

ARTICLE

THE CRIMINALIZATION OF POVERTY: MONTRÉAL'S POLICY OF TICKETING HOMELESS YOUTH FOR MUNICIPAL AND TRANSPORTATION BY-LAW INFRACTIONS

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“If, in the case of racial profiling, skin colour is the element that triggers police intervention, in the case of social profiling, the trigger is the visible signs of poverty or marginality. The stigmatization of the homeless in the Police Service of Montréal [Service de police de la Ville de Montréal (SPVM)] standards and policies as well as the ensuing police profiling, undermines the rights of the individuals concerned to the safeguard of their dignity without discrimination based on social status.”¹

I. INTRODUCTION

As a student in the Faculty of Law at McGill during the summer of 2009, I was fortunate enough to do a 200-hour legal information placement with *Dans la rue* (DLR). *Dans la rue* was started in 1988 by Father Emmett Johns, who held a strong conviction that young people in unfortunate life circumstances were deserving of help, respect and compassion. With the support of countless others who have shared his philosophy and philanthropy, *Dans la rue* has become Canada's second largest provider of services to street and at-risk youth.

Legal information forms only a small segment of the services offered at DLR, and my role in providing legal information to their clientele was not limited to looking up legal facts. The hands-on experience of working with these youth and learning their life stories changed the way I now perceive homelessness and the people who are affected by poverty in Canada,

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1. Commission des droits de la personne et des droits de la jeunesse (Québec Human Rights Commission), News Release, “The Commission des droits de la personne et des droits de la jeunesse Speaks Out Against the Social Profiling of the Homeless in Montreal” (10 November 2009), online: intraspec.ca <<http://intraspec.ca>>.

and in Montréal in particular. Despite the plethora of issues I encountered during my time at DLR, the reoccurring theme that emerged from almost all of my interactions with these young people is how the current legal system is overburdening the homeless poor and is placing already vulnerable members of our society into further turmoil.

While there are many examples of how the system works to keep the disadvantaged oppressed, the most frequent example I found during my placement was the ticketing of street youth for statutory and by-law offences, such as panhandling, jaywalking, squeegeeing, sleeping in a park, or creating public disturbances. As the legal information intern, I would spend a lot of my time verifying outstanding fines and contestations, annulling writ of seizures and working with DLR, the City of Montréal and the YM-YWCA's Compensatory Work Program to create payment work plans. Navigating the bureaucratic framework to find the appropriate legal information was easy enough, but I found that simply dealing with the monetary amounts owed to the City of Montréal did nothing to explain why street youth were consistently receiving tickets for violating Montréal by-laws, nor did it address the repercussions of those tickets.

Although there are countless reasons why young people might end up homeless, more often than not they have left situations of abuse or neglect with very limited resources, only to find themselves confronting substance abuse, depression, mental disturbances and basic survival issues on the street. But, as I soon discovered, as well as facing social marginalization and prejudice, and equipped with poor life and advocacy skills, their difficulty is compounded by the fact that they are often targeted and ticketed by law enforcement officials precisely for being poor and problematic. I found that it is not uncommon for homeless young people to have \$7,000 to \$20,000 worth of tickets.

In this article, I argue that Montréal's current statutory laws and general attitude of law enforcement towards street youth create what I refer to as the "criminalization of poverty." This targeting of homeless youth, which victimizes and marginalizes an already disadvantaged segment of the population, places financial burdens upon them that negatively impacts life opportunities, including credit, work and educational options, and adds unnecessary stress to an already stressful situation. It is a given that it is the function of the law to regulate society, but I would also suggest that the legal system has a responsibility to protect those who are vulnerable in our society. In this case, it seems that the laws and their methods of enforcement exist to serve the interests of the financial elite and not the general public good. Both the law and societal attitudes need to be changed in order to more adequately address the causes and solutions to homeless youth ticketing. These homeless youth need more compassionate and alternative social, financial and compensational options.

In addressing these issues, I look at the problem of homelessness in Montréal, and in Canada generally. I identify the influences that have determined the policies which have shaped Montréal's by-laws and attitudes towards homeless youth, including the zero-tolerance approach adopted by the City. I contrast this approach with Canada's and Québec's stated *Rights and Freedoms*; demonstrate how youth are targeted and discriminated against through the current laws and the methods of enforcement; and explore how the Courts deal with issues of fines and imprisonment. I conclude by critiquing the current system and suggesting both social and legal alternatives, drawing on examples from both B.C. and Ontario.

II. YOUTH AND HOMELESSNESS

A. The National Problem of Homelessness

The Canadian government's Department of Human Resources and Skills Development estimates that between 150,000 to 300,000 people are homeless in Canada.² Canada's adult homeless population costs taxpayers between \$4.5 and \$6 billion annually.³ These people live in shelters or on the streets, and approximately 40,000 stay in homeless shelters nightly. Single men are the largest segment of homeless people in most Canadian cities, but homelessness is rising among both single women and single-parent families headed by women. Others who are disproportionately reflected in the homeless population include street youth, Aboriginal people, persons with mental illness, the working poor, and new immigrants. The causes of homelessness are cited as insufficient affordable housing and housing supply; low income; the gap between income and affordability; mental health and/or substance abuse issues; family conflict and violence; job loss; and inadequate discharge planning for ex-offenders, mentally ill persons, and persons leaving the care of the child welfare system.⁴

