

THE JUDICIARIZATION OF THE HOMELESS IN MONTRÉAL: A CASE OF SOCIAL PROFILING

FACT SHEET 4: OVERVIEW OF THE OVER-JUDICIARIZATION OF THE HOMELESS IN MONTRÉAL

Only recently has quantitative data become available that is sufficiently exhaustive and accurate to define the extent, evolution over time and causes of the juridiarization of the homeless under Montréal municipal by-laws.

The data has been compiled by a research team headed by Céline Bellot, a professor at Université de Montréal, which has conducted a broad-based quantitative and qualitative study of the question in two phases.

For the quantitative segment of the study, the researchers used the general database of the Montréal municipal court to identify all the tickets issued each year under municipal by-laws or the by-laws of the Montréal urban transit corporation (Société de Transport de Montréal – STM) for the period 1994 to 2006.

To identify the tickets issued to the homeless, Bellot and her team isolated those that gave, as the defendant's home address, the address of one of the 22 organizations working with the homeless appearing on the list drawn up by the researchers. As a result, only the cases in which the person ticketed gave the address of one of the 22 organizations to the police officer were identified. In the opinion of the researchers, this underestimates the number of tickets actually issued to the homeless, since it excludes all cases in which the homeless person was living temporarily in a rooming house or supervised housing, or with a friend or relative, or gave no address.

Judiciarization between 1994 and 2005

The table below, taken from Phase II of the study by Bellot and her team, illustrates changes in the judiciarization of the homeless:

NUMBER OF TICKETS ISSUED EACH YEAR TO THE HOMELESS UNDER MUNICIPAL BY-LAWS BETWEEN 1994 AND 2005			
	RRVM – MUNICIPAL BY-LAWS	STM – URBAN TRANSIT BY-LAWS	TOTAL
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
TOTAL	18 499	16 301	34 800

* From Bellot, 2007, *Judiciarisation des personnes itinérantes phase II – Faits saillants*, p.2.

Between 1994 and 2005, 34 800 tickets were issued to homeless people in Montréal. The number of tickets issued each year to the homeless in Montréal increased spectacularly between 1994 and 2005: by 327% for offences under municipal by-laws, and by 696% for offences under STM by-laws.

It is important to note that the biggest annual jump in the number of tickets issued to the homeless under municipal by-laws occurred in 1998, when the total rose from 645 to 1275, an increase of 93% compared to the previous year. This was the year after neighbourhood policing was established in Montréal, leading, among other things, to the substantially increased visibility of foot patrols on the streets of Montréal.

In Phase I of the study, Bellot and her team created a more detailed quantitative overview of the judicialization of the homeless for the period April 1, 1994 to March 31, 2004, in particular concerning the type of offence most often ticketed. First, it should be noted that out of 22 685 tickets issued to the homeless during this period, 92% were issued to men and 8% to women. In addition, the most over-judicialized age group was the 18-24 age group, (29,1%), followed by the 25-34 age group (23,2%), the 35-44 age group (26,8%) and the 45 and over age group (19,6%). However, the homeless concerned were not all judicialized to the same extent, since the 22 685 tickets issued to them between 1994 and 2004 were given to 4 036 individuals, including 300 minor children. To obtain an idea of how the 22 685 tickets were distributed, the researchers divided the 4 036 individuals into three groups, based on the number of tickets received per person over the period studied:

- Ø the first group of 1 412 individuals (35,0%) received 1 ticket each;
- Ø the second group of 2 024 individuals (50,1%) received between 2 and 9 tickets each;
- Ø the third group of 600 individuals (14,9%) received 10 or more tickets each.

The unequal distribution of the tickets within the group of homeless people in general is made even more striking by this additional data, which shows that the 600 individuals who received 10 or more tickets each, although representing only 14,9% of the 4 036 individuals in the database, accumulated 13 228 tickets, or 58,3% of the 22 685 tickets issued to the homeless during the period under study. It is clear that a small group of the homeless were over-judicialized compared to their peers.

