, psychological and other forms of abuse.
4. Victims of domestic violence need access to additional and more accessible wrap-around services, including legal services that advocate for victims, to support them as they come to terms with their situation and their options.

5. More training is required for police, judges, lawyers, hearing officers, and landlords regarding the phenomenon of domestic violence. Particular emphasis should be placed on understanding the recurring cycles of violence that often results from attempts by victims to reconcile their relationship with their abuser, to attend to their children's needs, and to make appropriate alternative arrangements for their survival and the well-being of their children.
6. More educational resources and opportunities are needed to better educate the public, those who serve victims of domestic violence, and victims regarding the legal remedies and services available to victims of domestic violence;
7. Additional research needs to be undertaken to further clarify
  - a. the legal situation of victims of domestic violence regarding other market housing, including home ownership, condominiums, mobile homes, and cooperative housing;
  - b. whether the revisions made to residential tenancy law in other jurisdictions has been helpful for victims of domestic violence;
  - c. the variance between the law and the current practice in both market and non-market housing;
  - d. the legal status of emergency shelters and staged housing vis a vis the application of the law, including the application of the *Residential Tenancies Act* and the *Alberta Housing Act*;
  - e. the need for special housing and support services for the disabled, by those in need of special medical care, by the culturally and socially isolated, by male victims, and by LGBTQ victims.

# Introduction

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## Background

Several studies have identified a link between family violence and homelessness (Tutty, Ogden, & Weaver-Dunlop, 2008; Novac, 2006). A study by Richter and Chaw-Kant (2008) focusing on two inner-city women's shelters in Edmonton found that "[h]aving abusive relationships and housing problems (62.3%) were the main reasons why women had come to the shelter." (p. 13) Included in the housing problems were issues associated with renting, including eviction.

Recent research by the Edmonton Social Planning Council and the Edmonton Coalition on Housing (Kolkman & Ahorro, 2012) confirms that a bad rental history and lack of landlord references means that victims of domestic violence will have a difficult time finding stable housing. That study also identified that discrimination occurs on the basis of source of income: "When landlords found out tenants were on government income support (e.g. AISH, Alberta Works), there was often greater reluctance to rent them a unit" (p. 20). The same study identified the need for education on rental housing rights and responsibilities for those who were vulnerably housed and/or homeless and for the staff (intermediaries) who provide them with support services.

There is a stigma attached to being a victim of domestic violence that makes her seen to be an undesirable tenant in a residential tenancy situation. In July 2006, the Canadian Mortgage and Housing Corporation released a study that considered whether or not landlords discriminate against battered women. The results of the study suggest that landlords do discriminate against battered women and that "a substantial number of landlords were surprisingly candid in their unwillingness to rent to a battered woman and some were even openly hostile towards battered women" (p. 3). A victim is most vulnerable immediately after leaving the abusive relationship and trying to find somewhere new to live, which is also the time that the victims are faced with discrimination by landlords.

There are a variety of legislative approaches to dealing with the intersection of domestic violence and rental housing. In the United States, the *Violence Against Women Reauthorization Act of 2013* (2013, "VAWA") prohibits publicly-funded landlords from denying domestic violence victims admission into housing and requires leases to state explicitly that domestic violence is not a legal reason to evict the victim of that violence. Specific states also have laws to help victims, including requirements that the landlord must change the locks within a set period of time if the victim has a protection order, and provisions that allow a tenant to break the lease if domestic violence occurs (National Housing Law Project, 2013). In Canada, some provinces have special legal provisions in provincial renting law that are intended to help victims of domestic violence, but many provinces do not.

The intersections between domestic violence, rental housing, and homelessness make it critical that front-line service workers be able to refer their clients to appropriate resources and

services. The experience of the staff of the Centre for Public Legal Education of Alberta, coupled with the information provided by the staff of organizations providing services with respect to domestic violence, indicates that there is a lack of resources and legal information available to help victims of domestic violence understand their housing rights in Edmonton. However, there is not enough information about the kinds of legal problems victims face in relation to rental housing in Edmonton or when those problems occur (for example, are victims discriminated against when they apply to rent, or when they are evicted, or at another time) to guide legal reform, and the development of resources. More information is needed to identify where the legal information and service delivery gaps occur to determine the kind of resources and training that would best fill those gaps, both for the intermediaries and victims. Increased landlord awareness of some of the challenges that victims face when trying to secure safe rental housing may also help to prevent homelessness or a return to homelessness in this vulnerable sub-population.

## **Purpose**

This study was undertaken to better understand the legal context within which victims of domestic violence operate in staying in, leaving, and finding new rental housing. By identifying training needs and preferred formats for information delivery, the findings of this project will be useful in enhancing the capacity of front-line workers to assist their clients in avoiding homelessness. The research will also help identify potential avenues of legal reform to assist victims in maintaining housing stability. The study will help prevent at-risk populations from entering or returning to homelessness in Edmonton.

## **Research Questions**

The broad questions addressed in this study are

1. What is the legal context for victims of domestic violence in relation to rental housing?
2. Does the legal context help or hinder victims of domestic violence maintain stable rental housing?
  - 2.1 What legal problems do victims of domestic violence encounter in maintaining stable rental accommodation?
  - 2.2 What legal remedies, services, interventions and resources do intermediaries currently refer victims of domestic violence to access?
  - 2.3 What current legal remedies, services, interventions and resources are available to help?

- 2.4 What legal remedies, services, interventions and resources do the intermediaries themselves provide?
- 2.5 Do the current legal remedies, services, interventions and resources meet the needs of victims of domestic violence?
- 2.6 What additional legal remedies, services, interventions and resources are needed?

In this study, “legal context” means the legal problems and issues that the victims face with their rental housing after incident(s) of domestic violence, and the law and the legal remedies, services, interventions and resources that are being used to help victims maintain safe and adequate housing. The legal context is described through a review of current laws, policies, and practices, through interviews and focus groups with key informants and intermediaries who serve victims of domestic violence including front-line support staff at emergency shelters, social workers, community program coordinators, and legal service providers. The information collected identifies not only the residential tenancy problems commonly faced by victims of domestic violence and whether there are currently legal information, support, and advocacy services available to help prevent or overcome those problems, but also the ways in which the law, policies, and practices actually contribute to the problems victims face.

## **Research Methods**

The methods adopted in this study consist of

- A review of the literature dealing with the relationship between domestic violence, residential tenancy law, and homelessness. The literature review is attached as Appendix A and an annotated bibliography is attached as Appendix B.
- A review of legislation in Alberta as it affects the legal remedies available to victims of domestic violence with particular reference to their ability to obtain and maintain safe and appropriate housing. The results of this review are included in the “Findings” section of this report.
- A review of residential tenancy legislation across Canada. The results of this review are attached as Appendix C.
- A review of the existing resources and services available to assist victims of domestic violence with their residential tenancy legal issues. The results of this review are attached as Appendix D.
- Semi-structured interviews and focus groups with respect to the legal context in which victims of domestic violence must function in obtaining and maintaining safe and

appropriate housing. The Key Informant and Focus Group Protocol is attached as Appendix E.

### Selection of participants

Research participants were volunteers drawn from shelter staff and selected agencies that provide services to victims of domestic violence, including legal service organizations and government agencies. A snowballing approach to identifying research participants was adopted. An advisory committee was convened consisting of individuals known by the research team to be involved in addressing domestic violence in Edmonton. That group supplied names of key individuals and organizations that might be willing to participate in the study. As those key informants were interviewed, they in turn provided suggestions for other participants and in some cases facilitated the convening of focus groups. Focus group members were recruited directly by the research team and by key informants.

### Attributes of participants

The length of involvement research participants had in dealing with victims of violence and their problems in obtaining or maintain rental premises varied from six months to 23 years. Research participants included front line workers, program managers and Executive Directors of agencies and associations. Participants included people with experience with counseling immigrants and refugees as well as lawyers working in legal service agencies. Participants have been involved with issues related to domestic violence at the local, provincial, national, international levels with all of them having experience in dealing with housing issues in Edmonton. Participants have been involved in professional associations, domestic violence counseling and referral services, shelters and other forms of non-market housing, and legal advice and intervention services. The frequency of their involvement with issues of residential tenancy and victims of violence ranged from seldom to daily. One or more participants have been involved with victims of domestic violence at every stage of her journey: while still at home making her decision through to her re-settlement in a new home. Participants have had experience that included the range of severity of domestic violence, including dealing with victims who were being stalked by their abuser. Most have also been involved with victims of financial and psychological abuse, with intimate partner abuse, and with intergenerational abuse.

However, there were significant gaps in the make up of research participants: in particular, there were no representatives from the police, judiciary, private bar, organizations who provide specific services to senior victims, and organizations who provide specific services to LGBTQ victims. The only landlords included were responsible for forms of non-market housing. While some participants may have had direct personal experience with domestic violence, no one was interviewed with respect to their own experience as a victim.

### Data gathering

Data was gathered over the period of August 2013 to January 2014. Interviews with key informants and discussions with focus group participants followed semi-structured interview questions. However, as the experience of participants varied significantly, the

emphasis of the interviews and focus group discussions varied accordingly. The interview questions served to initiate the interview and to ensure that all questions were asked in the course of the interview. However, informants were given wide latitude in how they proceeded through those questions. The object of the interview was to elicit as rich a discussion as possible with prompts by the interviewer being used to clarify points or facilitate elaboration of relevant information. Interviews generally lasted 1 ½ hours. Focus groups lasted up to 2 hours.

### Data analysis

A simplified content analysis was used in examining the data generated through key informant interviews and focus group discussions. Themes emerged quickly as there was a high degree of congruence between the responses of participants.



## Findings

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Research Question 1: Legal Context

**What is the legal context for victims of domestic violence in relation to rental housing?**

## **Research Question 1:**

### **What is the legal context for victims of domestic violence in relation to rental housing?**

Although the intent of this study was to explore the intersection between the law as it applies to residential tenancies and the experience of victims of domestic violence in obtaining and maintaining that form of accommodation, it became apparent that understanding those legal issues required an understanding of the broader legal context within which victims must function as they resolve their housing situation.

When there is an incident of domestic violence, the victim comes into contact with the justice system in multiple ways. She will usually be involved with several legal processes, often involving the criminal, family, and civil courts. She may also find herself before the Residential Tenancy Dispute Resolution Service (RTDRS). Each of these legal processes are independent of the other and do not interact with each other, although they may intersect. Each process has its own rules, forms, terminology, and timelines. Her role in each may vary: she may be a claimant, complainant, witness, applicant, or respondent. To access services and remedies, she must tell her story over and over again, each time focusing on different aspects of it.

### **The Criminal Justice System**

Often a victim's interaction with the law begins when police are called to intervene at her home because of some act or threat of violence. The police will offer her immediate assistance and inform her of her option to contact a shelter, and, if appropriate, to get a protection order under the *Protection Against Family Violence Act* (RSA 2000, "PAFVA"). The police will conduct an investigation that will include taking statements and collecting evidence from the people who were involved in the incident. If the abuser is in the home, the police may simply caution him. However, if there are reasonable and probable grounds that a criminal offence has been committed (for example, assault), he may be arrested and taken into custody. Whether or not the abuser is detained depends on certain factors.

In Canada, every citizen has the right not to be denied reasonable bail under the *Canadian Charter of Rights and Freedoms* (1982).

Section 11

Any person charged with an offence has the right

- (a) to be informed without unreasonable delay of the specific offence;
- (b) to be tried within a reasonable time;
- (c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
- (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

**(e) not to be denied reasonable bail without just cause;**

(f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

The Crown Prosecutor has to show cause why the abuser should be detained under the provisions of the *Criminal Code* (R.S.C. 1985, "CC") governing judicial interim release.

Section 515

(10) For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:

- (a) where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;
- (b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and
- (c) if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including
  - (i) the apparent strength of the prosecution's case,
  - (ii) the gravity of the offence,
  - (iii) the circumstances surrounding the commission of the offence, including whether a firearm was used, and
  - (iv) the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment or, in the case of an offence that involves, or whose subject-matter is, a firearm, a minimum punishment of imprisonment for a term of three years or more.

If the abuser is released, he will likely have to abide by certain conditions. These conditions vary depending on the circumstances and are again set out in the CC.

Section 515

(4) The justice may direct as conditions under subsection (2) that the accused shall do any one or more of the following things as specified in the order:

- (a) report at times to be stated in the order to a peace officer or other person designated in the order;
- (b) remain within a territorial jurisdiction specified in the order;
- (c) notify the peace officer or other person designated under paragraph (a) of any change in his address or his employment or occupation;
- (d) abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, or refrain from going to any place specified in the order, except in accordance with the conditions specified in the order that the justice considers necessary;
- (e) where the accused is the holder of a passport, deposit his passport as specified in the order;
- (e.1) comply with any other condition specified in the order that the justice considers necessary to ensure the safety and security of any victim of or witness to the offence; and
- (f) comply with such other reasonable conditions specified in the order as the justice considers desirable.

(4.1) When making an order under subsection (2), in the case of an accused who is charged with

(a) an offence in the commission of which violence against a person was used, threatened or attempted,

(a.1) a terrorism offence,

(b) an offence under section 264 (criminal harassment),

(b.1) an offence under section 423.1 (intimidation of a justice system participant),

(c) an offence relating to the contravention of any of sections 5 to 7 of the *Controlled Drugs and Substances Act*,

(d) an offence that involves, or the subject-matter of which is, a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition, prohibited ammunition or an explosive substance, or

(e) an offence under subsection 20(1) of the *Security of Information Act*, or an offence under subsection 21(1) or 22(1) or section 23 of that Act that is committed in relation to an offence under subsection 20(1) of that Act,

the justice shall add to the order a condition prohibiting the accused from possessing a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all those things, until the accused is dealt with according to law unless the justice considers that such a condition is not required in the interests of the safety of the accused or the safety and security of a victim of the offence or of any other person.

(4.11) Where the justice adds a condition described in subsection (4.1) to an order made under subsection (2), the justice shall specify in the order the manner and method by which

(a) the things referred to in subsection (4.1) that are in the possession of the accused shall be surrendered, disposed of, detained, stored or dealt with; and

(b) the authorizations, licences and registration certificates held by the person shall be surrendered.

(4.12) Where the justice does not add a condition described in subsection (4.1) to an order made under subsection (2), the justice shall include in the record a statement of the reasons for not adding the condition.

(4.2) Before making an order under subsection (2), in the case of an accused who is charged with an offence referred to in subsection (4.3), the justice shall consider whether it is desirable, in the interests of the safety and security of any person, particularly a victim of or witness to the offence or a justice system participant, to include as a condition of the order

- (a) that the accused abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, or refrain from going to any place specified in the order; or
- (b) that the accused comply with any other condition specified in the order that the justice considers necessary to ensure the safety and security of those persons.

If the abuser is released, the police or victim services are required to inform the victim of the release.

If the abuser is charged as a result of the incident, the victim's involvement with the criminal justice system can be lengthy as the amount of time that it takes for a situation to proceed to trial varies. The victim is often required to testify against the abuser, which can be problematic depending on whether there has been a reconciliation between the parties, or whether there is intimidation or coercion being used against the victim by the abuser.

### **The Civil Justice System: Protection for Victims**

If the abuser is not taken into custody, the police may be able to assist the victim get an order limiting contact with the abuser. Under PAFVA, either a police officer or a victim can for a court order limiting contact between the victim and the abuser if there is family violence.

Section 1(1) of PAFVA defines 'family violence'.

- (e) "family violence" includes
  - (i) any intentional or reckless act or omission that causes injury or property damage and that intimidates or harms a family member,
  - (ii) any act or threatened act that intimidates a family member by creating a reasonable fear of property damage or injury to a family member,
  - (iii) forced confinement,
  - (iv) sexual abuse, and
  - (v) stalking,but is not to be construed so as to limit a parent or a person standing in the place of a parent from using force by way of correction toward a child who is under the care of the parent or person if the force does not exceed what is reasonable under the circumstances

In urgent situations where the violence may escalate, the police can apply for an Emergency Protection Order (EPO) immediately and over the phone, while the victim has to apply in person at the courthouse. There is duty counsel available at the courthouse. The abuser does not receive notice of an initial application for an EPO, but will be provided notice of the confirmation hearing (discussed further on). An EPO will only be granted under certain situations.

- 2(1) An order under this section may be granted by a judge of the Provincial Court or a justice of the peace, on application without notice to the respondent, if the judge or justice of the peace determines
  - (a) that family violence has occurred,
  - (a.1) that the claimant has reason to believe that the respondent will continue or resume carrying out family violence, and

- (b) that, by reason of seriousness or urgency, the order should be granted to provide for the immediate protection of the claimant and other family members who reside with the claimant.

PAFVA sets out the factors that the judge must consider in granting an EPO at section 2.

2(2) In determining whether an order should be granted, the judge of the Provincial Court or justice of the peace must consider, but is not limited to considering, the following:

- (a) repealed 2006 c8 s5;
- (b) the history of family violence by the respondent toward the claimant and other family members;
- (b.1) whether there is or has been controlling behaviour by the respondent towards the claimant or other family members;
- (b.2) whether the family violence is repetitive or escalating;
- (c) the existence of any immediate danger to persons or property;
- (c.1) the vulnerability of elderly claimants;
- (c.2) the effect of exposure to family violence on any child of the claimant or on any child who is in the care and custody of the claimant;
- (d) the best interests of the claimant and any child of the claimant or any child who is in the care and custody of the claimant;
- (e) the claimant's need for a safe environment to arrange for longer-term protection from family violence.

There are some factors that the judge should **not** use as a barrier to granting the EPO.

2(2.1) Without excluding any other circumstance, in determining whether an order under this section should be granted, by a judge of the Provincial Court or a justice of the peace, the following circumstances should not preclude the granting of an order:

- (a) that an emergency protection order, Queen's Bench protection order, restraining order or order of any Court ordering the respondent not to contact or communicate with the claimant has been granted previously;
- (b) that the respondent has previously complied with an emergency protection order, Queen's Bench protection order, restraining order or order of any Court ordering the respondent not to contact or communicate with the claimant;
- (c) that the respondent is temporarily absent from the residence at the time of application for an order;
- (d) that the claimant is temporarily residing in an emergency shelter or other safe place;
- (e) that criminal charges have been or may be laid against the respondent;
- (f) that the claimant has a history of returning to the residence and of residing with the respondent after occurrences of family violence.

If there are grounds to issue an EPO, then the order can include a variety of terms under section 2.