B. Youth Homelessness

Raising the Roof, a non-profit organization dedicated to eradicating homelessness in Canada, calls youth homelessness an unacknowledged national crisis.⁵ According to this organization, "youth" are considered to range from 12 to 29-years old.⁶ Youth homelessness generally refers to youth who are homeless, in a cycle of homelessness (temporarily sheltered or living in crowded or unsafe conditions) or at-risk of becoming homeless. These youth do not live with a family in a home, nor are they under the care of child protection agencies. They include many homeless youth who do not live on the street and who, therefore, are considered the hidden homeless.⁷

Based on three years (2006-2009) of research and consultations with 700 youth across Canada, Raising the Roof issued a report, *Youth Homelessness in Canada: The Road to Solutions*, that identifies characteristics and circumstances common to homeless youth.⁸ According to their research, the main commonalities among these youth include possessing inadequate stability, opportunity and support, but most relevant to this article is that 71%, or the great majority of homeless youth in Canada, have had some form of interaction with the criminal justice system.⁹ This statistic does not identify the causes and types of legal involvement. Nevertheless, the fact that almost three quarters of homeless youth are involved with the criminal justice system is significant, and reveals how impactful the system is on the young and poor.

2. Human Resources and Skills Development Canada, "Homelessness Partnering Strategy 2007 to 2011", online: HRSDC <<http://www.hrsdc.gc.ca>>.

3. See *Youth Homelessness in Canada: The Road to Solutions* (Raising the Roof, 2009) at 15, online: Raising the Roof: <<http://www.raisingtheroof.org>> [*Youth Homelessness in Canada*].

4. HRSDC, *supra* note 2.

5. *Youth Homelessness in Canada*, *supra* note 3 at 7.

6. *Ibid* at 12.

7. *Ibid*. See also Susan Wingert, Nancy Higget & Janice Ristock, "Voices from the Margins: Understanding Street Youth in Winnipeg" (2005) 14:1 *Canadian Journal of Urban Research* 54.

8. *Youth Homelessness in Canada*, *supra* note 3 at 12.

9. *Ibid* at 13.

III. THE CONNECTION BETWEEN HOMELESSNESS AND TICKETING IN MONTRÉAL: HOW, WHAT AND WHO

Tickets in Montréal can be issued for violations of either City of Montréal by-laws (averaging 58%) or public transportation rules [Société de transport de Montréal (STM)] (approximately 41%), while one percent of the violations come from other sources, such as the ban on smoking in public places.¹⁰ The most common by-laws for which youth are ticketed fall under Regulations Regarding Occupying the Public Domain; Regulations on Peace and Public Order; and Regulations Regarding Parks.¹¹

Some examples of the most frequent violations include:

- Sleeping in the metro (20% of the tickets)
- Public Loitering (9.8%)
- Free-riding public transport (8.1%)
- Hindering public transportation (8%)
- Smoking in/on public transportation areas (7.1 %)
- Drinking in public (6.5%)
- Public disturbances (5.4%)
- Loitering in a public park after hours (2.1%)¹²

According to *The Judicialization of the Homeless in Montréal: A Case of Social Profiling*, a 2009 report issued by the Québec Human Rights Commission (addressed in greater detail later in this article), the practice of ticketing has increased dramatically over the past decade and a half.¹³ According to this report, in 1994 the City of Montréal issued 575 tickets and the STM issued 494. In 2004, the City issued 3,281 tickets and STM issued 3,942. This represents a quadrupling of tickets over a ten-year period. Between 2003 and 2005 more than \$3.3 million remained owing to the City in unpaid tickets.¹⁴

10. This by-law information was provided by Gilles Lafontaine, Technicien en gestion de documents et archives, Section des archives, Ville de Montréal (July 2010), contact: glafontaine1@ville.montreal.qc.ca.

11. *Ibid.* The following is a sample of a section of one by-law and the financial repercussions of multiple infractions (City of Montreal, revised by-law c P-1, *Règlement concernant la paix et l'ordre sur le domaine public (Rules Concerning Peace and Order in the Public Domain)*):

3. Il est défendu de consommer des boissons alcooliques sur le domaine public. (It is illegal to drink alcoholic beverages in public.)

...

5. La personne qui, ayant reçu d'un agent de la paix l'ordre de cesser un acte en violation d'un règlement ou d'une loi, sur la voie publique, le domaine public ou dans un endroit où le public a accès, le continue ou le répète, est coupable d'une infraction qui constitue une nuisance, et trouble la paix et la sécurité publiques. (A person who receives an order from a law enforcement officer to cease violating a legal regulation concerning the use of the public domain or public access is guilty of a nuisance, disturbing the peace, or a security infraction.)

...

13. Quiconque contrevient à l'article 3 commet une infraction et est passible: (Contravening Article 3 (drinking alcohol in public) is an infraction and is fined at the following rate:)

1°pour une première infraction, d'une amende de 100 \$ à 150 \$; (for a first infraction, the fine is \$100-150;)

2°pour une première récidive, d'une amende de 150 \$ à 300 \$; (for a first repeat infraction, \$150-300;)

3°pour toute récidive additionnelle, d'une amende de 300 \$ à 1 000 \$. (additional infractions, \$300-1,000.)

12. From Gilles LaFontaine, *supra* note 11.

13. *The Judicialization of the Homeless in Montréal: A Case of Social Profiling*, Executive Summary of the Findings of the Commission, (Commission des droits de la personne et des droits de la jeunesse, 2009), online: CDPDJ <<http://www2.cdpdj.qc.ca>> [*The Judicialization of the Homeless*].

