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RESEARCH • ANALYSIS • SOLUTIONS

# FAST FACTS

September 27, 2007

## THE CASE AGAINST CRIMINALIZING PANHANDLING: Laws that muzzle the disadvantaged violate human rights

It is perplexing that in 21<sup>st</sup> century Canada it could be a punishable offence for one person to say to another, peacefully, in a public place, "I'm in trouble and need help." Yet that is the effect of laws such as City of Winnipeg Bylaw No. 128/2005 that criminalize the act of panhandling. Other Canadian and American cities have enacted similar legislation, underscoring a clash of competing values: social "hygiene" vs. freedom of expression; middle-class discomfort vs. underclass economic need; commercial interests of downtown business owners vs. beggars' right to plead for subsistence.

The Canadian Criminal Code expressly prohibits menacing types of panhandling. This prohibition may be viewed by most people as a legitimate use of state power, but restrictions of *peaceful* panhandling should not be accepted.

There is no justification for turning peaceful beggars into criminals. Non-aggressive begging is no more than the exercise of freedom of expression: when we criminalize beggars, we violate basic human rights.

Beggars are almost always poor, homeless, and often suffer from poor health, mental illness, and alcohol or drug addictions. They enjoy few social supports and have almost no opportunity to communicate their plight to society. Denying them their voice means that

"we", the legitimate citizens, do not believe that "they", the social outcasts, should have the same rights as we do.

If members of the underclass are not recognized as having an important contribution to make to public opinion, then they are robbed of a basic right of citizenship, and *everyone else in society is also robbed of potentially important information and ideas*. When the expressive liberty of the poor and homeless is censored, excluded, or ignored, we hobble the advancement of knowledge. Autonomous citizens should not settle for such restrictions on access to ideas and information.

Homeless people with multiple problems ranging from poor health to lack of education have very few means of engaging with their fellow citizens. Since there is unequal access to the means of communication, special heed must be paid to those who cannot easily make their voices heard. A liberal democratic society must work diligently to protect norms of mutual recognition and respect in communication.

When issues of social policy are being discussed and debated, it is imperative that the privileged classes understand - and take seriously - street people's history.

In Canada panhandlers are disproportionately from First Nations communities and other visible minorities. It is



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## ***FASTFACTS* continued ...**

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common for members of these communities to have suffered serious discrimination in education, housing, employment, and other spheres of life. Panhandlers give society the opportunity to understand this history.

Some critics argue that begging is not an expressive activity and therefore does not deserve the special protection we accord to free speech. They view panhandling as no more than a solicitation for money with which to buy food or drugs or booze.

These critics, however, cannot deny that the beggar is *also* seeking to communicate something important about his life. The panhandler demonstrates what our society is like for those at the very bottom of the heap. Panhandlers communicate – whether through speech or via an outstretched hand and raggedy appearance – a message about dire poverty, unemployment, substance abuse, mental illness, and homelessness.

The panhandler's presence also demonstrates the failure of government social programmes. An encounter with a panhandler may provide a passerby with insights into these difficulties, and spark an interest in social solidarity.

Clearly, beggars are seeking relief of their immediate personal needs (at times including the need for substances to which they are addicted). Why should some people have the right publicly to solicit help for famine relief in Africa, say, while others are denied the right to solicit help for themselves or their families when they are desperately in need of such help?

Moreover, direct appeals for help often enable panhandlers to engage in dialogue with their fellow citizens. This dialogue may raise important questions about poverty, homelessness, unemployment, mental health and addiction services and social solidarity. Accordingly, panhandling represents an

important form of “political speech,” both for the beggar and for the person to whom his appeal is addressed.

Passersby are entitled to hear the beggar's message, however disturbing, and to choose how to respond. Outlawing panhandlers' voices violates *our* informational rights as well as *their* expressive rights. Freedom of expression is a core value of Canadian society, making a beggar's freedom to request help far more important than someone else's desire to avoid a nuisance.

On a practical note, legal penalties are simply not the best way to deal with peaceful panhandlers. Less coercive, more effective solutions focus on efforts to reduce the root causes of social problems such as panhandling. Street disorder could be reduced to the status of a minor, occasional nuisance if Canadian cities would increase welfare and social benefits for the indigent. We also need to provide young street-people access to recreational facilities and exposure to positive role models.

None of these approaches is a “magic bullet.” All are expensive – though possibly less expensive than hiring more police and building more prisons. All will take time to show significant results, but they attack the underlying causes of street-disorder, while respecting individual dignity, free expression, and individual liberty.

- Arthur Schafer

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