

FEDERATED ANTI-POVERTY GROUPS OF B.C. v. VANCOUVER (CITY) AND WESTERN PRINT MEDIA

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Introduction

Now, at nineteen, she's so brimming with goodness that she sits on a Toronto street corner [...] Norah sits cross-legged with a begging bowl in her lap and asks nothing of the world. Nine-tenths of what she gathers she distributes at the end of the day to other street people. She wears a cardboard sign on her chest: a single word printed in black marker—GOODNESS.¹

Norah is Reta Winters' daughter. Reta is the narrator of Carol Shields' *Unless*. Shields' novel, however, is not about panhandling per se. Rather, *Unless* traces the impact Norah's situation has on her family. While Norah sits passively on the corner of Bathurst and Bloor and passersby drop money into her bowl, her mother writes "My heart is broken" on a washroom wall.² Norah's father surmises a traumatic event may have triggered her move to the street. Her two younger sisters sit beside her every Saturday afternoon, sandwiches and water in tow. Yet one is sleeping poorly, the other falling behind in math. Norah's behaviour does not attract a legal response. No law enforcement officer approaches Norah and asks her to move. No law enforcement officer tells Norah she could be fined. However, if

¹ C. Shields, *Unless* (Toronto: Random House Canada, 2002) at 11-12.

² *Ibid.* at 67.

Norah were transplanted to the corner of Vancouver's Granville and Robson, the story may have been different due to By-law No. 8309 ("By-law 8309" or "*Panhandling By-law*"):³

70A (1) "solicit" means to, without consideration, ask for money, donations, goods or other things of value whether by spoken, written or printed word or bodily gesture, for one's self or for any other person, and solicitation has a corresponding meaning, but does not include soliciting for charity by the holder of a license for soliciting for charity under the provisions of the License by-law.

"cause an obstruction" means

(a) to sit or lie on a street in a manner which obstructs or impedes the convenient passage of any pedestrian traffic in a street, in the course of solicitation.

(2) No person shall solicit in a manner which causes an obstruction.⁴

Sitting with a hand-printed sign around her neck and bowl in her lap, Norah offers no consideration for the money she receives. Nor does she have a license to solicit for charity. Thus, Norah's behaviour falls within the meaning of s. 70A(1). Furthermore, Norah sits on the street. Therefore, if she obstructs or impedes the convenient passage of *any* pedestrian traffic, she could be fined up to \$2,000 for breaching

³ Although By-law 8309 uses the word "solicit" instead of "panhandling," Taylor J. in the British Columbia Supreme Court decision *Federated Anti-Poverty Groups of B.C. v. Vancouver (City)* stated the By-law is also referred to as the "*Panhandling By-law*." [2002] B.C.J. No. 493 at para. 1 (QL) [*Vancouver (City)*]. Furthermore, I am adopting Taylor J.'s definition of "panhandling" for the purposes of this paper: "to beg for money in the street," at para. 2.

⁴ *Ibid.* at para. 40. By-law No. 8309 s. 70A(1) also includes:

- (b) to continue to solicit from or otherwise harass a pedestrian after that person has made a negative initial response to the solicitation or has otherwise indicated a refusal,
- (c) to physically approach and solicit from a pedestrian as a member of a group of three or more persons,
- (d) to solicit on a street within 10 m of
 - (i) an entrance to a bank, credit union or trust company, or
 - (ii) an automated teller machine, or
- (e) to solicit from an occupant of a motor vehicle in a manner which obstructs or impedes the convenient passage of any vehicular traffic in a street.

s. 70A(2).⁵ This troubles me deeply. Although Norah is a fictional character, her situation is not; I am wary of regulating such behaviour.⁶