14. *Ibid.*, Executive Summary of the Findings of the Commission at 2.

The table below summarizes these changes in the ticketing of the homeless:

NUMBER OF TICKETS ISSUED EACH YEAR TO THE HOMELESS
UNDER MUNICIPAL BY-LAWS BETWEEN 1994 AND 2005

	<i>Municipal By-Laws</i>	<i>Urban Transit By-Laws</i>	<i>Total</i>
1994	575	494	1,069
1995	782	640	1,422
1996	805	799	1,604
1997	645	601	1,246
1998	1,275	389	1,664
1999	1,776	373	2,149
2000	1,080	950	2,030
2001	1,602	980	2,582
2002	1,785	1,449	3,234
2003	2,438	1,750	4,188
2004	3,281	3,934	7,215
2005	2,455	3,942	6,397
<i>Total</i>	18,499	16,301	34,800 ¹⁵

In addition to the huge increase in the number of tickets issued, tickets are frequently given to repeat offenders. Between April 2003 and March 2004, 22,685 tickets were issued to 4,036 people in the City of Montréal. Between January 2005 and March 2006, 15,090 tickets were issued to only 2,704 people. Ninety-two percent of infractions were issued to men and eight percent to women. While these statistics speak for themselves, it is also important to examine why this dramatic increase in targeting the homeless has been taking place.¹⁶

IV. THE THEORY BEHIND THE LAW: THE ZERO-TOLERANCE APPROACH

In 1997, Montréal adopted a new “neighbourhood policing” model based on a similar “community policing” model in New York City. The idea behind this policy was to take a proactive or problem-oriented approach to crime by increasing contact with citizens through zone policing, neighbourhood foot patrols and mini-police stations. The neighbourhood police model adopted by Montréal aimed to bring the Service de police de la Ville de Montréal (SPVM) closer to the citizens.¹⁷ However, the new policy’s rhetoric seems to be at odds with the realities on the ground.

This community approach is strongly connected to the “zero-tolerance” policy, popularized in the 1980s by two conservative Americans, sociologist James Q. Wilson and criminologist George Kelly. In their 1982 article published in the *Atlantic Monthly*, Wilson and Kelly postulated the “broken-window” theory, which argued that policing in neighbourhoods should be based on a clear understanding of the connection between order-maintenance and crime prevention.¹⁸

15. *Ibid*, Fact Sheet 4 (Overview of the over-judicialization of the homeless in Montréal — Statistics) at 1.

16. *Ibid* at 2.

17. Service de police de la Ville de Montréal (SPVM), “About the SPVM” online: SPVM <<http://www.spvm.qc.ca>>.

18. James Q Wilson & George L Kelling, “Broken Windows: The Police and Neighborhood Safety” (1982) 249:3 *Atlantic Monthly* 29.

According to Wilson and Kelly, the best way to fight crime is to fight the disorder that precedes it. The premise is that if a window is left unrepaired, the appearance of neglect and lack of concern will result in other broken windows, so it follows that it is necessary to enforce the minor offences through the creation of an atmosphere of regulation that will then prevent escalation to major crimes, such as rape and murder. Wilson and Kelly, therefore, argued for “zero-tolerance” of minor public disorders and the decentralization of authority to empower individual police officers. In their own words:

Many citizens, of course, are primarily frightened by crime, especially crime involving a sudden, violent attack by a stranger. This risk is very real, in Newark as in many large cities. But we tend to overlook another source of fear –the fear of being bothered by disorderly people. Not violent people, nor, necessarily, criminals, but disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed.¹⁹

In his article “Urban Revitalization, Security, and Knowledge Transfer: The Case of Broken Windows and Kiddie Bars”, Randy Lippert refers to the “broken window theory” as “a simplistic ‘clean and safe’ mantra.”²⁰ Other critics of this theory and the policies that have resulted from it argue that the emphasis on the value of safety and security and the resultant zero-tolerance of minor infractions threatens the general societal tolerance of cultural pluralism and helps to legitimize extreme measures in keeping and/or restoring order to communities. Despite the theory’s detractors, urban centers such as New York City, Windsor and Montréal have based their security policies on the “broken window theory” and zero-tolerance policing.²¹ This approach has resulted in the deliberate targeting of street and homeless youth for minor infractions, since they often comprise “the disreputable or obstreperous or unpredictable people” that Wilson and Kelling identified as needing to be controlled and quelled in order for the general citizenry to “feel” safe. However, Wilson and Kelling readily admit in their article that attempting to create the perception of safety for the public by targeting the homeless bears little connection to actual crime rates.²²

V. HOW THE ZERO-TOLERANCE APPROACH IS IN CONFLICT WITH CHARTER PRINCIPLES AND CANADIAN VALUES

A. The Canadian and Québec Charters

Throughout my time at *Dans la rue* I witnessed many examples of discrimination that were worthy of challenges under both the Canadian and Québec Charters, but for a variety of reasons — including lack of resources, lack of education, vocational instability and psychological stress — those who could legitimately pursue a case against Montréal statutory by-laws have been prevented, to date, from doing so. Despite the fact that a case has not yet been brought forth, the Canadian Charter enshrines the protection of the vulnerable in our society. Should a challenge come before the courts, the initiator would most likely claim a breach of Section 15(1) of the Charter, which states:

19. *Ibid* at 29.