This trend is confirmed by data given to the Commission by the SPVM (the Montréal police service), which for the year 2008 sampled 3 198 events involving the homeless, 93% (2 801) of which led to the issue of a ticket under a municipal or STM by-law. The remaining 7 % (207 events) involved tickets issued under the Highway Safety Code (according to the SPVM, for squeegee cases). After analyzing the data, the SPVM observed the over-judicialization of a “hard core of 149 multiple offenders who received 4 or more tickets”, and who accounted for half of all the offences and arrests recorded for the sample group in 2008.

Offences for which homeless people were most likely to be ticketed

As part of Phase I of the study, Bellot and her team focused on identifying the type of offence for which homeless people were most likely to be ticketed under municipal by-laws between April 1, 1994 and March 31, 2004. The next table shows the 10 municipal by-law offences for which the homeless were most often ticketed during this period:

10 OFFENCES FOR WHICH THE HOMELESS WERE MOST OFTEN TICKETED UNDER THE BY-LAWS OF THE CITY OF MONTRÉAL AND ITS BOROUGHES BETWEEN APRIL 1, 1994 AND MARCH 31, 2004 *			
RANK	OFFENCE	FREQUENCY	% / TOTAL
# 1	Consuming alcohol in a public place	2 747	20,8
# 2	Being found drunk while lying or loitering in a public street or place	2 492	18,9
# 3	Hindering or obstructing traffic by remaining immobile, lurking or loitering in a public place	1 579	12,0
# 4	Being in a public place to offer services	862	6,5
# 5	Being in a park after closing time	675	3,9
# 6	Continuing an offence after being ordered to stop by a peace officer	587	4,5
# 7	Possessing a knife	406	3,1
# 8	Misusing, damaging or modifying the street furniture	330	2,5
# 9	Pouring a liquid on the ground in a public place	299	2,3
# 10	Making a noise audible outside, or any form of noise	288	2,2
	Subtotal	10 265	77,9%
	Other offences	2 911	22,1%
	TOTAL	13 176	100%

* From Bellot, 2005, p.58

Most of the tickets issued to the homeless were connected with alcohol consumption and public drunkenness, creating a disturbance in a public place, and solicitation. These are minor, “victimless” offences, in other words offences that create little or no harm for private or public property or security.

Two examples of this type of offence are being in a park after closing time and misusing street furniture. These offences share the characteristic of being “public order” disturbances, a particularly malleable notion open to all kinds of interpretation. Most of the offences with which the homeless were charged under municipal by-laws concerned breaches of public order, and could be placed mainly under the heading of “uncivil behaviour”.

Bellot and her team also listed the 10 offences with which homeless people were most likely to be charged under STM by-laws between April 1, 1994 and March 31, 2004, a period when breaches of public order and other “uncivil behaviour” in the metro system were generally dealt with by STM security guards. In general, the offences are similar to those ticketed under municipal by-laws (loitering and blocking traffic, lying down on a bench, drinking alcohol, making noise, littering) with, in addition, a few offences specific to the STM (panhandling, smoking, travelling without having paid, being on the tracks).

Young homeless people: a separate judicialization profile

The judicialization profile of young people is slightly different from that of older homeless people. Complementary analysis shows that, for the period 1994-2004, young people (aged 35 and under) were most often judicialized for offences concerning the use of a public place, such as solicitation, obstructing traffic and being in a park after closing time, while older people (35 and over) tended to get tickets relating to alcohol consumption, for example for drinking alcohol or being drunk in a public place.

Recent data provided by the Refuge des jeunes de Montréal

The Bellot data can be compared with other data that, although taken from a non-random sample, has the advantage of being more recent. The Montréal young people’s shelter *Le Refuge des jeunes de Montréal* provides assistance for youth who are homeless or in difficulty. Since 2001, it has systematically gathered data on the tickets received by its clients, in order to gain a better understanding of the causes of the judicialization of young people.