2(3) An order under this section may include any or all of the following:

- (a) a provision restraining the respondent from attending at or near or entering any specified place that is attended regularly by the claimant or other family members, including the residence, property, business, school or place of employment of the claimant or family members;
- (b) a provision restraining the respondent from communicating with or contacting the claimant and other specified persons;
- (c) a provision granting the claimant and other family members exclusive occupation of the residence for a specified period, regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties;

- (d) a provision directing a peace officer to remove the respondent from the residence immediately or within a specified time;
  - (e) a provision directing a peace officer to accompany a specified person to the residence within a specified time to supervise the removal of personal belongings in order to ensure the protection of the claimant;
  - (f) a provision directing the seizure and storage of weapons where the weapons have been used or have been threatened to be used to commit family violence;
  - (g) any other provision that the judge of the Provincial Court or justice of the peace considers necessary to provide for the immediate protection of the claimant.
- (3.1) A provision of an order referred to in subsection (3)(b) is to be interpreted as prohibiting communication and contact by any means, including through a third party, unless the order expressly provides otherwise.
- (4) An order under this section may be subject to any terms and conditions that the judge of the Provincial Court or justice of the peace considers appropriate.

The EPO must be served on the abuser by the police or someone else that the Judge or Justice of the Peace names. The initial EPO is of limited duration and will only be in effect for 9 days from when it is granted. It can be extended by the Court of Queen's Bench at a review hearing. The date for a review hearing is included as a term in the EPO. The police are not involved in the review process, unless the officers are called as witnesses at the review hearing.

At a review hearing, the Court of Queen's Bench Justice must consider all of the evidence that was heard in the original EPO application and can allow additional evidence. The Justice can revoke the original order, have an oral hearing, confirm the order, or revoke the order and grant a new Queen's Bench Protection Order (QBPO).

A QBPO may be granted when the justice finds that there has been family violence against the victim who applies for the order. The QBPO can include many different terms.

#### Section 4

- (2) An order under this section may include any or all of the following:
- (a) a provision restraining the respondent from attending at or near or entering any specified place that is attended regularly by the claimant or other family members, including the residence, property, business, school or place of employment of the claimant or family members;
  - (b) a provision restraining the respondent from contacting the claimant or associating in any way with the claimant and from subjecting the claimant to family violence;
  - (c) a provision granting the claimant and other family members exclusive occupation of the residence for a specified period, regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties;
  - (d) a provision requiring the respondent to reimburse the claimant for monetary losses suffered by the claimant and any child of the claimant or any child who is in the care and custody of the claimant as a direct result of the family violence, including loss of earnings or support, medical and dental expenses, out-of-pocket losses for injuries sustained, moving and accommodation expenses, legal expenses and costs of an application under this Act;
  - (e) a provision granting either party temporary possession of specified personal property, including a vehicle, cheque-book, bank cards, children's clothing, medical insurance cards, identification documents, keys or other necessary personal effects;
  - (f) a provision restraining either party from taking, converting, damaging or otherwise dealing with property that the other party may have an interest in;
  - (g) a provision restraining the respondent from making any communication likely to cause annoyance or alarm to the claimant, including personal, written or telephone contact or

contact by any other communication device directly or through the agency of another person, with the claimant and other family members or their employers, employees, co-workers or other specified persons;

- (h) a provision directing a peace officer to remove the respondent from the residence within a specified time;
  - (i) a provision directing a peace officer to accompany a specified person to the residence within a specified time to supervise the removal of personal belongings in order to ensure the protection of the claimant;
  - (j) a provision requiring the respondent to post any bond that the Court considers appropriate for securing the respondent's compliance with the terms of the order;
  - (k) a provision requiring the respondent to receive counselling;
  - (k.1) a provision authorizing counselling for a child referred to in section 1(1)(d)(iv) without the consent of the respondent;
  - (l) a provision directing the seizure and storage of weapons where the weapons have been used or have been threatened to be used to commit family violence;
  - (m) any other provision that the Court considers appropriate.
- (3) A provision of an order referred to in subsection (2)(b) is to be interpreted as prohibiting contact by any means, including through a third party, unless the order expressly provides otherwise.

A QBPO can be in effect for one year, and can be extended for longer.

PAFVA clarifies that protection orders are available to victims whether or not they are named on the lease if they live in the property. If an order is granted, the victim then has the right to remain in the property and cannot be evicted by the landlord.

9(1) A protection order does not in any manner affect the title to or an ownership interest in any real or personal property held jointly by the parties or held solely by one of the parties.

(2) Where a residence is leased by a respondent under an oral, written or implied agreement and a claimant who is not a party to the lease is granted exclusive occupation of that residence, no landlord may evict the claimant solely on the basis that the claimant is not a party to the lease.

(3) On the request of a claimant mentioned in subsection (2), the landlord must advise the claimant of the status of the lease and serve the claimant with notice of any claim against the respondent arising from the lease, and the claimant, at the claimant's option, may assume the responsibilities of the respondent under the lease.

While EPOs are a remedy available to victims of domestic violence, other remedies, such as peace bonds (a remedy in the criminal justice system) and restraining orders can also inhibit contact between the victim and her abuser. Recourse can also be had to the *Petty Trespass Act* (RSA 2000). Under that legislation, an owner can forbid a person to be on premises if the person has no legal right to be there. If the person comes on the premises after being told not to do so, the person can be arrested and removed from the premises by a peace officer.

### **The Civil Justice System: Residential Tenancy Law**

An incident of domestic violence can have an impact on the victim's ability to maintain rental housing. If the incident of domestic violence comes to the attention of the landlord, she may have little choice but to leave her current housing. Either way, she will likely encounter the civil justice process through the application of the *Residential Tenancies Act* (SA 2004, "RTA"). The



RTA is the law that applies to the majority of landlords and tenants, including apartment units, self-contained suites, and rented condominium units. The RTA sets out the obligations and rights that landlords and tenants have towards each other, and legal and procedural rules that must be followed in dealing with each other.

When there is an incident of domestic violence in an RTA governed rental property, several scenarios may follow. The victim may want to stay in the rental property or leave. The landlord may permit the victim to stay or choose to end the tenancy because of the violence. If the victim needs to find a new rental property to live in, then the tenant will have to apply to a new landlord and then meet the landlord's requirements.

- Scenario 1: the victim wants to stay

If the victim wants to stay in the premises, it is important to know whether she is a tenant or not as her legal rights depend on her formal status. If the victim is named as a tenant on the residential tenancy agreement, then she is a tenant and subject to the tenant's rights and obligations under the RTA. If the victim is not named on the agreement as a tenant, her status is less clear. She may or may not be considered tenant, depending on the interpretation of the definition of tenant under the RTA.

Section 1(1)

- (t) "tenant" means
  - (i) a person who is permitted by the landlord to occupy residential premises under a residential tenancy agreement,
  - (ii) a person who is permitted to occupy residential premises under an assignment or sublease of a residential tenancy agreement to which the landlord has consented under section 22, and
  - (iii) an heir, assign or personal representative of a person referred to in subclause (i) or (ii).

The wording included in the residential tenancy agreement can also affect the rights that an occupant has under the agreement.

If both the victim and the abuser are named as tenants on the agreement and the victim wishes to stay in the rental property after the violent incident, there is no mechanism under the RTA for the victim to unilaterally remove the abuser from the lease. In order to remove the abuser from the lease, the victim needs the consent of all parties, including the abuser and the landlord. The RTA also requires the landlord to provide a key to a tenant immediately if the locks are changed. So neither the victim nor the landlord can change the locks to ensure the victim's safety. This means that if the victim wants to stay in the property, she cannot stop the abuser from exercising possession rights as a tenant unless she has an order under PAFVA or other legislation as discussed above.

If the victim is not a tenant, she does not have any rights under the RTA. But, neither does she have any obligations to the landlord. This lack of obligations means that the victim is not liable for rent or damages to the property. It also means that she would be free to enter into a new agreement with the landlord. The agreement could be for the same premises, if the landlord has chosen to terminate the lease with the abuser.

- Scenario 2: the victim is a tenant and wants to leave the rental property voluntarily

The RTA does not allow a tenant to unilaterally end a tenancy. This means that the victim cannot be released from her obligations as a tenant without the consent of the landlord. If both she and the abuser are tenants, then his agreement would be needed as well. If she cannot get out of the lease, she is responsible for any property damage, rental arrears, utilities, or other lease requirements.

- Scenario 3: the victim is evicted from the rental property

Under the RTA, the landlord and the tenant are both acquire certain obligations. These obligations are called covenants. The tenant has seven covenants.

#### Section 21

The following covenants of the tenant form part of every residential tenancy agreement:

- (a) that the rent will be paid when due;
- (b) that the tenant will not in any significant manner interfere with the rights of either the landlord or other tenants in the premises, the common areas or the property of which they form a part;
- (c) that the tenant will not perform illegal acts or carry on an illegal trade, business or occupation in the premises, the common areas or the property of which they form a part;
- (d) that the tenant will not endanger persons or property in the premises, the common areas or the property of which they form a part;
- (e) that the tenant will not do or permit significant damage to the premises, the common areas or the property of which they form a part;
- (f) that the tenant will maintain the premises and any property rented with it in a reasonably clean condition;
- (g) that the tenant will vacate the premises at the expiration or termination of the tenancy.

If the tenant does not obey a covenant, she commits a substantial breach of the tenancy agreement which is grounds for terminating the tenancy.

- (p) “substantial breach” means
  - (i) on the part of a tenant, a breach of a covenant specified in section 21 or a series of breaches of a residential tenancy agreement, the cumulative effect of which is substantial

If a substantial breach occurs, the landlord can apply to terminate the tenancy, or the landlord can issue a 14 day notice to terminate the tenancy. The RTA sets out the

procedural process that the landlord must follow to terminate the tenancy early. If the landlord issues a 14 day notice and the tenant does not vacate the property, then the landlord must make an application to terminate the tenancy to the Provincial Court of Alberta under the Civil Claims division or to the Residential Tenancy Dispute Resolution Service, which is a quasi-judicial forum.

In the case of an incident of domestic violence, the most likely grounds for terminating the tenancy is that the tenant has interfered with the other tenants' rights to peaceful enjoyment, has caused significant damage to the property, has put other people in danger, or has performed an illegal activity. As the RTA provides that it is the *tenancy* that is terminated upon substantial breach, this means that all of the tenants under the residential tenancy agreement are evicted.

The RTA does not provide a victim of domestic violence with any protection from being evicted even if the abuser was on the premises against her wishes or unlawfully.

- Scenario 4: the victim attempts to get new rental housing

While the RTA is silent in regards to procedures for applying for rental accommodation, most landlords follow an application procedure and collect information from the tenant and other sources in order to decide whether to rent to the prospective tenant. The *Personal Information Protection Act* (SA 2003) covers the responsibilities that the landlord has in regards to the collection and retention of a tenant's person information.

Typically, landlords require tenants to provide certain pieces of information when they apply to live at a site. Tenants are often required to provide the landlord with a credit report or to consent to the landlord conducting a credit check himself. The landlord also may require income information from the tenant and a criminal record check. If the premises are certified as a crime free multi-housing project, the criminal record check will be mandatory.

While landlords can collect this information from the tenant, they are not supposed to use certain types of information to discriminate against the tenant. The *Alberta Human Rights Act* (RSA 2000) sets out the law regarding tenancies and human rights.

Section 5 No person shall

- (a) deny to any person or class of persons the right to occupy as a tenant any commercial unit or self-contained dwelling unit that is advertised or otherwise in any way represented as being available for occupancy by a tenant, or
- (b) discriminate against any person or class of persons with respect to any term or condition of the tenancy of any commercial unit or self-contained dwelling unit, because of the race, religious beliefs, colour, gender, physical disability, mental disability, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons or of any other person or class of persons.

If the tenant has been denied housing because of a prohibited ground, then the tenant can bring a human rights complaint against the landlord using the Alberta Human Rights Commission.

There are other laws that apply to particular types of housing. The *Alberta Housing Act* (RSA 2000, "AHA") applies to situations where management bodies provide housing, including social housing accommodations. The *Housing Accommodation Tenancies Regulation* (AR Reg., 1994, "HATR") sets out the test and priorities that must be used to determine eligibility and priority for housing under the AHA. Rent supplement program are also administered by a management body, and follow similar guidelines in regards to priority and allocation.

The AHA and the RTA interact with each other. In particular, HATR provides that

2(1) Except where this or any other regulation under the Act or any order or direction of the Minister under the Act provides otherwise, the *Residential Tenancies Act* applies to tenancies in housing accommodation provided by management bodies.

The regulations under the AHA explicitly state that the tenant is responsible for all activities of the household members and anyone else who lives with the tenant. The management body also has the discretion to decide who constitutes household members. HATR sets out the tenant responsibilities in regards to the management company (the landlord).

3 The individual representing a household who enters into a tenancy agreement with a management body in respect of housing accommodation is, in addition to the individual's responsibilities under the *Residential Tenancies Act*, responsible for the actions and consequences of those actions of the members of the household and any other person who occupies the housing accommodation with the consent of a member of the household.

Under the *Social Housing Accommodation Regulation* (AR Reg., 1994), a household is defined:

Section 1(1)

- (i) "household" means an individual who is applying for or occupying social housing accommodation, including the following, if any:
- (i) the spouse or adult interdependent partner of the applicant or occupant;
  - (ii) an individual, related by blood, adoption or marriage, or by virtue of an adult interdependent relationship, or who is known to have lived regularly as a member of the household as part of the family unit;
  - (iii) the dependants who are living with the applicant or occupant, including any dependants of whom the applicant or occupant has joint or sole custody;
  - (iv) an individual considered by the management body to be a member of the household under subsection (2);
  - (v) a live-in aide;
- ...

Section 2

For the purpose of determining the eligibility and the priority of need of a household for social housing accommodation, the management body may consider any individual as a member of that household who is usually a member of the household, but is temporarily absent by reason of

- (a) military service,
- (b) hospitalization,
- (c) employment,
- (d) school attendance, or

- (e) other special circumstances.

Policies of housing providers can also have a vast impact on the victim's ability to access appropriate housing. An example of a policy that can bar a victim from getting housing or lead to her eviction flows from the crime free multi-housing initiative. The following was excerpted from a Capital Region Housing Corporation application form.<sup>5</sup>

#### Crime Free Multi-Housing Program

Capital Region Housing Corporation (CRHC), along with our tenants and the Edmonton Police Service, is part of the Crime Free Multi-Housing Program.

We are working together to ensure that criminal activity is reduced or eliminated from our rental properties in the Community Housing and Affordable Housing Programs. All CRHC complexes have been registered under this program.

Tenants consent to be part of the program. They are required to sign the *Residential Tenancy Addendum Agreement for Crime Free Multi-Housing Program of Edmonton* before they move in. By doing so, tenants agree that members of their household, their guests, and they will not engage in the following criminal activity on or about the premises:

- (a) any drug related criminal activity;
- (b) solicitation (sex trade workers and related nuisance activity);
- (c) street gang activity;
- (d) assault(s) or threatened assault(s);
- (e) unlawful use of a firearm; or
- (f) any criminal activity that threatens the health, safety or welfare of the landlord, other residents, or persons on the residential property or residential premises.

If tenants or members of their household permit other persons onto the property or allow them to live on the premises, the tenants will be responsible for the actions of those persons and the consequences of those actions.

The *Addendum* allows for the police to release information about criminal activity to CRHC for the purpose of determining if a breach of the agreement has occurred.

It is understood and agreed that a single violation of any of these provisions will result in the termination of the tenancy.

If you do not wish to be part of the Crime Free Multi-Housing Program, do not complete an application form for any Community Housing or Affordable Housing properties managed by CRHC.

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<sup>5</sup> Excerpted from Capital Region Housing Corporation's website: <http://crhc.ca/media/32481/transferapplication-821-003.pdf>. Accessed on February 27, 2014.

All household members can be evicted because of a breach of another household member. This means that if the abuser assaults the victim in the rental property, the victim can be evicted, even though she did not commit a breach of the tenancy agreement.

### **The Family Justice System**

While the victim is involved with the criminal and civil legal systems, she may also be involved with the family justice system for numerous reasons. If she has children, custody and access to them may have to be decided if both parents wish to assert their rights. The victim and abuser also have to sort out financial support arrangements. If the relationship is ending, there may also be property that needs to be divided.

All these family issues are treated separately under the law. In a typical situation, the victim may need to make three applications under the *Family Law Act* (SA 2003) or the *Divorce Act* (R.S.C. 1985), one for partner support, one for child support, and one for parenting. If there is property that needs to be divided, then the legal situation is even more complicated, as the *Matrimonial Property Act* (RSA 2000) is only available in the Court of Queen's Bench, and is only applicable if the parties are legally married. If the victim and abuser are adult interdependent partners, then the victim may need to make a claim for unjust enrichment to recover a share of the property. If the parties are legally married, one of them may start divorce proceedings.

The family law system can be viewed as overarching the entire legal process as experienced by the victim of domestic violence as she is often dependent on the abuser for the financial support she needs for herself and any children. How financial matters are resolved will determine what type of housing she will be able to get. As the legal processes do not interact with one another, and as resolving both short term and longer term family issues can take time, the victim is often caught in legal limbo for an extended period of time.

## Findings

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### Research Question 2: Effect of the Legal Context

# Does the legal context help or hinder victims of domestic violence maintain rental housing in Edmonton?

- 2.1 What legal problems do victims of domestic violence encounter in maintaining stable rental accommodation?
- 2.2 What legal remedies, services, interventions and resources do intermediaries currently refer victims of domestic violence to access?
- 2.3 What current legal remedies, services, interventions and resources are available to help?
- 2.4 What legal remedies, services, interventions and resources do the intermediaries themselves provide?
- 2.5 Do the current legal remedies, services, interventions and resources meet the needs of victims of domestic violence?
- 2.6 What additional legal remedies, services, interventions and resources are needed?

## **Background: Context and Understanding is Important**

Both key informants and participants in the focus groups emphasized the need to understand the phenomenon of domestic violence before considering issues of the housing options available to victims of that violence. Integral to an understanding of the dynamics of domestic violence is an understanding of the role the law plays in ameliorating or exacerbating a victim's experience. More particularly, residential tenancies law affects victims differently depending on where they are in the process of resolving their domestic arrangements. It also affects them differently depending on which of several housing options they can access. But, as one research participant put it:

*“Law is the last thing you think of as a victim of domestic violence. The priority is to deal with practical problems first, and victims of domestic violence experience multiple problems.”*

## **Domestic Violence Context**

Research participants frequently noted that it is impossible to understand the legal problems facing a victim of domestic violence and, more particularly, her legal problems in obtaining and maintaining safe and appropriate housing without having a substantial understanding of the phenomenon of domestic violence in all its complexity. Research participants emphasized that domestic violence is rarely a single incident but rather a process of abuse that escalates over time. Victims may have trouble acknowledging the situation to themselves, let alone convincing others of what they are experiencing. On the one hand, they may find they may not be believed; on the other hand they may be met with simplistic advice to just leave. Or their pleas may be dismissed for their presumed complicity in the violence:

*“It takes two to tango.”*

Research participants reported that in most cases, the victims of domestic violence are women. However, when men are the victims, they often face biases that work against them: they are presumed to be able to look out for themselves and there are fewer resources and services available to support them.

