Curiouser and Curiouser! Exploring the narratives and consequences of panhandling regulation in British Columbia

by

April Katherine Lawrence-Anand

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ABSTRACT

In 2004 the British Columbia legislature passed the Safe Streets and Trespass Amendment Acts. The Downtown Vancouver Business Improvement Association (DVBIA) credits its lobbying process as having convinced the government to do so. The DVBIA is an unusual Business Improvement Association (BIA) as its advocacy mandate concerns extra-economic issues and its resources vastly exceed those of other BIAs in Vancouver. This thesis explores its advocacy position and the consequences of the legislation.

The lobby process is treated as one of narrative creation, with some attention to how the DVBIA’s resources influenced its success. Broken Windows Theory is used to explain the DVBIA’s presentation of panhandling and trespass as elective activities, separate from any conception of need. The DVBIA’s narrative must construct these actions as optional before they can be rendered criminal.

A Critical Discourse Analysis (CDA) is used to explore both why the DVBIA successfully generated support for the legislation, and why the opponents of the legislation were unsuccessful. The CDA reveals that the DVBIA had access to narratives – such as poverty as the fault of the individual, the competitive city or security – that are connected directly to contemporary society. These narratives allow for simple stories of blame and reform, tidily creating the ‘problem’ and the ‘solution’. These simple narratives are easily communicated through sound-bite media. The opponents of the legislation had access only to narratives such as fairness, generalized poverty, compassion or civil liberties. These narratives have complicated explanations of panhandling’s root causes, offer no simple solutions and were ineffective in countering the DVBIA’s simple problem constructions.

An analysis of the legislation examines its consequence for an actively political public space, citizenship and rights as well as the penalties for violation of the Acts. The consequences advocated by the DVBIA, arrest and area restrictions, are discussed in terms of the principle of legal proportionality and theories of what punishment is to accomplish. The analysis is finally framed in terms of Mill’s Harm Principle to discuss how the Safe Streets Act incorrectly legislates panhandling as a harm and as an offence worthy of legal consequence.
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LIST OF ABBREVIATIONS

BCCLA – British Columbia Civil Liberties Union
BIA – Business Improvement Association
CDA – Critical Discourse Analysis
CLS – Critical Language Studies (Chapter 6 only)
CLA – Critical Legal Studies
DVBIA – Downtown Vancouver Business Improvement Association
SSC – Safe Streets Coalition
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And my “editing team” deserves a note as well. My husband James Cormack and friend Randy Lane both know more now about urban planning then they ever thought they would have to. Randy tirelessly offered carefully considered comments during frequent editing sessions over too much coffee; he even managed, with some success, to teach me about comma splices. James did the same with the added responsibility of living with me through the entire process, enduring the clickity-clack of the keyboard at all hours, catching my split infinitives and providing a boundless source of love and support. He never once rolled his eyes or sighed out loud when I again made him listen while I talked through things that, if he were honest, couldn’t possibly have been that interesting. James even works to hide his panic when I speak of doing a doctorate. I am one lucky lady.

The cat didn’t really help much at all.
The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.

Anatole France, from *The Red Lilly*, 1894

CHAPTER 1: INTRODUCING THE CASE STUDY

This case study is essentially about the telling of stories. We tell stories to explain the world to ourselves and others; we tell stories about other people to explain and justify our feelings about them. Policy formation is a story telling process. The one who tells the most persuasive story frames the policy problem and its solution, and we all live with the outcomes. Here the policies are provincial legislation, applicable to all who live in British Columbia.

The legislation discussed in this case study tells a story of who is deserving of the right to move, unencumbered, through our public spaces and who has a right to enforce the law in private ones. It tells a story of who is ‘us’ and who is ‘them’ and just how ‘they’ are a threat to ‘us’. The construction of what is a crime and what is a fitting punishment is a powerful story-telling opportunity.

