

Challenging Discriminatory and Punitive Responses to Homelessness in Canada

Marie-Eve Sylvestre* and Céline Bellot**

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State and local governments have long turned to legal norms such as criminal law, anti-panhandling statutes, and land use planning and development by-laws and have relied on policing strategies to control the poor and homeless in Western countries.¹ Since the 1990s, Canadian cities have adopted a new series of local policies that emphasize the enforcement of provincial statutes and by-laws against urban disorder.² These strategies have generated much debate and controversy. Scholars, community groups, and lawyers have challenged the legitimacy and the discriminatory aspects of these policies, as they fall disproportionately on homeless people and racial minorities.

In both the historic and modern eras, punitive responses to homelessness were largely based on negative stereotyping, prejudices, and discrimination. Those who are homeless are wrongly portrayed as morally

* Associate Professor, Faculty of Law, University of Ottawa.

** Associate Professor, École de service social, Université de Montréal.

¹ Michel Foucault, *Discipline and Punish – The Birth of the Prison*, translated by Alan Sheridan (New York: Vintage Books, 1977); Katherine Beckett & Steve Herbert, *Banished: the New Social Control in Urban America*, (New York: Oxford University Press, 2010); Mary Ann Poutanen, “Images du danger dans les archives judiciaires. Comprendre la violence et le vagabondage dans un centre urbain du début du XIXe siècle, Montréal (1810-1842)” (2002) 55 *Revue d’histoire de l’Amérique française* 381.

² Marie-Eve Sylvestre et al, “Le droit est aussi une question de visibilité : occupation des espaces publics et parcours judiciaires des personnes itinérantes à Montréal et à Ottawa” (2011) 26:3 *RCDS* 531 [Sylvestre et al, “Occupation des espaces publics”]; Catherine Chesnay, Céline Bellot & Marie-Eve Sylvestre, “Taming the homeless one ticket at the time : the penalization of homelessness in Ontario and British Columbia” (2013) 55:2 *Canadian Journal of Criminology and Criminal Justice* 161 [Chesnay, Bellot & Sylvestre, “Taming the homeless”]; Damian Collins & Nicholas Blomley, “Private Needs and Public Space: Politics, Poverty and Anti-Panhandling By-Laws in Canadian Cities” in Law Commission of Canada, ed, *New Perspectives on the Public-Private Divide*, (UBC Press, 2003); Joe Hermer & Janet Mosher, *Disorderly People – Law and the Politics of Exclusion in Ontario*, (Halifax: Fernwood Publishing, 2002) [Hermer & Mosher, *Disorderly People*].

inferior, lazy, and dishonest individuals (the “moral depravation” discourse), blamed for their own misfortunes (the “choice” discourse), and are treated as criminals or potential serious offenders needing to be repressed and confined, rather than as equal citizens worthy of respect and consideration (the “criminality” discourse).

These three sets of beliefs have little to do with homeless individuals’ actual circumstances, or reality. However, their prevalence has had important legal implications for social rights litigation, preventing a necessary debate about the complexity and the multi-factorial dimension of homelessness – a phenomenon rooted in various social, economic, and political causes. In this chapter, we suggest that a broader discussion of the origins of the moral depravation, choice and criminality discourses, and the consequences of these three discourses for homeless people and communities, strongly support the recognition of homelessness as an analogous ground of discrimination under section 15 of the *Canadian Charter of Rights and Freedoms*,³ as well as claims to social and economic rights, such as access to housing, education, employment, health care, and social services under both section 7 and section 15 of the *Charter*.⁴

Since the Supreme Court of Canada’s decision in *R v Kapp*⁵, a person claiming that her rights have been violated pursuant to section 15 of the *Charter* has to demonstrate that (1) a law creates a distinction, in purpose or effect, based on an enumerated or analogous ground; and (2) the law is discriminatory within the meaning of the equality guarantee, *i.e.*, that it creates a disadvantage by perpetuating prejudice or stereotyping in a way that does not correspond to the group’s actual circumstances or reality.⁶ Moreover, the Court has held that an analogous ground of discrimination is often the “basis for stereotypical decisions made not on the basis of merit, but on the basis of a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity.”⁷ The specific question of whether homelessness is an analogous ground of discrimination under section 15, like

³ Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*].

⁴ This chapter will focus on section 15. See Margot Young, “Context, Choice and Rights: PHS Community Services Society v Canada (Attorney General)” (2011) 44:1 UBC L Rev 221; Marie-Eve Sylvestre, “The redistributive potential of Section 7 of the Charter: incorporating socio-economic context in criminal law cases and in the adjudication of rights” (2012) 42:3 Ottawa L Rev 389 (for more specific arguments on section 7 and the idea of choice).

⁵ 2008 SCC 41.

⁶ *Ibid.*, at para 17.

⁷ *Corbiere v Canada (Minister of Indian & Northern Affairs)*, [1999] 2 SCR 203 at para 13 [*Corbiere*] (confirmed in *Baier v Alberta*, 2007 SCC 31 at para 64).

the issue of poverty as an analogous ground,⁸ has yet to be settled by the courts.⁹

In the first part of this chapter, we will present homelessness as a complex and multi-factorial phenomenon characterized by a series of

⁸ See *Masse v Ontario (Ministry of Community and Social Services)* (1996), 134 DLR (4th) 20 (Ont Div Ct) [*Masse*] (leave to appeal to CA refused Admin LR (2d) 87 at n 1, leave to appeal to SCC refused, 39 CRR (2d) 375, in which the Court refused to recognize welfare recipients as a “discrete and insular minority” where reductions in the level of welfare were challenged at 71); *Polewsky v Home Hardware Stores Ltd* (1999), 68 CRR (2d) 330 (Ont Sup Ct) (Gillies J rejected a challenge under section 15 of the *Charter* by a would-be Small Claims Court Plaintiff to the absence of a provision in the *Courts of Justice Act*, RSO 1990, c C-43, giving a judge discretion to waive filing fees for impecunious litigants because, “[t]he poor in Canadian society are not a group in which the members are linked by shared personal or group characteristics” at 346); *Toussaint v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 146 at para 59 (the Court held the failure of the government to enact regulations to waive the fees for foreign nationals living in poverty did not violate section 15 of the *Charter* because poverty was not an analogous ground); *Boulter v Nova Scotia Power Inc*, 2009 NSCA 17 at para 42-44 (the Court held that the failure of the government to provide affordable power rates for poor consumers did not infringe their section 15 *Charter* right because poverty was not an analogous ground). But see *Dunmore v Ontario (AG)*, 2001 SCC 94 (the majority of the Court did not consider it necessary to examine Sharpe JA’s decision to refuse to recognize agricultural workers as such a group in a case challenging their exclusion from the right to bargain collectively under the *Labour Relations Act*, SO 1995, c 1, while L’Heureux-Dubé J, concurring, would have held that the occupational status of agricultural workers constituted an analogous ground); *Falkiner v Ontario (Ministry of Community and Social Services)* (2002) 59 OR (3d) 481 (Ont CA) (the Court accepted that membership in the group of “sole support mothers on welfare” could be considered grounds for a claim of discrimination because of the definition of “spouse” in a regulation under the *Family Benefits Act*, RSO 1990, c F2 (RRO 1990, Reg 366), and that such a claim could be partly founded on the enumerated ground of sex and partly on an analogous ground. Application for leave to the Supreme Court of Canada granted on March 20, 2003, but Ontario decided not to pursue its appeal in September 2004). See generally Martha Jackman & Bruce Porter, “Justiciability of Social and Economic Rights in Canada,” in Malcolm Langford, ed, *Social rights jurisprudence: Emerging Trends in International and Comparative Law*, (Cambridge: Cambridge University Press, 2009).

⁹ *Federated Anti-Poverty Groups of British Columbia v Vancouver (City of)*, 2002 BCSC 105 (the Court upheld a Vancouver by-law prohibiting aggressive panhandling and solicitation of a captive audience. Justice Taylor was of the opinion that the by-law did not violate section 15 of the *Charter* stating that the poor or more specifically “those who panhandle” could not be considered an analogous ground given that the choice to panhandle was not an immutable trait over which they had no effective control, at para 273-6). See also *R v Banks*, (2005) 248 DLR (4th) 118 (Ont Sup Ct) [*Banks*] (aff’d 2007 ONCA 19, Juriansz JA, leave to appeal to SCC refused, (2007) 376 NR 394 confirming the constitutionality of the Ontario *Safe Streets Act*, 1999, SO 1999, c 8, based on similar reasoning).

important traits related to a lack, or inadequacy, of housing arrangements, as well as by well-defined patterns of social exclusion and discrimination. We will then show how prevalent stereotypes and prejudice faced by homeless persons as they are policed and criminalized, both historically and in the present, are perpetuating disadvantage and have occluded consideration of the broader structural causes of homelessness. Next, we will suggest that homelessness cannot be explained simplistically through narratives of choice, but rather that it is, like several other enumerated or analogous grounds of discrimination, a social construct attached to some individuals that is not immutable, but that is difficult to change. We will argue that, when it comes to homelessness or to other enumerated or analogous grounds of discrimination, the courts' consideration of immutability in a section 15 analysis must include consideration of the complexity and embeddedness of the social structures and interactions at play.¹⁰ In particular, we will show how criminalization and penalization¹¹ of homeless people create further exclusion and homelessness and how such punitive responses make this social condition even more difficult to change. Ultimately, we hope that the reconsideration of the prevailing stereotypes and prejudices applied against homeless individuals will make it possible to address the social, political, and economic causes of homelessness, in order to offer different rights-driven legislative and regulatory responses to homelessness.