20. Randy Lippert, “Urban Revitalization, Security, and Knowledge Transfer: The Case of Broken Windows and Kiddie Bars” (2007) 22:2 *CJLS* 29 at 30.

21. *Ibid* at 30-31.

22. *Ibid* at 31.

15(1) *Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*²³

As Graham Garton asserts, the purpose of s. 15(1) is to “prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration.”²⁴ Therefore, s. 15(1) stands in direct contradiction to the social marginalization and systemic discrimination that street youth encounter by police and community services.

Because Montréal street youth are also subject to the *Québec Charter of Human Rights and Freedoms*, should a Montréal youth initiate a case of systemic discrimination against the City of Montréal, he or she would be further supported by the *Québec Charter’s* specific inclusion of social condition as a legally enshrined principle.

As s. 10 states:

Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, *social condition*, a handicap or the use of any means to palliate a handicap.²⁵

Further, s. 10(1) states:

No one may harass a person on the basis of any ground mentioned in Section 10.²⁶

Although it appears that there is a strong case to be made for a legal challenge against statutory by-laws and City/police policies that have a disproportional effect on socially marginalized populations, there are a number of other options to promote policy change without legal imposition and the courtroom process.

Montréal is the only city in Canada to have adopted a *Charter of Rights and Responsibilities*, which came into effect on 1 January 2006.²⁷ Although it is not legally enforceable, the *Charter* establishes principles of rights and responsibilities to guide the collective efforts of citizens in the City with respect to those rights. When a dispute arises, Montréal’s Ombudsperson has been given the authority to promote solutions based on the *Charter’s* content. Article 2 of the *Charter* is relevant to Montréal’s youth, and states:

Human dignity can only be preserved as part of a sustained struggle *against poverty and all forms of discrimination*, and in particular, those

23. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s 15(1) [*The Charter*].

24. Graham Garton, “Commentaries on Section 15.1” in *Canadian Charter of Rights Decision Digest* (Ottawa: Department of Justice Canada, 2005).

25. *Charter of Human Rights and Freedoms*, RSQ c C-12, s 10 [*Québec Charter*] [emphasis added].

26. *Ibid* at s. 10(1).

27. City of Montreal, *Montréal Charter of Rights and Responsibilities* (adopted 20 June 2005), online: Ville de Montréal <<http://ville.montreal.qc.ca>>.

based on ethnic or national origin, race, *age*, *social status*, marital status, language, religion, *gender*, sexual orientation or disability.²⁸

In addition, Article 16 Section i states that the purpose of the *Charter* is to aid in:

Combating discrimination, xenophobia, racism, sexism and homophobia, *poverty* and *social exclusion*, all of which serve to erode the foundations of a free and democratic society.²⁹

To my knowledge, the Ombudsperson of Montréal has not faced a complaint specific to street youth, or at least not where a public decision has been released. However, the use of the Ombudsperson as a mediator between the City police and street youth would seem like a proactive step in helping to dissuade discrimination and create community solutions.

B. Other Legislation

Youth are also protected by the *Youth Protection Act*, which applies to youth from birth to 18 years of age, and the *Youth Criminal Justice Act*, which applies to young people aged 12 to 17 who commit an offence under the *Criminal Code* or another federal law, such as theft, vandalism, breaking and entering, or the possession of drugs.³⁰ The objective of the *Youth Protection Act* is to safeguard the intrinsic rights and freedoms identified by the *Charters* and to ensure the protection and development of all children. However, these stated ideals and values are threatened by the discrimination, harassment, exploitation and exclusion that homeless youth so frequently experience. As previously noted, street youth have yet to be in a position to challenge these offences in Canadian courts, but it is my view that these youth should not be forced into the position of having to wait for a legal challenge before Montréal society recognizes that the current laws and their enforcement need to be changed.

Similar opinions have also been expressed in a report prepared for *Justice for Children and Youth* headed by Professors Stephen Gaetz of York University and Bill O'Grady of the University of Guelph.³¹ In researching their 2009 report, 244 homeless youth in Toronto were interviewed about life on the streets, including their experiences of criminal victimization. The authors claim that while street youth are often portrayed as threatening and delinquent, their own research highlights the degree to which street youth are frequently victimized by the vulnerabilities that homelessness produces. Their findings indicate that the criminal justice and shelter systems are not effectively addressing this victimization. Gaetz and O'Grady note that if the levels of violence and other forms of crime found in this study were experienced by any other group of youth in Canada, there would be immediate public outrage and considerable pressure for action by the government. Gaetz and O'Grady argue that street youth deserve the same level of attention in responding to their needs as any other group of Canadian citizens.

28. *Ibid* at Article 2 [emphasis added].

29. *Ibid* at Article 16 [emphasis added].

30. *Youth Protection Act*, RSQ, c P-34.1; *Youth Criminal Justice Act*, RSC 2002, c 1.

31. Stephen Gaetz, Bill O'Grady & Kristy Buccieri, *Surviving Crime and Violence: Street Youth and Victimization in Toronto* (Toronto: JFCY and Homeless Hub Press, 2010).

