

The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread. (*La majestueuse égalité des lois, qui interdit au riche comme au pauvre de coucher sous les ponts, de mendier dans les rues et de voler du pain.*)

Anatole France, *The Red Lilly*, 1894

Submission by the Wellesley Institute
to Streets Bylaw harmonization consultation
September 20, 2011

'Anti-camping' provisions raise Constitutional questions

The City of Toronto's proposed Streets Bylaw is being brought forward as an attempt to harmonize dozens of bylaws of the former municipalities of York, East York, North York, Scarborough, Etobicoke, Toronto, and Metropolitan Toronto – which were amalgamated in 1998. The harmonization effort extends to a number of bylaws and is an attempt to create a uniform set of rules across the City of Toronto. The Streets Bylaw governs activities associated with Toronto's streets, sidewalks and associated public places.

One new element in the proposed bylaw – which does not appear in the bylaws of any of the previous municipalities – is a ban on “camping” or “dwelling” on the city's streets. While the draft bylaw does not specifically mention people who are homeless, it is clearly targeted at activities associated with homelessness. People who are properly housed, as Anatole France so famously observed, do not need to camp in the streets.

The new provision in the draft Toronto bylaw are not unique to Toronto. Other Canadian and United States' municipalities have included similar provisions that target activities associated with homelessness – and a growing number of them have been challenged in court and overturned on Constitutional grounds.

The leading Canadian decision is the British Columbia Supreme Court case of *Victoria v Adams* in which the Court, on appeal, upheld the ruling of the trial judge who dismissed anti-camping provisions in a City of Victoria bylaw. Trial and appeal courts in Canada and the United States have typically found that the basic biological need for sleeping is part of a fundamental human right to life (which is protected in s.7 of Canada's Constitution).

Separately, Canada is the signatory to the International Covenant on Economic, Social and Cultural Rights – which includes the right to housing – and while there is a court challenge being prepared in this area, the successful legal challenges to date to anti-camping bylaws (and municipal ordinances in

the United States) have usually relied on the domestic Constitutional law, rather than international law.

People who are homeless, and their legal advocates, have not argued that sleeping in public places is an acceptable form of housing. The legal argument is that, when there is not an adequate supply of healthy, affordable and supportive housing and the shelter system is not adequate to meet the needs of the population that is homeless – then it is not legally permissible to ban people from engaging in a biologically necessary human activity, such as sleeping.

KEY OBSERVATIONS ON TORONTO'S PROPOSED ANTI-CAMPING BAN TARGETING PEOPLE WHO ARE HOMELESS:

1. The measure will almost certainly be challenged legally and, based on the BC Supreme Court decision, the city's bylaw could well be declared null and void as being a violation of the Constitutional rights of Torontonians who are homeless.
2. There was no similar provision in any of the former municipalities targeting people who are homeless, so the "anti-camping" provision should not be included as a "harmonization" initiative.
3. There are already legal provisions in the Mental Health Act that allow authorities (police, judges, psychiatrists) to determine if a person who is homeless is a danger to themselves or others, and allows them to be detained for treatment. These laws balance the personal and social interest in ensuring that people who require medical attention receive that attention with the legal right of individuals not to be detained or forced to submit to treatment against their will. Additional laws at the municipal level are not required to address the very small subset of people in Toronto who are both homeless and have severe physical or mental health issues.
4. Homeless and mental health advocates in Toronto and elsewhere report that coercive measures, such as a bylaw that prohibits camping on city streets, have the perverse effect of forcing the very people who are most in need of care and support to become more "invisible" in order to avoid attention. The people who are "hardest to reach" become even harder to engage by the very social support systems – including Toronto's Streets to Homes initiative – that are designed to reach people who are homeless and who also have special needs. Pushing people deeper into the municipal infrastructure makes it harder to reach them with the range of supports and services required to end homelessness in Toronto.
5. The vast majority of people who are homeless in Toronto have indicated that they would prefer to be properly housed, if such an option was available to them. This has been confirmed in the City of Toronto's Street Needs Assessment. Currently, the waiting list for affordable housing in Toronto is at an all-time record high of almost 80,000 households.
6. "Housing first" practices – including Toronto's Streets to Homes and initiatives in a range of cities from Calgary to New York City – have been found to be efficient in moving people from homelessness to housed, and also cost-effective. As KPMG consultants noted in Toronto's recent Core Services Review initiative, the cost of homeless shelters and other supports and services that aim to bring some meagre comfort to the lives and health of people who are homeless is much higher than the cost of transitional housing and long-term, affordable homes with the proper supports.

Research funded by the Wellesley Institute, including the *Street Health Report*, documents the devastating impact of homelessness on the physical and mental health of people living on the streets. Our *Blueprint to End Homelessness* in 2006 set out a practical and pragmatic strategy for ending homelessness in Toronto. The City of Toronto adopted its Housing Opportunities Toronto plan in 2009 in response to the urgent need for a specific set of plans to end homelessness and ensure everyone has a good place to call home.

The “anti-camping” provisions in the draft Harmonized Streets Bylaw are counter-productive and Constitutionally suspect. By banning the biological need of a small group of Torontonians to get sleep, the City of Toronto not only risks a lengthy legal challenge that will, if the BC precedent is upheld in Ontario, result in the city’s bylaw being overturned, but the draft bylaw will also have the effect of driving a small group of very vulnerable people who are homeless further out of reach of the outreach and supports that they need to make the transition from the streets to a good home.

For these reasons, we ask that the “anti-camping” provisions – which were not included in the bylaws of any of the former municipalities – be removed from the harmonized bylaw.

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