A. Perpetuating Disadvantage: a Review of Prevailing Stereotypes and Prejudice about Homeless People

1) Defining Homelessness as a Multi-Factorial Phenomenon

Defining homelessness is a challenging enterprise: social problems are fundamentally constructed by a certain set of social and cultural arrangements and shaped by the intentions and objectives of those committed to such an

¹⁰ For an interesting analysis of these issues, see also Sonia Lawrence, "Choice, Equality and Tales of Racial Discrimination: Reading the Supreme Court on section 15 of the Charter", (2006) 33 Sup Ct L Rev (2d) 115; David Robitaille, "La conception judiciaire de la pauvreté au Canada: condition sociale immuable ou simple question de volonté?" (Bruxelles, 2008), online: Service de lutte contre la pauvreté, la précarité et l'exclusion sociale www.luttepauvrete.be.

¹¹ Marie-Eve Sylvestre, "Disorder and Public Spaces in Montreal, Canada: Repression (and Resistance) through Law, Politics and Police Discretion" (2010) 31 Urban Geography 803 [Sylvestre, "Disorder and Public Spaces"] (while this may be an unusual term in English, "penalization" refers to the growing tendency to resort to regulatory criminal law, which includes provincial and federal statutes as well as by-laws rather than criminal law (most notably found in the Criminal Code and specific federal statutes) as the primary punitive normative system in the resolution of conflicts related to the use of public spaces).

exercise.¹² Whereas many scholars and policy-makers define homelessness more or less restrictively, in terms of lack or inadequacy of housing arrangements, others refer more broadly to complex and multi-dimensional factors embedded in dynamics of rights violation, social exclusion and inclusion, poverty, and discrimination.¹³

In an attempt to come up with an inclusive and comprehensive definition of homelessness in Canada, the *Canadian Homelessness Research Network* recently developed a typology based on the nature of housing circumstances as well as the duration and frequency of homeless episodes.¹⁴ This typology includes (1) people living on the streets or in places not meant to be permanent living spaces, such as under bridges, in alleys, sidewalks, building doorways, tunnels, and ravines, and in vehicles, shacks, tents, or garages, et cetera (“unsheltered”); (2) people living in emergency shelters, whether on a temporary, occasional, or more permanent basis, including in overnight shelters, violence against women shelters, and emergency shelters for people fleeing disasters (“emergency sheltered”); (3) people who do not have security of tenure or their own home, including people “squatting” friends’, families,’ or colleagues’ living spaces, transitional housing arrangements, people in institutional care, such as prisons or mental health institutions and in reception centers for newly arrived immigrants (“provisionally accommodated”); and (4) those who are not strictly speaking homeless, but who are improperly or vulnerably housed, including those occupying housing that is unsafe, unhealthy, unaffordable, overcrowded, or inappropriate for other reasons, such as lacking in available support services necessary for persons with disabilities or mental health issues and people living under threat of eviction, unemployment, family breakdowns, or violence and abuse (“at risk of homelessness”).¹⁵ This typology also distinguishes between those experiencing transitional, short-term, and chronic

¹² John David Hulchanski, “Who are the homeless? What is homelessness? The Politics of Defining and Emerging Policy” in *UBC Planning Papers* (Vancouver: The University of British Columbia, 1987) Discussion Paper no 10; David Hulchanski et al, “Homelessness, what’s in a word?” in David Hulchanski et al, eds, *Finding Home: policy options for Addressing Homelessness in Canada*, (Toronto: Homeless Hub, 2009) 1, online: The Homeless Hub <http://homelesshub.ca>.

¹³ See for example, Le Réseau d’Aide aux Personnes Seules et Itinérantes de Montréal, online : RAPSIM www.rapsim.org (the definition used by RAPSIM : “Une personne itinérante, c’est «une personne qui n’a pas d’adresse fixe, qui n’a pas l’assurance d’un logement stable, sécuritaire et salubre pour les jours à venir, au revenu très faible, avec une accessibilité souvent discriminatoire à son égard de la part des services publics, pouvant vivre des problèmes occasionnant une désorganisation sociale, notamment, de santé mentale, d’alcoolisme et/ou toxicomanie et/ou de jeux compulsifs, ou dépourvue de groupe d’appartenance stable”).

¹⁴ Canadian Homelessness Research Network (2012), online: The Homeless Hub www.homelesshub.ca.

¹⁵ *Ibid.*

homelessness.¹⁶ These groups are not, however, rigid or static. People who are provisionally accommodated or at risk of homelessness are also likely to experience homelessness as described in the first two categories (unsheltered or emergency sheltered) for short periods of time because of housing affordability, poor property maintenance, or other issues.

As a result, the majority of homeless people are not chronically homeless, but rather are temporarily without stable housing for certain periods of time. The length and frequency of these periods will vary according to the person and the circumstances. The most recent study published by the Research Alliance for Canadian Homelessness, Housing and Health (REACH) explains that:

[T]he division between these two groups [those who are vulnerably housed and those who are homeless] is false. The people we identified as 'vulnerably housed' were not just at risk of homelessness; in the past 2 years, they had spent almost as much time homeless (just under 5 months per year) as the homeless group did (6.5 months per year). Instead of two distinct groups, this is one large, severely disadvantaged group that transitions between the two housing states.¹⁷

According to this definition, homelessness encompasses different realities and is the result of multiple causes, including economic changes and loss of employment, poverty, domestic violence, land use and planning strategies, neighbourhood gentrification and community displacement, state and institutional failures to address the needs and respect the rights of vulnerable groups such as refugees, youth released from foster homes, ex-prisoners released from correctional facilities, people with mental or intellectual disabilities in need of support, et cetera. There are a myriad of individual circumstances that combine with systemic causes, such as physical and mental health problems, eviction, unemployment, family breakdown, addiction, and migration.¹⁸

Despite the diversity of the housing arrangements uncovered by this typology however, homelessness can also be characterized as being the result of massive rights violation, including rights to life, liberty and security of the person, equality, and various social and economic rights related to housing, decent income, health and access to social services, or education. Homeless

¹⁶ European Federation of National Organizations working with People who are Homeless (FEANTSA) (2007), online: FEANTSA www.feantsa.org (this typology largely mirrors ETHOS, the European typology on homelessness and housing exclusion developed by FEANTSA).

¹⁷ Emily Holton, Evie Gogosis & Stephen Hwang, *Housing Vulnerability and Health: Canada's Hidden Emergency* (Toronto: Research Alliance for Canadian Homelessness, Housing, and Health, 2010).

¹⁸ Danielle Laberge, ed, *L'errance urbaine* (Sainte Foy: Les Éditions MultiMondes, 2000).

people have in common the experience of social exclusion and discrimination which are both exemplified and exacerbated by the adoption of punitive responses to homelessness.¹⁹ As we shall demonstrate, discrimination and exclusion do not only produce and reproduce homelessness; they are also intrinsically linked to being homeless. Such prejudice and stereotypes obscure the social, economic, and political causes of homelessness and thwart efforts to address these underlying factors by blaming those who are its victims, imputing personal characteristics of moral inferiority, laziness, dishonesty, and criminality which, in turn, provide an ‘explanation’ for the problem of homelessness. While homelessness in Canada in its current form dates back to policy and economic changes that began to occur in the late 1980s, patterns of discrimination towards homeless people have a much longer history.

2) Historical Patterns of Discrimination

The historical antecedents to modern patterns of discrimination against homeless people can be traced back to at least the thirteenth century, when vagrants, *sans aveux* (without an agreement of loyalty and allegiance to a lord) and *gueux* (beggars), were the primary targets of repressive measures of social control in France.²⁰ Still, in the eighteenth century, the King’s agents tirelessly chased homeless people, applied red-hot brands on their bodies, and confined them in *dépôts de mendicité* (workhouses).²¹ Historical sources estimate the number of homeless individuals confined in *dépôts* to be more than 230, 000 over a period of twenty-two years between 1756 and 1778 with a peak of over 50, 000 mendicants arrested in the course of one year in 1767. The mortality rate among those in confinement was extremely high.²² The first vagrancy ordinance was enacted in France by François 1er in 1534. Subsequently, it appeared under sections 269 and 276 of the *Code pénal* (1810)²³ and was punishable by imprisonment for three to six months. These dispositions were officially abolished in France only in 1992.²⁴

¹⁹ Céline Bellot & Bernard St-Jacques, « La gestion pénale et l’itinérance : un enjeu pour la défense des droits » in Shirley Roy & Roch Hurtubise, eds, *L’itinérance en questions* (Québec : Presses de l’Université du Québec, 2007) 171.

²⁰ Julien Damon, “Cinq variables historiques caractéristiques de la prise en charge des SDF” (2003) 27:1 *Déviance et société* 25 at 27. Robert Castel, *Les métamorphoses de la question sociale : une chronique du salariat* (Paris : Gallimard, 1999).

²¹ David Johnston, *A general, medical and statistical history of the present condition of public charity in France* (Edinburgh: Oliver & Bond, 1829) at 469, online: [Open Library](http://archive.org/stream/ageneralmedical00johngoog#page/n6/mode/2up) <http://archive.org/stream/ageneralmedical00johngoog#page/n6/mode/2up>.

²² *Ibid.*

²³ *Code pénal* art 269 & 276.

²⁴ *Loi no 92-1336 du 16 décembre 1992*, JO, 23 décembre 1992, 17568 ; see also Julien Damon, “ La prise en charge des vagabonds, des mendiants et des

Similarly, the first vagrancy statute was passed in England in 1349, making it “a crime to give alms to any who were unemployed while being of sound body and mind.”²⁵ The wording of the statute clearly states that those who “live[d] of begging” did refuse to work and were “giving themselves to idleness and vice, and sometimes to theft and other abominations,”²⁶ reinforcing the loose associations between homelessness, laziness and criminality. Yet, for sociologist William Chambliss, there is a close connection between the adoption of the first vagrancy statutes in England and social and economic circumstances of the time. According to Chambliss, there is little doubt that it was enacted for the purpose of “[forcing] laborers (whether personally free or unfree) to accept employment at a low wage in order to insure [landowners] an adequate supply of labour at a price [they] could afford to pay²⁷” – this at a time when the Black Death had killed millions of labourers and when landowners were ruined by the price paid for various wars and crusades.