VI. HOW THE PRACTICE OF TICKETING AFFECTS YOUTH ON THE GROUND

My experience of the excess targeting of street youth by Montréal law enforcement officials is supported by research conducted on this issue. During the summer of 2004, several Montréal groups asked the *Commission des droits de la personne et des droits de la jeunesse* (Human Rights and Youth Rights Commission) to launch an investigation into allegations of systemic discrimination against the homeless in Montréal.³² A three-party taskforce made up of the Commission, Montréal's Homeless Support Network [Réseau d'aide aux personnes seules et itinérantes de Montréal (RAPSIM)], and the City of Montréal was created in 2005. The taskforce also brought together elected members of the City of Montréal's executive committee, the mayor of the Ville-Marie borough, public security and social development officials and advisors, representatives from Service de police de la Ville de Montréal (SPVM) and the Société de transport de Montréal (STM).³³

Members of the taskforce unanimously found that the issuing of large numbers of tickets for minor offences affect the homeless in particular, and in a high percentage of cases lead to a prison term for non-payment of tickets. They all agreed that imprisonment is not a solution to the problem of homelessness. The taskforce also determined that the main reason the courts convict the homeless is to enforce regulatory and legislative provisions concerning public spaces, and this is determined by the ways in which the police apply these legal instruments. However, despite their consensus, the taskforce produced no concrete policy recommendations.³⁴

The Commission then decided to focus its attention on the extent to which the municipal by-laws and their enforcement are consistent with the *Charter of Human Rights and Freedoms*. The Commission issued an executive summary of its investigations in the previously mentioned report "The Judicialization of the Homeless in Montréal: a Case of Social Profiling."³⁵ In regards to the *Charter of Human Rights and Freedoms*, the Commission identified four main issues of concern: the repression of the homeless; the discriminatory impact of police standards, municipal by-laws and legislation; social profiling; and imprisonment.³⁶ Again, the courts have not been faced by a legal challenge on these subjects to date. Nevertheless, concerning the *Charter*, the Commission asserts that the intensive enforcement of municipal by-laws by the SPVM has led to a disproportionate number of tickets being issued to the homeless.³⁷ This is demonstrated by the fact that while the homeless make up less than one percent of Montréal's population, they received 31.6 percent of the tickets issued by the police under municipal by-laws in 2004, and 20.3percent in 2005.³⁸

The Commission considers this discrimination to be systemic because it does not result from an isolated standard or practice, but from the combined effects of standards, policies and police methods, and also from certain by-laws and legislative provisions. During their investigation, the Commission focused on the institutional standards and policies of the SPVM, the way in which police officers apply these standards and policies, the by-laws

32. See *The Judicialization of the Homeless*, *supra* note 13, Executive Summary of the Findings of the Commission.

33. *Ibid* at 1.

34. *Ibid*.

35. *Ibid*.

36. *Ibid* at 2-4.

37. *Ibid* at 4.

38. *Ibid* at 1.

concerning the use of public spaces, and the legislation that imposes prison sentences for unpaid fines. The Commission found that policy objectives have made the fight against uncivil behaviour and “public disorder” a priority for the police, who tend to assign responsibility for disorder to certain groups, predominately the homeless, panhandlers, squeegeers and prostitutes.³⁹

The Commission also demonstrated that social profiling occurs when individuals are (or appear to be) homeless. These people are ticketed for minor offences that are rarely enforced by the police when committed by other citizens. These offences include, for example, loitering, spitting, dropping cigarette ends, lying on a public bench, being drunk in public, and jaywalking. However, the homeless population, by definition, has no other option but to use public spaces to carry out private functions. It seems that even the municipal courts have occasional difficulty enforcing these by-law infractions. For instance, the report cites the case of a municipal court judge who was surprised to find that lying down on a public bench could result in being charged by the police under a municipal by-law prohibiting the use of street furniture for a purpose other than the one for which it is intended. The judge was even more uncomfortable with the fact that, for this offence, the minimum fine was \$500, which he found to be completely out of proportion to the seriousness of the offence committed.⁴⁰

The Commission also found that vaguely worded by-laws frequently open the door for the targeting of the types of behaviour associated with homelessness. If a provision does not identify the nuisance, it is up to the police to decide what behaviours justify punishment. For example, one STM by-law states that a person loitering in the metro system, even without disturbing or obstructing other people, is guilty of an offence.⁴¹ Another by-law, enacted by the Ville-Marie borough, closed 15 parks and squares at night, several of which were used by the homeless to sleep in.⁴² This by-law has resulted in homeless persons being placed in an illegal situation when trying to sleep. In the Commission’s view, these by-laws and their discriminate enforcement undermine the *Charter*-protected rights of the homeless population to personal security, inviolability and freedom without discrimination, and also their right to have their dignity safeguarded.

Another important issue addressed by the Commission concerns the consequences for the homeless of imprisonment for unpaid fines. In light of the rights recognized by the *Charter*, it was determined that this practice is extremely harmful for people with very low or no income. The Commission argues that the provisions of the *Code of Penal Procedure* that impose a prison sentence for unpaid fines have a discriminatory effect on the homeless, noting that nothing in the *Code* justifies this discrimination on the basis of social condition.⁴³ As Supreme Court of Nova Scotia Justice B. Kelly has stated: “Our Constitution enshrines a system of justice based upon a belief in the inherent dignity and worth of every

39. *Ibid* at 3.

40. *Ibid*.

41. *Ibid* at 4.

42. City of Montreal, revised by-law, c P-3 *Règlement sur les parcs (Park Regulations)*, articles 3, 20. Ordonnance sur les heures de fermeture des parcs (Ordinances on the hours of park closures)

In the City of Montréal’s July 1999 session, the executive committee decreed:

1. Parks, public places and squares will be closed from 00:00hr to 06:00hr except:

- 1) parks, public places and squares enumerated in annexe 1;
- 2) areas designated for automobile traffic in parks, public places and squares;
- 3) areas designated for parking in parks, public places and squares;
- 4) City events in parks, public places and squares.

