Prohibitions on Panhandling Engage Charter Rights

Earlier this year the Ontario Court of Appeal examined the constitutionality of s. 3(2)(f) of the province's Safe Street Act, which prohibits the solicitation of a person in a stopped or parked motor vehicle. Eleven individuals faced charges arising from various incidents where the accused approached vehicles stopped in traffic, washed the windshields of the vehicles, and solicited money from the drivers, a practice commonly referred to as "squeegeeing".

The accused argued the provisions violated their ss. 2(b) (freedom of expression), 7 (life, liberty and security of the person) and 15 (equal treatment) rights. The Court of Appeal, in a decision dated January 16, 2007, held that there were no Charter violations. The Court found that, although the accused's liberty interest was engaged, it was in accordance with the principles of fundamental justice and s.7 was therefore not violated. Section 2(b) was also infringed, however, the purpose of the Safe Streets Act (which prohibits various forms of aggressive panhandling and soliciting a captive audience), safety, was sufficiently important to justify the legislation under s. 1 of the Charter. Other cities are dealing with this too.

British Columbia's Safe Streets Act contains similar provisions, but has not yet been subject to constitutional challenge. Edmonton, Calgary, Vancouver, Halifax and Montreal have all passed by-laws restricting panhandling in specific forms and places, but these have either escaped or withstood constitutional scrutiny. Winnipeg's anti-panhandling by-law is currently the subject of a constitutional challenge by the National Anti-Poverty Organization; NAPO filed a statement of claim in the Saskatchewan Court of Queen's Bench on May 29, 2007.

Councillor Case Ootes of Toronto-Dansworth has been lobbying for a by-law to ban panhandling in tourist areas of the city, but the city's lawyers are reported to have indicated that an outright ban may be open to constitutional challenge. In response, Mayor David Miller has implemented a two month pilot projects intended to ascertain the needs of downtown panhandlers and the impact of the practice on tourism. The project would see no policy changes until 2008.

Sources

- Bartley Kives, Panhandling rules challenged The Winnipeg Free Press (30 May 2007).
- Jennifer Lewington, Despite setback, councillor pushing for panhandler ban The Globe and Mail (10 April 2007).
- R. v. Banks, 2005 CanLII 605 (ON S.C.).
- R. v. Banks, 2007 CanLII 19 (ON CA).

- Safe Streets Act, S.O. 1999, c. 8
- Paul Moloney, City eyes project to assess beggars Toronto Star (19 May 2007).

Further Reading

- British Columbia Ministry of Attorney General, Safe Streets Act
- Safe Streets Act S.B.C. 2004, c. 75.
- Squeegee panhandling washed out by Ontario Appeal Court CBC News (17 January 2007).