When we are acting to persuade, we do not always tell the ‘true’ story; we tell the one that will support our position. To persuade we exaggerate, use proxies for the arguments we are ‘really’ making and we increasingly are confronted by how our story will be conveyed by the media. Simple stories are the easiest to squeeze in between commercials. Complex stories are, by their nature, difficult to grasp. They are almost destined to fail in modern media, which is where much of our information about the world comes from. The tragedy of this is that I am convinced, and I hope to show over the course of this thesis, that there are no simple stories. Ones that seem simple, obvious or intuitive are often highly ideological, though they hide this by presenting their position as ‘just the way things are’ (Fairclough, 1992c, 211).
There is no ‘just the way things are’. The world is made up of the stories we tell (Stone, 1989). It is always possible to tell another story. The fact that alternative stories may be doomed in the face of the dominant story does not serve to make the dominant story an immutable truth.

The title of this thesis is from Lewis Carroll’s *Alice’s Adventures in Wonderland* (1865). The full quotation reads “‘Curiouser and curiouser!’ cried Alice (she was so much surprised, that for the moment she quite forgot how to speak good English).” I chose this to reflect the ‘down the rabbit hole’ experience of peeling back layer upon layer of the stories told, both in the lobbying process for the legislation and the stories of crime and punishment told by the legislation itself.

**THE CASE STUDY: A brief introduction**

This case study explores the passage and consequences of the British Columbia provincial legislation (i) the *Safe Streets Act*, which regulates panhandling in public spaces, and (ii) the *Trespass Amendment Act*, which expanded control over behaviour in private and semi-private spaces, and who could enforce that control. The Downtown Vancouver Business Improvement Association (DVBI A) was fundamental in lobbying for these Acts to be passed, with a public campaign that ran from March 2004 until the passage of the legislation in October 2004. To facilitate the lobbying process the DVBI A created the Safe Streets Coalition (SSC). The SSC’s mandate was to “encourage the provincial government to pass the *Safe Streets Act and Trespass Amendment Act*” (DVBI A 2005). The DVBI A’s 2005 Annual Report attributes the passage of the Acts to the hard work of the SSC, which represents itself as a civil society organization, despite its obvious ties to the business community.

This thesis explores that lobbying process both as a task of narrative or discourse creation and as a practical matter of money, resources and access to power. The consequences of *Safe Streets* and *Trespass Amendment Acts* are examined here in terms of the implications for public space as a political arena, citizenship, rights and the legal implications for those who are directly regulated by these acts.
INTRODUCING THE LEGISLATION

While the Safe Streets Act and the Trespass Amendment Act are two very different Acts, they were passed together and were often discussed in the media simply as “safe streets legislation.” All legislation discussed here is presented in Appendix 4. There it is presented as written, with square brackets indicating my own points of clarification or where elements have been omitted.

The safe streets legislation serves to outlaw “aggressive” panhandling, defined as such things as soliciting in a group or continuing to solicit or remain near a person after he or she has denied one’s request for a “thing of value” such as money or a cigarette. It also outlaws the panhandling of a “captive audience.” For me, this is most troubling aspect of the Safe Streets Act. This section makes it illegal to solicit anyone defined as ‘captive’ by the legislation, such as someone waiting to use a pay phone. This serves essentially to construct making someone feel uncomfortable as an offence worthy of arrest. It makes even a polite solicitation illegal simply because the one solicited cannot flee the request for assistance. In doing so, it assumes that panhandlers are a threat by their mere proximity. The Trespass Amendment Act raises issues of enforcement, mainly through the extension of the right to determine and enforce trespass violations to private security guards. Both Acts raise issues of legal proportionality, by which I mean a more theoretical equivalent of ‘the punishment should fit the crime’. Both pieces of legislation incorrectly assume that the behaviours they have outlawed are optional behaviours for the very poor.