43. *Code of Penal Procedure*, RSQ c C-25.1.

individual. That a person should be imprisoned only because of his or her inability to pay a fine is inconsistent with such a system.”⁴⁴

VII. HOW THE COURTS ARE ADDRESSING THE IMPRISONMENT OF THE HOMELESS POPULATION AND THE INABILITY OF THE HOMELESS POPULATION TO PAY FINES

In the 2003 Supreme Court case *R v. Wu*, Chief Justice McLachlin stated that “the purpose of imposing imprisonment in default of payment is to give serious encouragement to offenders with the means to pay a fine to make payment. Genuine inability to pay a fine is not a proper basis for imprisonment.”⁴⁵ Yet according to a report from Statistics Canada, 17 percent of all people in custody in provincial or territorial institutions in 2000-2001 were jailed for default on unpaid fines, where “at least one of the causes for their committal arose from a fine default.”⁴⁶ A 1994 Québec survey found that 35 percent of imprisoned fine defaulters had been fined for offences under the *Criminal Code* or other federal criminal laws with an average fine of \$262, or, in the case of default, incarcerated for an average of 26 days. Ten percent were in prison for both federal and provincial offences with an average fine of \$1,366 or a 50-day sentence, and 55 percent were imprisoned for violations of provincial laws or *municipal by-laws*. The latter penalties averaged \$116 or eight days of prison.⁴⁷ Within municipal law, the homeless are continually and repeatedly fined, and frequently find themselves in prison as a result.

The Federal and Provincial Supreme Courts have recently favoured adaptable penalties based on ability and means to pay. As was held in the 1973 case *R. v. Grady*, the primary purpose of sentencing is to protect the public.⁴⁸ Justice Kelly then stated in the 1989 case *R. v. Hebb* that:

This purpose can be established either by rehabilitation or deterrence or combination of the two. A court, before determining the amount of the fine, should take into consideration the ability of the offender to pay the fine. Thus, a fine of some substance is only appropriate when a court concludes that deterrence is an appropriate method of protecting the public under the circumstances of the offence and the individual and secondly, when the offender is capable of paying the fine.⁴⁹

The Criminal Code also states that if an offender does not have the means to pay a fine immediately, he or she should be given a reasonable time to pay.⁵⁰ The offender may also be eligible for a provincial fine option program in which the fine may be discharged “in whole or in part by earning credits for work performed during a period not greater than two years.”⁵¹ In the event of a default, the Crown can resort to a number of civil remedies such

44. *R v Hebb* (1989), 69 CR (3d) 1 at Conclusion [*R v Hebb*].

45. *R v Wu*, 2003 SCC 73, [2003] 3 SCR 530 at para 3 [*R v Wu*].

46. Canadian Centre for Justice Statistics, *Adult Correctional Services in Canada, 2000-2001* (2002), at Table 7, cited in *R v Wu*, *supra* note 45 at para 34.

47. *Justice and the Poor*, National Council of Welfare Report (2000) at 76-77, cited in *R v Wu*, *supra* note 45 at para 35 [emphasis added].

48. *R v Grady* (1973), 5 NSR (2d) 264 (SC (AD)).

49. *R v Hebb*, *supra* note 44. The essential issue for the court in this case was to determine whether a person sentenced to a fine and a period of time in jail in default of payment of that fine should be incarcerated if they do not pay that fine by reason of being poor and unable to pay the fine.

50. *Criminal Code* RSC 1985, c C-46, s 736(1).

51. *Ibid.*

as suspending licenses or other instruments until the fine is paid in full or by registering the fine owing with the civil courts. The option of jail for a default is limited by important restrictions. A fine default is not punishable by committal unless the other statutory remedies, including license suspensions and civil proceedings, are not appropriate in the circumstances⁵² or the offender has, without reasonable excuse, refused to pay the fine or discharge it under s. 736.⁵³

A recent study by Stephen Gaetz and Bill O'Grady, conducted on behalf of the *John Howard Society of Ontario*, interviewed prison discharge planners, inmates and those recently released from prison. The results indicated that the relationship between homelessness and incarceration is in fact bi-directional; in other words, people who are homeless are at risk for incarceration, and the prison experience itself places many former prisoners in danger of becoming homeless. In addition, because homeless youth often find themselves living in neighborhoods that are subject to elevated levels of police surveillance, as a group they are over-represented in the court and correctional systems.⁵⁴

VIII. FINANCIAL AND SOCIAL COSTS OF THE CURRENT SYSTEM

In addition to the ramifications for homeless youth, the current laws and their methods of enforcement are producing other financial and social costs, including costs to the judicial and law enforcement system, the municipality, and ultimately to the taxpayers and society in general. Youth homelessness itself has numerous social and practical ramifications, but from a strictly fiscal perspective, it costs an estimated \$30,000–\$40,000 per year to keep one youth in the shelter system.⁵⁵ This amount seems minimal compared to the cost of keeping one youth in detention for unpaid fines, which is estimated at over \$250 a day or \$100,000 a year.⁵⁶ When the costs of administration, policing, the court system, work and payment programs, collection agencies, bailiffs and everything else associated with the current system are added to the cost of youth incarceration, the enormity of these fiscal burdens becomes apparent. In my view, the burden on the taxpayer would be better served by redirecting this money into more efficient and effective legal/social policies and programs. I will discuss some possible alternatives later in this paper.