With the abolition of feudalism in England and the subsequent transition to a market economy, vagrancy statutes shifted their focus from labourers to criminals who, “to the great terror of her majesty’s *true* subjects,”²⁸ were attacking merchants transporting goods on the roads or anyone who was likely to engage in criminal activity.²⁹ In 1824, the United Kingdom adopted *An Act for the Punishment of Idle and Disorderly Persons*,

clochards. Le tournant récent de l’histoire” (2007) 43 *Revue de droit sanitaire et social* 933.

²⁵ William Chambliss, “A Sociological Analysis of the Law of Vagrancy” (1964) 12:1 *Social Problems* 67 at 68 [Chambliss, “A Sociological Analysis”].

²⁶ 35 Ed. 1 c. 1, cited in Chambliss, at 68.

²⁷ Chambliss, above note 25 at 69.

²⁸ *Ibid* at 74 quoting 14 Ed. c. 17 (1571).

²⁹ *Ibid*. Chambliss’ class-based analysis was challenged by some historians who argued that vagrancy statutes evolved throughout history as a response to different concerns unrelated to specific forms of economic organization: from paupers coming from the countryside to the cities, carrying diseases and overburdening poverty-relief aid mechanisms in the city in the sixteenth-century, to prostitutes and other wanderers who threatened small town morality in the nineteenth-century to a catchall category for any undesirable people in twentieth-century North America: Jeffrey S. Alder, “A Historical Analysis of the Law of Vagrancy” (1989) 27 *Criminology* 209 at 213-216; Paul A. Slack, “Vagrants and Vagrancy in England, 1598-1664” (1974) 27 *The Economic History Review* 360. In our view, this historical research adds to Chambliss’ analysis but does not discredit it. See also JM Beattie, *Crime and the Courts in England 1660-1800* (New Jersey: Princeton University Press, 1986), who suggests that houses of correction were first established in England “to punish and to attempt to reform the able bodied poor who refused to work” (at 492). According to Beattie, the detainees held in houses of corrections included “the vagrant and disreputable poor, prostitutes, and street urchins, those who refused to work (“wanting more wages than the law allows”), servants and apprentices who disobeyed their masters and unmarried mothers” (at 493).

and Rogues and Vagabonds, providing for the commitment of any person wandering in any public place who begged while “being able wholly or in part to maintain himself or herself, or his or her Family, by Work or by other Means, and wilfully refusing or neglecting to do so.”³⁰ Again, references to idleness and disorder as well as explicit distinctions drawn between vagrants and her majesty’s “true subjects” have the effect of downplaying the importance of social structures and economic changes, suggesting that homeless people were lazy or morally inferior individuals unworthy of respect or dignity.

The first *Vagrancy Act* was adopted in Canada in 1869, modeled upon English legislation.³¹ It was replaced by the Canadian *Criminal Code* in 1892.³² Section 207 of the *Criminal Code* created a list of twelve enumerated offences falling within the vagrancy section of the Code and aiming to address a multitude of social problems ranging from labour (“not having any visible means of maintaining himself”; “being able to work and refusing to do so”; “begging” while not being a “deserving object of charity”); morality (“indecent exhibition”; “being a common prostitute”; keeping or frequenting a “common bawdy-house”; living off the avails of prostitution,); mischief (breaking windows, roads, walls, or gardens); and other common nuisances (“loitering”; causing disturbance while being drunk; “disturbing the peace” by discharging firearms; or rioting). A person convicted of one of these various offenses was labelled a “loose, idle, disorderly person or vagrant” within the wording of section 207.³³ According to Ranasinghe, the eclecticism of these offenses shows the three different ways in which the vagrant was perceived in nineteenth century Canada. First, vagrants were thought to be “indolent, lazy and worthless” individuals who did not want to work. Second, they were seen to be “professional” or “habitual criminals,” as in the case of prostitutes or tramps, likely to engage in more serious criminality if provided the right opportunity. Lastly, “they were considered “morally depraved” or “outcasts,” belonging to a “self-perpetuating class of citizens who lived without fixed abode.”³⁴ Furthermore, many of the vagrancy offenses listed

³⁰ *An Act for the Punishment of Idle and Disorderly Persons, and Rogues and Vagabonds*, 1824 (UK), 5 Geo IV, c 83, s 3.

³¹ Prashan Ranasinghe, “Reconceptualizing Vagrancy and Reconstructing the Vagrant: A Socio-Legal Analysis of Criminal Law Reform in Canada, 1953-1972” (2010) 48 *Osgoode Hall LJ* 55 at 62 [Ranasinghe, “Reconceptualizing Vagrancy”].

³² *Criminal Code*, SC 1892 (55-56 Vict), c 29, ss 207 & 208.

³³ Section 207 read as follows: “Everyone is a loose, idle, or disorderly person or vagrant who ...”

³⁴ Ranasinghe, “Reconceptualizing Vagrancy”, above note 31 at 60-61. See also David Bright, “Loafers are not going to subsist upon public credulence: Vagrancy and the Law in Calgary, 1900-1914” (1995) 36 *Labour* 37 at 41-42 (Bright argues that while North American studies have largely emphasized the fact that vagrancy provisions were used by the ruling class to control the lower classes, Canadian studies have rather insisted on promoting respect for values of order and respectability, occluding evident class interests).

in section 207 were interpreted by the courts as not applying to “persons of good character” or “respectable citizens,”³⁵ thereby demonstrating the discriminatory nature of such provisions.³⁶ These vagrancy provisions remained virtually unchanged until the 1950s, when five offences listed in section 207 of the *Criminal Code*, including offences related to causing disturbance, public nuisance, and mischief were removed and relocated to different sections of the Code, while the other offences were significantly revised.³⁷

Section 179 of the current *Criminal Code* still provides that everyone who “(a) supports himself in whole or in part by gaming or crime and has no lawful profession or calling by which to maintain himself,” or “(b) having at any time been convicted of an offence under [specific sexual offences involving children], is found loitering in or near a school ground, playground, public park or bathing area,”³⁸ commits vagrancy.³⁹

Throughout the Middle Ages and into the contemporary era, homeless people were stereotyped as lazy or morally depraved, or as criminals who were unwilling to work and intentionally chose to remain in such a precarious social condition. Homelessness was explained and addressed as an individual moral failure rather than in relation to its structural causes, so that the victims of economic changes leading to displacement or unemployment were blamed for their predicament, suspected of being a threat to society and likely to engage in serious criminality. As the Supreme Court of Canada acknowledged in *Heywood*,⁴⁰ legislative responses to homelessness created “status” offences, related to personal characteristics rather than to prohibited actions. In this respect, Cory J wrote:

Historically, the essence of the offence of vagrancy was that of being a loose, idle or disorderly person or vagrant, rather than the doing of any of the specific acts referred to in the vagrancy provisions. In the 1953-54 *Criminal Code* (S.C. 1953-54, c. 51) the vagrancy provisions were restructured so that the focus shifted from being a vagrant to doing the acts prohibited by the section. However, it is significant that the acts

³⁵ Ranasinghe, “Reconceptualizing Vagrancy”, above note 31 at 74, n 87 (referring to *R v Kneeland*, (1903) 6 CCC 81, at 87 (Qc KB) and *R v Law*, (1924) 42 CCC 123, at 124 (Winnipeg Police Ct)).

³⁶ Jean-Marie Fecteau, *La liberté du pauvre. Crime et pauvreté au XIXe siècle québécois* (Montreal: VLB, 2004); Marcela Aranguiz, *Vagabonds et sans abris à Montréal : perception et prise en charge de l'errance, 1840-1925* (Montréal, RCHTQ, coll. « Études et documents du RCHTQ », no 12, 2000) [Aranguiz].

³⁷ Aranguiz, *ibid* at 67-71; *Criminal Code*, SC 1953, c 51, s 164(1).

³⁸ *R v Heywood*, [1994] 3 SCR 761 [*Heywood*] (section 179(b) was held unconstitutional and inoperative by the Supreme Court. Justice Cory, writing for the majority, held that this provision violated section 7 of the *Charter* and was not justified under section 1).

³⁹ *Criminal Code*, RSC 1985, c C-46, s 179.

⁴⁰ *Heywood*, above note 38.

prohibited were still primarily related to the status of the accused rather than the nature of the acts themselves.⁴¹

3) Modern Patterns of Penalization, Social Profiling and Discrimination against Homeless People

Anti-panhandling statutes and anti-disorder by-laws adopted in Canadian cities in the 1990s are, in many ways, modern substitutes for vagrancy laws. Their renewed popularity has been largely attributed to the success and notoriety of the “broken-window” theory. According to this theory, the absence of social and legal responses to petty crime and to the first signs of disorder in a neighbourhood (a broken window, for example) may signal to potential offenders that a neighbourhood is not concerned with preserving order in its public spaces and that crime will be tolerated or accepted. Moreover, according to the theory, disorder causes law-abiding residents to leave because they no longer feel safe in their environment. Thus, informal control mechanisms are relaxed and a spiral of urban decay and crime begins.⁴²

The proponents of this theory have associated homeless individuals with broken windows or signs of disorder. They believe that homeless people are potential criminals and suggest that they should be particularly targeted by police intervention and eliminated from public spaces to prevent subsequent disorder and more serious crime in local communities. They portray homeless people who are deemed responsible for disorderly acts as “disreputable or obstreperous or unpredictable.”⁴³ They distinguish between “regulars” and “strangers” by referring to regulars as “both ‘decent folk’ and some drunks and derelicts who were always there but ‘knew their place,’” while adopting the view that “strangers [are], well, strangers, and viewed suspiciously, sometimes apprehensively.”⁴⁴ Illustrating the clear moral overtone present in the broken-window theory, proponents suggest that these undesirable people are associated with the threat of having a “stable neighbourhood of families who care for their homes and mind each other’s children” transformed into an “inhospitable and frightening jungle,” inhabited by “unattached adults.”⁴⁵ They further compare “respectable people” to “street people,” “good citizens” to homeless people, and “good kids” to “criminals or wannabes.”⁴⁶

⁴¹ *Ibid.*

⁴² James Wilson & George Kelling, “Broken Windows: The Police and Neighborhood Safety” (1982) 249 *Atlantic Monthly* 29.