My concerns about regulating panhandling are echoed by many throughout Canada. A coalition of three umbrella-like anti-poverty organizations, representing 565 member groups, challenged the validity of By-law 8309 in *Federated Anti-Poverty Groups of B.C. v. Vancouver (City)* (“*Vancouver (City)*”).⁷ The Federated Anti-Poverty Groups of B.C., the End Legislated Poverty Society, and the National Anti-Poverty Organization joined forces to challenge the *Panhandling By-law*’s validity on five bases. First, they claimed the Vancouver Charter did not give the City the required authority to enact such a by-law.⁸ Second, the petitioners asserted By-law 8309 was *ultra vires* the City of Vancouver because panhandling regulation is a “matter of criminal law under exclusive federal jurisdiction pursuant to s. 91(27) of the *Constitution Act, 1867*.”⁹ Their final three arguments involved the *Canadian Charter of Rights and Freedoms* (“*Charter*”). The petitioners argued the *Panhandling By-law* infringed three Charter rights:

2 (b) “freedom of thought, belief, opinion and expression”

7 “Everyone has the right of life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

15 (1) “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

⁵ *Ibid.* at para. 114. *The Street and Traffic By-law No. 2849* sets a maximum \$2,000 fine for infringement of By-law 8309. There is no minimum fine.

⁶ Vancouver is not alone in regulating “panhandling.” An increasing number of Canadian cities and provinces are legislating similar regimes (albeit not identical). See for example Ontario’s *Safe Streets Act*, S.O. 1999, c.8, as am. by S.O. 2002, c.17, Sched. F; British Columbia’s *Safe Streets Act*, S.B.C. 2004, c.75; City of Winnipeg, By-law, No. 7700/2000, *The Obstructive Solicitation By-law* (11 December 2002); City of Calgary, By-law, No. 3M99, *Panhandling Bylaw* (8 March 1999), as am. by City of Calgary By-law, No. 6M2004.

⁷ *Vancouver (City)*, *supra* note 3 at para. 6.

⁸ *Ibid.* at para. 81.

⁹ *Ibid.* at para. 102.

After Taylor J. addressed each of these five issues separately in *Vancouver (City)*, he summarized his findings at paragraph 313:

- (1) The City of Vancouver had the authority to enact By-law 8309;
- (2) By-law 8309 is not a criminal matter and, therefore, falls under s. 92(16) of the *Constitution Act*, 1867;
- (3) By-law 8309 does not infringe ss. 2(b), 7 and 15 of the Charter.

Accordingly, Taylor J. concluded By-law 8309 was “validly enacted and is properly of force and effect.”¹⁰ As I asserted in relation to Norah’s begging in *Unless*, I am uncomfortable with Vancouver’s Panhandling By-law remaining in force. Moreover, I find much of Taylor J.’s reasoning in *Vancouver (City)* problematic, particularly in relation to the *Charter*.

Despite my discontent, the focus of this paper will not be a doctrinal analysis of *Vancouver (City)*. Instead, I am using *Vancouver (City)* as a case study. In the past ten years panhandling has become a hot political and social topic;¹¹ and a set of norms has developed around panhandling. In recent Western Canadian newspapers panhandling is regularly portrayed in articles, editorials, and letters to the editor in an unfavourable manner. A panhandler’s appearance, personality, motivation level, morality, and behavioural tendencies are accounted for. Each portrayal is unique. However, I have identified what I consider to be two of the most powerful norms that animate not only many such representations, but also *Vancouver (City)*. In *Vancouver (City)* Taylor J. assessed the petitioners’ and respondents’ submissions in a manner that reflects these pervasive and persuasive norms: first, panhandling is likened to criminal behaviour; second, panhandling is perceived as a threat to downtown businesses. These norms, which are reflected in calls for increased panhandling regulation, are

¹⁰ *Ibid.* at para. 313.