In terms of costs to the judicial system, having a high number of homeless or street youth pass through the courts burdens the system with an unnecessary case load, and adds to the wait time before cases are dealt with. It has been my experience that youth frequently wait for months and even years before receiving appropriate notifications or having their cases dealt with in the court system, which compounds the stress of their already difficult situations.

The current system has also increased the financial and administrative burdens of law enforcement, without, I would argue, any apparent benefit. In 2004, the City of Montréal's police force received a budgetary increase of \$28 million to reorganize the force, hire new

52. *Ibid.*, s 734.7(1)(b)(i).

53. *Ibid.*, s 734.7(1)(b)(ii).

54. Stephen Gaetz & Bill O'Grady, "Homelessness, Incarceration, and the Challenge of Effective Discharge Planning: A Canadian Case" in J David Hulchanski *et al*, eds, *Finding Home: Policy Options for Addressing Homelessness in Canada* (Toronto: Cities Press, University of Toronto, 2009) Chapter 7.3 (e-book), online: The Homeless Hub <<http://www.homelesshub.ca>>.

55. Gordon Laird, "Shelter, Homelessness in a Growth Economy, Canada's 21st Century Paradox", Report for the Sheldon Chumir Foundation for Ethics in Leadership (2007), cited in Raising the Roof, Youthworks, "Costs to Society", online: Raising the Roof <<http://www.raisingtheroof.org>>.

56. *Ibid.*

officers and implement “optimization mode.”⁵⁷ This new mode sought to make the reduction of anti-social behaviour a priority by using 26 new call codes to classify “incivilities” including prostitution, the “bothersome presence of homeless people and beggars, the menacing activity of squeegees, and the gathering of youth in public areas.”⁵⁸ Yet despite this influx of money and a shift in priorities to deal with the “uncivil,” the crime rates did not drop, as one might expect. Instead, this community strategy produced both an increase in the number of tickets issued — 10,000 — and the number of complaints against police officers.⁵⁹

In 2003-2004, the Commissioner of Police Ethics received 1,290 complaints of inappropriate behaviour by law enforcement officers, SPVM officers, and municipal bylaw officers; by 2007-2008 the number went up to 1,459 complaints.⁶⁰ In addition to the inefficient use of resources, these policing policies have negatively impacted street youth-police relations and have added to the unnecessary targeting and punishment of the youth for being visibly poor, “disruptive” and “uncivil.”

IX. WHAT ARE THE ALTERNATIVES?

A. Building Better Relationships between Police and Youth: The Kelowna R.E.S.P.E.C.T. Program

Many groups believe that the negative relationship that exists between youth and police services can be positively transformed through alternative means. One example can be illustrated by the R.E.S.P.E.C.T. (Recognizing Every Strategy Promoting Excellent Community Trust) program, which is in the process of being instituted in the Okanagan region of B.C.⁶¹ As its name implies, the purpose of the program is to promote positive community relations and trust. This is being brought about by a partnership between the Regional District of Central Okanagan (Parks & Recreation and Crime Prevention), the RCMP and the Westside Youth Centre, with the intent to create a more positive experience for youth-community relations in Westside.⁶²

One of the foundational components of the program rests on the relationship between youth and the RCMP. A main objective is to strengthen the relationship between youth and the police through the use of “positive tickets.” The RCMP will hand out “positive tickets” to any youth they see who are *not* engaged in any *negative* or *destructive* behaviour. Positive tickets include coupons for a free slushie, free coffee, free pizza, swim vouchers, movie passes, skating tickets, ski passes, etc. The theory behind this approach is based on the ability to change behavior through positive, rather than negative reinforcement, and the need to build community relations through the recognition of the positive potential and actual contributions of youth.⁶³

57. Martin Lukacs (*The McGill Daily*), “The New Blue Line”, *Streetviews* (Spring 2006) online: Wyoming Coalition for the Homeless <<http://www.wch.vcn.com>>.

58. *Ibid.*

59. *Ibid.*

60. *Ibid.*

61. “Recognizing Every Strategy Promoting Excellent Community Trust” (RESPECT), online: City of Kelowna <<http://www.kelowna.ca>>.

62. *Ibid.*

63. *Ibid.*

According to the program, an important component of community building is the elimination of fear and negative stereotyping on the part of both the police and youth in relation to each other, in order to foster greater mutual respect and understanding. R.E.S.P.E.C.T. holds that this can best be accomplished by an integrative approach that connects youth with their communities. In this case, the three partner groups have also been approaching local businesses to solicit support for their program in the form of donations, free coupons and vouchers for products, with the sponsoring/donating businesses recognized on the tickets that are handed out by the RCMP, to encourage community cooperation.⁶⁴

Whether or not Montréal chooses to follow this program, it is important that police officers in the district change their attitude towards the homeless. At the very least, they should be mandated to participate in sensitivity training so that they can deal with marginalized, at-risk and mentally challenged street youth with greater awareness and understanding.