⁴³ *Ibid* at 30.

⁴⁴ *Ibid.*

⁴⁵ *Ibid* at 31.

⁴⁶ George Kelling & Catherine Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in our Communities* (New York: Martin Kessler Books, 1996).

The proponents of broken-window theory also rely heavily on the myth of homelessness by choice, insisting that homeless people should be held responsible and repressed for their choice to live on the streets. They observe that “[c]learly, not all those designated as homeless in these [cases] are in this condition involuntarily. Yet, their choice to live on the streets is disruptive to others.”⁴⁷ They adopt Scheidegger’s classification of people living in the streets: these individuals fall either in the category of the *have-nots*, who are genuinely poor and will, in time, move back into mainstream society; the *can-nots*, who are seriously mentally ill and/or drug addicts; or the *will-nots*, for whom living in the streets has become a lifestyle (*i.e.*, a choice).⁴⁸

The broken-window theory has been largely discredited in the academic literature. Scholars have demonstrated the lack of conclusive empirical evidence to support the connection between physical disorder and serious criminality, or the fact that order-maintenance policing had brought about declines in crime rates.⁴⁹ Others have questioned the theory’s democratic legitimacy, suggesting that the community on behalf of which policy-makers claimed to act was not a homogenous body and that the policing of disorder was actually responsive to specific social, political, and economic interest groups in the neighbourhood, rather than to a general community consensus.⁵⁰ Yet others have criticized the discriminatory impact of policies adopted pursuant to the broken-window theory on the poor and racial minorities. For instance, in New York, complaints about police misconduct increased by 68 percent in the first three years of implementation of the recommended programs and aggressive stops and frisks fell

⁴⁷ *Ibid* at 66.

⁴⁸ *Ibid* at 68; Kent Scheidegger, “Brief Amicus Curiae of the Criminal Justice Legal Foundation in Support of Respondents” filed on 25 October 1994 in *Tobe v City of Santa Ana*, 892 P 2d 1145 (Cal 1995).

⁴⁹ Bernard Harcourt, *Illusion of Order: The False Promises of Broken Windows Policing* (Cambridge: Harvard University Press, 2001) [Harcourt, *Illusion of Order*]; Bernard Harcourt & Jens Ludwig, “Broken Windows: New Evidence from New York City and a Five-City Social Experiment” (2006) 73:1 U Chicago L Rev 271; Franklin Zimring, *The Great American Crime Decline* (Oxford: Oxford University Press, 2007); John Eck & Edward Maguire, “Have Changes in Policing Reduced Violent Crime? An Assessment of the Evidence” in Alfred Blumstein & Joel Wallman, eds, *The Crime Drop in America* (Cambridge: Cambridge University Press, 2000) 207; Jock Young, *The Exclusive Society: Social Exclusion, Crime and Difference in Late Modernity* (London: SAGE, 1999).

⁵⁰ Steve Herbert, *Citizens, Cops and Power* (Chicago: University of Chicago Press, 2006); Williams Lyons, *The Politics of Community Policing* (Ann Arbor: University of Michigan Press, 1997); Marie-Eve Sylvestre, “Policing the Homeless in Montreal: Is This Really What the Population Wants?” (2010) 20:4 Policing & Society 432.

disproportionately on Blacks and Hispanics in the city.⁵¹ Finally, some scholars criticized the moralistic aspects of the broken-window theory, suggesting that its proponents made strong normative judgments about what a good life should be and how people should behave in public places.⁵²

Despite the raging controversy around this theory, our research has found that public officials and the police in Canada have relied, sometimes heavily, on the practices and on the stereotypes implicit in the broken-window theory (*i.e.*, homeless people are dangerous and potential criminals; homeless people have chosen to live on the streets; and homeless people are morally inferior to other citizens), in order to justify the adoption of punitive responses to homelessness over the last two decades. As programmatic responses that addressed the causes of homelessness such as social housing, investment in health care, or employment policies have been reduced or eliminated, governments have adopted unprecedented measures based on the stigma of homelessness as a perceived moral failure and designed to make homeless people disappear from the public sphere, rendering these social and economic changes invisible.

Throughout Canada, local and provincial authorities have prohibited antisocial behaviour in public spaces, such as parks, subway stations, and sidewalks. Ontario was the first province to adopt this type of legislation with the passage of the *Safe Streets Act* in 1999.⁵³ British Columbia followed suite, enacting its own province-wide *Safe Streets Act* in 2004.⁵⁴ The City of Montreal and the Province of Quebec did not adopt new legislation. However, local authorities and the police ranked combating antisocial behaviour among the highest concerns in the city and insisted that it should become a priority. The police worked with general, open-ended existing legislation,⁵⁵ while the

⁵¹ Eliot Spitzer, *The New York City Police Department's 'Stop & Frisk' Practices: A Report to the People of the State of New York from the Office of the Attorney General*, (New York: Diane Publishing, 1999) (between January 1998 and April 1999, whites who represent 43.3 percent of the population in New York City accounted for 12.9 percent of all stops, whereas Blacks, who represent 25.6 percent of the population and Hispanics, who represent 23.7 percent, accounted respectively for 50.6 percent and 33.3 percent of all stops). See also Paul Eid, Johanne Magloire & Michèle Turenne, "Profilage racial et discrimination systémique des jeunes racisés" (2011) at 30, online : Commission des droits de la personne et des droits de la jeunesse www.cdpcj.qc.ca (establishing a relation between the adoption of antisocial behaviour policies in Montreal and racial profiling).

⁵² Harcourt, *Illusions of Order*, above note 49; Sylvestre, "Disorder and Public Spaces", above note 11.

⁵³ 1999, SO 1999, c 8.

⁵⁴ SBC 2004, c 75.

⁵⁵ Relevant legislation includes: City of Montreal, by-law, RBCM, c B-3, *By-law concerning noise*; City of Montreal, by-law, RBCM, c C-10, *By-law concerning dog and animal control*; City of Montreal, by-law, RBCM, c P-1, *By-law concerning peace and order on public property*; City of Montreal, by-law, RBCM, c P-12.2, *By-*

City of Montreal and its boroughs made regulatory changes to the status of some public places, for instance by transforming them into parks in order for the police to control curfews. Significant architectural changes were also made to the public domain in order to restrict access to public spaces by homeless people. These included erecting walls and fences or adding concrete blocks around vacant lots or abandoned buildings that used to be occupied by the homeless and introducing new public furniture, such as park benches divided into three discrete sections separated by metal arm-rests, to prevent anyone, including the homeless, from lying down on them.⁵⁶

All these measures have had severe effects on homeless populations and on people who use public space for activities related to their subsistence and survival. Homeless people rely on public spaces, from the moment the shelter requires them to leave in the morning, to the first line-up in front of the community health clinic, food bank, or soup kitchen, to the employment centre or a community organization to get social support, and then back to the final line-up in front of the shelter in the evening. By definition, homeless people are always on the move and always exposed – hence the French word “itinérant.” Their lack of access to private space means that homeless people are forced to meet their most basic needs in public spaces.⁵⁷ They are highly dependent on being able to use such spaces, yet at the same time are vulnerable to discriminatory treatment in them⁵⁸.

In a research project on the penalization of homelessness in Canada, we collected data on the number of tickets issued against homeless people for violations related to their use and occupation of public spaces in the last decade in eight Canadian cities, including Vancouver, Winnipeg, Toronto, Ottawa, Gatineau, Montreal, Quebec City, and Halifax⁵⁹. The results provide significant insights on the repressive practices to which homeless people are still subject in Canada, as well as on the patterns of discrimination and social profiling.

law concerning cleanliness and protection of public property and street furniture; City of Montreal, by-law, RBCM, c P-3, By-law concerning parks; City of Montreal, by-law, RBCM, R-037, By-law prescribing conditions regarding the possession and use of any transportation ticket issued under the authority of the Société de transport de Montréal; City of Montreal, by-law, RBCM, R-036, By-law prescribing standards of safety and conduct to be observed by passengers in the rolling stock and immovables operated by or for the Société de transport de Montréal; Highway Safety Code, RSQ c C-24.2, ss. 444-453.1 & 505.

⁵⁶ Sylvestre, “Disorder and Public Spaces,” above note 11; Service de police de la Ville de Montréal, “Optimization of the Neighborhood Police” (2003).

⁵⁷ Danielle Laberge & Shirley Roy, “Pour être, il faut être quelque part : la domiciliation comme condition d’accès à l’espace public” (2001) 33 *Sociologie et sociétés* 115.

⁵⁸ Hermer & Mosher, *Disorderly People*, above note 2.

⁵⁹ Sylvestre et al, “Occupation des espaces publics”, above note 2.