¹¹ See A. Daniels, “Anti-panhandling Bylaw Splits Victoria Series: Civic Election 2002” *The Vancouver Sun* (15 November 2002) C6, online: ProQuest <<http://proquest.umi.com>> (“In the staid old capital ... the big issue is not capping taxes, but cap-in-hand); “City’s Homeless Deserve Better,” Editorial, *Toronto Star* (22 September 2003) A20, online: ProQuest <<http://proquest.umi.com>> (In Canada’s largest city the homeless are “a local election issue. All four major candidates hoping to become mayor have plans for dealing with the homeless.”).

troubling. Such assumptions fail to account for the complex social, political, cultural, and economic reasons for the unfortunate perpetuation of poverty, homelessness, and panhandling. In response I contend that we must develop a set of norms which *do* attend to panhandling's complexities. This response must occur immediately for we are living in an era where an increasing number of Canadian cities are regulating the time, place, and manner in which panhandling can occur. Finally, I conclude with one alternative norm that Canadians may wish to consider: panhandling as dialogue.

Panhandling is likened to criminal behaviour

Before addressing the five issues raised in *Vancouver (City)*, Taylor J. stated "it is necessary to set out a history of [By-law 8309's] enactment and the historical and present manner in which Vancouver manages movement."¹² He begins this historical review by succinctly summarizing where Vancouver gets its authority to enact by-laws.¹³ Next, Taylor J. briefly examined the history of statutes governing panhandling.¹⁴ It is within this latter section that certain panhandling norms first emerge, including the connection between begging and criminal activity. As Taylor J. related, "begging" was originally prohibited under the English *Vagrancy Act* of 1824, its Canadian counterpart enacted in 1869, and subsequently the *Canadian Criminal Code* of 1892.¹⁵ For the next 80 years begging was prohibited under the *Criminal Code*. Although this offence was repealed in 1972,¹⁶ the close nexus between begging and criminal behaviour continues to inform the panhandling discourse.

¹² *Vancouver (City)*, *supra* note 3 at para. 11.

¹³ *Ibid.* at paras. 12-21.

¹⁴ *Ibid.* at paras. 22-40.

¹⁵ *Ibid.* at paras. 23-24.

¹⁶ *Ibid.* at para. 27; *Criminal Code*, R. S. C. 1985, c. C-46 s. 175(1) (Currently s. 175(1) "Causing disturbance, indecent exhibition, loitering, etc." creates two summary offences which are related to the earlier provisions repealed in 1972: "Every one who" "(c) loiters in a public place and in any way obstructs persons who are there, or (d) disturbs the peace and quiet of the occupants of a dwelling-house by [...] other disorderly conduct there [...] is guilty of an offence punishable on summary conviction.").

One of the most striking examples of associating panhandling with criminal activity is found in the adoption of the “broken-windows syndrome” by advocates for increased panhandling regulation. The broken-windows syndrome was first developed in 1982 by George Kelling and James Q. Wilson.¹⁷ They argued the perceived degree of social control in a certain area was related to its upkeep. More specifically, if a city street was lined with abandoned cars, piles of garbage, and buildings with “broken windows” further disorder and crime would closely follow.¹⁸ Subsequently, Kelling and Wilson’s theory was explicitly referenced and adopted by legal scholar Robert Ellickson in his 1996 article “Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-space Zoning” (“Of Panhandlers”).¹⁹ Although Ellickson’s views represented one particularly strong stream of anti-panhandling discourse, this influential article continues to animate understandings of panhandling. In “Of Panhandlers” Ellickson expanded Kelling and Wilson’s conception of the broken-windows syndrome. He asserted this phenomenon could also be triggered by chronic begging activity: “[a] regular beggar is like an unrepaired broken window—a sign of the absence of effective social-control mechanisms in that public space.”²⁰ Because of this perceived lack of social control, Ellickson concluded the incidence of street disorder, petty crime, and severe crime would increase whereby pedestrians would avoid that public space.

Ellickson’s equation of panhandlers with broken windows and his use of the broken-windows syndrome discourse have been embraced by some Canadians, as is evident in a series of letters to the editors of major Western Canadian newspapers. Analogies have been drawn between panhandlers and trash,²¹ robbers,²² and the plague.²³

¹⁷ R. C. Ellickson, “Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-space Zoning” (1996) 105 *Yale L.J.* 1165 (QL) [Of Panhandlers].