Victims are often dependent on their abusers emotionally, socially, culturally, and financially so the implications of ending those relationships reverberate through all aspects of their lives. Victims are often extremely committed to those relationships and will go to considerable lengths to keep their families together. Victims may be members of tightly-knit families and communities that emphasize the importance of marriages and blame women if they fail. Some families and communities may reject the victim's claims of violence or fail to denounce the acts or the abusers. Pets often play a key role in maintaining the victim's emotional health or that of the children. The abuser may use threats against the pet as a means of controlling the victim and keeping her in the home. Victims who are refugees may be suffering from post-traumatic stress disorder in addition to their domestic violence and may be simply unable to cope. Victims often



experience considerable pressure to remain with the abuser and would face family or community ostracism if they leave, a price that may be particularly difficult to pay if they are culturally and socially isolated, and if children are involved.

Victims often fear what will happen to their children if they bring the relationship with the abuser to an end. How will she care for her children? Support them? Will they have to change schools? How will they maintain their relationships with other family members? Their father? Will his abuse continue through them? Even as the abuse escalates, the victim may be unwilling to disclose her situation to anyone for fear of the stigma that will attach to her. Even if she can afford a lawyer, she may downplay the violence. She probably will not talk to her landlord either. Victims do not want to be identifiable. And even though the abuse is escalating, the victim may return to the abuser because she has no effective alternative. Sadly, research participants note, this is often the case with the most vulnerable: elderly and disabled victims are often dependent on the abuser for day-to-day care.

Research participants reported that women in general are getting poorer. A woman leaving an abusive relationship may be completely destitute.

*“She might not have 25 cents to her name.”*

Entry level jobs do not pay enough to cover basic living costs plus child care. The financial implications of leaving an abusive relationship are particularly significant where the abuser controls the victim’s access to money. He may hide whatever money the couple has accumulated or may spend it before she can access it. The victim may also find that she is responsible for debts of the abuser, arrears in rent, and damages to premises. She may find that she has a bad credit rating which may prove to be a barrier to accessing certain kinds of housing. While the government offers special help to victims freeing domestic violence,<sup>6</sup> research participants asserted that these funds and other forms of social assistance are inadequate. Immigrant victims are particularly vulnerable: they may put their immigration status in jeopardy and may not qualify for social assistance. Often the financial well-being of victims and children is directly tied to the relationship with the abuser.

As a result, victims often resist resorting to legal remedies. Moreover, the consequences to themselves, their children, and the abuser are not only significant but often beyond their control. They may be afraid of the police, of having the children apprehended, or just of the unknown. Victims often do not want their abusers to go to jail. They may not want to lose the emotional, social, and financial support the abuser provides. They want the abuse to end, but not the relationship.

Once she does decide to leave the relationship, whether temporarily or permanently, the victim will need considerable support. She will likely need help to create and implement an effective safety plan. She will need to stabilize her situation and find safe and appropriate accommodation. If she is like many victims, she will start on this journey from a point of absolute poverty so she will need to find some source of income almost immediately, whether through

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<sup>6</sup> [http://humanservices.alberta.ca/documents/RRM-PUB\\_fs\\_supports\\_fleeing\\_abuse.pdf](http://humanservices.alberta.ca/documents/RRM-PUB_fs_supports_fleeing_abuse.pdf). Accessed February 25, 2014.

work or some form of government assistance. To do all this, she will need access to a variety of services, some on a 24 hour basis, seven days a week.

## **The Housing Context**

When a victim decides to leave a violent relationship, either temporarily or permanently, she will likely have to consider housing options other than home ownership.<sup>7</sup> The rental housing options currently available to her in Edmonton consist chiefly of the following:

- Private Rental Housing
- Non-market Housing
  - Social Housing
    - Affordable Housing
    - Community Housing
  - Shelters
    - Emergency shelters
    - Second stage housing
    - Third stage housing
- Hotels
- The Women's Emergency Accommodation Centre
- Couch Surfing and Unsafe Housing

There are many issues related to each of these options.

- Private Rental Housing  
Private rental housing is rental housing that is owned by a private landlord, and includes arrangements where rent supplements are paid directly to the landlord.

This option would be available to someone with the financial resources to manage a security deposit as well as monthly rent and who would be able to provide the prospective landlord with a good tenancy reference. Research participants noted that some landlords work with victims and will help them if they can. Some larger companies will help a victim relocate to another property so her abuser will not know where she is. However, landlords sometimes feel betrayed by the victim if she and the abuser get back together again.

Research participants complained that victims face a variety of forms of discrimination in getting private accommodation. She may be told a unit is no longer available just because she calls from a shelter. If a victim with an aboriginal or foreign name makes an inquiry about a unit, she may be told it has been taken, yet if someone calls on her behalf shortly after, it may still be available. If an appointment to see an apartment is

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<sup>7</sup> The legal issues related to homeownership are beyond the scope of this study except insofar as a share in matrimonial property may put the victim in the position of having assets that exceed the limits for eligibility for certain services and housing.

made by someone on behalf of the victim, when she shows up to see the unit, it is suddenly unavailable. Incidents of economic eviction were also noted: landlords simply raised rent beyond the ability of a tenant to pay.

Research participants reported that many victims of domestic violence do not have sufficient financial resources to rent on the private market because the abuser may be the main or only source of income or may control the victim's income, bank accounts, matrimonial assets, and the like. The violence leading up to her decision to relocate may also have resulted in damage to her previous accommodation. That damage may adversely affect the victim's tenancy reference. The victim may also be liable for outstanding claims for rent, utilities, or damages that would interfere with her ability to get both a good tenancy reference and a good credit rating. Research participants reported that rent subsidies given to victims who cannot be accommodated in social housing are inadequate to meet the costs that victims incur. Nor is the fund itself adequate to cover the number of victims who need to access it.

According to the Canada Mortgage and Housing Corporation, in October 2013<sup>8</sup> the apartment vacancy rate in the Edmonton Census Metropolitan Area (CMA) was 1.4 per cent. The average rent for a two-bedroom apartment in new and existing structures that month was \$1,141 per month. The vacancy rate for row (townhouse) rentals decreased to 0.9 per cent in October 2013 from 1.7 per cent in October 2012, and the vacancy rate for housing with 3 or more bedrooms was 1.2 per cent. So even if a victim could afford a rental property, she may have considerable difficulty getting one.

- Non-market housing

Non-market housing is made up of social housing and shelters.

- Social Housing

Social housing is a broad term that includes affordable and community housing.

- Affordable Housing

Affordable housing is where the rent is a fixed dollar amount which is at least 10% below the market rents for the area.<sup>9</sup>

- Community Housing

Community housing is where rent is calculated using the rules in the *Alberta Housing Act*. The rent is either based on a rent schedule or is 30% of gross monthly income. Victims must have some form of income but that can include social assistance. A point system is used to determine priority for getting a unit in community housing. However, the location of the victim is not a determining factor: victims from out-of-

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<sup>8</sup> [http://www.cmhc-schl.gc.ca/odpub/esub/64379/64379\\_2013\\_A01.pdf](http://www.cmhc-schl.gc.ca/odpub/esub/64379/64379_2013_A01.pdf). Accessed February 23, 2014.

<sup>9</sup> <http://crhc.ca/programs-and-services/affordable-housing-program.aspx>. Accessed February 26, 2014.

province may get priority over someone in Edmonton. Emergency situations are given priority but the reason for a prior eviction will factor into the determination of eligibility. Failure to pay rent may not be viewed as a bar, but damage to the unit might. Tenants of community housing are responsible for damage to their units regardless of how the damage was caused. If a victim returns to social housing after leaving it, she will likely be asked to pay her share of any outstanding claims from her previous occupancy. Tenants are encouraged to get insurance but research participants who commented on this provision suggested that few tenants likely do.

- Shelters

Shelters encompass emergency, second, and third stage shelters that provide housing to victims fleeing domestic violence.

- Emergency shelters

As one participant described this option, emergency shelters are a form of communal living. Each family has a bedroom but they share the kitchen and bathroom. There is a 21 days limit to staying in a shelter. Shelters typically offer a range of services to help victims deal with their immediate challenges.

Emergency shelters are not suitable for everyone. One research participant noted that a woman may be afraid to go to a shelter, perhaps fearing the unknown or the stigma that might go with accessing that option.

- Second stage housing

This option is often accessed by victims who have spent time in a shelter and are ready to move into a supportive living environment. They may be referred directly from the shelter, by a social worker, or by another agency. Some may come directly to the housing. Second stage housing is generally available for six months, with some flexibility to accommodate the birth of a new child, the education of children, safety, or health reasons. Second stage housing is characterized by intensive programming in matters such as life skills, family violence, parenting, and building self-esteem. One-on-one support may also be available to help the victim with her specific needs, including support in attending court.

- Third stage housing

While this housing is subsidized, research participants reported that the cost of utilities is sometimes as much as the rent, making this option prohibitive for some victims.

Research participants reported that the supply of shelter accommodation has not kept up with the growth in the province's population and that shelters have no option but to turn away hundreds of women who need their help.

Most non-market and some private rental housing is 'crime free'. That designation is overseen by the city police.<sup>10</sup> In the case of social housing in Edmonton, crime free policies include prohibitions against renting premises to individuals with certain criminal records:

The Criminal Record Check conducted by the Edmonton Police Service does not prevent someone with a past Criminal history from being eligible for housing. The record check is done to ensure as far as is reasonable, that those choosing to apply are not currently involved in criminal activity. The acceptance criteria are inclusive of, but not limited to the following: for non-violent crime, three years clear since the last court imposed conditions or restrictions. For violent crime offences, five years clear since the last court imposed conditions or restrictions (this would include all sex offences, impaired driving), conditions or restrictions would be inclusive of community service work or hours, probation, parole etc. Any person who is registered in the National Sex Offender Database is ineligible for housing with CRHC.<sup>11</sup>

Victims who themselves may have records for a variety of offences, including prostitution, will be barred from social housing until they have been crime free for the periods of time specified for their particular offences.

- Hotels

In some of cases where a victim cannot be accommodated in an emergency shelter, she may be provided with short term accommodation in a hotel at government expense. While that may provide her with some immediate relief, she and her children will not likely be able to resume any sort of normal life while there. Perhaps crowded into one room, distant from schools, friends, and other resources and support networks, the victim may find herself in an increasingly unsatisfactory situation. Having little access to support services, she may find the hurdles to getting housing are overwhelming and return to her abuser.

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<sup>10</sup> <http://www.edmontonpolice.ca/crimefree>. Accessed February 27, 2014.

<sup>11</sup> <http://crhc.ca/programs-and-services/crime-free-multi-housing-program.aspx>. Accessed February 27, 2014.

- The Women's Emergency Accommodation Centre  
This option is available to victims who are living on the street. It provides dormitory-style accommodation, meals, showers and laundry, and outreach services. Research participants suggested that some victims do not feel safe accessing this accommodation.
- Couch surfing and unsafe housing  
If victims cannot obtain other forms of housing, rather than returning to the abuser she may resort to couch-surfing with family and friends often exposing their hosts to the risk of violating policies governing their homes. They may now be over-crowded or subject to occupancy rules that are violated by the victim's presence (especially if she has a criminal record). If her family or friends live outside the boundaries of the area that is served under a social housing management body, she may find that she no longer qualifies for the benefits it provides, shut out by the only solution she's been able to find. As her options run out, the victim may be forced to split up her family and to seek increasingly unsafe and unsuitable shelter, such as in a car or on the streets. Many simply remain hidden from view relying on their wits, prostitution, and crime to keep a roof over their heads.

Research participants noted that single women, aboriginal women, immigrant women and women with criminal records have a particularly difficult time getting safe and appropriate rental accommodation. They noted too that there is not enough housing that meets the specific needs of seniors, the disabled, and large (sometimes extended) families.

Research participants noted that helping victims find alternative housing is one of the most discouraging aspects of their jobs because there simply is not enough housing. Some research participants reported having to provide emotional support to workers in other agencies less familiar with the plight of women fleeing domestic violence. Agency staff feel powerless as they watch victims go back to their abusers, take whatever housing they can get regardless of its condition, or use whatever financial resources they have to pay for rent and then do without other essentials, like food.

Many research participants asserted that more housing of all types is urgently needed to meet victims' needs. They also noted that an increase in vacancy rates would likely mean that landlords would relax their selection criteria somewhat and be more willing to accommodate victims. They may also be less inclined to evict victims.

## Research Question 2.1:

### **What legal problems do victims of domestic violence encounter in maintaining stable rental accommodation?**

#### The Law and Financial Problems

- Financial obligations with respect to rental premises  
Research participants frequently noted that the single most significant legal problem that victims of domestic violence face arises from the financial obligations they acquire in connection with rented premises. They may be liable for debts related to unpaid rent, utility charges, and damages to the premises from which they were evicted (even though they did not cause the damage). Even when the abuser is also a tenant and shares the liability for these costs, the landlord may pursue the victim if she is the easiest to locate. If she fails to pay these costs, she may find her credit rating is negatively affected. Since many landlords do credit checks, they may impede her ability to find new housing.
- Access to financial resources  
The problems created by financial obligations are exacerbated by the difficulty that victims have in obtaining and enforcing orders for financial support and in settling matrimonial property matters. The breakdown of the relationship leads to issues of maintenance, property, and child custody that take time, are arduous, unpredictable, and expensive to resolve. However, until resolved, the victim is in legal limbo, often without the financial means to obtain other accommodation.
- Asset tests  
If the victim is entitled to a share of matrimonial assets, she may be barred from accessing certain kinds of housing and other services that have an asset test as part of the criteria for accessing those resources. The level of assets permitted is often very low and a victim is considered to have an asset whether or not she can access it. In the case of the asset test for community housing, no definition of 'asset' is provided in the regulations; all that is provided is a list of what is **not** an asset.

#### Evictions

- Substantial breach under the law  
Breaches that arise from domestic violence and typically lead to eviction notices include failure to pay rent, interfering with the rights of either the landlord or other tenants, performing illegal acts on the premises, significantly damaging the property, and endangering persons or property. The victim may find herself served with a notice simply because of the noise associated with the abuse or of the presence of police. She may be evicted simply she was threatened but not actually assaulted and there may be no damage to any property. The victim may be evicted whether or not she played any role

in the breach and whether or not the abuser was allowed to be on the premises or barred by court order. Fear of eviction may serve as a deterrent to calling the police. If the landlord issues a termination notice, then the victim's only remedy is to object to the notice, and refuse to leave the premises, forcing the landlord to get a court order to terminate the tenancy.

- Breach of policies governing social housing  
The crime-free policies governing social housing are even stricter than those governing private rental housing. Since all social housing is crime-free, the victim may be subject to eviction for activities on her premises that she has not participated in, condoned, or possibly even been aware of.
- Breach of policies governing shelters  
Some research participants reported that the policies of some second stage housing are also more restrictive than those of private rental housing. The legal status of shelters vis a vis the application of the *Residential Tenancies Act* and the *Alberta Housing Act* appears to be unclear. The experience of some research participants suggests the second stage shelters believe they are exempt from the RTA and that 'tenants' are given notice to leave but that notice is not called an 'eviction notice'. It was beyond the scope of this study to verify that understanding or to provide a legal opinion as to the coverage of the RTA in these settings.

### **Termination of the Residential Tenancy Agreement**

Currently, if both the victim and the abuser are tenants under a lease, the victim cannot terminate the lease unilaterally. She and the abuser, as well as the landlord, must agree to either terminate the tenancy or release the victim from her obligations under the lease. As a result, she will continue to have obligations under the lease even if she leaves the premises. Those obligations include rent and utilities making it virtually impossible for her to rent alternative premises. Research participants noted that there are also occasions where the victim wants to remain in the premises but has no means of removing the abuser from the lease agreement.

### **Security Deposits**

Getting their deposits returned constitute a significant problem for victims of domestic violence. Research participants reported that landlords sometimes simply refuse to return security deposits even when they have no claim to the funds. In other cases, victims must wait well beyond the statutory limit to recover her entitlement. Taking the landlord to the Alberta Residential Tenancy Dispute Resolution Service to enforce her rights is often not a



viable option for the victim. Meanwhile, she must find the money to make the deposit required for a new unit.

### **Securing the Premises**

If the victim is the sole tenant of a private rental unit, she may be able to change locks and take other measures to keep the abuser off the premises. However, if the abuser is the sole tenant or a co-tenant with the victim, the victim must go to court for an order barring the abuser from the premises.

### **Screening and Application Practices**

The requirements of many landlords for tenancy references and credit checks make it very difficult for a victim to obtain private rental housing if she has been evicted from premises, particularly where the eviction is based on violence. Research participants reported that landlords discriminate on the basis of income source and ethnicity although both are prohibited by legislation. Victims with children or extended families may also have difficulty getting private rental accommodation, as do victims who have pets.

### **Community Housing Screening Practices and Occupancy Policies**

Policies governing community housing may also interfere with a victim's ability to get safe and appropriate accommodation. The financial limit for assets is set very low, creating a barrier for some victims. Crime free policies may prevent some victims from getting housing in a timely manner, or lead to evictions. Efforts to maintain contact with adult children and extended family members or to reconcile with the abuser may be significantly impeded by crime free policies and put a victim's continued occupancy at risk. The abuser's rights to visit his children may also threaten the victim's obligations under her tenancy agreement. Policies regarding relocating victims within housing also limit their ability to hide from their abusers.

### **Shelter Housing Policies**

While victims of domestic violence may be able to obtain emergency accommodation in a shelter or hotel, that accommodation is temporary, often available only for a few days or weeks. These short stays may not be long enough to enable the victim to secure alternative accommodation. Her problems will be exacerbated if the shelter has a policy forbidding cell phone use on the premises lest the abuser can track the victim through its GPS capability. She may find her ability to make and keep important appointments, including with legal services, is significantly impaired.

If she is single, she may not even be able to be accommodated in an emergency shelter as priority is generally given to women with children.

Where the victim has dependent children, her situation is often complicated. While she may have priority in obtaining housing, she may have trouble abiding by its policies. Some shelters were considered by some research participants to be very oppressive, for example, imposing requirements regarding disciplining of children, attending programming, time to have lights out, smoking, attending therapy that had to be met to retain housing.

### **Attempted Reconciliation**

If a victim chooses to leave a residence in an attempt to reconcile with the abuser, she will get no special consideration in accessing that housing again.

### **Immigration Status**

Immigrant women may have their status revoked if the family breaks down or the domestic violence is reported. Their immigrant status may also be a complete bar to some forms of housing.

### **The Sheer Complexity of all the Laws, Rules, and Processes**

The complexity of the laws, rules, and processes governing the domestic violence, the rights and responsibilities of family members, and the housing options make it difficult for the victim to find a safe and appropriate home for herself and the children.