First, since the adoption of provincial statutes such as the Ontario *Safe Streets Act*⁶⁰ or the implementation of policies against anti-social behaviour, there has been a consistent increase in the number of tickets issued against homeless people. For instance, in Toronto, certificates of offences⁶¹ were nine times more frequent in 2006 (6, 356 certificates) than they were in 2000 (710 certificates), with an overall increase of 800 percent and with the total number of certificates reaching 16, 860 in a period of six years.⁶² In Ottawa, certificates of offences were fifteen times more frequent in 2006 (1, 527 certificates) than in 2000 (103 certificates), with a total increase of 1, 400 percent and a total number of certificates reaching 4, 882 in the six years after Ontario's *Safe Street Act* came into force.⁶³ This finding is echoed by O'Grady et al., who showed that the number of tickets issued to homeless youth has been increasing exponentially over the past decade (2000-2010)⁶⁴. In British Columbia, 1,370 tickets were issued between 2005 and 2008; 91.7 percent of these were issued within the Metro Vancouver area. The number of tickets has increased six-fold since B.C.'s *Safe Streets Act*⁶⁵ came into force in 2005, amounting to an increase of 543 percent over that period.⁶⁶ In Montreal, between April 1st, 1994 and December 31st, 2010, the police issued 64, 491 statements of offence to 8,252 homeless people for violations of municipal by-laws or Montreal Transportation Society (STM) regulations. Almost half of those statements (30, 551) were issued between January 1st, 2006 and December 31st, 2010. As a result, there were 6.5 times more tickets issued in 2010 (6, 562 statements) than in 1994 (1, 035 statements).⁶⁷

In all the above-named cities, including Montreal, these numbers are only the tip of the iceberg since they only include individuals who, at the time of the issuance, gave their address as one of the organizations or shelters working with street youth or the homeless population in the city. Moreover, homeless individuals are also charged with infractions to provincial

⁶⁰ *Safe Streets Act*, 1999, SO 1999, c 8.

⁶¹ *Provincial Offences Act*, RSO 1990, c P. 33, s 3 (According to this statute, proceedings may be commenced by filing a "certificate of offence" or a "Provincial Office Notice" in addition to laying an information).

⁶² Chesnay, Bellot & Sylvestre, "Taming the homeless", above note 2.

⁶³ Sylvestre, et al, "Occupation des espaces publics," above note 2 at 544.

⁶⁴ Bill O'Grady, Stephen Gaetz & Kristi Buccieri, "Can I see your I.D.? The policing of youth homelessness in Toronto" (2011), online: The Homeless hub www.homelesshub.ca (the authors showed that the number of tickets has been exponentially increasing for the past decade (2000-2010) in the case of homeless youth).

⁶⁵ *Safe Streets Act*, SBC 2004, c 75

⁶⁶ Chesnay, Bellot & Sylvestre, "Taming the homeless", above note 2.

⁶⁷ Céline Bellot & Marie-Eve Sylvestre, "La judiciarisation des personnes itinérantes à Montréal : 15 années de recherche, faits et enjeux" (22 February 2012), online: The Homeless Hub www.homelesshub.ca [Bellot & Sylvestre, "La judiciarisation des personnes itinérantes"].

legislation. For instance, in Ontario, tickets are also routinely issued under the *Highway Traffic Act*,⁶⁸ the *Liquor License Act*,⁶⁹ the *Environmental Protection Act*,⁷⁰ and the *Trespass to Property Act*,⁷¹ as well as under municipal by-laws. These non-*Safe Streets Act* infractions are not included in our statistics.

Secondly, in every Canadian city, homeless people are sanctioned either for resorting to street survival strategies (such as practicing squeegee or panhandling), or for merely being in public spaces, rather than being punished for causing any particular harm or presenting a specific threat to personal integrity or security. In Ontario, Quebec, and British Columbia, the most common offences for which homeless people are charged include “soliciting a person in a stopped, standing or parked vehicle” (these tickets represent 47.6 percent of the total of tickets issued in Toronto and Ottawa); “soliciting a captive audience—using or waiting to use an automated teller machine, a phone booth, public washroom, bus stop, parking lot”; or “soliciting someone who is a vehicle” (these tickets represent 71 percent of the total of tickets issued in Vancouver);⁷² or “public drunkenness” or “public consumption of alcohol” (these tickets represent 61 and 37 percent of all tickets issued pursuant to Montreal and Quebec City by-laws respectively.)⁷³

Our studies have also found that these repressive measures have had an impact on homeless individuals of all ages. For instance, in Montreal, between 1994 and 2004, 31 percent of statements of offence were issued against individuals below the age of thirty; 36 percent against homeless people between thirty and forty-four years of age and 33 percent against individuals above forty-five years old. Women received approximately 8 percent of all statements issued during that period, while 92 percent were issued to men.⁷⁴ Generally speaking, the more unstable and visible homeless people are, the more likely it is that they will receive statements of offence. Nonetheless, whether individuals are younger or older, male or female, whether they are chronically, episodically, or transitionally homeless, and whether they live on the streets, in shelters, or are transitioning from friends or family housing units, they receive statements of offences simply because they occupy public spaces on a daily basis, to satisfy their most basic needs.

⁶⁸ RSO 1990, c H 8.

⁶⁹ RSO 1990, c L 19.

⁷⁰ RSO 1990, c E 19.

⁷¹ RSO 1990, c T 21.

⁷² Chesnay, Bellot & Sylvestre, “Taming the homeless”, above note 2.

⁷³ Bellot & Sylvestre, “La judiciarisation des personnes itinérantes”, above note 67; Dominique Bernier et al, “La judiciarisation des personnes itinérantes à Québec: des discours aux chiffres” (November 2011), online : The Homeless Hub www.homelesshub.ca.

⁷⁴ Céline Bellot et al, “Judiciarisation et criminalisation des populations itinérantes à Montréal” (2005), online : UQÀM www.er.uqam.ca [Bellot et al, “Judiciarisation et criminalisation”].

In 2005, the Quebec Human Rights Commission established a taskforce to examine the potentially discriminatory effect of City of Montreal by-laws on homeless people⁷⁵. In November 2009, the Commission produced a legal opinion suggesting that the over-penalization of homeless people was a direct consequence of their being targeted and socially profiled by the Montreal police⁷⁶. The Commission argued that homeless people were victims of “systemic discrimination” because discrimination ensued from a series of factors including citywide policies, institutional statements, by-laws, policing practices, and discretion, and was not the result of an isolated factor.⁷⁷ Based on our studies, the Commission estimated that homeless people had received between 30 percent and 50 percent of all statements of offences issued on the territory served by the Montreal police in 2004 and 2005. For instance, in 2004, at least 3, 281 of 10, 397 statements of offences were issued to homeless people (31.6 percent). Using the same methodology, we have found that between 2006 and 2010, homeless people received, on average, approximately 25 percent of all statements of offences issued by the Montreal police.⁷⁸ In contrast, the most recent estimates establish that homeless people represent between 1 to 2 percent of the population of Montreal.⁷⁹

According to the Commission, social profiling is a form of discrimination pursuant to section 10 of the Quebec *Charter of Human Rights and Freedoms*,⁸⁰ which prohibits discrimination on a number of grounds, including “social condition.” Social condition has been a prohibited ground of discrimination under the Quebec *Charter* since its adoption in 1975. In a 1994 policy statement on social condition, the Quebec Human Rights Commission describes this ground as referring to a rank, a social position, or class attributed to someone principally because of his or her level of income, occupation, and education, having regard to the objective and subjective components of each.⁸¹ Homelessness has been accepted by human rights

⁷⁵ Commission des droits de la personne et des droits de la jeunesse du Québec, “The Judicialization of the homeless in Montreal: a case of social profiling. Executive Summary of the Opinion of the Commission” at 1 (2009), online: CDPDJ www.cdpedj.qc.ca [Commission des droits de la personne et des droits de la jeunesse du Québec, “The Judicialization of the homeless in Montreal”].

⁷⁶ Christine Campbell & Paul Eid, “La judiciarisation des personnes itinérantes à Montréal: un profilage social” (2009), online: CDPDJ www.cdpedj.qc.ca [Campbell & Eid, “La judiciarisation des personnes itinérantes à Montréal”].

⁷⁷ *Ibid.*

⁷⁸ Bellot & Sylvestre, “La judiciarisation des personnes itinérantes,” above note 67.

⁷⁹ Statistics Canada, *Census 2005*, cited in Campbell & Eid, “La judiciarisation des personnes itinérantes à Montréal”, above note 76 at 43.

⁸⁰ RSQ c C-12, s 10.

⁸¹ Commission des droits de la personne et des droits de la jeunesse, *Lignes Directrices sur la Condition Sociale* (Montréal: Commission des droits de la personne, 1994).

tribunals, courts, and the Quebec Human Rights Commission as a form of “social condition.”⁸² Like racial profiling:

[s]ocial profiling refers to any action taken by one or several persons in a position of authority with respect to a person or a group of persons, for the purposes of safety, security or public protection, that relies on social condition, whether it is real or presumed, without any reason or reasonable suspicion, with the effect of subjecting that person to differential treatment. This includes any action taken by persons in a position of authority applying a specific measure in a disproportionate manner on one segment of the population because of their social condition, real or presumed.⁸³

According to the Commission, social profiling is triggered by an action taken against a person based on the fact that the person appears to be a member of an identified group of people. In the case of homelessness, profiling may be based on a person’s “sloppy or neglected appearance,” “bad bodily odour or personal hygiene,” and “used and ill-assorted clothing.”⁸⁴ Social profiling can be exercised in different ways. It can be the result of a broad interpretation of by-laws in order to criminalize homeless people. For instance, the Montreal police used the general prohibition against using “street furniture for a purpose other than the one for which it is intended”⁸⁵ to ticket homeless people who are lying down on a park bench instead of sitting upright on it. It can also be the result of issuing a statement of offence for an offence that would otherwise go unchecked for the rest of the population, such as jaywalking or throwing a cigarette butt on the sidewalk.⁸⁶

The evidence we collected, as well as the findings of the Quebec Human Rights Commission, are extremely relevant in light of the Canadian *Charter*’s jurisprudence on social and economic rights, because lack of empirical evidence is often used by the courts to reject discrimination claims.⁸⁷ For instance, in *R v Banks*, the Ontario Court of Appeal examined the constitutionality of section 3(2) of the Ontario *Safe Streets Act*⁸⁸ and found that it did not violate section 15 of the *Charter*. Among other things, the

⁸² *Ibid* at 45.

