

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

FACT SHEET 5: ANALYSIS OF THE MUNICIPAL BY-LAWS APPLICABLE ON THE TERRITORY OF MONTRÉAL

The judiciarization of homeless people is a direct consequence of the existence of infractions relating to the occupation of public spaces. Some provincial statutes, but mainly municipal by-laws that aim to impose sanctions on certain “incivilities”, are used to justify these infractions.

The Service de police de la Ville de Montreal defines incivilities as being actions oftentimes unnoticed, that disturb public order or that hinder “the free enjoyment of public spaces by all fellow citizens” such as, for example, the *By-law concerning cleanliness and protection of public property and street furniture*

The Commission notes that most of the regulatory provisions are neutral and do not, on the face of it, result in a discriminatory effect. It is rather their *directed* application that paves the way for discrimination in the form of social profiling. The by-law that requires pedestrians to cross the street at traffic lights, for example, is not in itself discriminatory except when it is applied, in practice, mainly to the homeless.

A distinction must also be made between the provisions that sanction a behaviour that does not constitute a real nuisance. There exists, for example, a provision that a person who is loitering in the subway, without bothering other people, is committing an infraction. In this case, the nuisance is not identified which makes it hard to justify a legitimate intervention since loitering is not in and of itself an objective nuisance.

The closing of parks at night in the Ville-Marie borough

The Commission notes that any by-law imposing a sanction for the occupation of public spaces will have as a probable consequence to cause a disproportionate prejudice to the homeless. Street people, by definition, have no other choice than to live in public spaces and to adopt certain behaviour usually associated with the private aspects of life.

The Commission considers that the two bylaws adopted and modified by the Ville-Marie borough were voted with the apparent aim of restricting access to public spaces to homeless people.

This applies to the by-law of the Ville-Marie borough closing its last 15 remaining parks and public spaces still open at night, several of which were used by the homeless to sleep. As a result, several of them without a home to go to were placed in an illegal situation when they tried to snatch a few hours of sleep.

This by-law is not a reasonably necessary measure in order to ensure public order and interferes with the fundamental rights of the homeless, namely, with the exercise, without discrimination, of their rights to life, to personal security, to liberty, to integrity and to dignity. Therefore, the Commission recommends that the Ville-Marie borough repeal this by-law.

The amendment of the *By-law concerning dog and animal control*

The *By-law concerning dog and animal control* modified by the Ville-Marie borough prohibits the presence of dogs in Émilie-Gamelin park and Viger Square.

The Commission also believes that in this case, there is a prejudicial effect since this by-law specifically targets two parks where homeless youth who own dogs congregate. Nuisances associated with dogs may be sanctioned by existing municipal by-laws, as is the case in other city parks. The borough's objective appears to be to expel street people by reason of their social condition.

Therefore, the by-law amended by the Ville-Marie borough prohibiting dogs in these two public places constitutes discrimination under section 10 of the Quebec Charter. It violates the right of the homeless to have access without discrimination, to public spaces, and infringes their right to dignity and freedom, as well as causing them moral harm.

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