¹⁸ J. Waldron, “Homelessness and Community” (1982) 50 *U.T.L.J.* 371 at 380 (QL).

¹⁹ “Of Panhandlers,” *supra* note 17.

²⁰ *Ibid.* at 1181.

²¹ J. McCallum, Letter to the Editor *Calgary Herald* (28 November 2003) A20, online: ProQuest <<http://proquest.umi.com>>.

²² D. Doman, Letter to the Editor, *The Vancouver Sun* (13 October 2003) A7, online: ProQuest <<http://proquest.umi.com>>.

Furthermore, panhandlers have been held responsible for petty crimes and general lawlessness. For example, one visitor to Vancouver stated, “[i]t is a small stretch to go from panhandling to begging to pick-pocketing and, finally, to robbery and violence.”²⁴ More recently *The Vancouver Sun* ran an article extolling the virtues of former New York Mayor Giuliani’s successful and “creative” approach to crime: “the ‘broken windows’ method of law enforcement.”²⁵ By “hiring more cops” and cracking down on “petty crime and degradation of public and private spaces,” including panhandling, Mayor Giuliani signaled to New Yorkers that he cared about their city spaces.²⁶ Calls are rampant for Canadian city mayors to follow suit. And Canadian mayors are listening, if a January 2004 promise by Vancouver Mayor Larry Campbell to increase the city’s police force by 200 officers in response to “rising public concern about crime, aggressive panhandling and what some Vancouver residents say is general lawlessness” is any indication.²⁷

There is no reference to the broken-windows syndrome in *Vancouver (City)*. However, its underlying thesis emerges in a report Taylor J. excerpted in his judgment. The report, dated October 28, 1997, was made to the then Deputy Chief Constable of the Vancouver Police Department by Inspector Jones.²⁸ Among the eight categories delineated by Inspector Jones and accepted by Taylor J. are

²³ S. Sullivan, Letter to the Editor, [*Victoria*] *Times Colonist* (27 February 2003) A11, online: ProQuest <<http://proquest.umi.com>>.

²⁴ G. Reiss, Letter to the Editor, *The Vancouver Sun* (3 September 2003) A9, online: ProQuest <<http://proquest.umi.com>>.

²⁵ M. Milke, “Soft Liberal Views on Crime Ripe for Change,” *The Vancouver Sun* (11 November 2003) A10, online: ProQuest <<http://proquest.umi.com>>.

²⁶ *Ibid.*

²⁷ F. Bula, “200 Police Will Be Added, Mayor Says: Larry Campbell Leads Forum on Neighbourhood Safety,” *The Vancouver Sun* (12 January 2004) page number, online Canada.com News <www.canada.com>. Note, however, several British Columbian municipal leaders (such as Victoria’s Mayor Alan Lowe) were *not* supportive of British Columbia’s *Safe Streets Act*. British Columbia, Legislative Assembly, *Debates of the Legislative Assembly*, 26/16 (25 October 2004) at 1515 (Ms. J. Kwan).

²⁸ Excerpts from the report can be found in *Vancouver (City)*, *supra* note 3 para. 61.

“Substance Abusers” and “Welfare Refusals.”²⁹ Both categories included claims about panhandlers and their propensity to engage in criminal activity. According to Inspector Jones many panhandlers fall into the “Substance Abusers” category, resorting to “panning to obtain additional money for drugs”.³⁰ Drugs in this context presumably refer not only to legal drugs, but also to illegal narcotics such as marijuana, cocaine, and heroin. The possession of these latter types of drugs is a criminal offence. Moreover this category stated that “some use ... violence to obtain money,”³¹ behaviour that can also be construed as criminal. In Jones’s report, panhandlers falling under the “Welfare Refusals” category often hold the door open, as an apparently friendly gesture, for automated-banking machine customers. . Jones, however, claimed this “insidious tactic leaves an implied threat with every ATM customer ... This amounts to thinly disguised extortion in the guise of helpfulness.”³² In addition to words like “threat” and “extortion” that have criminal connotations, Jones’s report implicitly incorporates the broken-windows theory in the “Welfare Refusals” section:

A concomitant effect is that passersby subconsciously see that the bank has passed into the hands of the panhandler and the bank is no longer in charge of its property. This subliminal message leaves a vague sense of unease and loss of security.³³

To expand, the panhandlers’ presence and criminal-like tendencies causes pedestrians to perceive that the bank lacks control over its property. In turn, they become fearful and less likely to revisit the

²⁹ *Ibid.* at para. 62. The eight categories are: Street Kid Wannabees, Real Street Youth, Transients, Substance Abusers, Welfare Refusals, Frauds, Mentally Ill, and Outstanding Warrants. (Taylor J. stated “I am of the view that Inspector Jones’s report, *despite expressing editorial opinions within each group*, has set out the various categories of panhandlers” [emphasis added]. Taylor J. included this disclaimer regarding Jones’s editorial opinions after the categories were excerpted in full from the original report. Furthermore, Taylor J. made no specific mention about what parts of Inspector Jones’s report were “editorial opinions.” I think this renders Jones’s chosen phrases more significant than if simply the categories were adopted and Taylor J. himself determined their content.

³⁰ *Ibid.* at para. 61.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

bank (or the city street where the bank resides). Therefore this described scenario exemplifies how the broken-windows syndrome functions in panhandling discourse. This line of thinking may also have influenced the City of Vancouver when its current anti-panhandling legislation was drafted.

The precursor to By-law 8309 included more-expansive panhandling prohibitions.³⁴ Although the current *Panhandling By-law* adopted very little from its predecessor,³⁵ it did incorporate the prohibition on soliciting within ten metres of “(i) an entrance to a bank, credit union or trust company, or (ii) an automated-teller machine”.³⁶ The National Anti-Poverty Organization (“NAPO”), one of the petitioners in *Vancouver (City)*, suggested that such provisions “assume panhandlers are more likely to be thieves than other citizens.”³⁷ This ignores the economic reality of panhandling. People may solicit outside banks and ATMs simply because they are “wisely chosen locations for panhandling”:

From the point of view of a panhandler ... these sites could be considered strategic locations where a non-panhandler has made some kind of financial transaction ... and possibly has some loose change readily available upon request.³⁸

Thus, by allowing cities like Vancouver to prohibit panhandling near banks and ATMs, NAPO contends two troubling conclusions may result: panhandlers are equated with thieves, and they are denied the opportunity to increase their earnings. Moreover, if the broken-windows theory underlies such ATM and banking provisions, as Inspector Jones’s report in *Vancouver (City)* suggests, Jeremy Waldron presents a compelling argument as to why this is highly problematic.

³⁴ See *Vancouver (City)*, *supra* note 3 at para. 36 for By-law No. 7885. (For example, By-law No. 7885 prohibited all panhandling while sitting or lying on the street, and panhandling between sunset and sunrise).

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ National Anti-Poverty Organization, “Short-Changed on Human Rights: A NAPO Position Paper on Anti-panhandling By-laws” (November 1999) at 9-11. I acquired a copy of “Short-Changed” by contacting NAPO directly. NAPO, a national coalition of 396 groups across Canada, is a non-profit, non-partisan organization that conducts advocacy, education, and research on behalf of those living in poverty (*Vancouver (City)*, *supra* note 3 at para. 6).

³⁸ NAPO, *supra* note 37 at 9.