⁸³ Campbell & Eid, “La judiciarisation des personnes itinérantes à Montréal”, above note 76 at 89-96 [translated by authors].

⁸⁴ *Ibid* at 89.

⁸⁵ City of Montreal, revised by-law C P-12.2, *By-law Concerning Cleanliness and Protection of Public Property and Street Furniture*, s 20.

⁸⁶ Campbell & Eid, “La judiciarisation des personnes itinérantes à Montréal”, above note 76 at 90-96.

⁸⁷ See Martha Jackman, “Reality Checks: Presuming Innocence and Proving Guilt in Charter Welfare Cases” in Margot Young et al, eds, *Poverty: Rights, Social Citizenship, Legal Activism* (Vancouver: UBC Press, 2007) 23 (the author provides an interesting analysis of the use of empirical evidence).

⁸⁸ *Safe Streets Act*, 1999, SO 1999, c 8.

Court held that the appellants had failed to establish, as a matter of fact, that there was selective enforcement by the police of the prohibition against soliciting in an aggressive manner while on the roadway against those who beg or squeegee.⁸⁹ In coming to this conclusion, Juriansz J relied on the trial judge who qualified the evidence in question as “frail.”⁹⁰

Our studies also found that authorities frequently adopt abusive, harassing behaviour towards the homeless population, such as issuing a statement of offence to someone who is sleeping, or issuing multiple statements of offence for the same behaviour in a very short period of time. The Quebec Human Rights Commission came to the general conclusion that several City of Montreal by-laws had a discriminatory impact on, and that they infringed homeless people’s rights to life, security, integrity, dignity, liberty, and equal access to public spaces⁹¹. The Commission recommended that: (1) “the institutional standards and policies of the SPVM [Service de police de la ville de Montréal] be amended to remove any element that targets and stigmatizes the homeless;” (2) “the use of repressive methods by the SPVM against the homeless be based, not on a perception that their presence might be disturbing or threatening, but on neutral behavioural criteria applicable to all citizens, such as the degree of nuisance or danger created by the behaviour;” (3) “that each municipality and borough, as well as the provincial government, review all the regulatory and legislative provisions that punish behaviour in public spaces to ensure that they identify a specific nuisance and that the provision is justified;” and (4) “the State strengthens the economic and social rights set out in the Charter at the earliest opportunity to protect the rights of the most vulnerable people in society, and in particular the rights of the homeless.”⁹² A few days prior to the Human Rights Commission’s report, the Commission of Social Affairs of the Quebec National Assembly also released the report of the Parliamentary Commission on Homelessness, recommending the eradication of the judicial records of homeless people who had been convicted of violating municipal by-laws and provincial statutes related to the occupation of public spaces.⁹³ In doing so, the Parliamentary Commission recognized the ineffectiveness of punitive strategies aiming at penalizing homeless people in Quebec.

Depending on their personal circumstances, homeless people and vulnerably housed people are a relatively powerless group of individuals in Canadian society. Their voices are largely unheard and their interests tend to be overlooked in the political process. For instance, they are not considered

⁸⁹ *Banks*, above note 9 at para 95.

⁹⁰ *Ibid.*

⁹¹ Commission des droits de la personne et des droits de la jeunesse du Québec, “The Judicialization of the homeless in Montreal”, above note 75 at 5.

⁹² *Ibid.*, at 5-6.

⁹³ Commission de la santé et des services sociaux sur l’itinérance au Québec, “Itinérance : Agissons ensemble” (2009) at 20, online : Dianova www.dianova.ca.

interested parties when cities put forward development or revitalization projects which will have significant impact on homeless communities and on the vulnerably housed, by displacing them, by raising the price of housing or property, or by increasing demands for repression and containment of homeless populations. In the words of a former Montreal City Councillor, “they [homeless people] are not welcome anywhere.”⁹⁴

Similarly, community organizations and shelters that provide homeless services are not welcome in most neighbourhoods. Local neighbourhood movements informally called “Not in my Backyard” (NIMBY) have been formed in several cities, essentially advocating that, while social and community groups working with homeless people should be allowed to exist and continue their activities, they should not be allowed to do so in their neighbourhood. These movements have prevented the operation, centralization, and expansion of community shelters. For instance, there was significant resistance within the community when the *Refuge des jeunes de Montreal*, a drop-in center and shelter for homeless youth, had to move to the Montreal Gay Village in 2010. Businesses and resident associations expressed their opposition to the move, arguing that there were already too many community organizations serving the homeless population in the area and that it would attract further criminal activity.⁹⁵

The case of the City of Ottawa further illustrates the kinds of stigma and exclusion faced by homeless people and community shelters. In 2005, an Ottawa City Councillor called for, and obtained, a moratorium on downtown homeless services. His rationale was that the concentration of social supports in the downtown area had created a ghettoizing effect and had also attracted homeless people to Ottawa. This was a point of view shared by former Mayor O’Brien who, in 2007, stated that Ottawa was attracting the homeless “like seagulls at the dump” by offering so many services. On another occasion, Mayor O’Brien compared homeless people to pigeons, saying that if we would stop feeding them, they would stop coming.⁹⁶ These beliefs reflect general stereotypes about homeless people as inferior, irresponsible, and undesirable inhabitants who will bring about urban decay and disorder. These views are, however, not grounded in empirical evidence: this is not a chicken-and-egg situation and shelters and community organizations choose to locate near the population they wish to serve. Moreover, if social support for the homeless population were to be stopped, homeless people would not disappear. Their situation would simply become even more critical and precarious.

⁹⁴ Clairandrée Cauchy, “Les itinérants ne sont bienvenus nulle part, dit le conseiller Peter Yeomans”, *Le Devoir* (12 May 2004).

⁹⁵ Annabelle Nicoud, “Refuge des jeunes: un déménagement controversé”, *La Presse* (8 June 2010), online : La Presse www.lapresse.ca.

⁹⁶ “Pigeons' squawk over mayor's comments on homeless”, *CBC News* (25 April 2007), online: CBC www.cbc.ca.

Attitudes towards homeless people are informed by prejudices and stereotypes that are generally applied to poor people.⁹⁷ A recent Angus Reid survey commissioned by the Salvation Army found that, despite widespread concern about poverty as one of the most serious problems facing Canada, a disturbingly high number of respondents viewed people living in poverty as morally inferior, lazy, and responsible for their own circumstances.⁹⁸ The survey found that nearly half of all respondents agree with the notion that if poor people really want to work, they can always find a job; 43 percent agree that “a good work ethic is all you need to escape poverty;” 41 percent believe that the poor would “take advantage” of any assistance given and “do nothing;” 28 percent believe the poor have lower moral values than average; and nearly a quarter believe that “people are poor because they are lazy.” The results of this survey reflect the patterns of discrimination and prejudice described in expert evidence considered by Ferrier J in *R v Clarke*, in which it was found that “there is widespread prejudice against the poor and the homeless in the widely applied characterization that the poor and homeless are dishonest and irresponsible and that they are responsible for their own plight.”⁹⁹

The prevalence of discriminatory attitudes towards those who are poor or homeless has led most provinces and territories to include some form of protection from discrimination on the ground of social condition, receipt of social assistance, or source of income, in their human rights legislation. The *Canadian Human Rights Act*¹⁰⁰ does not however include a ground of discrimination linked to social condition. In 2000, the *Act* was reviewed by a special panel chaired by former Supreme Court Justice Gérard Laforest at the request of the federal Minister of Justice. The panel was asked to consider whether the ground of “social condition” should be added to the *Act*. Relying on extensive research and consultations held across Canada, the panel stated that:

Our research papers and the submissions we received provided us with ample evidence of widespread discrimination based on characteristics related to social conditions, such as poverty, low education, homelessness and illiteracy. We believe there is a need to protect people who are poor from discrimination...

We believe it is essential to protect the most destitute in Canadian society against discrimination. At the very least, the addition of this ground would ensure there is a means to challenge stereotypes about

⁹⁷ Martha Jackman, “Constitutional Contact with the Disparities in the World: Poverty as a prohibited ground of discrimination under the *Canadian Charter* and *Human Rights Law*” (1994) 2:1 *Rev Const Stud* 76 at 90-95.

⁹⁸ Salvation Army, “Debunking myths about Poverty in Canada” (2011), online: Salvation Army www.salvationarmy.ca.

⁹⁹ [2003] OJ No 3883 (CanLII) (Ont Sup Ct).