INTRODUCING THE DOWNTOWN VANCOUVER BUSINESS IMPROVEMENT ASSOCIATION

The DVBIA is a business improvement association (BIA) that covers a 90-block area of Vancouver’s downtown peninsula. Maps of the BIAs discussed in this paper are included in the Appendices, along with a map of Vancouver generally, and a map of Vancouver’s downtown in which all the BIAs discussed are located. While the DVBIA claims to be a voice for downtown, it does not cover the business districts of Yaletown, Robson Street, or Gastown. The DVBIA is the largest by far of the downtown BIAs, but it is not the only voice representing business in the downtown peninsula. Nonetheless, a huge section of downtown falls under its mandate, including the Convention Centre, Pacific Centre (the major mall downtown), the Granville Street
entertainment district, most major international hotels and the majority of the high-rise office development of the central business district.

INTRODUCING THE STREETS

The DVBJA argued that the problem of people panhandling and on the streets had been growing in Vancouver. There is data to suggest it is correct in this assessment. Some statistics are not available specifically for the City of Vancouver, but rather are statistics that cover the Greater Vancouver Regional District (GVRD), made up of Vancouver and the regional municipalities. The 2005 Homeless Count found 2,174 people homeless in the GVRD, almost double the 1,121 found in the 2002 Count (Goldberg et al, 2005, 33). The 2205 Count found 1,291 homeless in the City of Vancouver the day of the count, up from 628 in 2002 (Goldberg et al, 2005, 33). This includes both those living in shelters and those who are living on the streets. These numbers were collected in a 24 hour snapshot, and thus underestimate the actual number of those who will experience homelessness over a period such as a year (Goldberg et al, 2005, 4). It also does not count those in detox, recovery or in hospitals with no place to go when they are discharged (Goldberg et al, 2005, 6). Thus, all of the numbers here can be considered an undercount of those who are or will be homeless in our area.

Vancouver is home to 59 percent of the GVRD’s homeless. Of these Vancouver homeless, 700 are sheltered (which is 74 percent of the GVRD’s sheltered homeless, those in transition houses and shelters) and 591 are living on the street (this is 53 percent of the GVRD’s street homeless) (Goldberg et al, 2005, 38). Regionally, only 33 percent of the unsheltered homeless have any access to a regular income, such as welfare, disability or unemployment. But, of the 1,020 street homeless in the GVRD, only 48, about 5 percent, said they made their income by panhandling (Goldberg et al, 2005, 24). It is impossible to know where these 48 people are active and if other homeless did not consider themselves ‘panhandlers’ even if they did ask for change from time to time. There are also panhandlers who are not homeless. The homeless and the panhandler are difficult proxies for each other, as will be discussed later in this chapter. Nonetheless, if only a third of unsheltered homeless in our area have regular income, there is bound to be a problem of some kind – certainly this presents a problem for the other two thirds with no source of income. This thesis discusses how that two thirds and those in a similar position are then constructed as a problem for us.
The DVBI A, being centred in the downtown of the largest city in the region, may very well feel that its members and their customers bear the brunt of this issue. I do not begrudge its concern and frustration, but I do disagree with its position on what the problem is, who is most affected by it and what the solution should be. The results of the DVBI A's construction of the ‘problem’ and lobbying for a fitting ‘solution’ were the Safe Streets and Trespass Amendment Acts.

THE OUTLINE

In this first chapter I will present my research questions, discuss why this case study qualifies as ‘planning’ and why it is important to undertake it. In Chapter 2, I will position the reasons for this case study’s importance within the literatures of public space, geography and critical legal theory. I will also present the “good city” (Friedmann, 2002) and ideas of injustice as both a foil and frame for the troubling elements of the Safe Streets Act and the Trespass Amendment Act. Chapter 3 is methodology where I will explain the selection of the case study method for this project and frame my position as a researcher. I will then, in Chapter 4, introduce generally how BIAs are constructed in the legislation that creates them, how they are portrayed by the City of Vancouver, and contrast this with how BIAs see themselves. I will pay special attention to the ways in which the DVBI A is exceptional and encapsulates an expanding BIA mandate that increasingly includes involvement with extra-economic issues. Chapter 5 will provide a history of attempts to regulate panhandling in the City of Vancouver. This will introduce some of the constitutional and legal themes as well as give a history of the involvement of the DVBI A in previous panhandling regulation. Chapter 6 is a Critical Discourse Analysis (CDA) based on Fairclough’s model with my own modifications. I use three opinion pieces from the Vancouver Sun newspaper to explore the narratives employed by the proponents and opponents of this legislation. The power of the narratives and the relative advantages of those for and against the legislation are discussed. Chapter 7 is the crux of the thesis in many ways, analyzing exactly how the legislation defines a harm worthy of legal protection and how that translated into laws with attendant punishments. The punishments are discussed in terms of the legal principle of proportionality. In Chapter 8, I present research conclusions, surprises from the research and questions for further study.

