



RESEARCH HIGHLIGHTS

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LEGISLATIVE APPROACHES TO PANHANDLING

Introduction

This research highlight draws on the literature review undertaken for *Panhandling In Winnipeg: Legislation vs. Support Services*¹. This study highlights key socio-economic and demographic characteristics of panhandlers in Winnipeg, examines the effects of the current legislation on panhandling activities, and identifies inadequacies in support services and program initiatives that would effectively reduce the need to panhandle.

The negative reaction to panhandling by a substantial proportion of the public has prompted cities to try to either control and/or eliminate panhandling through legislation and introduce program approaches that assist panhandlers to “get off the street”. This Research Highlight focuses on legislative approaches to panhandling that have been used by Canadian municipalities.

Origins of Anti-Panhandling Regulations

Legislation to control panhandling goes back several centuries. In England, vagrancy laws were enacted as early as 1349 (Carter 1998). Early English anti-begging laws were usually components of larger statutes intended to control labour mobility and wages. Punishment for begging varied over the centuries and included resettlement, imprisonment, removal, forced labour, branding, whipping, and death (Mitchell 1995). Subsequent laws enacted in England in the 1800s became the basis for early legislation in Canada,

the United States and Australia. Since that point in history, there have been cyclical attempts to control the homeless, the beggars, and the panhandlers through both harsh and more humane applications of the law.

Anti-Panhandling Legislation

Commonly cities restrict soliciting in an aggressive manner in any public place. Some cities have turned their attention to restricting panhandling specifically in the downtown areas of their cities. For instance, Seattle, Washington, completely banned panhandling in its business district (The National Coalition for the Homeless 2004). Although Canadian municipalities’ anti-panhandling by-laws are generally citywide in application, they usually address particular concerns about begging within the public spaces of the downtown (Collins and Blomley 2003). Enforcement of anti-panhandling laws varies widely among cities and penalties can be substantial. At the same time many cities make no formal attempt to regulate panhandlers.

American Experience

American cities have been the most aggressive, going so far as to criminalize behaviours such as begging, lying on sidewalks, or sleeping in public places. Some have conducted police sweeps that physically remove homeless persons, who are most likely to panhandle, from the city core altogether. These initiatives can be traced to ideas concerning policing and social order that emerged in the United States, but have become quite influential within Canada. ‘Zero-tolerance policing’ originates from

¹ For more details on this study please visit Canada Research Chair web site at http://ius.uwinnipeg.ca/CRC/crc_publications_journals.htm

'broken windows' theory and presumes that one can prevent serious crime by proactively preventing anti-social behaviour and minor offences (Kelling and Coles 1996). While this involves dealing with graffiti and littering as well as panhandling, it also appears that it is the 'anti-social' behaviour of the urban poor and homeless that is targeted.

Over one-third of the 504 largest cities in the United States had panhandling control ordinances as of mid-1996 (Conner 2000). A growing number of jurisdictions have enacted aggressive-panhandling laws within the past 10 years. A report *A Dream Denied: The Criminalization of Homelessness in U.S. Cities* (NCH and NLCHP 2006) documents the results of a survey of laws that criminalize homelessness in 224 cities around the US, as well as a survey of lawsuits from various jurisdictions in which those measures have been challenged. The study showed that the criminalization measures in City ordinances have increased. Of the cities surveyed 43% prohibit begging in specific public places; 45% prohibit aggressive panhandling and 21% have citywide prohibitions on begging. Compared to NCH and NLCHP's 2002 joint report that surveyed 67 cities (NCH and NLCHP 2002), this study found that there was a 12% increase in laws prohibiting begging in certain public places and an 18% increase in laws that prohibit aggressive panhandling. Cities with panhandling control measures adopted recently include Washington, D.C., Baltimore, Cincinnati, Seattle, San Francisco, Santa Barbara, Long Beach, Philadelphia, Sacramento, Raleigh, New Haven, and Santa Cruz (NCH and NLCHP 2006).

Other measures include the forced removal of homeless persons from selected locations (via police sweeps), their restriction to "safe zones," and the dispersal of service agencies to prevent panhandlers from congregating in the central business district or similar prime spaces at too high a density.

Another trend among cities trying to regulate panhandling includes requiring panhandlers to obtain a license to panhandle or solicitation permits.

Some jurisdictions have made wide use of community service sentences tailored to the particular offender and offence.

