

THE SPEED BUMP – CHANGES IN THE NEIGHBOURHOOD, SPRING 2020

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The view changes every day from my desk by the front window of my living room. This is my book-writing desk - bought and installed during my last sabbatical, painted bright blue to inspire creativity. In March of 2020, it was transformed into my general office: a site of withdrawal from a pandemic-stricken world while, at the same time, a vantage point for looking out and registering developments beyond the confines of home. From my window, I have watched piles of dirty snow slowly melt, deep purple crocuses emerge, my teenage son (with no school or extracurricular activities to keep him occupied) energetically cut down and dig out the roots of our dead pine tree, and elements of Montreal sidewalk etiquette evolve.

This past week, there was something new to watch. In what felt like a private performance over 24 hours, the construction of a speed bump took place directly in front of my house. Everything about the show was orchestrated with precision: each team of workers waited its turn and each had a different role. One made marks with fluorescent paint, another cut a careful rectangle in the asphalt, the next directed the dumping of new gravel, the last took on the task of rolling smooth the new little hill. There was obvious satisfaction at each stage. As each team packed up and left, it left this stretch of avenue Querbes irrevocably modified. My view from my desk now includes a solid speed bump, and the users of the road will have to adapt their behaviour accordingly.

Modification, adaptation and speed bumps (whether literal or metaphorical) are obvious parts of a landscape redrawn by the pandemic. Forced to slow down and shift gears, we are invited to adjust our trajectory and our regard for those around us. As I take a break from my desk to go for a walk, I reflect on pandemic-related changes to the neighbourhood, neighbours, and play – all core pieces of my research, teaching and writing as a law professor.

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Outremont is a Montreal neighbourhood about which I have been writing for almost thirty years. A quarter of the population belongs to Hasidic Jewish communities, here for roughly seven decades and insistent on their distinctive insularity from their largely francophone and non-religious neighbours. Each community has its own synagogue, the common language is Yiddish, children attend private religious schools, girls and boys follow different educational paths, and women and men have gender-demarcated roles and responsibilities. These are families whose lives are governed by a network of religious rules and customs, whose connections beyond Outremont are primarily with their counterparts in New York and New Jersey, whose daily errands are primarily to Hasidic grocery stores and bakeries, who make a collective stop in their week to celebrate Shabbat from sundown on Friday to sundown on Saturday, and whose close communal life means that a virus can circulate fast and efficiently.

For a scholar interested in the contours of interactions among individuals, normative communities and the state, the Hasidic Jews of Outremont provide rich material and complex challenge. While they and their non-Hasidic neighbours tend to describe their co-existence as 'parallel', closer observation reveals constant interaction. Whether in the pediatrician's waiting room, the corner hardware store, or the public school playground on Sunday afternoons, residents of the neighbourhood share their space and the rhythms (good and bad) of everyday life. While some individuals have left Hasidism and are trying to figure out new paths outside communal constraints, others remain firmly rooted while at the same time willing to share their stories and engage in conversation. Norms internal to the communities are in constant interaction with those externally articulated and implemented – and the best places to understand those interactions are never the formal sites provided by charters, codes and constitutions.

The pandemic has proven that point by turning Hasidic law and life in Outremont inside out. As I walk around the block on a Saturday morning, the people and prayers that usually fill the inside of synagogues are now visible and audible to all. Bar mitzvah boys chant Torah on front porches, with men in prayer shawls joining in blessings from every balcony along the entire block. In the alley behind our house, a minyan of ten men – each standing two metres from the next – gathers at 9:00 each morning, and the neighbourhood air is filled with chanting for evening prayer at

sundown. The women pray too – inside while the men are out, or outside while the men are in – but they do so on their own, quietly swaying as they read and reflect. Their domestic space has been dramatically modified over the past weeks – almost never free from school age children and men – and I often see pairs of women in their long skirts and running shoes, keeping an appropriate distance from each other, out for very long and determined walks.

The moving of Hasidic synagogues to the front steps of homes throughout the neighbourhood has been met by onlookers with a mix of patience, curiosity and even admiration. The narrative – in Montreal newspapers and on the sidewalks of the neighbourhood – about the Outremont “other” has been temporarily transformed into a story of the calming beauty of religious melodies and the security of faith and prayer. The coexistence of communities and customs, of sources of authority and of organizing structures, was always there but is now transparent and explicit. Creativity and flexibility are exposed as crucial characteristics of shared space, and relationships between neighbours are indelibly altered.