THE RESEARCH QUESTIONS
I formulated three ‘how’ and ‘why’ research questions (Yin 1994, 21) to guide the inquiry into business-led activism and public policy. The ‘how’ questions were an intentional attempt to tease out the “dynamics of practice” and recreate the actions that brought the actors to this point (Flyvbjerg, 2004, 298). They are presented here in “ascending” order, from more embedded in the DVBIA and Vancouver to more general questions about the legislation as a policy that serves or does not serve society’s interests at large. The first two questions addressed the discourse both within the DVBIA and Vancouver at large. The third asked whether the result was a policy that is good for the city and province. This progression is intentional so as to design a case study that “produces precisely the type of context-dependant knowledge which makes it possible to move from lower levels to higher levels in the learning process” (Flyvbjerg 2001, 71).

• How did the DVBIA come to see a form of Broken Windows Theory-based legislation\(^1\) as the answer to its concerns about the comfort of shoppers and shopkeepers in the downtown? What is its understanding of what Broken Windows legislation can do and where does it come from?

• How did the DVBIA influence the public debate about “aggressive” panhandling and with which alternative voices did it compete? Why was the message it advocated so successful in capturing the public imagination? Why did opponents fail?

• Was the outcome of this business advocacy and resulting public passion a good policy? How exactly does the legislation operate in terms of sanctions? How does it construe offense, harm and vulnerability?

\(^1\) This policing and legislative theory will be elaborated in the next chapter. As the briefest of introductions, Broken Windows Theory holds that allowing ‘disorderly’ behaviour such as panhandling, graffiti or drunkenness to exist on the streets gives the impression of reduced social order. This then leads to crime of increasing seriousness and disrupts the enjoyment of the area by visitors and residents, damaging vibrancy and economic health (Kelling & Wilson, 1982).
IS THIS A ‘PLANNING’ CASE STUDY?

Discussing case study in terms of planning literature and theory is not straightforward, though at first glance it seems that it should be. I will start with Fainstein’s definition of urban planning as “the conscious formulation of goals and means for metropolitan development, regardless of whether these determinations are conducted by people officially designated as planners or not” (Fainstein, 1999, 250). She suggests that whether this planning results in a beneficial outcome “depends on the goals selected and the mechanisms through which policies are devised and implemented” (Fainstein, 1999, 250). This case study would seem to qualify as a planning case study as it examines actions taken by individuals (small ‘p’ planners) to shape the city, which produced outcomes that can be evaluated to see if they were beneficial. Indeed all this is true, but I find myself wrestling with this, as aspects of the process examined here are antithetical to what I associate with planning.

My planning education has coached me to think of planning as having both a process and a product and that each are important. Some theorists, such as Fainstein, prefer that “substance and procedure are...inseparable” (Fainstein, 1999, 265) while others, such as Forester, see a focus on process as a way to increase the likelihood of a beneficial and inclusive outcome (Forester, 2000). Still, regardless of the focus, there are things recognized as “planning processes,” whether they are well executed or poorly executed, inclusive or exclusive, executed by professionals or by others. The difficulty with this case study is the lack of anything I can comfortably categorize as a clearly planning process.