¹⁰⁰ RSC 1985, c H-6.

the poor in the policies of private and public institutions. We feel that this ground would perform an important educational function.¹⁰¹

Nonetheless, these discriminatory attitudes towards people living in poverty still pervade the judicial system. For instance, in rejecting the appellants' section 15 *Charter* claim in *R v Banks*, Juriensz JA held that the proposed analogous ground of "the poor who beg" or "beggars"¹⁰² referred to an activity, rather than to "an immutable or constructively immutable personal quality that [could] only be changed at a 'great personal cost'" to personal identity and dignity.¹⁰³ He pointed out that the appellants themselves referred to begging as a "private choice of a means of subsistence."¹⁰⁴

In light of the prevailing patterns of penalization, social profiling and discrimination outlined above, we shall now examine the question of immutability as it applies in the context of homeless people. We argue that being homeless cannot be understood merely as a question of personal choice, but rather is a social construct that is difficult to change. We conclude that the use of punitive responses to homelessness by the State aggravates the social condition of homeless individuals.

B) Homelessness and the question of immutability and choice

Understanding homelessness as a choice is a simplistic explanation - one that does not take into consideration how human actions and conditions are socially constructed as well as embedded in social structures, constraints, and interactions.¹⁰⁵ Creating a dichotomy between choice and constraint is misleading, as it does not correspond to lived experience. The challenge, then, becomes to determine how such reality can be effectively translated into our existing legal categories, which tend to be unnecessarily rigid and binary.

In many ways, homeless people are ordinary individuals. They are intelligent, autonomous, and creative. They are rational and capable of elaborating sophisticated strategies. While some of them quietly suffer their fate, others struggle, resist, and fight against injustice. Many homeless people also claim responsibility for their choices, including their decision to become homeless. We could all too easily conclude that homeless people have assimilated and transformed the discourse of their domination into something of their own choosing but, in doing so, we would be missing something fundamentally important. Choice is indeed crucial for homeless people: it

¹⁰¹ Canadian Human Rights Act Review Panel, "Promoting Equality," at Part One, ch 17(e), online: CURA www.socialrightscura.ca.

¹⁰² *Banks*, above note 9 at para 98.

¹⁰³ *Ibid* at paras 98-100.

¹⁰⁴ *Ibid* at para 101.

¹⁰⁵ See Marie-Eve Sylvestre, "Rethinking Criminal Responsibility for Poor Offenders: Choice, Monstrosity and the Logic of Practice" (2010) 55:4 McGill LJ 771 (contains a more detailed argument).

gives them control over their lives and it allows for resistance against the prevailing social and economic order.

This being said, we should also realize that these affirmations of choice are systematically accompanied by a series of explanations regarding the circumstances surrounding their actual decisions. Ethnographic studies are replete with stories showing the complexity of homeless people's choices: some relate having been thrown out of their families due to alcohol or drug problems, others report having voluntarily given up on entering the formal economy due to either a lack of cultural capital or skills, or simply because of racism, and others admit to having decided to quit a job or a community to preserve their integrity or resist physical, sexual, or institutional violence.¹⁰⁶ This is of particular concern with regards to Aboriginal people who are disproportionately represented in the streets of many Canadian cities. For instance in Montreal, around 40 percent of children coming from northern communities have been victims of some form of sexual abuse.¹⁰⁷ Distress is also a part of life in these communities: for example, the suicide rate in Nunavik is up to seventy-nine deaths for every 100,000 inhabitants.¹⁰⁸

Furthermore, recognizing homeless people's freedom and autonomy should not allow us to forget that homelessness and housing precariousness create constraints that have overarching effects on homeless people's options and opportunities, as well as on their immediate everyday life decisions. In his book on the working poor, David Shipler explains how pervasive socio-economic disadvantage can be:

[E]very problem magnifies the impact of the others, and all are so tightly interlocked that one reversal can produce a chain reaction with results far distant from the original cause. A run-down apartment can exacerbate a child's asthma, which leads to a call for an ambulance, which generates a medical bill that cannot be paid, which ruins a credit record, which hikes the interest rate on an auto loan, which forces the purchase of an unreliable used car, which jeopardizes a mother's punctuality at work, which limits her promotion and earning capacity, which confines her to poor housing.¹⁰⁹

Choices and options are extremely limited when one experiences homelessness. While the assumption behind criminalization and regulation of homeless people is that governments have an interest in punishing them, and thus "encouraging" them to change their characteristics, social science

¹⁰⁶ See for example Mitchell Duneier, *Sidewalk* (New York: Farrar, Straus and Giroux, 1999) [Duneier, *Sidewalk*]; Philippe Bourgois & Jeff Schonberg, *Righteous Dopefiend*, (Berkeley: University of California Press, 2010).

¹⁰⁷ Brian Myles, "Le tiers-monde au bout de la rue", *Le Devoir* (26-27 February 2005).

¹⁰⁸ *Ibid.*

¹⁰⁹ David Shipler, *The Working Poor: Invisible in America* (New York: Vintage Books, 2005) at 7.

research indicates otherwise. Living in precarious arrangements is not the end of autonomy and agency choice, but rather the context within which personal choices are made. For example, the choice between begging, squeegeeing, selling stolen or lost goods or drugs, singing, or performing is one of limited options among a series of survival strategies. Choosing to sleep on the sidewalk often does not result only from the fact that shelters are full (although this is a stark reality in many cities). Nor is it because the people in question cannot afford to pay for a cheap hotel room for the night (most street people end up making a small sum of money every day), or because they just spend all of their money on drugs (although they may spend some of it that way.) Many homeless echoed one of the following sentiments: they feel safer surrounded by friends in the streets; they feel that they can better escape from the police when they are outside, they need to save money for the winter season; they feel more comfortable using drugs in the streets since they disturb less people (or so they think); they avoid the risk of becoming sick while alone; they do not want to get used to sleeping in a bed because they are generally unable to afford it; they want to sleep either with their dogs or close to their personal belongings or their place of work (*i.e.*, they need to keep their vending spot on a street), *et cetera*.¹¹⁰

Because of the prevalence of stereotypes and stigma applied to homeless people, the lived experience of homelessness involves far more than economic deprivation and absence of housing. While being homeless cannot be considered as central, or essential to one's identity or dignity, in the same way as other enumerated grounds of discrimination can,¹¹¹ in many ways it becomes an all-encompassing social identity or social label for individuals. Homelessness defines one's personhood in a way that is socially constructed and difficult to change. Virtually every part of society perceives and treats a person differently once they become homeless. Law enforcement officials treat homeless people as potentially dangerous, disorderly, and in need of severe regulation and they apply measures in a discriminatory fashion, on the basis of visible signs of poverty. Politicians tend to treat homeless people as a "problem" to be kept out of a neighbourhood, by denying basic sustenance or other services, rather than as equal citizens entitled to fundamental human rights.

The broader category of homelessness defines a disadvantage that can be difficult for an individual to overcome. Street exit is a long and difficult process, which generally involves considerable movement back and forth from being homeless to being "vulnerably housed." For example, when applying for a job, it is hard to justify the period of time that the individual remained unemployed because he or she was homeless. When applying for an apartment, the homeless person often has difficulties providing references to future landlords and is seen as an undesirable tenant.

¹¹⁰ Duneier, *Sidewalk*, above note 106 at 85-87.

¹¹¹ *Corbiere*, above note 7 at para 13; *Banks*, above note 9 at para 101.

Moreover, our research has shown that penalization or criminalization only aggravate this situation, creating further homelessness and social exclusion. In the last decades, homeless people who occupy public spaces in Canada have carried several thousands of dollars in unpaid fines. The vast majority of homeless people are rarely able to pay the fines, and because of this, they frequently end up being incarcerated. For instance, in Ontario, only 0.3 percent of all certificates of offences issued against homeless people (e.g., 51 out of 16, 860 in Toronto and 14 out of 4, 880 in Ottawa) were actually paid between 2000 and 2006.¹¹² In Montreal, of the 7, 650 statements of offence that reached a complete resolution during the period of the first Bellot study (1994-2004), 72.3 percent were closed after the offender was incarcerated for default of payment of the amount due.¹¹³ Bellot found that offenders in Montreal spent, in total, more than 70, 000 days in prison for the non-payment of statements of offence between 1994 and 2004. She further predicted that pending cases would result in an additional 200, 000 prison days. According to Statistics Canada, the average daily cost per inmate held in provincial custody is \$143.03.¹¹⁴

The connections between homelessness and (costly) incarceration in Canada are now well documented. The likelihood of being incarcerated is high among homeless people and the number of people who are homeless or vulnerably housed when they are arrested, jailed, or released from jail in Canada is steadily increasing. In a 2009-2010 study conducted by the John Howard Society of Toronto, involving 363 inmates in four provincial correctional facilities in the Toronto area, 69 percent of the respondents experienced residential instability in the two years prior to their incarceration; 24 percent had used a shelter during that period; and 23 percent were homeless (living on the street, in places unfit for habitation, in a shelter or couch-surfing.)¹¹⁵ Contrary to popular belief, this is not because homeless people are more dangerous and more likely to be criminals than other citizens. In the same study, researchers found that homeless people were significantly less likely to have been incarcerated for a violent offence than other individuals¹¹⁶.

High incarceration rates among homeless and vulnerably housed individuals are largely explained by structural factors. First, homeless people are more visible and often targeted by law enforcement because of their

¹¹² Sylvestre et al, "Occupation des espaces publics" above note 2 at 550.

¹¹³ Bellot et al, "Judiciarisation et criminalisation" above note 74.

¹¹⁴ Laura Landry & Maire Sinha, *Adult Correctional Services in Canada 2005-2006* (Ottawa: Statistics Canada, 2008) at 24 (the amount referenced does not include capital costs).

¹¹⁵ Amber Kellen et al, *Homeless and Jailed: Jailed and Homeless* (Toronto: John Howard Society of Toronto, 2010).