Canadian Experience

Canadian municipalities have not been as prohibitive as American cities: none have prohibited sitting or lying on the sidewalks or sleeping in public places, but some have passed by-laws regulating panhandling, loitering, and gathering in public places. Examples of such legislations cities have passed over the last decade (though not necessarily current) can be drawn from across Canada:

- some municipalities like Vancouver and Kamloops do not permit sitting or lying on a street for the purpose of panhandling;
- Windsor requires a permit to solicit contributions, but only charitable organizations may receive a permit;
- others such as Brandon, Ottawa, Windsor, and Sudbury have by-laws that ban all panhandling.
- Vancouver, Brandon, Hamilton, Sudbury, and Fredericton have by-laws restricting park access to panhandling.
- Vancouver, Kingston, Oshawa, and Charlottetown have by-laws preventing gathering and loitering.

Under these by-laws persons apprehended for engaging in such activity are liable to be jailed and/or fined - generally in excess of \$50. Often these by-laws are punishing persons who have no money by fining them.

Arguably, laws can address aggressive panhandling through other parts of the Criminal Code of Canada therefore restrictive legislation to control aggressive panhandling is simply not necessary. However, local governments, in response to increasing pressure from many sectors of the community (particularly the business community), to deal with what appears to be a growing problem have introduced additional municipal by-laws that attempt to deal with people on the street. The particular focus of restrictions under these by-laws include control of panhandling in specific places, such as ATMs, shopping malls and subways, liquor stores etc.); time of day

restrictions (for example, during the night-time); and manner in which panhandling can occur (Carter 1998, Schafer 1998, NAPO 1999, Collins and Blomley 2003).

In recent years, some jurisdictions have proceeded with legislative measures to restrict obstructive solicitation, notably Ontario and British Columbia. Ontario introduced The Safe Streets Act in 1999 and British Columbia recently enacted The Safe Streets Act in 2004. These pieces of legislation both prohibit solicitation of a “captive audience”, such as individuals at automatic teller machines and banks, at pay telephones, taxi stands and bus stops, in public transit vehicles, getting in or out of vehicles, and in parking lots.

A summary of panhandling by-laws in selected Canadian cities is presented in Table 1.

Enforcement

Although many municipalities have these by-laws in place, many of the municipalities do not enforce them. There appears to be a number of reasons for lack of enforcement (Carter 1998):

- the absence of any significant problems with panhandling;
- the concern that by-laws are not the solution, particularly over the long term;
- the lack of sufficient numbers of law enforcement staff to carry out the by-laws;
- the concern that the by-laws would be successfully challenged in court if they were enforced; and,
- the availability of sections of the Criminal Code to deal with aggressive, threatening, intimidating, or persistent panhandling.

As opposed to charging people under the by-laws, police often enforce loitering and panhandling statutes against the homeless and the beggars by moving them from disputed public areas. This does not eliminate the problem, it simply temporarily moves it out of the view of those who are offended or whose businesses are affected.

Panhandling By-Laws in Winnipeg

Winnipeg’s 1995 Panhandling By-Law was quite extensive as it incorporated place, manner, and time restriction on panhandling, and a severe penalty - a fine of not more than \$1,000 or imprisonment for a term not exceeding six months, or both. It prohibited panhandling after sunset and within 10 metres of sensitive services (The Panhandling By-Law, No. 6555/95). The By-Law also prohibited a person from continuing to ask another person for money, or continuing to follow that person, after a negative response had been made.

The 1995 By-Law was challenged by the National Anti-Poverty Organization (NAPO) that contended it violated the rights to freedom of expression and equal protection under the law as well as other rights protected by The Canadian Charter of Rights and Freedoms. In September 2000, court action initiated by the NAPO convinced Winnipeg’s City Council to repeal the City’s by-law against panhandling (Canadian Housing and Renewal Association 2002).

The City replaced the 1995 By-law with the current Obstructive Solicitation By-Law No. 7700/2000, Consolidation Update 2005. Further to the City’s decision to adopt the current By-Law, the National Anti-Poverty Organization entered into a written agreement with the City that it would not bring a legal challenge to that by-law, provided that the by-law’s essential features are not amended by the City in the future (The City of Winnipeg 2005).