Waldron suggested it is erroneous to engage the broken-windows discourse when analyzing panhandling for two main reasons.³⁹ First, regardless of whether literally broken windows indicate a sign of decay and lack of social order, human beings cannot be analogized to broken windows. If something is broken, we assume it must be fixed. Waldron argues, however, that panhandlers do not need to be fixed. Rather the underlying cause of panhandling—poverty—needs to be addressed. Waldron’s view is shared by many anti-poverty activists, as evidenced in an excerpt from an article written by a panhandling outreach worker in Calgary:

Panhandling, begging, whatever you want to call it, will always be prevalent in our city ... It is unrealistic to hope to ever eliminate it unless we also eliminate poverty and homelessness. Panhandling is a symptom of poverty and should be viewed as such.⁴⁰

A similar response was given by a Calgary Alderperson, who had worked as a social worker before joining city council, when asked to describe why he “frustrated efforts to immediately move ahead” with amendments to a panhandling bylaw.⁴¹ According to the *Calgary Herald*, the Alderperson “defended his stance, saying the proposal represents only a cosmetic change and fails to get to the real issues.”⁴² Thus, by focusing on fixing the panhandling problem we shift our attention away from the underlying issues.

In addition to Waldron’s belief that the broken-windows theory diverts our attention from poverty issues, Waldron maintains that the theory itself is flawed. He argues that the broken-windows discourse assumes there is a universally accepted definition of (dis)order. But, according to Waldron, this assumption is incorrect. Why? Because what constitutes (dis)order is a normative claim. Thus, how (dis)order

³⁹ Waldron, *supra* note 18 at 381-383 (He also uses this argument in relation to homelessness.).

⁴⁰ A. Major-Hodges, “Hey Buddy, Can You Spare a Dime?,” *Calgary Herald* (23 December 2003) A15, online: ProQuest <<http://proquest.umi.com>> [emphasis added].

⁴¹ T. Seskus, “Alderman Stalls Panhandling Law: Expected To Be Passed in Two Weeks,” *Calgary Herald* (13 January 2004) page number, online: Canada.com News <www.canada.com> (The new bylaw targeted “those who continue to panhandle after a request has been declined,” subjecting them to a fine of “\$50 for the first offence and \$100 for subsequent infractions.”).

⁴² *Ibid.*

is defined will depend on the norms one endorses. Waldron suggested two very different sets of norms that could inform an understanding of (dis)order when thinking about panhandling. First, there are “norms of order for a complacent and self-righteous society, whose more prosperous members are trying desperately to sustain various delusions about the situation of the poor.”⁴³ According to Waldron the United States subscribes to these norms of order. Americans have deluded themselves into thinking they live in an ordered, “just and prosperous society, a society of equal opportunity.”⁴⁴ So the presence of panhandlers, “persons who live on the very margins of civilized existence,” represents disorder.⁴⁵ He contrasts this with “norms of order for a society whose members are attempting in good faith to live honestly with a given mixture of great prosperity and great poverty.”⁴⁶ India was given as an example of a country where these norms of order are predominant. In India “people regard street begging as a normal activity and not all as a disorder.”⁴⁷ Not surprisingly, for Waldron it is essential that as North Americans we abandon our current normative understandings in favour of those embraced in India. Whether Canadians will accept panhandling as a normal activity remains to be seen. However, as an examination of both NAPO’s and Waldron’s writings suggest, simply likening panhandling to criminal behaviour obscures the realities of panhandling experiences: the Norah Winters of the world get lost in the shuffle.

Panhandling is constructed as a threat to downtown businesses

Taylor J.’s summary in *Vancouver (City)* of how Vancouver’s panhandling by-laws originated highlighted how influential the city’s business community was in promoting their enactment. Uniting many business community members in their calls for anti-panhandling legislation was a continued adherence to the second norm that animates panhandling discourse: panhandling adversely impacts

⁴³ Waldron, *supra* note 18 at 381.

⁴⁴ *Ibid.* at 380.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.* at 381.