## **Research Question 2.2:**

### **What legal remedies, services, interventions and resources do the intermediaries currently refer victims of domestic violence to access?**

Participants reported referring victims to the following legal service in dealing with issues of domestic violence and family law issues:

- Legal Aid Alberta, especially the Family Law Office and Duty Counsel
- Domestic Violence Intervention Team
- Family Law Information Centre
- Family Justice Services
- Native Counselling Services
- Student Legal Services of Edmonton
- Centre for Public Legal Education of Alberta

Participants reported accessing the following legal services in dealing with residential tenancies:

- City of Edmonton Landlord and Tenant Advisory Board
- Residential Tenancy Dispute Resolution Service
- Edmonton Community Legal Centre
- Student Legal Services of Edmonton
- Centre for Public Legal Education of Alberta

### **Research Question 2.3:**

#### **What current legal remedies, services, interventions and resources are available to help?**

The intermediaries and front line workers that participated in this study seem to be well-versed in the services available to assist victims with their legal and housing problems. However, less use is made of the Residential Tenancy Dispute Resolution Service than might be ideal. The family law service now offered by the Edmonton Community Legal Clinic was not in place at the time of this study so was not referred to by participants.

**Research Question 2.4:**

**What legal remedies, services, interventions and resources do the intermediaries themselves provide?**

Intermediaries and frontline workers provide vital triage, legal information, and referral services to victims. They may also provide limited support to victims in accessing legal services and attending court.

## **Research Question 2.5:**

### **Do the current legal remedies, services, interventions and resources meet the needs of victims of domestic violence?**

The simple answer to this question is no, the current legal remedies, services, interventions, and resources do not meet the needs of victims of domestic violence. However, the full answer is more complex.

#### **Legal Remedies and Interventions**

Some research participants questioned the very role the justice system plays in intervening in domestic violence situations. Victims may want the abuse to end, not the relationship with the abuser. Yet the law focuses on the abuser, not the relationship. Some victims do not want the abuser charged or to face the full criminal justice process. Many victims just want an immediate intervention and a time out. Yet once the police are involved, the victim loses control over the process. Losing control can lead to a downward spiral of other consequences for the victim: loss of income, loss of housing, bad tenant reference, bad credit rate, and ultimately, homelessness. It can also lead to escalating violence.

In any event, it is all too much for the victim. As research participants put it:

*"The legal context is very challenging for women."*

*"The victim has to navigate multiple legal systems at once."*

*"She may even have to be a witness in another jurisdiction."*

Many research participants expressed a feeling of frustration that in general:

*"Legal remedies either are not available at all, are being sought inappropriately, or are generating negative results."*

Research participants frequently criticized the legal system for being too complex, costly, and slow. Several research participants also complained that the civil and criminal systems are not well coordinated.

Indeed, the very reputation of the system is seen to be a barrier to its use:

*"The legal system is not known as a friendly system."*

*"The legal system is aggressive, often too adversarial for victims."*

*"It is aggressive, just like the abuser!"*

The legal system is also seen to be biased in favour of the abuser.

- Research participants stated that the criminal justice system favours the abusers:
  - Some police who respond to incidents of violence are reluctant to believe the victim and may be reticent to seek emergency orders.
  - The abuser gets the benefit of the presumption of innocence.
  - The burden of proof is high.
  - The abuser has a right to have a lawyer but the victim does not.
  - The victim is unrepresented but feels that proving the violence rests with her.
  - If the abuser is incarcerated, the victim does not always know when he will be released.
  - Criminal remedies are not available in situations where the abuse does not entail physical violence though psychological and financial abuse is as real and destructive as physical violence.
- Research participants reported incidents where the family justice system favoured the abuser.
  - It is difficult for the victim to prove the abuse. As one research participant put it

*“Domestic violence takes place behind closed doors.”*

The violence must become serious before the law will see it. Evidence can be tampered with by the abuser, and if he is particularly manipulative, he can turn the case against the victim. One research participant noted a case where a victim lost custody of her children as a result of the evidentiary problems she faced.

- Ex parte applications are easy for him to get.
- It costs the victim so much to go to court.
- The victim must face her abuser. One research participant reported a situation where the victim “freaked out” when her abuser was present in court.
- The abuser has a right to see his children.
- The burden of enforcing orders is on the victim.
- The abuser gets away with refusing to comply with orders. It is easy for the abuser to hide money or delay in making payments. Several research participants expressed the view that there are many ways that an abuser can avoid accountability and that the legal system supports him. As one research participant put it:

*“Power is still with the abuser.”*

But the responses of research participants were often more nuanced than those initial comments suggest. One research participant recognized the inherent limits of law:

*“Law cannot deal with emotional issues.”*

While on the other hand recognizing that the law can be beneficial for victims:

*“The law can contribute to advancing a victim’s life.”*

It is perhaps easiest to assess the law and legal remedies by following the legal path that a victim of domestic violence typically takes beginning with the first incidences of violence.

- Emergency assistance

Research participants agree that the front end response to domestic violence has improved and early legal interventions are generally working well when sought. Many police are familiar with the phenomenon of domestic violence and make good judgment calls when assessing the nature of the intervention needed. The introduction of emergency protection orders is also perceived by participants as a useful addition to the legal remedies available to victims.

*“Sometimes he gets the message he has crossed the line.”*

Research participants noted that orders help to build a record of the victim’s fear of violence and get her concerns about the safety of children on the record. However, the victim must persist. Several research participants noted, in some cases:

*“The emergency protection order is just a piece of paper.”*

If the abuser does not obey an EPO and is harassing or stalking the victim, the police will respond depending on their other priorities and the record of the abuser. One participant noted:

*“The more specific the order, the better so that there is no room for interpretation by the abuser.”*

If the order is too general, the police may not be able to act effectively.

Research participants reported that the assistance a victim can get from police in getting her personal belongings from the home is extremely valuable. However, they also noted that its application to only personal belongings means that victims often cannot get the furniture, toys, or other devices that they may need to provide for themselves and their children properly. It does, though, cover pets. Because providing stand-by assistance to victims is not a high priority for police, victims do not always make use of the service and are often left to their own resources to do so, not always safely.

One participant noted that the *Protection Against Family Violence Act* enables courts to go further than is often realized. Courts can make orders regarding payment of rent and possession of credit cards, check books, and key medical and other documents.

Some research participants suggested that EPOs may be sought in situations where restraining orders or peace bonds might be more appropriate. EPOs are meant for



serious and urgent situations. Restraining orders should be used in cases where the violence or threat of violence is less immediate.

Research participants also reported on situations where victims found themselves at odds with EPOs and other orders prohibiting contact when they were attempting to get financial assistance from the abuser, during efforts to reconcile, and during visits between the abuser and his children. If a victim communicates even indirectly with the accused about anything, including her financial needs or issues relating to the children, she may be in violation of the court order and find herself in trouble with the law.

One research participant noted a case where the abuser sought the EPO against the victim suggesting that these orders can sometimes be used against their very purpose.

Several research participants noted that getting EPOs in Edmonton is more difficult than elsewhere in the province.

- Interim and long term family arrangements

Divorce, maintenance orders, custody orders, restraining orders, and exclusive possession orders (under the *Matrimonial Property Act*) are helpful in resolving the longer term issues that the couple must address. As one participant put it:

*“If you can access it, the civil system provides essential service. But it’s a long, arduous, expensive, and unpredictable process. Meanwhile, the victim is in legal limbo.”*

As will be discussed later in this report, being in legal limbo has serious implications for obtaining and maintaining suitable accommodation for the victim and other family members.

Research participants noted that sometimes family judges and lawyers do not consider domestic violence to be an issue unless a criminal charge has been laid. The failure to address issues of domestic violence appropriately can lead to custody and access arrangements that put the victim at risk. Some research participants complained that family courts do not pay enough attention to the way the abuser uses the children to continue to abuse their mother. Nor do they seem to be aware that violence will sometimes escalate when a court order for maintenance or custody finally makes the breakdown of the family real to the abuser.

*“He feels he has nothing left to lose.”*

Access orders sometimes conflict with crime free housing policies and orders limited contact between the victim and the abuser, putting the victim in a very difficult legal situation.

A research participant noted that confirming an exclusive possession order can be difficult but where they are granted, they are useful.

Some cases present unique problems. One research participant noted a case where the landlord was a close relative of the abuser and refused to act on an order forbidding the abuser to enter the premises. Because the victim was an immigrant, isolated from support outside her community, she saw little option but to remain with the abuser.

- Housing law

The implications for victims of the law governing residential tenancies vary with the particular type of accommodation available to the victim. Research participants varied in their view of the *Residential Tenancies Act*. Some see the Act as basically sound and believe that the onus must be on landlords to keep their premises peaceful and safe. Those research participants tended to support the landlord's remedy to evict to protect their property and other tenants. They also supported the landlord's discretion to permit the victim to remain in the premises. However, other research participants were concerned that landlords use these provisions unnecessarily and inappropriately. In particular, victims may be held accountable for activities over which they have no control.

Crime free housing policies were also seen by some research participants as being helpful and necessary in keeping abusers away and in ensuring that housing has basic safety features, like good locks, lighting, and bars on windows. Others felt that the policies interfered unnecessarily with efforts of the parties to reconcile, to maintain contact between the abuser and his children, and to maintain contact with other family members.

Research participants reported that the *Petty Trespass Act* can be used effectively in dealing with unwelcome guests.

Research participants reported that fighting an eviction is not seen by many victims to be worth the trouble, particularly if the victim can no longer afford the premises or needs to hide from the abuser. Some victims believe the system is stacked in favour of the landlord.

The overall complexity and lack of coordination between various components of the justice system work against the victim in resolving her tenancy issues.

*"The lack of coordination means the victim has to weigh her options and getting legal services for residential tenancy issues may be very low on her list of priorities. She just wants to find somewhere new to live."*

Lawyers are expensive and she may already be paying for one for other legal matters.

*“Security deposits are a large chunk of money, but the money it would take to fight to get it returned isn’t worth it.”*

In general, however, residential tenancy law is not seen to be particularly helpful to victims. Respondents complained that victims should not have to lose their rights. The policies of some housing options currently function like jails. Ineligibility for one housing provider should not disqualify victims from others.

Respondents in one focus group collectively summed up the state of the law:

*There’s a law? I’m not aware of a law or remedies that help victims of domestic violence get or maintain rental housing! I can’t think of any particular piece of legislation or even common law that provides specific protections for people who are victims of domestic violence. I am always asking the landlord, resident manager, or housing provider for an exception to their policy to be made or to change their mind on an eviction notice based on their compassion. That’s our only argument.*

## **Legal Services**

Access to a lawyer is seen as a key factor in helping a victim get things sorted out and achieving positive outcomes. Research participants noted that victims are often isolated from or reluctant to use services and seek remedies because they may come at a social, emotional, or financial cost that the victim cannot bear. They fear that their children and other family members will turn against them or will resort to self-destructive behavior. They may be afraid of triggering a response that will result in being cut off from some form of government assistance or in their children being taken from them.

Victims must also have the capacity to access services. Literacy, language, cultural factors, and access to transportation may impede a victim’s ability to get the help she needs. She may also be overwhelmed by the other demands on her time and energy: caring for children under difficult conditions; finding a safe and appropriate place to live; and getting a job or other means of financial support.

Research participants particularly praised the work of the Family Law Office and duty counsel provided by Legal Aid Alberta in helping victims get protection orders. When available, other legal aid services in general were well-regarded and considered essential. Criticism of legal aid focused chiefly on eligibility criteria, problems with geographical accessibility, and the limited coverage.

Lawyers, on the other hand, were often severely criticized by research participants. Some lamented the dearth of family law lawyers, acknowledging that it is very difficult work. Research participants complained that victims often need immediate legal assistance and cannot wait weeks for an appointment. Research participants also noted that victims were sometimes turned

away by lawyers for inability to pay or seemed to overcharge for their services. Some of the lawyers that do take cases on behalf of victims were criticized for their lack of empathy for their clients and their general lack of understanding of the phenomenon of domestic violence. Some research participants criticized lawyers for focusing too single-mindedly on the victim's legal issues without realizing that the conversation with the lawyer may be the very first time the victim has told anyone her story. Some victims have difficulty developing a trusting relationship with their lawyer, fearing they are not being believed. If the lawyer is not sufficiently empathetic, the victim may give up. Some lawyers will not allow a support worker to be present, increasing the need for the lawyer to provide the victim with emotional support.

Some lawyers were seen to put victims at unnecessary risk by agreeing to particular arrangements for the abuser's access to his children. Research participants noted that not enough consideration is given to the risk of parental alienation in unsupervised visits, or to the heightened risk to the victim of unsupervised exchanges of children.

Some research participants complained that lawyers do not maintain adequate contact with their clients.

Participants viewed judges as having an inadequate understanding of the phenomenon of domestic violence. Some research participants accused some judges of being suspicious of allegations of domestic violence and of having a narrow definition of violence. While some progress in this regard was noted by some research participants, more understanding and education is still seen to be needed.

The police, on the other hand, fared somewhat better. Some research participants expressed particular appreciation for the assistance police provide in getting emergency protection orders and for police assistance in helping a victim retrieve her personal belongings from her former residence. However, some research participants urged that more is still needed to ensure that front line officers are adequately trained in dealing with domestic violence situations.

The Residential Tenancy Dispute Resolution Service came into some criticism. Some research participants are unfamiliar with the service and so do not refer their clients to the service. Others have found that the hearing officers do not have a nuanced understanding of domestic violence and tend to rely on stereotypes of victims and abusers.

The legal problems of victims of domestic violence were seen as too complicated for law students to handle.

### **Legal Resources**

Legal information resources and services were generally seen as inadequate and particularly unsuited to a victim in a crisis situation. Web sites were seen as difficult to access and navigate. Print resources were seen as helpful where they exist but not generally available. Research participants rarely mentioned any specific information resource or service. However, the family law sessions offered by the Edmonton Community Legal Centre were praised.

## **Research Question 2.6:**

### **What additional legal remedies, services, interventions and resources are needed?**

Because the legal issues victims of domestic violence encounter in obtaining and maintaining rental accommodation are complex and reflect the phenomenon of domestic violence itself, research participants' recommendations for additional remedies, services, interventions and resources were much broader than was anticipated when this study was conceived. They address the needs of victims in dealing with the criminal and family justice systems, and well as the more specific context of residential tenancies.

Some research participant responded to this question at a very general level:

*“The law must be made to work for women.”*

*“The law just needs to be there to help.”*

To make that happen, several research participants urged that the law and legal remedies be seen in the context of the reality of victims. More specifically, housing law and policies need to reflect the realities of victims, including the ambiguity of the status of the relationship as the victim comes to terms with the abuse and her situation.

### **Legal Remedies and Interventions**

Research participants called for many different measures to be undertaken.

- Simplify and coordinate the laws, remedies, and legal processes for dealing with criminal, family and civil (housing) matters.
- Examine the interrelationships of the legal systems and the remedies available.
- Access to remedies on a timely basis.
- Support for victims throughout the process of resolving their legal problems.
- More proactive measures at the early stages of domestic violence. One suggestion was that the police forward the victim's contact information to a shelter for follow-up rather than simply advising the victim of the availability of help from shelters. Victims need to be provided with wrap-around, multi-sector support. Response teams should be coordinated. Favorable reference was made to a program available in Edmonton regarding elder abuse.
- Emergency protection orders to be available, and accessed, by phone.
- Greater consideration to the potential for violence to escalate in bail, custody, maintenance and property hearings.
- A faster and easier way for victims to get non-contact orders varied.

- Additional rights for victims to change locks on doors.
- Additional remedies for terminating leases. One research participant suggested that a potential remedy might lie in applying the law with respect to frustration of contracts to the situation where a victim is locked into a lease she wants to break.
- Responsibility for paying for damages to be allocated between the people who actually caused it.
- Align policies for social assistance and social housing.
- More realistic housing policies that are applied flexibly to give victims real opportunities to attempt to reconcile with abusers and to move forward with their lives in safe and appropriate accommodation.

### **Legal Services**

Research participants clearly saw lawyers as providing essential services to victims of domestic violence. However, they would like lawyers to be better trained in dealing with those clients. In particular, lawyers need to better understand the phenomenon of domestic violence, the trauma their clients may have experienced, safety issues, and the ways in which abusers manipulate victims and those that support victims. Some research participants noted that abusers often present particularly well in legal settings. Lawyers also need to be better able to get the client's real life issues before the court. Many research participants urged lawyers, judges, and police to take a less judgmental approach to dealing with victims and the many factors that impeded them from telling their stories and accessing appropriate services. Lawyers need more information on shelters, what they do, and how they can help victims. Some research participants supported the idea of a subset of judges specially trained and dedicated to dealing with cases involving domestic violence.

Research participants called for expanded legal aid coverage for victims. Access to legal information and advice on site at shelters was also seen as desirable. Research participants suggested that more advice and advocacy services in general are needed.

Some research participants called for more legal support for victims during criminal proceedings.

### **Legal Resources**

Research participants called for

- more, better, and more accessible information on legal issues relevant to victims of domestic violence;

- legal training for shelter workers and others who support victims of domestic violence on the law, legal remedies, legal services, and legal processes that victims must navigate as they move forward;
- legal education for shelter workers on residential tenancies law and dispute resolution processes;
- better training for lawyers, judges and police on the phenomenon of domestic violence and the problems victims face;
- better education of landlords on the phenomenon of domestic violence, ways they can support victims and the application of the *Alberta Human Rights Act* to housing;
- consideration of a compulsory program for victims and abusers to learn more about the phenomenon of domestic violence and ways of intervening in their dynamics effectively;
- more information to assist victims in recognizing that they have a legal problem and where to go to pursue a legal remedy;
- more educational opportunities to assist victims in better understanding and dealing with legal processes so they can feel more in control, understanding the implications of various legal options, and make appropriate choices;
- more education on residential tenancy law so that victims and those who support them have a better understanding of the tenant's covenants, of the possibility of getting a conditional eviction order, and of the landlord's duty to mitigate damages;
- better and more accessible print and web resources and resources in languages other than English; and
- in person services to assist victims in accessing the legal information they need.

However, some research participants also cautioned that educational activities for victims should not be undertaken just after she leaves as she will have more pressing priorities.