I recognize that planning by civil society organizations need not have formal planning processes. Indeed, this is at the heart of emancipatory community organizing (Friedmann, 2002, 106). As established by Fainstein’s definition of planning and Friedmann’s definition of radical planning—“political action by organized groups within civil society” (Friedmann, 2002, 106)—a protest movement by a civil society group is a planning action, even though these movements may lack more traditional planning processes. But this is of little use here, as I cannot group the actors in this thesis, the SSC and the DVIBIA, into civil society. If civil society “must be seen as standing in ‘opposition’ to the corporate economy, the sphere of capital writ large which...separated itself from civil society to become a distinctive sphere of action...” (Friedmann, 1998, 22) then a BIA and any other associations it creates are not civil society. Thus this case study is of an oddly positioned thing – a lobby process by private business interests that has definite planning results,
but cannot be evaluated in terms of its planning processes. They have “done” planning in terms of the legislative outcomes of their advocacy process, but there was no planning process in either a formal or radical sense. The lobby process is not, then, a planning process.

None of this is to say that the lobby process and the results are not of interest to planning or that planning ideas and theories are not applicable. This case study examines themes and outcomes of central concern to planning such as public space, justice, power and urban policy creation. In the next chapter I will set these themes in the contexts of the theories that have informed this study. Here I will set this case study in the context of power to demonstrate both why this case study matters and what I hoped to contribute through undertaking it.

POWER

Flyvbjerg calls attention to what he sees as a deficit in planning and policy theory, and this case study responds to it by trying to fill the need he describes. He writes, “What is lacking today in planning and policy theory is an understanding of relations of power, and understanding of Realpolitik and Realrationalität as opposed to ideal politics and ideal rationality, and understanding of actual as opposed to ideal processes of communication, and attention to the details that make or break plans and policies during genesis and implementation” (Flyvbjerg, 1998, 41). Through an examination of the success of the DVBlA’s discourse in creating an environment in which legislation of this kind is possible, this case study delves deeply into real communication, real politics and the “details that make or break...policies” (Flyvbjerg, 1998, 41).

This case study, in a number of ways, is a case study about power. But it is not interesting or surprising that a large BlA had more power than panhandlers. To be academically interesting it cannot be a question of “merely who has power and why they have it; the focus is on process in addition to structure” (Flyvbjerg, 2004, 293). This is therefore a study of both process and structure. The elements of structure will be addressed in the next chapter’s section on inequity, and here I will concern myself with the processes of power as played out in this case study. Here the “process” is the advocacy for the Safe Streets and Trespass Acts, which was largely a process of discourse creation in which power was harnessed to define problems and generate solutions. Flyvbjerg writes of how power operates:

...power does not limit itself to defining a specific kind of knowledge, conception or discourse of reality. Rather power defines physical, economic, ecological and social reality itself... Thus power seeks change, not knowledge. And power may very well
see knowledge as an obstacle to the change power wants... Power, quite simply, produces that knowledge and that rationality which is conducive to the reality it wants. Conversely, power suppresses that knowledge and rationality for which it has no use. In modern societies the ability to facilitate or suppress knowledge is in large part what makes one party more powerful than another (Flyvbjerg 1998, 36).

Exactly how the DVBIA formed the discourse will be treated extensively in Chapter 6. As stated before, the power possessed by the DVBIA is relevant but, of itself, not interesting. Through an examination of the successful use of this power the case study provides the opportunity to ask questions about why some narratives succeed in shaping public policy, why some fail, and why only some groups have access to powerful narratives. In this case study there are two kinds of power that the DVBIA had that the opponents of the legislation, such as poverty and civil liberty advocacy groups, did not have. As mentioned it had the more obvious power of money, organization and access to government. The more academically interesting and revealing power it had was its ability to shape the public discourse. I discuss this in the discourse analysis in Chapter 6 in terms of Stone’s theories of causal stories. The ability to present one’s causal story as the truth and have one’s own assessment of the problem accepted as true allows one to explain one’s own solution as the ‘rational’ choice. As Stone argues “Any bad situation offers multiple candidates for the role of ‘cause’... In the world of policy there is always a choice about which causal factors in the lineage to address and different choices locate the responsibility and burden of reform differently” (Stone 1989, 298). Stone recognizes that some causal stories have more appeal and some are almost doomed from the start, no matter how much rationality they possess. Simple causal stories of blame coupled with narratives of potential economic decline and urban fear are more appealing than complicated causal stories like the ones offered by those more inclined to address root causes of poverty or disenfranchisement. The ability to create causal stories is in line with Flyvbjerg’s position that “power defines reality.”