⁴⁷ *Ibid.*

downtown businesses. The Downtown Vancouver Business Association (“Association”) is one group that successfully used this argument to lobby Vancouver’s City Council for policy changes.⁴⁸ Taylor J. identified their efforts, in conjunction with others, as having a direct influence on Vancouver’s response to panhandlers. As he stated, the implementation of By-law 8309 and its predecessor By-law 7885 was “unquestionably” a “react[ion] to a cacophony of complaints.”⁴⁹ How these complaints were constructed by the Association and others is succinctly summarized in a report authored by the City Manager for Vancouver’s Council’s Standing Committee on Planning and Environment (April 1998):

[P]anhandling ... has become a growing concern to residents and business communities throughout Vancouver. It creates an intimidating and unsightly atmosphere, negatively impacting on the quality of life of Vancouver’s citizens while adversely affecting businesses and tourism in our City.⁵⁰

As business and tourism are mainstays of many Canadian cities, similar claims are echoed throughout Canada. Victoria is one city where the business community is increasingly concerned with panhandling. When interviewed for a February 2003 article about panhandling, Mayor Alan Lowe asserted he had never seen the business community so angry and frustrated over an issue.⁵¹ Even more striking is the response to a comment made at a Greater Victoria Chamber of Commerce meeting in 2003. When a business activist stated “begging,” among other problems, “is killing us economically and socially,” the local paper reported “the room erupted in applause.”⁵² *Vancouver (City)* illustrated that municipalities can legally respond by enacting panhandling regulations when faced with concerns similar to those raised in Vancouver and Victoria. However, the by-laws each city enacts must successfully balance competing interests.

⁴⁸ *Vancouver (City)*, *supra* note 3 at para. 54.

⁴⁹ *Ibid.* at para. 44.

⁵⁰ *Ibid.* at para. 33.

⁵¹ L. Dickson, “Reclaiming Downtown Series: The Red Zone,” [*Victoria Times Colonist*] (9 February 2003) D5, online: ProQuest <<http://proquest.umi.com>> (The article also addresses other issues relevant to the downtown core, including prostitution and drug dealing).

⁵² *Ibid.*

What are these competing interests? Taylor J. identified two main groups whose interests must be accounted for when drafting panhandling regulations: panhandlers and pedestrians. Panhandlers represent “those who do not have the financial means to provide for themselves for a full and meaningful existence” whereas pedestrians represent “those who are to part with any ‘spare change.’”⁵³ Moreover, because these two groups have opposing goals when they use city streets, Taylor J. noted “a tension has developed” between them.⁵⁴ According to s. 70A(1) of By-law 8309, panhandlers use the street to “ask for money, donations, goods or other things of value whether by spoken, written or printed word or bodily gesture.”⁵⁵ On the other hand, pedestrians’ goals include wanting to walk (unimpeded) down a city street. Downtown retailers and businesspersons are included in this latter group. These individuals also want to conduct their business in a way that maximizes profit levels. Although Taylor J. only identified two main interest groups, the Vancouver administrator responsible for “policies on activities conducted upon the streets and sidewalks,” and referred to in *Vancouver (City)*, identified 19 such competing interest groups. These interest groups included not only pedestrians and panhandlers, but also, among others, street vendors, newspaper boxes, Canada Post delivery boxes, fire hydrants, and phone booths.⁵⁶ In balancing the interests of these diverse stakeholders, this Vancouver administrator identified the city’s primary concerns as the “maintenance of a safe passage and smooth and unobstructed pedestrian traffic flow on the City’s sidewalks.”⁵⁷ Taylor J. assessed By-law 8309 accordingly, concluding that it successfully met the “dominant purpose” of regulating “the safe and efficient movement of pedestrians.”⁵⁸

Rather than striking a balance of rights, anti-poverty activists argue a hierarchy of rights is created when the primary purpose of regulating city streets is defined as maintaining “the safe and efficient movement

⁵³ *Vancouver (City)*, *supra* note 3 at para. 43.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.* at para. 40.

⁵⁶ *Ibid.* at paras. 64-66.

⁵⁷ *Ibid.* at para. 65.