# Recommendations

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1. All levels of government need to take immediate action to facilitate the development of more non-market housing, including emergency shelters, staged shelters, and social housing and to ensure that this housing addresses the needs of the full range of victims of domestic violence and their children.
2. Victims of domestic violence need to be provided with increased financial assistance to adequately meet financial obligations with respect to their accommodations.
3. Laws and policies that govern housing need to be reformed to effectively respond to the variety of needs of victims. Victims can be at various stages in addressing the violence in their relationships so laws, policies, and legal processes need to be nuanced. In particular, consideration should be given to
  - a. reviewing the legislative provisions regarding security deposits. Consideration should be given to reducing the amount to half a month's rent, or replacing security deposits with provisions that require tenants to prepay first and last month's rent so that the victim's funds are not tied up pending the return of the deposit;
  - b. no longer holding a victim responsible for damages that she did not cause, particularly when they are caused by someone under an EPO or other form of restraining order forbidding them to be on the premises or evidence that the domestic relationship has ended;
  - c. no longer holding the victim responsible for criminal activity on the premises particularly when those are acts of violence against the victim or when they are caused by someone under an EPO or other form of restraining order forbidding them to be on the premises;
  - d. eliminating the asset element of needs tests for accessing various services when those assets are not accessible to the victim;
  - e. revising the policies with respect to crime free multi-housing so that the victim is not held responsible for behaviour she is unable to influence, let alone control;
  - f. revising policies of non-market housing to better reflect the dynamics of domestic violence so that victims are not penalized for attempting to reconcile with the abuser, to keep her family together, and to enter into new relationships;
  - f. establishing public oversight of the exercise of discretion by providers of non-market housing;
  - g. clarifying the application of the *Residential Tenancies Act* and the *Alberta Housing Act* to various forms of non-market housing;



- h. providing the victim the option of remaining as the tenant of a rental property while evicting the abuser where domestic violence on presentation of evidence confirming the violence; and
  - i. expanding legal remedies and housing options for victims of financial, psychological and other forms of abuse.
- 4. Victims of domestic violence need access to additional and more accessible wrap-around services, including legal services that advocate for victims, to support them as they come to terms with their situation and their options.
- 5. More training is required for police, judges, lawyers, hearing officers, and landlords regarding the phenomenon of domestic violence. Particular emphasis should be placed on understanding the recurring cycles of violence that often results from attempts by victims to reconcile their relationship with their abuser, to attend to their children's needs, and to make appropriate alternative arrangements for their survival and the well-being of their children.
- 6. More educational resources and opportunities are needed to better educate the public, those who serve victims of domestic violence, and victims regarding the legal remedies and services available to victims of domestic violence;
- 7. Additional research needs to be undertaken to further clarify
  - a. the legal situation of victims of domestic violence regarding other market housing, including home ownership, condominiums, mobile homes, and cooperative housing;
  - b. whether the revisions made to residential tenancy law in other jurisdictions has been helpful for victims of domestic violence;
  - c. the variance between the law and the current practice in both market and non-market housing;
  - d. the legal status of emergency shelters and staged housing vis a vis the application of the law, including the application of the *Residential Tenancies Act* and the *Alberta Housing Act*;
  - e. the need for special housing and support services for the disabled, by those in need of special medical care, by the culturally and socially isolated, by male victims, and by LGBTQ victims.

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*Petty Trespass Act*, RSA 2000, c P-11.

*Protection Against Family Violence Act*, RSA 2000, c P-27.

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*Social Housing Accommodation Regulation*, AR Reg. 244/1994.

Tutty, L., Ogden, C. & Weaver-Dunlop, G. (2008). *An environmental scan of strategies to safely house abused women*. Final Report to the Calgary Poverty Reduction Coalition. Calgary, AB: RESOLVE Alberta.

# Appendix A

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## Literature Review

### Residential Tenancies Issues of Victims of Domestic Violence

The purpose of the literature review is to consider the relationship between domestic violence, residential tenancy law, and homelessness, and to consider the existing residential tenancy legal framework, its limitations and strengths, and to review legislative strategies that have been put in place in other jurisdictions.

After domestic violence occurs, the victim is often faced with difficulty in regards to accessing adequate housing. Some victims want to stay in the current place that they are renting, some wish to find new rental accommodation, some enter the shelter system, and some become homeless. Several studies have identified a link between family violence and homelessness (Tutty, Ogden, & Weaver-Dunlop, 2008; Novac, 2006). In regards to shelter use, a study by Richter and Chaw-Kant (2008) focusing on two inner-city women's shelters in Edmonton found that "[h]aving abusive relationships and housing problems (62.3%) were the main reasons why women had come to the shelter." (p. 13) Included in the housing problems were issues associated with renting, including having been evicted from previous rental accommodations.

Women face homelessness when they leave the violent relationship, and if they utilize the shelter system, they also face homelessness when they leave the shelter: women are often faced with inadequate housing and financial support that leaves them with a choice between homelessness and returning to the abusive partner (Tutty *et al*, 2008). In 2006, a second stage Edmonton shelter disclosed that the number of women who returned to their abusers after staying in the shelter jumped 64 percent over a six month period, and the number of women forced to move in with family or friends tripled (Kleiss, 2006).

When a victim wishes to remain her current rental housing, residential tenancy law may not be able to assist her to do so. In the United States, the maintenance of rental housing has been identified as crucial because women living in rental housing experience domestic violence at three times the rate of women who own their own homes (National Housing Law Project, 2012). The experience is similar in Canada. A recent Canadian study found that women living in rental housing were twice as likely to experience violence compared to women who owned their own homes (Brownridge, 2005).

Given the increased prevalence of violence in rental properties, as well as the increased vulnerability of victims because of their financial means and limited rental housing options available, it is very important to understand how residential tenancy law can affect the victim, and how the law is currently being used to help or hinder victims.

Many women face eviction after an incident of domestic violence. Stern, Valles and Randall (2007) conducted a national survey in the United States focusing on rental housing denials and evictions across that country. A key finding was that victims were often evicted from all types of housing because of violence committed against them. Out of 5,422 eviction cases that were handled by the service providers, 600 specific cases, or 11% of the total, were evictions of domestic violence victims because of the violence committed against them in the rental property.

The violence is often the underlying reason for an eviction. Landlord policies, including zero tolerance for crime in certain kinds of properties, allow landlords to evict when violence occurs in the rental property, regardless of whether the tenant is the victim or the perpetrator of the violence (American Civil Liberties Union Tipsheet – Domestic Violence and Homelessness). Other identified reasons for evictions include physical damage done to the property by the abuser, interference with housing providers and in housing subsidies by the abuser, police presence at the rental property, disturbing others' peaceful enjoyment of their properties, putting other people in danger, and simply because the victim identified herself as a victim of domestic violence to her landlord (Stern *et al.*, 2007).

If the victim attempts to find new rental accommodations, she is often discriminated against by landlords. There is a stigma attached to being a victim of domestic violence in the context of being seen as a desirable tenant in a residential tenancy situation. In July 2006, a report from the Canadian Mortgage and Housing Corporation focused on whether or not landlords discriminate against battered women. The results of the study suggested that landlords do discriminate against battered women and that "a substantial number of landlords were surprisingly candid in their unwillingness to rent to a battered woman and some were even openly hostile towards battered women" (p. 3).

This discrimination is echoed in the Stern *et al.* (2007) national survey in the United States. Service providers identified that of the 1,251 housing denials handled by the service providers, 346 denial cases were directly associated with domestic violence victims being denied housing because of the violence committed against them. This represents 28% of the total housing denials addressed by the service providers. There were various reasons given for the denials, including self-identifying to the landlord as a domestic violence victim, previous property damages, wrongful arrests over violence inflicted on them, criminal activities of the abuser even if the relationship had ended, the source of the housing subsidy, and the existence of a court order against the abuser.

Recent research by the Edmonton Social Planning Council and the Edmonton Coalition on Housing (Kolkman & Ahorro, 2012) identifies the same concerns in a local context, and that a negative rental history and lack of landlord references means that the domestic violence victims will have a difficult time finding stable housing. This study also identified that discrimination occurs on the basis of source of income: "When landlords found out tenants were on government income support (e.g. AISH, Alberta Works), there was often greater reluctance to rent them a unit" (p. 20). The Alberta government provides income support to women fleeing

domestic violence situations, and based on the study, this funding could also be a basis for discrimination against the victim.

If the victim wishes to stay in the current rental property, there are challenges to this situation as well. One issue that was identified in Ontario is that the landlord is under a legal obligation to provide all tenants with keys if the landlord is requested to do so, even if there is domestic violence occurring or an order in place (Ontario Non-Profit Housing Association, 2012). Civil protection orders can be sought in order to exclude the abuser from the rental property to allow the victim to stay in place. In a 2005 review of emergency protection orders in Alberta, it was identified that 64% of the victims received exclusive occupation of the residence under the order (Tutty, Koshan, Jesso and Nixon, 2005). Some challenges exist in relation to receiving an order, including access to the courts in rural areas, education of police officers to assist the victim in receiving the order and then enforcing the order, and the perceived lack of consequences for breaching a civil order (Tutty, 2008).

To more effectively meet the housing needs of victims of domestic violence, some governments have changed or amended laws in order to assist the victim in maintaining or receiving rental housing. In the United States, the *Violence Against Women Reauthorization Act of 2013* (2013, “VAWA”) prohibits a landlord from evicting or denying housing to a woman because of her status as a domestic violence victim. It also requires that leases explicitly state that domestic violence is not a legal reason to evict the victim of the violence, and that incidents of domestic violence do not qualify as violations of the lease, and are not good cause for evictions (Stern et al., 2007). VAWA also provides that publicly funded landlords can end the tenancy for the abuser, while allowing the victim to remain as a tenant (Stern et al., 2007).

Specific states also have laws to help victims; including requirements that the landlord change the locks within a set period of time if the victim has a protection order, and provisions that allow a tenant to break the lease if domestic violence occurs (National Housing Law Project, 2013). In Canada, some provinces have special legal provisions to help domestic violence victims (see Appendix C).

A common theme running throughout the majority of the literature is the importance of continual education of service providers regarding legal options available, as well as the importance of different kinds of service providers working together to help victims achieve housing stability. The local Edmonton study by Kolkman and Ahorro (2012) identified the need for education on rental housing rights and responsibilities for those who were vulnerably housed and/or homeless and for the staff (intermediaries) who provide the support services.

Given that the legal system is complicated and difficult to maneuver, service providers may better meet the needs of their clients through forming a coalition or collaborative group to provide perspective about issues of local importance can be a way to influence housing policy and reform at a local level (Martin & Stern, 2005). Service providers, housing providers, and housing and homelessness advocates need to have adequate funding to work together to have continuous education, training and outreach to ensure that the housing needs of victims are met (Stern et al., 2007).

Specialized training about domestic violence issues for members of the justice system, including judges and lawyers, is needed. In the United States, the National Housing Law Project developed *Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium* (2013) which educates legal service providers about the various domestic violence and housing laws across the country. The resource is designed to act as a starting point for service providers in understanding the housing rights of victims, and to build upon work being done to address obstacles that victims face. The National Housing Law Project has also developed several educational materials for legal professionals, including *Maintaining Safe and Stable Housing for Domestic Violence Survivors: A Manual for Attorneys and Advocates* (2012), which educates lawyers and other legal service providers about common issues that arise for victims and housing rights, as well as laws and legal arguments that are available to be used to help maintain housing for victims.

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# Appendix B

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## Annotated Bibliography

### Residential Tenancies Issues of Victims of Domestic Violence

#### Canada - Federal

Acacia Consulting & Research. (2006). *Cycles of Homelessness: Understanding Eviction Prevention and Its Relation to Homelessness*. Ottawa: Retrieved February-18-14 from [http://www.halifax.ca/qol/documents/Evictions\\_FinalHighlightsReport.pdf](http://www.halifax.ca/qol/documents/Evictions_FinalHighlightsReport.pdf)

The 12-month study entitled “Cycles of Homelessness: Understanding Eviction Prevention and its Relationship to Homelessness” responds to three research questions: (1) What are the characteristics of tenants served with eviction notices and tenants who are evicted?; (2) What are the key points of intervention in the eviction process and what specific approaches are most successful at these points in maintaining security of tenure?; (3) What are the best practices of eviction prevention models for populations at risk of homelessness and/or people who have recently experienced a bout of homelessness? Principle conclusions are that eviction prevention cannot be equated with homelessness prevention; threat of eviction is an important and useful indicator of crisis; and making a real impact on homelessness requires new public policy and investment.

Brownridge, D. (2005). Violence against women in renter versus owner-occupied housing: is homeownership a panacea? *Women's Health and Urban Life*. 4(1):45-62 Toronto, ON: Pristine Publishing. Retrieved February-18-14 from <http://hdl.handle.net/1807/4266>

Using a representative sample of 7,141 Canadian women living either in renter- or owner-occupied housing, this investigation assessed the extent of women's elevated risk for violence in rental housing relative to owner-occupied housing as well as potential explanations for this relationship. Canadian women living in rental housing were twice as likely as their counterparts in owner-occupied housing to experience violence. Explanations examined included family life course (age, marital status, duration of union), male control and domination (sexual jealousy, sexual possessiveness, patriarchal domination), socioeconomic indicators (woman's and partner's employment, woman's and partner's education), and control variables (place of origin, Aboriginal status, urban/rural residence, dwelling type). Results showed that family life course as well as male control and domination are important for understanding the elevated risk of violence against women in rental housing. Thus, the classic housing policy stance, to simply encourage homeownership, will not adequately address this women's health issue.

Canada Mortgage and Housing Corporation. Policy and Research Division (2006). *Housing Discrimination Against Victims of Domestic Violence*. Ottawa: Canada Mortgage and Housing Corporation. Retrieved February-18-14 from <http://www.cmhc-schl.gc.ca/odpub/pdf/65096.pdf>

This study, under the External Research Program (ERP) funded by Canada Mortgage



and Housing Corporation (CMHC), attempted to find out if landlords discriminate against battered women. The results suggest that housing discrimination against battered women exists, although the reasons for the discrimination are less clear.

Novac, S. (2007). Family Violence and Homelessness: Connections and Dynamics. *CUCS Research Bulletin, #40*. Toronto: University of Toronto, Centre for Urban and Community Studies. Retrieved May-29-13 from <http://www.urbancentre.utoronto.ca/researchbulletin.html>

This research bulletin is a summary of a literature review on the connections between family violence and homelessness. Rates of family violence are very high and more prevalent in the histories of homeless people than among the non-homeless. This association is strong enough that some researchers have concluded that family violence is a major cause of homelessness.

Novac, S., National Clearinghouse on Family Violence. (2006). *Family Violence and Homelessness: A Review of the Literature*. Ottawa: Public Health Agency of Canada. Retrieved February-18-14 from <http://www.phac-aspc.gc.ca/ncfv-cnivf/sources/fv/fv-homelessness-itinerance/index-eng.php>

This literature review summarizes current knowledge about the relationship between family violence and homelessness. It begins by considering the categories of homelessness that have been identified in the literature, pointing out the difficulties that definitional problems pose to any attempt to gain an accurate estimate of the extent of homelessness in Canada.

Thurston, W. E., Roy, A., Clow, B., Este, D., Gordey, T., Haworth-Brockman, M., ... Carruthers, L. (2013). Pathways Into and Out of Homelessness: Domestic Violence and Housing Security for Immigrant Women. *Journal of Immigrant & Refugee Studies, 11:278–298*. Routledge.

Housing insecurity is a major barrier to leaving domestic violence; it may force abused women to live in inadequate conditions or to return to their abusers. Immigrant women face additional barriers. Longitudinal interviews with 37 abused immigrant women living in three Canadian cities investigated key causes of housing insecurity. Results show a need to target systemic factors, a diversity of issues foregrounded along pathways into and out of homelessness, and complex indicators of risk. Advocacy is key to exiting abuse and obtaining secure housing, and cultural competency in services is needed to adequately support immigrant women experiencing domestic violence.

Tutty, L., Ogden, C., Weaver-Dunlop, G., RESOLVE Alberta. (2008). *An Environmental Scan of Strategies to Safely House Abused Women*. Calgary: Calgary Poverty Reduction Coalition. <http://www.ucalgary.ca/resolve/reports/2008/2008-02.pdf>

This environmental scan consists of a review of published academic literature and internet sites on best practices to safely house abused women. The range of housing options for abused women is examined, from emergency VAW shelters or transition shelters, to second and third stage housing. It also looks at options to assist women to remain in the family home while increasing the women's safety from an abusive intimate partner.

## Alberta

Alberta. Aboriginal Relations, Alberta. Education, Alberta. Health, Alberta. Human Services, Alberta. Justice and Solicitor General, Alberta Health Services. (2013). *Family Violence Hurts Everyone: A Framework to End Family Violence in Alberta*. Edmonton, AB: Government of Alberta. Retrieved February-18-14 from <http://humanservices.alberta.ca/documents/family-violence-hurts-everyone.pdf>

This framework was developed by five Government of Alberta ministries through consultations with community partners and Government of Alberta staff as well as input from the Brenda Strafford Chair in the Prevention of Domestic Violence at the University of Calgary. Each ministry will have a significant role in implementing and measuring the successful achievements of the framework's outcomes. Building on a solid foundation of intervention, treatment and protection measures, the Government of Alberta determined that the framework needed to be redesigned to include a greater emphasis on primary prevention, and incorporate new and emergent research and learn from other programs and policies that are making a difference around the world to stop violence before it starts. While all forms of family violence are unacceptable, the focus of this framework is primarily on: preventing intimate partner violence; stopping the transmission of violence to children, youth and young adults; and building healthy relationships across the lifespan – from children to seniors.

Alberta Works. (2011). *Supports for Albertans Fleeing Abuse*. Alberta Works. Retrieved February-18-14 from <http://humanservices.alberta.ca/documents/RRM-PUB fs supports fleeing abuse.pdf>

Fact sheet addressed the financial support available for getting to safety; setting up a new household; and starting a new life.

Calgary Domestic Violence Collective (CDVD) (2013). *Surviving Not Thriving: Barriers to Housing for People Leaving Violence: Priorities and Recommendations*. Calgary, AB: Calgary Action Committee on Housing and Homelessness (CACHH) Retrieved February-26-14 from <http://www.avena.org/pdfs/sntreportnov2013.pdf>

Understanding the intersection of domestic violence and homelessness is critical in addressing the unique needs of people fleeing violence and preventing housing instability and homelessness in this population. The Calgary Domestic Violence Collective (CDVC) hosted a workshop to bring together key stakeholders in the domestic violence and housing and homeless sectors to begin to explore barriers and build capacity to collectively address issues at this intersection. This report contains a summary of findings from the workshop as well as community identified priorities and recommendations for action.

Ipsos Reid. (2012). *Alberta Children and Youth Services: Albertans' Perceptions of Family Violence and Bullying Survey 2012 – Summary Report*. Calgary: Ipsos Reid. Retrieved May-29-13 from [http://www.child.alberta.ca/home/documents/familyviolence/PO\\_Survey\\_Summary\\_Report\\_2012.pdf](http://www.child.alberta.ca/home/documents/familyviolence/PO_Survey_Summary_Report_2012.pdf)

Ipsos Reid conducted a total of 900 telephone interviews with Albertans aged 16 years and older between January 4th and 16th, 2012. Key research objectives included examining issues related to public understanding and awareness of bullying and family

violence, assessing public support for government involvement in family violence and bullying prevention, collecting data for Ministry and regional performance measures and informing future directions for the public awareness and education campaigns in the prevention of family violence and bullying. This report presents a summary of key research findings and recommendations.

Kleiss, Karen. (2006, November 14). *These women are trapped*. Edmonton, AB: The Edmonton Journal. Retrieved February-18-14 from <http://www.canada.com/edmontonjournal/news/story.html?id=ecc0e5a4-252e-47bc-8616-b790bdbf66a8>

This newspaper article describes the housing issues faced by women leaving domestic violence situations. According to the Alberta Council of Women's Shelters, "nearly one in three women leaving Alberta shelters say they are returning to their abusers, in part because they can't find an affordable place to live. Nationally, the rate is lower, at nine per cent."