The only defense against this is rationality, which Flyvbjerg categorizes as the final defense of the weak (Flyvbjerg, 1998, 37), since often all the reason in the world does not matter in the face of power. This was certainly the experience of the British Columbia Civil Liberties Association (BCCLA), which argued against the legislation on the grounds of civil rights and fundamental freedoms. These are rational positions, but sadly not as intuitively compelling or publicly appealing as economic competitiveness or urban fear. Flyvbjerg writes that this “is the most important single characteristic of the rationality of power,... Power, quite simply, produces that knowledge and that rationality which is conducive to the reality it wants... Will to power is manifested in the ability to make one’s own view of the world the very world in which others live” (Flyvbjerg, 1998, 36).
Exploring why some causal stories succeed and why some fail is an important academic pursuit because the success and failure involve the remaking of the world in which others must live (Stone, 1998, 293). Sandercock suggests it is our duty as urban researchers “to deconstruct these discourses and provide counter discourses” (Sandercock, 2005, 216). This is especially true when we are confronted with the powerful narratives of urban fear to which we are all vulnerable (Sandercock, 2005, 215) and which seem to trump discussions of the rights of the ‘other’. By creating a narrative in which the panhandler’s presence alone is feared, the DVBIA’s narrative had the “intended policy consequences” (Sandercock, 2005, 215) of all narratives that portray groups as threatening; it led to an increase in regulation and control. Exposing the ‘inner-workings’ of the power in the DVBIA’s narratives is the contribution of this case study. While nothing can be done about the Safe Streets Act, I hope that when we again slide towards regulation of this kind the unpacking of the narratives offered here will help render them as constructions, not as the ‘truth’. Thus, by exposing the elements of their construction, as well as outlining the weaknesses of the arguments used to counter this legislation, those who oppose this style of legislation will be better armed and forewarned.

Beyond my own desire to use this case study to deepen my understanding of the issues that affect planning, I think this is an important case that merits study because of what it explores. I believe that the regulation of access to public space and the definition of ‘appropriate’ activities and ‘appropriate’ people are dangerous things to do. All regulation is about ideology (Mitchell, 1997, 316). These sorts of statutes limit the citizenship and the visibility of the vulnerable, and, consequently, make it easier to ignore their needs. Visibility and inclusion are essential to citizenship; narratives that justify the reduction of these require special attention. I am concerned by how a narrative so rooted in a lack of compassion can prove to be so compelling to the population at large.

Perhaps through a reliance on law and legal issues I have, to no small extent, been lured by the appeal of the rational in confrontation to the emotional narratives used by the proponents of the legislation examined here. Flyvbjerg calls rationality “part of the power of the weak” and offers this as an explanation for the appeal of Enlightenment thinking to “those outside power” (Flyvbjerg, 1998, 37). I have fallen so deeply into this lure of the rational that I even rely upon an Enlightenment philosopher, John Stuart Mill, in my analysis of the legislation itself. Flyvbjerg questions the use of Enlightenment inspired rational persuasion in the heat of battle (Flyvbjerg, 1998, 37), but the battle has already passed. In unpacking the narratives and causal stories used
to compromise the rights of the vulnerable, and indeed rights for all of us, I offer an understanding that can assist in the next battle over rights for the poor.

WHO IS A ‘PANHANDLER’?