⁵⁸ *Ibid.* at para. 157.

of pedestrians.”⁵⁹ The normative claim that panhandlers threaten the interests of downtown consumers and businesses ignores the fact that the anti-panhandling legislation “threatens the interests and rights of those who panhandle.”⁶⁰ Panhandlers’ rights are, ultimately, subordinated to the business community and to “those who are to part with any ‘spare change.’”⁶¹ Moreover, scholar Don Mitchell contended an “annihilation of space by law” occurs when the rights of pedestrians, business owners, and consumers are favoured in panhandling legislation.⁶² According to Mitchell, legal remedies are used to “cleanse the streets ... by simply erasing the spaces in which [the homeless] must live.”⁶³ The petitioners in *Vancouver (City)* echoed Mitchell’s argument when they stated By-law 8309’s purpose is “to restrict and prohibit ‘the intimidating and unsightly people who panhandle.’”⁶⁴ That is, the Panhandling By-law attempts to cleanse Vancouver’s streets, and in turn, the spaces panhandlers can legally occupy are reduced. Such legislation, as Mitchell aptly stated, “creat[es] a world in which a whole class of people simply cannot be, entirely because they have no place to be.”⁶⁵ This annihilation of space by law is particularly troubling given panhandling regulation targets panhandlers in public spaces.

Conclusion: Panhandling as Dialogue

Taylor J. asserted that “it must not be forgotten that the street plays an important role in providing a public forum for the expression of ideas and thoughts.”⁶⁶ This reminder highlights that public spaces—city parks, boulevards, and street corners—oftentimes are perceived

⁵⁹ *Ibid.*

⁶⁰ D. Mitchell, “The Annihilation of Space by Law: The Roots and Implications of Anti-homeless Laws in the United States” in N. Blomley, D. Delaney, and R. T. Ford, eds., *The Legal Geographies Reader* (Oxford: Blackwell Publishers, 2001) 6 at 12.

⁶¹ *Vancouver (City)*, *supra* note 3 at para. 43.

⁶² Mitchell, *supra* note 60 at 8 (Mitchell made this claim in relation to, what he terms, anti-homeless legislation in the United States).

⁶³ *Ibid.* at 7.

⁶⁴ *Vancouver (City)*, *supra* note 3 at para. 89.

⁶⁵ Mitchell, *supra* note 60 at 8.

⁶⁶ *Vancouver (City)*, *supra* note 3 at para. 158.

as places where diverse individuals can come together and exchange ideas. As a venue for dialogue, public spaces “carv[e] out a site within which free, rational discourse can occur between citizens, distanced from the particularities of the state, the economy, and the private domain.”⁶⁷ For some people this characterization of public spaces is troubling. Problems arise from the belief that members of the public cannot be trusted to use their city spaces wisely: a “space that all can enter ... is a space that each is tempted to abuse.”⁶⁸ Similarly, in Ellickson’s terms, “public spaces are classic sites for ‘tragedy’” because they are open to everyone.⁶⁹ The response to these fears is the endorsement of public space regulation, including anti-panhandling legislation. A response I contend that we must be wary of.

I believe, however, there is a more constructive way to understand panhandling in public spaces. The presence of panhandlers in our cities may indeed be unnerving, yet our communities’ public spaces do include panhandlers: human beings who have their own interests and needs, families, and friends. And, as centers for encouraging conversations and encounters with diverse individuals, it is precisely within our city spaces that alternative political, social, and cultural norms can emerge. We must not only encourage the emergence of such alternative norms by repealing anti-panhandling legislation, but also recognize the dangers raised by our current understandings of panhandling. Our focus should be on the underlying issues, such as poverty and homelessness. Our reaction to the Norah Winters of the streets should be one of acceptance, not marginalization.

⁶⁷ “Private Needs and Public Space: Politics, Poverty, and Anti-Panhandling By-Laws in Canadian Cities” in The Law Commission of Canada, ed., *New Perspectives on the Public-Private Divide* (Vancouver: UBC Press, 2003) 40 at 55.

⁶⁸ Ellickson, *supra* note 17 at 20.

⁶⁹ *Ibid.*