Kolkman, J., Ahorro, J., Edmonton Social Planning Council, Edmonton Coalition on Housing and Homelessness. (2012). *Understanding Tenancy Failures and Successes: Final Report*. Edmonton: Edmonton Social Planning Council; Edmonton Coalition on Housing and Homelessness. [http://homewardtrust.ca/images/resources/2013-02-06-14-21ESPC-ECOHH\\_FinalReport\\_Oct2012.pdf](http://homewardtrust.ca/images/resources/2013-02-06-14-21ESPC-ECOHH_FinalReport_Oct2012.pdf)

Based on a literature review, 8 focus groups, and an online survey, the authors found that an inability to afford suitable and safe rental accommodation was a recurrent theme. The root cause is incomes that are too low relative to market rents, with income support not keeping up with increases in rent costs. A number of housing quality concerns were identified by the research project, as well as the importance of better integrated, more effective support services to keep people housed.

Reimer, J., Goard, C., Alberta Council of Women's Shelters (ACWS) (2009). *Measuring Progress: After the Roundtable*. Edmonton: Alberta Council of Women's Shelters (ACWS) Retrieved May-29-13 from <https://www.acws.ca/reports>

We are currently marking a number of global and provincial anniversaries: the 30th anniversary of the Convention to End Discrimination Against Women (CEDAW); the 20th anniversary of the Convention on the Rights of the Child (CRC); 14 years since the Beijing Platform for Action (1995); and 5 years since the Premier's Roundtable on Family Violence Final Report (2005). It has also been three years since the completion of the Women's Shelter Program Review (2006). This report assesses how Alberta measures up with respect to these international conventions and uses the recommendations coming out of the Premier's Roundtable and the Women's Shelter Program Review as indicators to assist in measuring improvements that have been made from a shelter perspective. To measure progress in the implementation of the Roundtable recommendations, ACWS contracted Banister Research and Consulting Inc. to survey our members and key stakeholders.

Solina Richter, M., Chaw-Kant, J. (2008). *A Case Study: Retrospective Analysis of Homeless Women in a Canadian City*. *Women's Health & Urban Life*, 7(1), 7-19. Toronto, ON: Pristine Publishing. Retrieved February-18-14 from <http://hdl.handle.net/1807/10367>

A retrospective study was performed using the case files of women shelter users to profile and describe the factors that are associated with homelessness in the women population in Edmonton, Alberta, Canada. Case files (660) were extracted by selecting every fifth file in each group (one group per year) beginning in 1985. Of all the files examined, the mean age was 34 years. Fifty three percent were single women and half were Aboriginal. Main reasons given for using the shelters were housing problems and involvement in abusive relationships. Thirty eight percent of women used shelters only once, while 25.6 % were considered chronic users. Establishing the profile of homeless women proved difficult because of the lack of usable data. What is urgently needed for women shelters is the creation of a standardized admission form that incorporates sensitivity and flexibility for each shelter admission.

Wells, L., Boodt, C., Emery, H. (2012). Preventing Domestic Violence in Alberta: A Cost Savings Perspective. *School of Public Policy Research Papers, 5(17):1-16*. Calgary: University of Calgary, School of Public Policy.  
<http://www.canadianwomen.org/sites/canadianwomen.org/files/PDF--domestic-violence-alberta.pdf>

Recent studies show that Alberta has the fifth highest rate of police reported intimate partner violence and the second highest rate of self reported spousal violence in Canada, and despite a 2.3 percent decline over the last decade, the province's rate of self-reported domestic violence has stubbornly remained among the highest in Canada. This brief paper offers a cogent summary of its costs, and the benefits that could be reaped by investing in quality prevention and intervention programs, making it essential reading for policymakers and anyone else prepared to use them.

## **British Columbia**

BC Non-profit Housing Association (BCNPHA), BC Society of Transition Houses. (2013). *Surviving not thriving tool kit*. Vancouver, BC: BC Non-profit Housing Association (BCNPHA)

This tool kit provides facilitators experienced in issues related to violence against women with resources to plan and implement and awareness building and action planning session. It includes a nine-minute DVD and facilitator's guide designed to be adaptable to your setting. In the DVD, 45 women in four BC communities tell their stories through words and photographs. The facilitator's guide includes sections about planning and facilitating, a range of activities to facilitate dialogue and plan action and a series of templates including invitations, posters, action commitment form and evaluation form.

Jategaonkar, N., Ponik, P. (2012). *Unsafe and Unacceptable Housing: Health & Policy Implications for Women Leaving Violent Relationships*. Vancouver: BC Non-Profit Housing Association (BCNPHA) Retrieved May-29-13 from  
<http://www.bcnpha.ca/pages/research/bcnpha-research-papers.php>

This article explores the interrelationships among women's health, experiences of violence, and access to housing. We draw on findings from a feminist participatory action and Photovoice research project that identified barriers to housing for women leaving violent relationships. We found that the health effects of violence were

themselves a barrier to accessing housing and that the unsafe and unacceptable housing options from which participants were forced to choose had a further negative impact on their health. We suggest policy responses that address the unsafe and unacceptable housing for women leaving violent relationships.

Ponic, P., Jategaonkar, N., BC Non-profit Housing Association (BCNPHA), BC Society of Transition Houses. (2010). *Surviving not thriving: The Systemic barriers to housing for women leaving violent relationships*. Vancouver, BC: BC Non-profit Housing Association (BCNPHA)

This report is based on a research project entitled “Shedding Lights on the Barriers to Housing for Women Leaving Violent Relationships: A Photovoice Exploration”. Photovoice is a participatory action research method which couples photographs taken by participants with their explanations of the relevance and meaning of the photos as they relate to the research purpose. A total of 45 women, diverse in age, marital and parental status sexual orientation and ethnocultural identity, participated in the project across four communities. The conclusions in this report were generated from a collaborative and multi-stage analysis process which identified four systemic and interconnected barriers to housing. The report explores these themes and concludes with suggested strategies for action in each of these areas.

## **Ontario**

Ontario Non-Profit Housing Association. (2012). *Domestic Violence: What a landlord needs to know*. Ontario: Ontario Non-Profit Housing Association.

This info ON will provide an overview of landlords’ legal obligations under various pieces of legislation and an explanation of terminology. It will also provide a framework for assisting tenants who are experiencing or have experienced violence. A basic understanding of what domestic violence is and how it impacts individuals, families and communities is included to help landlords better understand the issues related to domestic violence.

## **United States - Federal**

American Civil Liberties Union. ([2008]). *Know Your Housing Rights for Survivors of Domestic Violence*. New York: American Civil Liberties Union. Retrieved February-18-14 from [http://acluidaho.org/wpsite/wp-content/uploads/kyr\\_housing\\_domestic\\_violence2008.pdf](http://acluidaho.org/wpsite/wp-content/uploads/kyr_housing_domestic_violence2008.pdf)

This information sheet addresses one's rights in private or public housing (e.g., The Fair Housing Act & The Violence Against Women Act) and enforcing these rights.

American Civil Liberties Union. (2008). *Housing Discrimination and Domestic Violence*. New York: American Civil Liberties Union. Retrieved February-18-14 from [http://www.aclu.org/files/pdfs/womensrights/discrimination\\_housing\\_2008.pdf](http://www.aclu.org/files/pdfs/womensrights/discrimination_housing_2008.pdf)

This information sheet takes a FAQs-approach to the intersection of sex desicrimination, housing, and domestic violence, and considers federal and state law.

American Civil Liberties Union. *The Rights of Domestic Violence Survivors in Public and Subsidized Housing*. New York: American Civil Liberties Union. Retrieved February-18-14 from [http://www.aclu.org/pdfs/womensrights/subsidized\\_housing\\_2008.pdf](http://www.aclu.org/pdfs/womensrights/subsidized_housing_2008.pdf)

This information sheet adopts a FAQs-approach to the intersection of domestic violence survivors and public and subsidized housing in relation to VAWA.

American Civil Liberties Union. (2008). *Domestic Violence and Homelessness*. American Civil Liberties Union. Retrieved February-18-14 from [https://www.aclu.org/pdfs/womensrights/factsheet\\_homelessness\\_2008.pdf](https://www.aclu.org/pdfs/womensrights/factsheet_homelessness_2008.pdf)

When women flee domestic abuse, they are often forced to leave their homes, with nowhere else to turn. Landlords also sometimes turn victims of domestic violence out of their homes because of the violence against them. For years, advocates have known that domestic violence is a primary cause of homelessness for women and families. Studies from across the country confirm the connection between domestic violence and homelessness and suggest ways to end the cycle in which violence against women leads to life on the streets. This Fact Sheet summarizes information from some of these studies.

American Civil Liberties Union Women's Rights Project, Students Active for Ending Rape. (2010). *The Right to Safe Housing on College Campuses for Survivors of Sexual Assault, Stalking, Domestic Violence, and Dating Violence*. New York: American Civil Liberties Union Women's Rights Project; Students Active for Ending Rape. Retrieved February-18-14 from [http://www.aclu.org/files/assets/studen\\_housing\\_factsheet.pdf](http://www.aclu.org/files/assets/studen_housing_factsheet.pdf)

A factsheet, for students, regarding their right to an effective response from their college or university upon reporting that they have been the victims of stalking, sexual assault or harassment, or intimate partner violence. The law prohibits schools from discriminating against students in residential services because they suffered gender-based violence, and requires schools to present victims with housing options.

Berger, V. (2005, June 6). *Don't Evict Victims; Domestic Violence*. National Law Journal. Retrieved February-18-14 from <http://www.ncdsv.org/images/DontEvictVictimsDomesticViolence.pdf>

On April 18, the Women's Rights Project of the American Civil Liberties Union, co-counsel with Vermont Legal Aid, announced settlement in *Bouley v. Young-Sabourin* (D. Vt. 2005), the first case in which a court had held that the Fair Housing Act bans discrimination against victims of domestic violence. This case merits attention not only because of its landmark holding, but also because of the legal argument advanced on behalf of the suing tenant: Bouley's attorneys took the rather novel tack of claiming that the owner and her managing agent had subjected Bouley to disparate treatment based on negative stereotypes pertaining to battered women.

Fleck-Henderson, A., Futures Without Violence. (2012). *Beyond Title IX: Guidelines for Preventing and Responding to Gender-based Violence in Higher Education*. San Francisco: Futures Without Violence. <http://www.futureswithoutviolence.org/userfiles/file/PublicCommunications/beyondtitleIXfinal.pdf>



This document is intended for a team of campus stakeholders working to develop an integrated and consistent approach to the issue of gender-based violence for their institution. It promotes a focused and coherent system of supports to create a climate that encourages respectful non-violent relationships and addresses all forms of gender-based violence, including intimate partner violence, sexual misconduct and stalking. The goals are to prevent abusive behaviors, insofar as is possible, by engaging faculty, staff and students in promoting healthy relationships; to ensure that the institution is prepared to respond promptly and effectively to incidents and reports of violence when they do occur; and ultimately to change campus norms so that community members hold themselves and each other to respectful and non-violent standards of interpersonal behavior.

Grewal, Navneet, Schultzman, Meliah. National Housing Law Project. *The Violence Against Women Act: A Housing Toolkit for Advocates*. National Housing Law Project. Retrieved February-18-14 from [http://www.idaholegalaid.org/files/VAWA\\_Housing\\_Toolkit.pdf](http://www.idaholegalaid.org/files/VAWA_Housing_Toolkit.pdf)

The toolkit is designed to provide advocates with an overview of VAWA's housing provisions and includes administrative guidance, recent legal developments, and sample advocacy materials. NHLP plans to release an additional advocate toolkit on survivors' rights under fair housing laws.

Legal Momentum. *Sample Letter Challenging Eviction, Refusal to Rent, or Other Action*. New York: Legal Momentum.

Legal Momentum has developed this sample letter as a model that may be useful for individuals seeking to enforce their rights under federal, state and local fair housing laws.

Martin, E. J., Stern, N. S., American Civil Liberties Union, National Law Center on Homelessness & Poverty. (2005). Domestic Violence and Public and Subsidized Housing: Addressing the Needs of Battered Tenants Through Local Housing Policy. *Journal of Poverty Law and Policy*, January–February 2005. New York Washington, DC: Retrieved February-18-14 from <http://www.aclu.org/FilesPDFs/ACF831B.pdf>

This article is an excellent tool for advocates looking for strategies to improve access to federal housing programs for non-immigrant domestic violence survivors. The article concentrates on federal public housing and the Section 8 Housing Choice Voucher Program. The piece provides information on the connection between homelessness and domestic violence and the shortage of affordable housing. Readers are walked through the applicable sections of HUD's 2003 Public Housing Occupancy Guidebook domestic violence chapter and its applicability to various barriers and challenges survivors face with public housing.

Advocates will find this article useful for preparing to advocate with public housing authorities and public housing authorities will find it helpful for policy actions to take to avoid sex discrimination and promote critical access and maintenance of housing for survivors and their families.

National Coalition for the Homeless. (2009). *Domestic Violence and Homelessness*. Washington, DC: National Coalition for the Homeless. Retrieved February-18-14 from [http://www.ncdsv.org/images/NCH\\_DV-and-homelessness\\_7-2009.pdf](http://www.ncdsv.org/images/NCH_DV-and-homelessness_7-2009.pdf)

This fact sheet examines the relationship between domestic violence and

homelessness. A list of resources for further study is also provided. Sections: Background, Domestic Violence as a Contributing Factor to Homelessness, Policy issues.

National Housing Law Project. (2008). State and Local Housing Protections for Domestic Violence Victims Gaining Momentum. *Housing Law Bulletin*, Vol. 38, 2008, 194 - 198. Oakland: National Housing Law Project. Retrieved February-18-14 from <http://nhlp.org/node/626>

VAWA does not cover several categories of survivors of domestic violence. As a result, advocates throughout the country are lobbying for or implementing a variety of state and local housing protections for domestic violence survivors This article discusses this issue.

National Housing Law Project. (2011). *Subsidized Housing: Relocation for Domestic & Sexual Violence Survivors*. San Francisco: National Housing Law Project. Retrieved February-18-14 from <http://nhlp.org/files/Relocation%20Slides%205.26.11%20for%20web.pdf>

A webinar presentation by the National Law Housing Project with content on the following topics: the federally subsidized housing programs; assisting survivors in transferring to a different public housing unit; assisting survivors in using their Section 8 vouchers in another jurisdiction; assisting survivors in transferring to a different project-based Section 8 unit; advocacy examples; working with housing providers on relocation policies; and maintaining survivors' safety and privacy when relocating within subsidized housing.

National Housing Law Project. (2010). *Assisting Survivors in Applying for Federally Subsidized Housing*. National Housing Law Project. Retrieved February-18-14 from [http://crimevictimsservices.org/images/stories/Community/Housing/10\\_28\\_10\\_Housing\\_DV\\_Slides.pdf](http://crimevictimsservices.org/images/stories/Community/Housing/10_28_10_Housing_DV_Slides.pdf)

Webinar covers the following topics: common problems domestic violence (DV) survivors face in applying for subsidized housing; laws that may protect survivors who are applying for housing; advocacy approaches that can be used in these cases; and resources available to advocates as part of NHLP's manual, *Assisting Survivors of Domestic Violence in Applying for Housing*.

National Law Center for Homelessness & Poverty. (2007). *Improving Housing and School Stability for Domestic Violence Survivors and Their Children*. Baltimore, MD: [http://www.nlchp.org/content/pubs/Housing\\_and\\_School\\_Stability\\_for\\_Survivors\\_of\\_Domestic\\_Violence3.pdf](http://www.nlchp.org/content/pubs/Housing_and_School_Stability_for_Survivors_of_Domestic_Violence3.pdf)

Resource is a compilation of materials presented, by the National Law Center on Homelessness & Poverty, at a workshop on the intersections of housing, schools, and domestic violence at the University of Maryland School of Law.

Contents:

- PPT slides by Eric Tars for a presentation entitled "The Violence Against Women Act: Protecting the Housing Stability of Domestic Violence Survivors and Their Children" (pp.7-12)
- An information sheet by NLCHP entitled "The impact of the Violence Against Women Act 2005 (VAWA) on the housing rights and options of survivors of



- domestic and sexual violence” (pp.12-16)
- An information sheet by NLCHP entitled “The impact of the Violence Against Women Act of 2005 (VAWA) on the housing rights and options of survivors of domestic and sexual violence” (pp.17-26)
- An information sheet by the American Civil Liberties Union Women’s Rights Project entitled “The Rights of Domestic Violence Survivors in Public and Subsidized Housing” (pp.27-28)
- An information sheet by the American Civil Liberties Union Women’s Rights Project entitled “Housing Discrimination and Domestic Violence” (pp.29-30)
- An information sheet by the American Civil Liberties Union Women’s Rights Project entitled “Domestic Violence and Homelessness” (pp.31-34)
- An information sheet by NLCHP entitled “Housing Stability and Safety For Domestic Violence Victims in DC” (pp.35-49)
- PPT slides by Joy Moses for a presentation entitled “The McKinney-Vento Act: Ensuring School Access and Stability for the Children of Domestic Violence Survivors” (pp.36-56)
- An information sheet entitled “Domestic Violence, Homelessness, and Children’s Education” (pp.57-63)
- An information sheet by NLCHP entitled “Educating Homeless Children and Youth” (pp.64-68)
- An information sheet by NLCHP containing specific suggestions and highlights of model language for statutes, regulations, and policy statements in Maryland (pp.69-83)

National Law Center on Homelessness & Poverty. (2006). *The Impact of the Violence Against Women Act of 2005 (VAWA) on the Housing Rights and Options of Survivors of Domestic and Sexual Violence: Frequently Asked Questions*. Washington, DC: National Law Center on Homelessness & Poverty. Retrieved February-18-14 from <http://www.ncdsv.org/images/ImpactofVAWAHousingFAQ.pdf>

A set of FAQs intended to clarify the new housing legal protections and programs for victims of domestic violence, dating violence, sexual assault, and stalking.federal addressed through the Violence Against Women Act of 2005 (VAWA 2005).

National Law Center on Homelessness & Poverty. *Housing Discrimination Against Abused Women*. Washington, DC: National Law Center on Homelessness & Poverty. Retrieved February-18-14 from <http://www.ncdsv.org/images/DVHousingDiscrimination.pdf>

This fact sheet explains some rights and options under federal and state laws if you have been evicted, denied a housing benefit, or denied rental housing by your landlord after your landlord learned you were in an abusive situation or a victim of sexual assault.