“The rule that you are to love your neighbour becomes in law, you must not injure your neighbour...”

Who is my neighbour? Someone so closely and directly affected by my actions that I ought to have them in my contemplation... I have been teaching Lord Atkin’s neighbour principle to McGill law students for 25 years, working with them to figure out the “who”, “for what”, and “with what consequences” that complicate civil liability. Together, every year, we learn what it means to owe an obligation to act reasonably vis-à-vis others, neighbours, the people whom we should foresee as affected by our actions. We are all potential defendants and all potential plaintiffs – all potential wrongdoers and all potential victims all of the time – something that this pandemic underscores with striking emphasis. Indeed, the pandemic provides plenty of fresh material and hard-hitting examples for exploring the foreseeability of people affected by the actions of individuals, corporations, or state institutions.

Even more obviously, the pandemic complicates what it means to behave with requisite care, to take appropriate precautions, to act reasonably. This fall, it will not be hard to make students realize how quickly norms of acceptable behaviour can change, and how reasonableness can never be

a fixed standard. Neither will it be hard to get them to appreciate the destabilizing feel of uncertainty and the crucial importance of creativity and responsiveness. These ideas are tightly woven into the very fabric of private law governing human interactions but the pandemic might make them more visible and obvious.

The limitations of even a generous understanding of the duty of care will also be more apparent. At a time when vulnerability is highlighted and responsibility re-shaped, it will not be hard for students to understand that the moments in which they will have a true impact on other people may be those in which they move beyond simply fulfilling their obligations to offer care for others, provide support, say a kind word, or hold a hand.

Finally, as law teachers are urged to adapt to remote teaching and learning, it might be a good moment to turn to private law for insight on “remoteness”. To be labelled “remote” means to fall beyond the scope of responsibility or outside the orbit of obligation, to fail to meet the requirements of directness or foreseeability that would allow for a successful claim. Let us pay careful attention to what happens when learning in law shifts to “remoteness” mode, and ask ourselves what, if any, remedies might be forthcoming for the losses suffered.

My walk around the neighbourhood takes me past a park where the playground is firmly closed, tied off with “Danger”- imprinted tape. The message is clear. It is forbidden to climb, slide, swing or play in the sandbox while the entire world is shut down for a pandemic. Children cannot come together to learn, neither can they come together to play. Even if the initial fear of young people as silent and invisible vectors of disease has been discarded, their shared spaces remain tightly constrained.

Maybe we don’t need swings and slides, or the formally designated play spaces that include them. But we all miss and need the human contact, coming together, and creativity that play thrives on. I have often used the playground as a metaphorical image relevant to teaching and learning, research, and the meaningful, if messy, autonomy of youth – not a neat playground of safe and soft structures, but an “adventure playground” filled with materials that encourage risk-taking and dangerous encounters without parents in the vicinity. This is the kind of play that we can’t afford to lose: play that depends on peer contact, builds trust, and infuses all

structures and spaces for learning and developing. Safety at the expense of everything else is not good for kids, and that's a lesson important for people who aren't quite so young anymore.

I arrive home and settle back at my desk. The speed bump – installed for the safety of the children in the neighbourhood, and a literal reminder of the standard of care required of road users – has now become a place for play. As I watch out my window, I see Hasidic boys and girls, who would usually be sitting at their desks in separate schools, trying out their new roller skates together. A couple of teenagers appear with their skateboards and take photos of each other manoeuvring over the little hill in the road, and soon their friends arrive to try it out. A pre-schooler stomps on the smooth black surface with her father, both of them happily and daringly in the middle of the street. Late in the afternoon, the last work team turns up to cover the entire speed bump in fluorescent paint. There is no way now that it cannot be noticed. It has become a bright yellow site for developing norms of human interaction, risk-taking, and social proximity.

This is the view from my window. It seems to me that the pandemic, like my speed bump, provokes reflection on how we are learners and players and neighbours even with, or perhaps especially against, transformed landscapes. This is a bright yellow time for closeness and compassion, connection and continuity, care and courage, curiosity and creativity. If we are watching out of our windows, we can be sure that our children and our students are watching us back.