Panhandlers are diverse as a group. Some panhandlers suffer from drug addiction, some are mentally ill and most are poor. The DVBIA contends that for some it is simply a lifestyle choice, and this is likely true of a very small minority. The group ‘panhandlers’ also contains others who likely think of themselves as distinct and self-defined based on culture as much as circumstance, such as ‘street kids’. Despite all variation, I will discuss them as a group identifiable by their apparent poverty. This ignores the percentage that see street life and panhandling as a choice, and I am aware of this. I hold to Munzer’s construction of the issue as it is to me the most clear and concise. He writes that most who panhandle do so because it is either their only source of income or a way to augment meagre income:

...it does not say that *all* panhandlers beg for defensible reasons. Some panhandlers may be able-bodied and employable, and beg because they enjoy the rhythm of street life and prefer asking for money to working for it. Other panhandlers may lie to induce passersby to give. There may even be some individuals who panhandle temporarily as a part of a prank or dare...However, because sustained begging in public spaces invites opprobrium and requires a good deal of effort, it would be implausible to claim that most panhandlers beg for unjustifiable reasons such as those just mentioned (Munzer, 1997, 5).

So I will treat panhandlers as a group defined by their poverty, despite these variations.

In addition to variations complicating their treatment as a group, they are also not seen as an identifiable group that can suffer discrimination under Canadian law. This is in part because “panhandling” is an action or behaviour, not an identifier of a group like race or even ‘the poor’ or ‘poverty’. There is also, however, difficulty in defining them as a group through their poverty. A section of the *Canadian Charter of Rights and Freedoms* (the *Charter*) protects “status groups” from discrimination. These status groups are categorized in Section 15 (1) of the Charter, which reads,

Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on by race, national or ethnic origin, colour, religion, sex, age or mental or physical disability (Taylor, 2002, 40).
Discrimination was defined in Andrew v. Law Society of British Columbia [1989] as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society (Taylor, 2002, 40).

The *Charter* can be expanded to protect groups not listed in Section 15 from discrimination through a legal test of “analogous grounds” (Taylor, 2002, 41). Analogous grounds are those which are similar enough to the ones listed in the Charter. The test for qualification as analogous grounds reads as follows:

...the thrust of identification of analogous grounds...is to reveal grounds based on characteristics that we cannot change or that the government has no legitimate interest in expecting us to change to receive equal treatment under the law. To put it another way, s. 15 [of the Charter] targets the denial of equal treatment on the grounds that are actually immutable, like race or constructively immutable, like religion (Taylor, 2002, 44).

But jurisprudence has not elevated poverty to an analogous ground, though it is often a characteristic of those seeking protection under the groups listed in Section 15. Whether one is willing to construct poverty as ‘optional’ and mutable, one would be hard pressed to argue that this is a status the government has no legitimate interest in seeing changed. Groups formed through shared circumstance alone cannot be analogous to status groups and are not protected from discrimination. Thus, panhandling is, according to Canadian law, an optional behaviour, and poverty is something suffered and regrettable but those who suffer “are not without options that can result in such change” (Taylor, 2002, 44).

Thus, discussing panhandlers as a group with evenly distributed characteristics is difficult. I also acknowledge that I am denying the construction of poverty as ‘optional’ under Canadian law when I discuss it as otherwise. When I do so I present structural economic reasons for my position. Here I simply present the opposing constructions to demonstrate that I acknowledge them. I also wanted to make clear that I understand the difficulties in discussing panhandlers as a group, but I am not alone in doing so (Munzer, 1997, Waldron, 1993).

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2 But it is also a behaviour that is protected by the Charter, it is ensured by the right to free expression. This will be discussed in Chapter 5 with a review of previous attempts to regulate panhandling in Vancouver.
CHAPTER 2: THINKING ABOUT THEORY; THEORIZING ABOUT HOW TO THINK

PUBLIC SPACE: HOW IT IS CREATED

Both the Trespass Amendment Act and the Safe Streets Act deal with behaviour in spaces, the former with behaviour in private and the latter with behaviour in public space. Public space is one of the reasons this case study attracted me. The analysis in Chapter 7 of this thesis will look extensively at how the Trespass Amendment Act changes the regulation of private space and how the Safe Streets Act limits the ability of the panhandler to move through urban public space. Here I would like to explore the importance of public space generally and position myself within the literature.