B. Litigation Alternatives: The Restorative Justice Movement

Restorative justice is also a growing movement in communities throughout Canada. Restorative justice is an alternative to court where wrongdoers must make reparations to victims, themselves and the community. This differs from the traditional adversarial legal process by expanding the issues beyond those that are legally relevant to include underlying relationships and community healing. Through the guidance of trained volunteers, guardians, victims and other interested supporters, the offenders participate in a process where they acknowledge responsibility for their behaviour, learn how others are affected, and take steps to repair the harm done. Strong restorative justice programs have well-trained facilitators who are sensitive to the needs of victims and offenders, who know the community in which the crime took place and who understand the dynamics of the criminal justice system.⁶⁵

Restorative justice can help keep youth out of the criminal court system by providing another way to hold them accountable. Police services may refer youth who commit minor crimes to the program. Trained facilitators then hold face-to-face meetings with the offender, who admits responsibility and describes what was done, and the victims, parents, police and others involved in the incident all explain how they have been affected. The group then develops a written contract of action for the offender so that he or she can repair harm caused and prevent a similar situation from reoccurring. The value of this approach in dealing with minor infractions generated by street youth is easily apparent.⁶⁶

C. Addressing the Roots of By-law Infractions: The Need for Social Housing

While currently there is no general integrated strategic response to youth homelessness on the federal, provincial and municipal levels of government, this is certainly something that merits effort. In the meantime, Montréal can benefit from the approaches taken by Canada's other large urban centers, such as Toronto. Until recently, the City of Toronto's policies and practices regarding the issue of youth homelessness have been directed towards encouraging youth to access the network of existing street youth services and dis-

64. *Ibid.*

65. Department of Justice, Policy Centre for Victim Issues, Fact Sheet, "Restorative Justice", online: Department of Justice Canada <<http://www.justice.gc.ca>>.

66. *Ibid.*

courage them from living outside of the shelter system in parks, under bridges and in abandoned buildings.⁶⁷ In 2007, the City expanded its outreach efforts to engage street youth in its successful “Streets to Homes” program, which uses a ‘housing first’ approach to move young people from the streets directly into housing.⁶⁸

While these may be positive changes in Toronto, much more is needed to create a truly effective response to youth homelessness and its consequences across Canada. An integrated preventive approach would include the creation of affordable housing for youth, as well as joint efforts by the health/mental health sectors, the education system, corrections and child welfare services to assist the prevention of homelessness. Preventive strategies should also include crisis intervention and family mediation approaches that help young people stay housed. Transitional approaches, including Toronto’s “Street to Homes” program are most effective when there is an adequate housing supply, as well as appropriate levels of income, social and health care supports.

The issue of social housing has recently created controversy in Victoria, B.C., where it is now legal for homeless people to put up temporary shelters in public parks if the municipality is not able provide adequate social housing.⁶⁹ In *Victoria (City) v. Adams*, the B.C. Court of Appeal upheld the ruling of Madame Justice Carol Ross.⁷⁰ Justice Ross held that in the absence of adequate homeless shelter spaces, the City of Victoria’s ban on camping in parks violated section seven of the *Canadian Charter of Rights and Freedoms*, which guarantees “the right to life, liberty and security of the person.” The Court of Appeal further added that the City could simply resolve the issue by making more shelter space available.⁷¹

Following Justice Ross’s ruling, the City of Victoria changed its by-laws to allow camping in parks between 7 p.m. and 7 a.m.⁷² The ruling in Victoria may have set a precedent for the use of public space in municipalities across Canada because it legally affirmed that people have the right to live in public spaces without paying. This is one concrete example of how marginalized populations have to fight against elected officials in order to protect their rights. On the one hand it is unfortunate that the fight for social housing requires legal action, but this case is also an indication of the direction in which Canadian courts are moving in addressing issues of concern to the poor and homeless.

X. CONCLUSION

In my opinion, the criminalization of poverty stems from a misunderstanding and abrogation of social responsibility and community cohesion. Rather than dealing solely with tickets after-the-fact, more emphasis must be placed on changing the ticketing practices of the City of Montréal. This requires more than legal reforms and the changing of by-laws; it also requires balancing legal reforms with social awareness, concern and action. This can be accomplished by working with police, the City, courts, intervention workers, and other community member and organizations to find a balance between public order, law enforcement

67. Gaetz & O’Grady, *supra* note 54.

68. *Ibid.*

69. Laurin Liu, “Policing Poverty: Filmmaker and ex-squeegee kid portrays the criminalization of Montreal’s homeless”, *The McGill Daily* (18 February 2010), online: [The McGill Daily <http://www.mcgilldaily.com>](http://www.mcgilldaily.com).

70. *Victoria (City of) v Adams*, 2008 BCSC 1209.

71. *Ibid.*

72. “BC Homeless Win Right to Camp in Parks”, *CBC News* (9 December 2009), online: [CBC News <http://www.cbc.ca>](http://www.cbc.ca).

and social concern. But in order for meaningful change to be accomplished the old attitudes of zero-tolerance need to be transformed into a more humane, care-based approach, where socially marginalized populations are treated with respect, dignity and compassion.

By changing or repealing discriminatory statute by-laws, redirecting funds to social services, building better community and police relationships, and offering proper support services, the City of Montréal could become a leader in community development instead of remaining mired in its current reputation as one of the most discriminatory regions in Canada in regards to its attitudes and actions towards street youth. However, it is easier for the City to use coercive measures for short-term gains and immediately visible results than to directly confront and remedy the issues it faces. Therefore, it will likely take a long and expensive court battle before the City is finally ready to address its problem of criminalizing poverty through its practice of ticketing street youth for being poor, homeless and problematic.