¹¹⁶ This is also confirmed by our studies on the penalization of homelessness in Canada. See above, page 21.

occupation of public spaces, and may end up incarcerated for these reasons. Second, criminalization has been one of the dominant state responses to homelessness in the last decades and, accordingly, the number of adults with no fixed address admitted to correctional facilities has increased. Third, studies have shown that homeless people are more likely to be incarcerated for default payment of fines, as well as for being unable to offer guarantees to the criminal justice system upon arrest, but also at the sentencing stage (*i.e.* their incapacity to provide an address may result in temporary detention, and their incapacity to show employment can prevent the issuance of alternative sentences, such as probation or conditional sentences).¹¹⁷ Finally, the number of ex-prisoners released onto the streets is very high. Thus, homelessness leads to incarceration, and incarceration, in turn, produces homelessness.

In the same John Howard Society of Toronto study, researchers found that 32.2 percent of respondents expected to be homeless upon discharge from prison. The rate of homelessness among respondents upon discharge was 22.9 percent. That rate had increased to 32.3 percent within days of discharge. Moreover, homeless respondents were more likely to need a full range of services upon discharge. Those surveyed anticipated their service needs within the next six months to include transportation (92 percent); finding affordable housing (90 percent); getting low-cost or free furniture (87 percent); finding low cost or free clothing (82 percent); replacing identification documents (76 percent); finding low-cost or free food (74 percent); and assistance with finding a job (62 percent). Lack of availability of these services is directly related to rates of homelessness among those discharged from prisons.

Incarceration and criminalization also have long-lasting effects on homeless people, impeding their street exit process and community reintegration. In several studies, including our own, people report losing housing and child custody, as well as their jobs while in jail, increasing the proportion of people relying on income support programs upon discharge. While a warrant of committal will only be issued in Ontario if a Justice is satisfied that the person who has defaulted is able to pay, and that the incarceration of the person would not be contrary to the public interest,¹¹⁸ when a fine has been in default for at least 90 days, the provincial Ministry of the Attorney General may disclose to a consumer reporting agency the name of the defaulter, the amount of the fine, and the date the fine went into default.¹¹⁹ The fact that a fine remains unpaid will thus affect a person's credit rating. So, a homeless person trying to re-establish him- or herself would be confronted with poor credit and would be unable to get basic

¹¹⁷ Danielle Laberge et al, "Le rôle de la prison dans la production de l'itinérance. Rapport de recherche soumis au Conseil québécois de la recherche sociale" (1998), online: UQÀM www.er.uqam.ca.

¹¹⁸ *Provincial Offenses Act*, above note 61, s 69(14).

¹¹⁹ *Ibid*, s 69.1.

services, like heat, water, phone, *et cetera*. Perhaps even more importantly, landlords routinely check prospective tenants' credit before renting an apartment, and debt collection on unpaid fines may compromise a tenant's ability to pay rent. In the words of an officer for the Collection Services in Ottawa: "unless they sort out their unpaid fines, they won't be able to get the rest of their lives in order."¹²⁰ Similarly, in British Columbia, having these debts can potentially affect a homeless person's access to a driver's license or a health card, since the Insurance Corporation of British Columbia, a Crown Corporation in charge of collecting fines and fees relating to the *BC Safe Streets Act*¹²¹, is also responsible for issuing these documents.¹²²

In addition to creating homelessness and impeding the street exit process, thereby making homeless people's social condition very difficult to change, punitive measures are very costly for Canadian society. A study conducted in 2006 showed that correctional facilities for adults and young offenders, cost \$3,720 and \$7,917, respectively, on a monthly basis.¹²³ The monthly costs of homeless services provided by the police, health care system, and other social supports were estimated at \$4,583 per capita. The cost of ensuring access to adequate housing and community-based services for homeless people is relatively small in comparison. The Emergency Homelessness Pilot Project (EHPP), initiated by the City of Toronto in 2002, provided rent supplements to former homeless occupants of Tent City, and assisted them in finding and maintaining housing. The estimated total monthly cost of housing, including the housing component of social assistance, rent supplement, and community worker support, was less than \$1,000 per person.¹²⁴ The monthly cost of a new social housing unit has been estimated at \$1,080.¹²⁵ Another study conducted in 2011 analyzed the cost savings associated with the provision of transitional housing and supports for "homeless ex-offenders" relative to the cost of not providing such support.¹²⁶ The analysis demonstrated that better outcomes can be achieved at lower costs with transitional housing and supports in place for individuals when they are released from prison. The likelihood of re-offending decreases and the public

¹²⁰ Sylvestre et al, "Occupation des espaces publics" above note 2 at 551.

¹²¹ SBC 2005, c. 75

¹²² Chesnay, Bellot & Sylvestre, "Taming the homeless" above note 2.

¹²³ Sylvia Novac et al, *Justice and Injustice: Homelessness, Crime, Victimization and the Criminal Justice System* (Toronto: Centre for Urban & Community Studies, University of Toronto, 2006) at 23 [Novac et al, *Justice and Injustice*].

¹²⁴ Gloria Gallant, Joyce Brown & Jacques Tremblay, *From Tent City to Housing: An Evaluation of the City of Toronto's Emergency Homelessness Pilot Project* (Toronto: City of Toronto, 2004).

¹²⁵ Novac et al, *Justice and Injustice*, above note 123 at 23.

¹²⁶ John Stapleton, Brendon Pooran & René Doucet, *Making Toronto Safer: A Cost-Benefit Analysis of Transitional Housing Supports for Men Leaving Incarceration* (Toronto: John Howard Society of Toronto, 2011).

funding spent on prisoners is far less than the alternative of continued re-incarceration. The estimated savings was \$350, 000 per person when services are in place.¹²⁷

C) Conclusion

Both historically and in the contemporary era, homeless people have been subject to systemic rights violations, widespread discrimination and prejudice based on stereotypes and misconceptions. In particular, the false association between homelessness and criminality and the strongly-held beliefs that homelessness is caused by moral failures and personal choices, and therefore, that homelessness can be deterred by regulating homeless people and their use of public spaces, have prevented the recognition and enforcement of homeless people's most fundamental human rights. Such ill-founded beliefs in turn supported repressive measures, from the death penalty to banishment in the Middle Ages, to confinement in workhouses and houses of corrections in the eighteenth and nineteenth centuries, to the targeted surveillance, profiling, systemic issuance of tickets, and incarceration for default payment of fines of the last decades. Such stereotypes and stereotype-driven public responses do not reflect the complexity of homelessness and do not correspond to the actual circumstances or the reality of homeless people in Canada. On the contrary, these discriminatory and punitive responses simply serve to produce more homelessness by maintaining homeless people under constant surveillance in public spaces, contributing to judicial debts and incarceration and impeding homeless people's street exit processes and their participation in social and political life. Such strategies have also cost significant amounts of money that could have been saved had governments approached the problem of homelessness through more reasonable, cost-effective and human rights affirming means.

Our analysis challenges the false beliefs and stereotypes that underlie prevailing patterns of penalization, social profiling and discrimination against homeless people within Canadian society. We argue for a more accurate understanding of homelessness, one which encompasses precarious housing arrangements and multiple transitions from periods of homelessness to periods of being at risk of homelessness, and which also accounts for dynamics of rights violations, social exclusion, poverty and discrimination that constitute the reality of being homeless – making it a condition that is not immutable but is difficult to change. This holistic conception of homelessness, combined with a reconsideration of the various stereotypes and beliefs that surround this condition, provides the basis for recognizing homelessness as an analogous ground of discrimination under section 15 of the *Charter*. When it comes to considering enumerated and analogous grounds of discrimination, we suggest that the courts should follow an

¹²⁷ *Ibid.*

analysis of immutability that takes into consideration how personal conditions and identity are socially constructed and embedded in specific economic and political contexts as well as dynamics of power.

In that sense, our analysis highlights the importance of social rights litigation practice which argues for the recognition of human rights for homeless people as well as exposes the discriminatory underpinnings of inadequate programs and of state neglect of the interests of marginalized groups. Our analysis also points to the need for immediate legislative changes to strengthen the human rights claims of people who are homeless. For example, human rights legislation should provide enhanced protection from discrimination based on social condition and against social profiling, including at the federal level, and this should be backed up by solid legal opinions and reports issued by legal organisations. The ground-breaking work produced by the Quebec Human Rights Commission on social and racial profiling provides an example of initiatives that are called for elsewhere.

Although important and necessary however, engaging in social rights litigation, combating social profiling and making legislative changes to human rights legislation alone are not enough to end discriminatory practices and promote homeless people's rights, in particular because of important material and structural barriers to access to justice. Substantive remedies and political changes are also required at both national and local levels. Across Canada governmental responses to homelessness over the past three decades have been marked by a prevailing tendency to neglect programs addressing the social, economic, and political causes of homelessness in favour of punitive responses. As we have argued, programs and policies in this area must be informed by a holistic vision of homelessness and the reality that homelessness is deeply embedded in, and the product of, social structures and interactions rather than the result of individual failure and choice. To effectively tackle the real problems of homelessness and housing insecurity, governments must adopt national and provincial policies on homelessness dealing with income inequality, education, housing, health, employment and access to justice and to community support and social services¹²⁸. In order to succeed, such policies must be based on the recognition of homeless people as citizens entitled to human rights and must welcome a multiplicity of interventions and actions in order to respond to the diversity of the phenomenon¹²⁹.

¹²⁸ In 2012, in response to longstanding demands from Quebec civil society, the Quebec government announced the establishment of a national policy to help combat homelessness. The Minister for Social Services and Youth Protection, Véronique Hivon, held a forum on June 17-18, 2013 to discuss the preliminary platform and promised to release the policy followed by an intervention plan shortly. See online: Portail Québec <http://communiqués.gouv.qc.ca>.

¹²⁹ In this respect, see the critiques addressed against the adoption of an across the board Housing First model in Canada: RAPSIM www.rapsim.org.