National Law Center on Homelessness & Poverty. (2006). *The Impact of the Violence Against Women Act of 2005 (VAWA) on the Housing Rights and Options of Survivors of Domestic and Sexual Violence: The Problem and a Remedy*. Washington, DC: National Law Center on Homelessness & Poverty. Retrieved February-18-14 from <http://www.ncdsv.org/images/ImpactVAWAHousing-TheProbandRemedy.pdf>

This press release explains the important new housing legal protections and programs

for victims of domestic violence, dating violence, sexual assault, and stalking that are part of the Violence Against Women Act 2005 (VAWA).

National Law Centre on Homelessness and Poverty. *Domestic Violence: Multimedia*. National Law Centre on Homelessness and Poverty. Retrieved June-05-13 from [http://www.nlchp.org/program\\_multimedia.cfm?prog=3](http://www.nlchp.org/program_multimedia.cfm?prog=3)

Training materials for domestic violence attorneys, as well as others who advocate on behalf of housing rights for domestic violence victims, are available on this webpage. Includes audio files, PowerPoint presentations and background materials.

National Resource Center on Domestic Violence (NRCDV) *VAWnet*. Harrisburg, PA: National Resource Center on Domestic Violence (NRCDV) Retrieved June-06-13 from <http://www.vawnet.org/domestic-violence/policy.php>

VAWnet is a comprehensive and easily accessible online collection of full-text, searchable materials and resources on domestic violence, sexual violence and related issues. The actions of governmental bodies - their laws, practices, regulatory measures, and funding priorities - profoundly affect how women and their families experience life and freedom from domestic violence. The Policy and Systems Advocacy section of this website provides information and tools to assist in the critical thinking and critical action of individuals and their collective(s) working to end domestic violence through public policy and systems change. VAWnet is a project of the National Resource Center on Domestic Violence (NRCDV) and is supported by Cooperative Agreement with the National Center on Injury Prevention and Control, Centers for Disease Control and Prevention (CDC).

National Sexual Violence Resource Center. (2010). *Opening the Door: An Advocate's Guide to Housing and Sexual Violence*. Enola, PA: National Sexual Violence Resource Center. Retrieved February-18-14 from [http://www.ncdsv.org/images/NSVRC\\_OpeningDoorAdvocatesGuideHousingSV\\_2010.pdf](http://www.ncdsv.org/images/NSVRC_OpeningDoorAdvocatesGuideHousingSV_2010.pdf)

Sexual violence often acts as a precursor to homelessness, and once a person becomes homeless their risk for sexual victimization is heightened. This guide is intended to equip advocates with information and resources to support their housing advocacy efforts. To these ends, information on housing as both a sexual violence prevention and intervention advocacy area is explored. Sections: 1) The Connections Between Housing and Domestic Violence; 2) Legal Protections for Housing at the Federal Level; 3) What Advocates Can Do – Housing as a Prevention Tool.

NOW Legal Defense and Education Fund, Inc. (2003). *Sexual Harassment in Housing: A Primer*. New York: NOW Legal Defense and Education Fund, Inc. [http://www.legalmomentum.org/assets/pdfs/lrk\\_sexharassment.pdf](http://www.legalmomentum.org/assets/pdfs/lrk_sexharassment.pdf)

This primer focuses on remedies available under the federal Fair Housing Act to women who have been sexually harassed. There are also other laws that can provide legal remedies for sexual harassment. Those laws are outlined in a separate section at the end of this packet. This primer is not a substitute for a lawyer's advice. While it provides useful information to help you protect your federal rights, you should consult a lawyer if you are contemplating a lawsuit.

Nunez, R., Adams, M., Curtis, H., Institute for Children, Poverty, & Homelessness. (2011). *Housing Assistance Underfunded but Critical for Survivors of Domestic Violence*. Institute for Children, Poverty, & Homelessness. Retrieved February-18-14 from [http://www.icphusa.org/PDF/reports/ICPH\\_brief\\_HousingAssistanceCriticalforSurvivorsofDV.pdf](http://www.icphusa.org/PDF/reports/ICPH_brief_HousingAssistanceCriticalforSurvivorsofDV.pdf)

In honor of Domestic Violence Awareness Month, and the homeless families affected by violence, ICPH's report highlights the importance of housing and supportive services for survivors. Featured are three maps of the United States highlighting Number and Rate of Sheltered Survivors of Domestic Violence (2010); States with Laws against Domestic Violence Housing Discrimination; and Percent of Unmet Domestic Violence Shelter Requests (2010). Discussion supplements these graphics.

Nunez, R., Adams, M., Curtis, H., Institute for Children, Poverty, & Homelessness. (2011). *A Tangled Web: Homeless Family Subpopulations and Their Overlapping Needs*. Institute for Children, Poverty, & Homelessness. Retrieved February-18-14 from [http://www.icphusa.org/filelibrary/ICPH\\_brief\\_ATangledWeb\\_HomelessFamily%20SubpopulationsandTheirOverlappingNeeds.pdf](http://www.icphusa.org/filelibrary/ICPH_brief_ATangledWeb_HomelessFamily%20SubpopulationsandTheirOverlappingNeeds.pdf)

Homeless families often face additional challenges to attaining and maintaining housing due to mental illness, substance abuse, HIV/AIDS, domestic violence, and veteran status. Data and research on these families are lacking. This policy brief touches upon these sub-communities, specifically mental illness; substance abuse; HIV/AIDS; domestic violence; veterans; and chronic homelessness.

Pratt, S. K., Office of Fair Housing and Equal Opportunity. (2011). *Memorandum: Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA)* Washington, DC: U.S. Department of Housing and Urban Development. Retrieved February-18-14 from [http://www.fhco.org/pdfs/news/NEWS\\_HUDonAssessingDVclaims02092011.pdf](http://www.fhco.org/pdfs/news/NEWS_HUDonAssessingDVclaims02092011.pdf)

This memorandum provides guidance to FHEO headquarters and field staff on assessing claims by domestic violence victims of housing discrimination under the Fair Housing Act (FHA). Such claims are generally based on sex, but may also involve other protected classes, in particular race or national origin. This memorandum discusses the legal theories behind such claims and provides examples of recent cases involving allegations of housing discrimination against domestic violence victims. This memorandum also explains how the Violence Against Women Act (VAWA) protects some domestic violence victims from eviction, denial of housing, or termination of assistance on the basis of the violence perpetrated by their abusers.

Schultzman, M., National Housing Law Project. (2013). *Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium*. United States: National Housing Law Project. Retrieved February-18-14 from <http://nhlp.org/files/Domestic%20violence%20housing%20compendium%20FINAL7.pdf>

A compendium of state and local laws that affect domestic violence survivors' housing rights. This compendium is designed to serve as a starting point for advocates seeking to conduct research on the housing protections that their state laws offer for domestic

violence survivors. For purposes of brevity, some statutes have been excerpted to include only the information that is relevant to domestic violence and housing.

Schultzman, M., National Housing Law Project. (2012). *Maintaining Safe and Stable Housing for Domestic Violence Survivors: A Manual for Attorneys and Advocates*. San Francisco: National Housing Law Project. Retrieved February-18-14 from <http://www.nhlp.org/files/NHLP%20Domestic%20Violence%20and%20Housing%20Manual%202.pdf>

This Manual is designed for advocates and attorneys assisting domestic violence survivors who are at risk of losing their housing or who need to improve the safety of their housing. Survivors often return to abusive partners because they cannot maintain safe and secure housing on their own. As a result housing advocacy is a critical part of holistic services for domestic violence survivors. The purpose of this Manual is to provide background information and sample documents that can be used to advocate on behalf of survivors facing evictions, rental subsidy terminations, and other forms of housing instability. This Manual does not address the housing application process or strategies for assisting survivors who have been denied access to housing.

Stern, N., Valles, J., Randall, A., National Law Center on Homelessness & Poverty. (2007). *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country*. Washington, DC: National Law Center on Homelessness & Poverty. [http://www.nlchp.org/content/pubs/NNEDV-NLCHP\\_Joint\\_Stories%20February\\_20072.pdf](http://www.nlchp.org/content/pubs/NNEDV-NLCHP_Joint_Stories%20February_20072.pdf)

Domestic violence survivors are frequently evicted from or denied federal public and subsidized housing because of the violence committed against them. The results of NLCHP's and NNEDV's national survey demonstrate the extent of these wrongful housing evictions and denials of domestic violence victims, thereby adding to existing cases and stories.

The survey results indicate that 11% of the total evictions handled by surveyed legal and social service providers were evictions of victims of domestic violence because of the violence against them. The results further indicate that 28% of total housing denials handled by the same providers were denials because of an applicant's status as a domestic violence survivor.

Stern, N., Valles, J., Randall, A., National Law Center on Homelessness & Poverty, National Network to End Domestic Violence. (2007). *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country*. National Law Center on Homelessness & Poverty; National Network to End Domestic Violence. [http://www.nlchp.org/content/pubs/NNEDV-NLCHP\\_Joint\\_Stories%20February\\_20072.pdf](http://www.nlchp.org/content/pubs/NNEDV-NLCHP_Joint_Stories%20February_20072.pdf)

In July 2005, NLCHP and NNEDV received survey responses from 76 legal and social services providers around the country who work with homeless and low-income domestic violence victims to address their housing needs. The survey was intended to assess the extent of housing denials and evictions of domestic violence victims because of the domestic violence against them. Notable findings include the following: domestic violence victims frequently are evicted because of violence against them; domestic violence victims frequently are denied housing because of violence against them; and that data, stories, and locations indicate a national problem.

Stern, N. S. (2004). *Housing, Homelessness and Domestic Violence*. Washington, DC: American Bar Association.  
<http://www.nlchp.org/content/pubs/Housing%20Homelessness%20and%20DV%202006.pdf>

This article touches upon housing discrimination against victims of abuse; other housing problems under state law or local practice; representing domestic shelters or other housing programs for victims; and local advocacy and collaborations. It also provides a bibliography and a checklist.

Tars, E., Zeisel, K., National Law Center on Homelessness & Poverty. (2007). *The Violence Against Women Act: Protecting the Housing Stability of Domestic Violence Survivors and Their Children*. Baltimore: National Law Center on Homelessness & Poverty.  
[http://www.nlchp.org/content/pubs/Housing\\_and\\_School\\_Stability\\_for\\_Survivors\\_of\\_Domestic\\_Violence3.pdf](http://www.nlchp.org/content/pubs/Housing_and_School_Stability_for_Survivors_of_Domestic_Violence3.pdf)

Resource consists of 26 ppt slides providing an overview of the Violence Against Women Act to improve the housing stability of domestic violence survivors and their children.

Weiser, W. R., Boehm, G. (2002). Housing Discrimination Against Victims of Domestic Violence. *Clearinghouse Review*, 35, 708-718. Chicago: Clearinghouse Review.  
<http://www.legalmomentum.org/assets/pdfs/housingdiscriminationclearinghouse.pdf>

Domestic violence should not become a barrier to housing. If a woman faces eviction, or if a landlord denies her application for housing because she is a victim of domestic violence, she may have a claim under federal or state laws prohibiting sex discrimination in housing. In this article we discuss ways in which federal and state fair housing laws may be used to assist domestic violence victims who face eviction or lose housing opportunities because they are victims of domestic violence.

Whitehorn, E. M. (2007). Unlawful Evictions of Female Victims of Domestic Violence: Extending Title VII's Sex Stereotyping Theories to the Fair Housing Act. *Northwestern University Law Review* 101(3), 1419 – 1457. Chicago: Northwestern University School of Law. Retrieved February-18-14 from  
<http://www.law.northwestern.edu/lawreview/v101/n3/1419/LR101n3Whitehorn.pdf>

The article proposes the extension of Title VII's sex stereotyping theories to the Fair Housing Act in the U.S. It argues that women who are victims of domestic violence and evicted from their homes based on the criminal actions of their abusers can file claims for sex discrimination under the Fair Housing Act. It discusses two theories of sex stereotyping developed under Title VII jurisprudence of the Civil Rights Act of 1968 that female victims of domestic violence can use in claiming for sex discrimination. It looks at the one-strike policies used by landlords in the country to evict female victims of domestic violence. (Abstract from EBSCO)

## **California**

National Housing Law Project. *Civil Code § 1946.7 Toolkit: Early Lease Termination for Survivors*. San Francisco: National Housing Law Project.

<http://nhlp.org/files/1.%20Civil%20Code%201946.7%20Toolkit.pdf>

The Toolkit Contains:

1. A Q&A explaining the law in plain English.
2. A sample 30-day notice that survivors can use to end their leases.
3. Safety planning concerns that should be addressed when using the law.
4. PowerPoint slides outlining the new law.
5. The text of Civil Code § 1946.7

National Housing Law Project. (2009). *Domestic Violence and Housing: A Toolkit for California Advocates*. Oakland, CA: National Housing Law Project.

Toolkit covers the following: finding housing and resources for survivors; survivors' rights in applying for housing; safety planning in rental housing; common landlord-tenant issues survivors encounter; survivors' rights under fair housing laws; housing rights of survivors with disabilities; the Violence Against Women Act and rights of survivors in federally; subsidized housing evictions and subsidy terminations in federally subsidized housing; and increasing survivors' access to housing.

## **District of Columbia**

National Law Center on Homelessness & Poverty. *Housing Stability and Safety for Domestic Violence Victims in DC*. Washington, DC: National Law Center on Homelessness & Poverty.

[http://www.nlchp.org/content/pubs/Housing\\_and\\_School\\_Stability\\_for\\_Survivors\\_of\\_Domestic\\_Violence3.pdf](http://www.nlchp.org/content/pubs/Housing_and_School_Stability_for_Survivors_of_Domestic_Violence3.pdf)

Following the lead of a number of other states, DC passed the Protection from Discriminatory Eviction for Victims of Domestic Violence Amendment Act of 2006 and it went into effect in March 2007. The law provides a variety of protections to domestic violence victims in the District of Columbia, which are clarified herein along with notices to Project-Based Section 8 Owners and Managers; Owners and Managers of Section 8 Voucher-Assisted Units; Public Housing Managers; Public Housing Tenants; Project-Based Section 8 Tenants; and Section 8 Voucher Holders.

## **New York**

Nunez, R., Anderson, D., Bazerjian, L., Institute for Children, Poverty, & Homelessness. (2013). *Rapidly Rehousing Homeless Families New York City - a Case Study*. New York: Institute for Children, Poverty, & Homelessness. Retrieved May-29-13 from

[http://www.icphusa.org/filelibrary/ICPH\\_brief\\_RapidlyRehousingHomelessFamilies.pdf](http://www.icphusa.org/filelibrary/ICPH_brief_RapidlyRehousingHomelessFamilies.pdf)

This report examines the model of "rapid rehousing/housing first" using New York City as a case study. It specifically examines the impact of this policy on the city's shelter system for homeless families, focusing on shelter census, eligibility, and recidivism rates, along with length of stay and overall costs.



## **South Carolina**

South Carolina Appleseed Legal Justice Center. (2012). *Public Housing: Help for Victims of Discrimination or Domestic Violence*. Columbia, SC: South Carolina Appleseed Legal Justice Center. Retrieved February-18-14 from <http://appleseedlegaljusticecenter.files.wordpress.com/2012/11/public-housing-help-for-victims-discrimination-of-domestic-violence-2012.pdf>

Resource adopts a FAQs-approach covering housing discrimination; sex discrimination; domestic violence and housing discrimination; and getting help.

## **Vermont**

Vermont Housing Discrimination Study Committee. (2009). *Housing Discrimination Against Victims of Domestic and Sexual Violence*. Montpelier, VT: Vermont Human Rights Commission. Retrieved February-18-14 from <http://www.leg.state.vt.us/reports/2009ExternalReports/241418.PDF>

This report examines the issues related to housing discrimination against victims of domestic and sexual violence and makes recommendations for the Legislature to consider regarding changes to Vermont law and policy in order to protect victims of domestic and/or sexual violence from housing discrimination. The committee began by conducting surveys of three groups: Domestic and Sexual Violence Advocates, Property Owners, and Public Housing Authorities. They then reviewed existing protections and suggested possible legislative responses.

## **Washington**

Northwest Justice Project. *Landlord/Tenant Issues for Survivors of Domestic Violence, Sexual Assault, and/or Stalking*. Seattle: Northwest Justice Project. Retrieved February-18-14 from <http://www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-BF37E9BC9FFA/attachments/3928251B-B3D0-3E9D-F621-19319DF0FC5E/6304en.pdf>

Resource explains how tenants who are victims of domestic violence, sexual assault, or stalking now have increased protection under the Residential Landlord Tenant Act (RLTA). In addition to addressing FAQs, sample forms and letters to landlords are provided.

## **New South Wales, Australia**

Fair Trading NSW. (2012). *Domestic violence in a rented property: What tenants and occupants need to know*. Fair Trading NSW. Retrieved February-18-14 from [http://www.fairtrading.nsw.gov.au/Factsheet\\_print/Tenants\\_and\\_home\\_owners/Renting\\_a\\_home/During\\_a\\_tenancy/FTR75\\_Domestic\\_violence\\_in\\_a\\_rented\\_property.pdf](http://www.fairtrading.nsw.gov.au/Factsheet_print/Tenants_and_home_owners/Renting_a_home/During_a_tenancy/FTR75_Domestic_violence_in_a_rented_property.pdf)

Resource provided information on changing the locks; changing the tenancy agreement; ending the lease early; tenancy database listings; and further advice and support.

Hawkesbury Nepean Community Legal Centre Inc. (2012). *Domestic Violence and Renting*. Windsor, NSW: Hawkesbury Nepean Community Legal Centre Inc. Retrieved February-18-14 from <http://www.hnclc.net.au/SiteMedia/w3svc742/Uploads/Documents/DVA%20Booklet%202012.pdf>

This booklet outlines the options available to you if you are living in a rental property and experiencing domestic abuse according to the NSW Residential Tenancies Act 2010. On the basis of answers to five questions (relating to the nature of tenancy; whether domestic violence is an issue; and user preferences for staying/leaving the rental property), users are guided to differently.

NSW Women's Refuge Movement Resource Centre, UWS Urban Research Centre. (2009). *The impact of housing on the lives of women and children - post domestic violence crisis accommodation*. Sydney, Australia: University of Western Sydney. Retrieved February-18-14 from [http://www.uws.edu.au/\\_data/assets/pdf\\_file/0011/69590/Microsoft\\_Word\\_-\\_Finalreport.pdf](http://www.uws.edu.au/_data/assets/pdf_file/0011/69590/Microsoft_Word_-_Finalreport.pdf)

This research aimed to identify in general the impacts of housing on women and their children who experience domestic and family violence. The study investigated the quality and timeliness of appropriate housing provision and its link to women and children's wellbeing. ... The release of this study is timely as it provides policy makers with a richer understanding through the voices of women, of the critical importance of appropriate housing in improving the safety and wellbeing of women and children in NSW who experience homelessness as a result of domestic and family violence. The study provides some clear indications on what parts of the service system should be improved to reduce the level of homelessness caused by domestic and family violence, a task which both the Commonwealth and NSW Governments have committed themselves to addressing.