For the most recent data collection period (2006-2008), the Refuge recorded, for each ticket received the by-law concerned and the amount of the fine. The Refuge then forwarded the raw data to the Commission for analysis. The Commission analyzed 763 tickets, of which 311 (40.8 %) were issued in 2006, 338 in 2007 (44,3%) and 114 in 2008 (14,9%). A majority (54,1%) of the tickets were issued under STM by-laws, compared to 33,4% under a municipal by-law and 12,5% under the Highway Safety Code. The data is consistent with the data analyzed by Bellot, showing that, starting in 2004, the judiciarization of the homeless in Montréal began to result mainly, for the first time, from their behaviour in the metro system.

The 763 tickets in the sample were issued to 298 young people, an average of 2.6 tickets each. The Refuge data showed, as the data from Bellot and the SPVM had already established that a minority of individuals received a disproportionate number of tickets. For example, 82% of the young people in the sample had received between 1 and 3 tickets each, or 46% of all tickets. In contrast, 4 % of the young people in the sample had received 10 or more tickets each, representing 20% of the total number of tickets.

The table below lists the 10 most frequent offences for the young people in the sample, either under STM or municipal (RM) by-laws or under the Highway Safety Code (CS).

10 MOST FREQUENT PENAL OFFENCES COMMITTED BY YOUNG HOMELESS PEOPLE USING THE REFUGE DES JEUNES DE MONTRÉAL			
RANK	OFFENCE	FREQUENCY	%
# 1	Obtaining or attempting to obtain a trip without paying (STM)	138	18,1
# 2	Lying down on a bench, seat or the ground in a metro station (STM); Misusing street furniture (RM)	114	14,9
# 3	Obstructing or blocking traffic by lurking, loitering or remaining immobile in the metro system (STM) or in a public place or street (RM)	87	11,4
# 4	Consuming alcohol in a public place (RM) or in the metro system (STM)	49	6,4
# 5	Standing on the roadway to solicit transportation or to deal with the occupant of a vehicle (squeegee) (CSR)	45	5,9
# 6	Smoking or having tobacco or any other substance alight in the metro system (STM)	41	5,4
# 7	Shouting or making noise (STM, RM)	39	5,1
# 8	Being in a park after closing time (RM)	37	4,8
# 9	Failing to comply with traffic lights; jaywalking (CSR)	35	4,6
# 10	Soiling the pavement or a public place (RM); dropping food, ash, refuse or other rubbish (RM); soiling metro system property (STM)	23	3,0
Subtotal		608	79,6%
Other offences		155	20,3%
TOTAL		763	100%

Source: Le Refuge des jeunes de Montréal

Apart from riding the metro without paying and drinking alcohol in the metro system, young homeless people appear to have been ticketed mainly because their presence in a public place was considered disturbing or inappropriate, whether because they were lying on a bench, loitering in a group, staying in a park after closing time, making noise, littering a public place or jaywalking.

Disproportionate application of municipal by-laws to the homeless

It has been estimated that the 30 000 homeless people in Montréal represented, in 2005, less than 0,8% of the total population. However, homeless people made up 31,6% of all Montrealers prosecuted for a municipal by-law offence in 2004, 20,3% in 2005 and at least 13,7% in 2008. For 2008 this percentage is clearly an underestimate, since it is based on an incomplete “sampling” carried out by the SPVM.

It is true that on the basis of this data, a minority of individuals is responsible for a disproportionate percentage of the tickets issued to homeless people. This trend appears to confirm that the application of municipal by-laws by the SPVM results in the over-judicialization of the homeless.

Judicialization: a step toward incarceration

The study by Céline Bellot also highlights another disturbing aspect of the judicialization of the homeless: the use of prison sentences as the main way to deal with the tickets issued to the homeless. The researchers notes that, among the tickets settled by the courts, in other words among the 7 650 files closed during the period 1994-2004, 72% were settled *“by issuing a warrant of commitment, in other words by jailing a homeless person for non-payment of a fine”*

Only 15% of the cases were settled by an order to perform community work. This data echoes the results of a study commissioned by the Ministère de la Sécurité publique, which shows that the homeless are strongly over-represented in the prison system, making up 18,5% of the client base of the correctional services in 2001, including 4,7% who were homeless and 13,8% of no fixed address.

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