The 2000 By-law removed the distance feature and the time of day stipulation and prohibited soliciting in an obstructive manner. However, obstructive solicitation continued to be a concern expressed by Winnipeg’s citizens, business representatives, and organizations. The 2005 amendment added to the list of sensitive services where solicitation of a “captive audience” should not occur. The prohibition also applies to areas within the weather-protected walkway system of downtown Winnipeg.

The National Anti-Poverty Organization is again taking the city of Winnipeg to court over a section of its 2005 anti-panhandling bylaw, claiming that

Table 1. Summary of Municipal Panhandling By-Laws

City	Complete ban	Time of day restriction	Specific area restriction	Aggressive panhandling banned	Obstructive panhandling banned	Specific fine Min./Max.
Fredericton				X		0/\$70
Moncton				X		0/\$50
Quebec City					X	0/\$500
Ottawa	X			X		0/\$5,000
Kingston				X		
Hamilton				X	X	
Sudbury	X					
Windsor	X					0/\$1,000
Winnipeg			X	X	X	
Saskatoon		X	X	X	X	0/\$10,000
Edmonton					X	
Calgary		X	X	X	X	0/\$10,000
New Westminster		X	X	X	X	0/\$2,000
Vancouver			X	X	X	0/\$2,000

Source: Collins and Blomley. 2003. p.60

the “captive audience” clause - which prohibits someone from asking another person for money in public places such as bus stops and ATM machines - violates the Canadian Charter of Rights and Freedoms.

A summary of particular restrictions introduced by Winnipeg’s panhandling By-laws is presented in Table 2.

Effectiveness of Legislation

Have by-laws banning or restricting panhandling been successful in Canadian and American cities? Despite all the attempts at legislation from various jurisdictions ranging from the criminal code to municipal by-laws, public begging or panhandling is still with us. There is no empirical support to suggest legislative measures are working effectively. It has not been demonstrated, for instance, that American zero tolerance policing model actually reduces serious crime (Burnham 1996, Blomley 2004, Schafer 1998).

The bottom line is that legislation has not been an effective short term, or long term, solution. The problem is that these by-laws fail to address the underlying causes (Schaffer 1998, Carter 1998, NAPO 1999). The experience is much the same in city after city. Enforcing by-laws moves the problem or reduces it in the short term but because they fail to address the underlying causes, people are soon back on the street. In general, the effects are short lived. As well, panhandlers who may have been charged generally show up panhandling somewhere else. By-laws generally just drive panhandlers to someone else’s doorstep.

Conclusion

Discussion presented above seems to lead to an obvious conclusion. The factors that drive people onto the streets to panhandle are not ones that can be easily solved by making panhandling a crime. Making panhandling a criminal offence only punishes the perpetrators - it does not address the causes. It is a solution that deals with symptoms as opposed to basic causes. Making these offences illegal only penalizes and stigmatizes people based on their economic and social situation.

Table 2. Summary of Winnipeg By-Law Restrictions				
By-law	Distance	Time	Sensitive Services	Other
1995	X	X	<ul style="list-style-type: none"> - the main entrance to a bank, credit union or trust company; - an automatic teller machine; - a public entrance to a hospital; - a bus stop; - a bus shelter; - in a Public Transit bus; - in an elevator or in a pedestrian walkway; - from an occupant of a motor vehicle, which is parked, or stopped at a traffic control signal. 	<ul style="list-style-type: none"> - Regulates panhandling. - Prohibits a person from continuing to ask another person for money, or continuing to follow that person, after a negative response had been made. - Sets penalties
2000				Regulates obstructive solicitation by prohibiting: <ul style="list-style-type: none"> - to obstruct or impede the convenient passage of pedestrians in a street; - continue to solicit or follow a pedestrian after that pedestrian has made a negative initial response; - verbally threaten a pedestrian; and - physically approach a pedestrian as part of a group of three or more persons.
2005			Prohibits solicitation in the situations: <ul style="list-style-type: none"> - at an automated teller machine, a bank or credit union; - at a public pay telephone; - at public transit stop or taxi stand or in transit buses; - in elevators; - in the downtown pedestrian walkway; - getting in, out of, on or off a vehicle, or who is in a parking lot; - while seated in an outdoor area of a restaurant or bar in which food or beverages are being served. 	<ul style="list-style-type: none"> - Regulates obstructive solicitation. Amends causes of obstruction by prohibiting: <ul style="list-style-type: none"> - to obstruct or impede the convenient passage of any pedestrian or vehicular traffic in a street; - to solicit a captive audience.

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