# Appendix C

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## Legislative Review

### Residential Tenancy Law and Domestic Violence

#### Purpose

This purpose of the legislative review is to identify and briefly consider changes that have been made to some residential tenancies laws across Canada. Specifically, Quebec, Manitoba and Nova Scotia have provisions in their rental laws that relate directly to the domestic violence victim's ability to terminate the tenancy agreement if there is domestic violence. The first section of this review identifies the provincial laws and the procedures that must be followed under each, and the second section will be a brief discussion of the provincial laws.

#### Quebec

The victim must believe that her safety, or the safety of her children, is at risk because of violence or sexual assault. The abuser may be a spouse or former spouse, but also includes a third party. The victim must send in a sworn document that sets out information about the lease, and the reasons why the victim fears for her, or her child's, safety. The attestation must be sent to the public prosecutor's office. The public officer makes a decision, and the mails the attestation to the victim, at an address specified by the victim.

The victim must serve the landlord with the attestation, along with notice of termination. The notice will take effect at different times, depending on the kind of tenancy that is in place. For a indeterminate term, or a term of less than 12 months, then the victim provides one month notice. For any other term, the notice ends the tenancy two months after the notice is sent.

The *Civil Code of Quebec* (SQ 1991) reads as follows.

1974.1. A lessee may resiliate the current lease if, because of the violent behaviour of a spouse or former spouse or because of sexual aggression, even by a third party, the safety of the lessee or of a child living with the lessee is threatened.

The resiliation takes effect two months after a notice is sent to the lessor or one month after the notice is sent if the lease is for an indeterminate term or a term of less than 12 months. However, the resiliation takes effect before the two-month or one-month period expires if the parties so agree or when the dwelling, having been vacated by the lessee, is re-leased by the lessor during that same period.

The notice must be sent with an attestation from a public servant or public officer designated by the Minister of Justice, who, on examining the lessee's sworn statement that there exists a situation involving violence or sexual aggression, and other factual elements or documents supporting the lessee's statement

provided by person in contact with the victims, considers that the resiliation of the lease is a measure that will ensure the safety of the lessee or of a child living with the lessee. The public servant or public officer must act promptly.

If part of the rent covers the cost of services of a personal nature provided to the lessee or to a child of the lessee who lives with the lessee, the lessee is only required to pay the part of the rent that relates to the services which were provided before he or she vacated the dwelling. The same applies to the cost of such services if they are provided by the lessor under a contract separate from the lease. (Civil Code of Quebec, 1991)

## **Manitoba**

The victim has to believe that if the tenancy were to continue, her safety or her children's safety, would be at risk before applying for a certificate. In order to get a certificate, the victim must have

- made a complaint to police and agreed to cooperate with an investigation and court proceedings; and
- received an order of the court; and
- satisfied the authority that if the tenancy were to continue, the victim or the victim's children would be a risk.

If the victim receives a certificate, then she must serve the landlord with the certificate, along with notice that takes effect after one full payment period.

The *Residential Tenancies Act* (SM 1990-91) reads as follows.

92.3(1) A tenant of a rental unit may terminate the tenancy by giving notice in accordance with subsection (2) if, because of domestic violence or stalking, the tenant believes that his or her own safety, or that of a dependent child of the tenant, is at risk if the tenancy continues.

92.3(2) To terminate a tenancy because of domestic violence or stalking, the tenant must give the landlord

- (a) a notice of termination that is not less than one rental payment period, effective on the last day of the rental payment period; and
- (b) a certificate signed by a designated authority appointed under section 92.4 confirming that there are grounds for terminating the tenancy.

92.4(1) The minister may appoint a person to act as the designated authority under this section.

92.4(2) The designated authority may authorize one or more employees of the government to exercise the powers and carry out the duties of the designated authority, in addition to the designated authority.

92.4(3) A designated authority may issue a certificate to a tenant for the purpose of section 92.3 if

- (a) the authority is satisfied that the tenant has

- (i) made a complaint respecting domestic violence or stalking to local law enforcement authorities, and
  - (ii) cooperated or agreed to cooperate with any subsequent investigation and court proceeding;
- (b) an order of the court, the Provincial Court or a judicial justice of the peace appointed under The Provincial Court Act has been issued; and
  - (c) after having completed an assessment, the authority is satisfied that there is a risk to the safety of the tenant, or that a child who is a dependant of the tenant, if the tenancy continues.

92.4(4) A certificate issued by a designated authority must be in a form approved by the director.

92.4(5) The landlord must ensure that any information received from the tenant under this section is kept confidential.

## **Nova Scotia**

The tenant must be a tenant under a year-to-year or fixed term tenancy. The tenant needs to serve the landlord with a written notice and with a certificate from the Director of Victim Services. The tenant can apply for a certificate if the tenant

- received an emergency protection order within 90 days; or
- filed a domestic violence complaint with the police AND received a court order that contains a no contact provision AND the Director has reason to believe that the tenant is a victim of domestic violence under that order.

There is no appeal from the Director's decision. The tenant can re-apply if there is a change of circumstances. If the issue is ordered, then the tenant must serve the landlord with the certificate and with one month's notice to quit (in the approved form).

The landlord can only appeal if the notice and the certificate were not properly served. The notice ends the tenancy for everyone who resides in the premises.

The *Residential Tenancies Act* (RSNS 1989) of Nova Scotia reads as follows.

10F(1) Notwithstanding Section 10, where a tenant in a year-to-year or fixed-term tenancy is a victim of domestic violence, that tenant may terminate the tenancy by giving the landlord

- (a) one month's notice to quit in the form prescribed by the regulation; and
- (b) a certificate issued by the Director of Victim Services confirming that one of the grounds to issue a certificate under subsection 10H(2) has been established, no later than 60 days after the date the certificate is issued.

(2) The landlord shall ensure that information in a certificate received from the tenant pursuant to subsection (1) is kept confidential

(3) The landlord may apply to the Director of Residential Tenancies under Section 13 for an order setting aside the notice to quit only on the ground that the notice to quit and the certificate were not properly given to the landlord as required by subsection (1).

(4) Where the tenancy is terminated pursuant to subsection (1), the tenancy is terminated for all the tenants in the same residential premises, but for greater certainty, the other tenants and the landlord may agree to enter into a new landlord and tenant relationship.

10G The Director of Victim Services may authorize one or more employees in the Department of Justice to exercise the powers and carry out the duties of the Director of Victim Services under Section 10H.

10H(1) Where a tenant in a year-to-year or fixed-term tenancy is a victim of domestic violence, the tenant or a person on behalf of the tenant and with the tenant's consent may apply to the Director of Victim Services, in the form and manner and including the information required by the Director of Victim Services, for a certificate confirming that one of the grounds to issue a certificate under subsection (2) has been established.

(2) The Director of Victim Services may issue a certificate to the tenant for the purpose of clause 10F(1)(b) if either of the following grounds is established:

(a) an emergency protection order relating to the tenant has been issued under Section 11 of the Domestic Violence Intervention Act and has not been revoked under clause 12(1)(c) of that Act, and the tenant made the application for the certificate no later than 90 days after the date of the order; or

(b) the Director of Victim Services is satisfied that all of the following requirements are met:

(i) a domestic violence complaint has been filed with a police agency identifying the tenant as the victim,

(ii) a peace bond or other order of the court has been issued that contains a condition that the person who is alleged to have committed the domestic violence have no contact with the tenant, and the peace bond or other court order is currently in force, and

(iii) after having completed an assessment, the Director of Victim Services has reason to believe the tenant is a victim of domestic violence for the purpose of the peace bond or order referred to in subclause (ii).

(3) For the purpose of this Section, the Director of Victim Services may request information from a police agency respecting a domestic violence complaint filed with the police agency, and, where requested, the police agency must provide the information.

(4) In considering an application under this Section, the Director of Victim Services is not required to hear or consider representations from the person who is alleged to have committed the domestic violence.

(5) Subject to subsection (6), the decision by the Director of Victim Services to issue or refuse to issue a certificate under this Section is final and not subject to review or appeal.

(6) A tenant who is refused a certificate under this Section may re-apply for a certificate under this Section if there is a change in circumstances.

10(I) The Director of Victim Services cannot be compelled in a court or other proceeding, including a proceeding before the Director of Residential Tenancies, to

- (a) give evidence about information obtained for the purpose of Section 10H; or
- (b) produce any document or thing obtained for the purpose of Section 10H.

## **Discussion**

Rental law varies significantly from province to province. There are three provinces in Canada who have chosen to add provisions that relate to domestic violence into their residential tenancy legislation. The provisions share some common characteristics.

- The laws allow the victim to provide notice to end the lease for domestic violence.
- A person of authority under each law must provide some kind of certificate that supports the tenant's termination on the grounds of violence.
- Once the victim provides the notice and certificate to the landlord, then there is a notice period, where she remains responsible for the lease. The shortest notice period is one rental payment period.

Quebec law appears to have the widest applicability. The law allows a tenant to cancel the lease if the tenant is at risk, or if the tenant's child is at risk. The law also specifically allows the tenant to terminate if it is a third party who is violent (so there is no requirement that it be domestic violence per se). The victim is not required to make an in person application, but instead, mails in a sworn document setting out the situation, and attaches any supporting evidence. The tenant is not required to have any kind of protection or no contact order, but there is a suggestion that a third party (presumably a doctor, victim services) provide some sort of document to support the victim's attestation.

Manitoba and Nova Scotia appear to have more onerous terms for the victim to meet in order to terminate the tenancy agreement. The victim of domestic violence cannot apply to terminate the lease unless she already has a court order limiting the contact between herself and abuser. Once she has the court order, then she must make a second application, for a certificate from a designated authority. Under Manitoba law, the victim must also agree to cooperate with the police investigation and court proceedings prior to receiving a certificate. The law in that province also requires that the authority be satisfied that there is risk to the tenant's safety if the tenancy continues, which, as there has already been some kind of court order of protection issued, seems somewhat like a reconsideration of the grounds, and slightly redundant. Presumably, the court order would not have been issued if there were not grounds for concern of the safety of the victim.

All provinces provide for a very long notice period to be given by the tenant. During the notice period, she remains responsible for the lease, including rent and damages. In Nova Scotia, for example, if there has been a contravention of the lease that impairs safety and that poses an

immediate risk to the health and safety of another tenant, a landlord could provide a notice of termination that is effective not earlier than 5 days after the notice is given. The victim tenant must provide a full months notice to end the lease.

None of the laws take a proactive approach in regards to the landlord and tenant relationship. None of the laws set out specific protections from eviction for the victim of the domestic violence, and none of the laws allow a landlord to remove the abuser from the tenancy agreement upon the request of the victim. In the United States, the federal *Violence Against Women Reauthorization Act of 2013* has many requirements that appear to be more protective of the victim of the violence. In 2012, the National Housing Law Project developed *Maintaining Safe and Stable Housing for Domestic Violence Survivors: A Manual for Attorneys and Advocates*. This manual helps attorneys understand housing rights of victims of domestic violence, and the information below is a summarization of the VAWA protections that were discussed in detail in that manual.

- Multiple forms of evidence can be used provide proof of the domestic violence

The victim has the option between three forms of evidence to prove the domestic violence, and only has to submit one kind. The housing provider cannot request further documentation. The law allows

- The victim can fill out an approved form and certify that the information is true;
- The victim can provide a statement from a qualified third party (doctor, victim assistance, or lawyer). The third party must certify that the survivor has experienced abuse, and the third party and the victim must sign the document.
- the victim can provide some kind of police or court record, which may include a restraining order, a police report, a criminal complaint or a conviction.

- Victims of domestic violence cannot be evicted based on acts of violence committed against them

The National Housing Law Project (2012) provides this background information:

VAWA prohibits survivors of domestic violence, dating violence, or stalking from being evicted or having their rental subsidies terminated based on acts of violence committed against them. These protections were enacted to create an exception for survivors from the federal “one strike and you’re out” criminal activity rule. The rules gives [public housing authority] the authority to evict or terminate a tenant’s assistance based on only one instance of criminal activity committed by any household member, guest, or other person under the tenant’s control that threatens the health, safety, or peaceful enjoyment of other tenants. Unfortunately, some housing authorities have applied the rules to justify the evictions and subsidy terminations of all members of a particular household, even those who did not commit the criminal acts or were themselves victims of those acts. As

a result, many survivors have faced evictions and subsidy terminations based on criminal acts committed by their batterers. (p. 55, with footnotes removed)

- Public housing authorities are allowed to split the lease, to allow the victim to remain living in the property while evicting the abuser tenant

The housing authority can proceed with an eviction against an individual tenant. The housing authority must follow the eviction procedure set out in the residential tenancy legislation.

### **Recommendations**

If Alberta is to take a leadership role within Canada on victim rights, consideration should be given to adopting measures to help ensure victims of domestic violence can maintain safe rental housing after violence occurs. As there has not been any public evaluations released of any of the measures that have been put in place by the other provinces, research must be undertaken to determine if the amendments to provincial residential tenancy laws have helped victims of domestic violence maintain rental housing. Consideration should be given to going beyond what the other provinces have implemented and including more proactive measures than simply allowing the victim of domestic violence to provide notice to end the lease on the basis of the domestic violence. The VAWA provisions provide some guidance into measures that have been taken in other jurisdictions, and which appear to provide more options and protections for the victim tenant. Further research and consideration should be given to including similar provisions in Alberta's residential tenancy law.

## References

*Civil Code of Quebec*, SQ 1991, c 64.

National Housing Law Project. (2012). *Maintaining Safe and Stable Housing for Domestic Violence Survivors: A Manual for Attorneys and Advocates*. San Francisco, CA: National Housing Law Project.

*Residential Tenancies Act*, RSNS 1989, c 401.

*The Residential Tenancies Act*, SM 1990-91, c 11.



# Appendix D

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## Residential Tenancy Service and Resource Review

### Residential Tenancies Issues of Victims of Domestic Violence

#### Purpose

The purpose of the service and resource review is to identify service and resources available to help victims of domestic violence with residential tenancies issues in Edmonton. The purpose is not to identify all of the resources and services that a victim may need, but only those that can be accessed to assist her with her residential tenancy issues.

#### Services and Resources

No services are tailored to meet the specific needs of victims of domestic violence in relation to her residential tenancy issues. The victim can access the services that are available in Edmonton to help the general public with their tenancy issues. There are a variety of services available, which encompass legal information, advice, and representation. If the service is offering legal advice and representation there are usually income guidelines that the victim must meet in order to receive those services.

- Service Alberta's Consumer Contact Centre

Service Alberta provides a contact centre, where people can call in to receive information about the residential tenancy law. The Service Alberta website also has publications for landlords and tenants (including the RTA Handbook), information about how to make a consumer complaint, and information and forms regarding applications in the Residential Tenancy Dispute Resolution Service.

- City of Edmonton Landlord and Tenant Advisory Board

The Landlord and Tenant Advisory Board provides information about residential tenancy issues, workshops and courses, mediation services, and are a partner with the Edmonton Police Service Crime Prevention Unit in the Crime Free Multi-Housing Program. They also have tenancy forms and notices available for purchase.

- Law Information Centre

The Law Information Centre, more commonly known as LInC, provides information about general court procedure, court forms and options that might be available for people bringing an application in court.

- Legal Aid Alberta

Legal Aid Alberta provide a range of services, including legal information, referral, advice, brief services, duty council and representation. Some services are offered regardless of income, and some, including representation, are based on income guidelines.

- Student Legal Services of Edmonton

Student Legal Services of Edmonton provide education, information, advice and representation in landlord and tenant matters when the client meets their eligibility criteria. Their website has resource materials on residential tenancy law in Alberta.

- Edmonton Community Legal Centre

The Edmonton Community Legal Centre offers a variety of services, including information workshops and summary legal advice clinics, where a person can receive free legal advice on a particular matter. They also offer representation services. There are income guidelines that must be met to access some of the services. They also provide income support and immigration law assistance.

- Centre for Public Legal Education Alberta

The Centre for Public Legal Education Alberta provides information and referral services, including online services through the *Laws for Landlords and Tenants in Alberta* website. They have publications on a variety of residential tenancy matters, and provide workshops and presentations.

# Appendix E

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## Key Informant and Focus Group Interview Protocol

Key Informant or Focus Group Participant #\_\_\_\_\_

- Prior to the interview or focus group, assign a code number to the key informant and record the key informant's name and number on the code sheet.

- Introductions:

Thank you for agreeing to be interviewed today. I'm [name of interviewer] and this is [name of anyone else assisting with the interview].

Before we start the interview/focus group, I'd like to explain our project to you and answer any questions you might have about it or the interview/focus group.

- Review the Letter of Initial Contact.

- Answer any questions (based on information in the research plan)

- Obtain consent or terminate the interview/participation in the focus group.

Are you still willing to participate in the interview today?

If so, please sign the consent form at the bottom of the Letter of Initial Contact.

If not: Thank you for taking the time today to talk about this research. Would you like a copy of the report when it is completed? [If so, confirm contact information.]

- Conduct the interview/focus group

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I. I/We would like to begin by getting a bit of background on your experience in working with victims of domestic violence who have had problems getting or maintaining rental accommodation.

How long have you been working in the field of domestic violence or providing services to victims of domestic violence?

How often have problems with getting or keeping rental accommodation come up?

Ask all members of the focus group before proceeding to the next set of questions.

II. What is your general understanding of the suitability and availability of the law, legal remedies, legal services and resources to help victims of domestic violence get or maintain rental accommodation?

Ask all focus group members each question before proceeding to the next one.

In your view, what are the main legal problems that victims face in getting or keeping rental accommodation?

In your view, what are the main problems facing victims in accessing appropriate legal remedies when they have problems?

In your view, what are the major strengths of the current legal environment in supporting victims of domestic violence get or maintain rental accommodation?

In your view, what are the major weaknesses in the current legal environment?

III. Without giving me/us the names of any of the people involved, can you give me/us some examples of the kinds of problems victims have?

For each example, ask probing questions: how recent was the example, did it occur with respect to an apartment building or a suite in a home, was there a formal lease, what was the tenancy period, was the victim the sole tenant, any other matters that might affect the legal context.

For each example, ask

What solution did the victim need?

What was your role in helping the victim?

What services or resources to you provide?

How helpful were they?

What resources did you use?

How helpful were they?

Did you use the resources or services of anyone else?

How helpful were they?

Did these meet the needs of the victim?

If not, what more would be needed?

Ask each focus group member for an example. If time permits solicit a second example from everyone.

IV. Our research includes looking at other studies that have been done here or in other jurisdictions that might shed some light on the problems of victims of domestic violence. Are you aware of any research that we should know about?

V. Our research includes looking at the law, remedies, services, and resources available in other jurisdictions that help victims of domestic violence get or maintain rental accommodation. Are you aware of any such legislation or service?

VI. Thank you so much for helping us with this. Your input has been invaluable. We expect to have the research completed by February 2014 and to release our report shortly after. If you have indicated that you would like a copy on the consent form, we will send you one as soon as it has been finalized.

Provide focus group members with a copy of their Information Letter and their cash honorarium.