Geographical space is not, in any way that has meaning for urban planning, a pre-political concept (Blomley & Bakan, 1992, 662). As anything other than an emptiness or wilderness, it exists only because of human intent. Even spaces we often see as empty, such as an unused playing field, is imbued with values and social policies. The playing field speaks, perhaps, to the value of exercise or fresh air, the intent to create green or open space, the intent to nurture children in the city or, if poorly maintained, the absence of all these values. But urban spaces are a product of intent through zoning or permits, and of the legal classifications of public and private (Blomley, 2004, xvii). Space is not simply a physical presence or simply the “backdrop to political and social action but is, instead, a product of such action” (Blomley & Bakan, 1992, 687). As such, most social policies that liberate or constrain groups or individuals have spatial dimensions (Byrne, 1999, 111). Sandercock defines this kind of space as a product not only of social policies but more broadly of the social order. She calls this space “habitus” and writes of it,

Habitus is a field of social relations defined structurally, but that ‘field’ also has a spatial component, the spaces of the city, as well as the social spaces in which one feels ‘at home’, where we experience both a positive sense of belonging, as well as a sense of knowing where we belong, in the social order which is also a spatial ordering of the city (Sandercock, 2005, 206).

This is how I wish to explore space here, as the spatial representation of a social order. While most of us have the luxury of largely choosing for ourselves these spaces where we go, our choice...
is also something governed by law. Some laws govern where we go, through the creation of private spaces with the ability to exclude certain others, and some laws dictates our behaviour when we are in spaces, such as hospital quiet zones. In 1992 Blomley and Bakan wrote of a need for a more explicit relationship between critical geography and critical legal studies suggesting that both would benefit through a clearer understanding of how law contributes to the “spatiality of structures that constrain human action and social consciousness, with special attention given to the politics of race, class and gender” to erode the “law/society and law/space divides” that contribute to both law and space being considered pre-political (Blomley & Bakan, 1992, 665). They called the literature as it stood in 1992 “small but growing” (Blomley and Bakan, 1992, 668). This paper relies upon and includes itself within this literature, especially as it concerns the regulation of the urban poor, a field exemplified by theorists such as Blomley (1992, 2004), Mitchell (1997, 2006) and Staeheli (2006) from the geographic school and Munzer (1997) and Waldron (1993, 2000) from the critical legal school.

Blomley has answered his own call and is a major contributor to this bridging of geography and law. He analyzes the naturalized institution of private property in the urban environment in his book, Unsettling the City: Urban land and the politics of property (2004). He contrasts different conceptions of property, from the neoliberal exclusive ownership model to more expansive and collective understandings of property. He illustrates that ‘private’ is not a natural state, but is constructed. And having been imagined, not handed to us from on high, it can be re-imagined. Mitchell, like Blomley, approaches law from a geographical standpoint in his article “The Annihilation of Space by Law: The roots of anti-homeless laws in the United States” (1997). This article falls into the “death of public space” literature and examines the increasing whittling down of spaces available to the homeless by legislation similar to the Safe Streets Act. The article holds that the increasing pressure for cities to be competitive and attractive has led to a hyper-regulation of the homeless that amounts to their “annihilation” as they are increasingly not allowed to be anywhere. This position amounts to a critique of the neo-liberal city. This is a similar approach to that taken in the recent article “Clean and Safe? Property Redevelopment, Public Space and Homelessness in Downtown San Diego” (Mitchell & Staeheli, 2006). The article examines explicitly the relationship between inner-city redevelopment plans and the need to “clean up” spaces, which it does through the regulation of activity by the poor and homeless. It also explores the policing of these spaces by private security.
From the critical legal school, Waldron has the most in common with Mitchell as both his articles “Homelessness and Community” (2000) and “Property, Justification and Need” (1993) are concerned with the regulation of the homeless’ ability to be in public when they have no private alternative. “Homelessness and Community” uses a philosophical and utilitarian approach to analyze the legitimacy of legislation that regulates the homeless and the communitarian principles that often underscore it. In “Property, Justification and Need” he applies a critical legal and spatial approach to the institution of private property set against a theory of need. Munzer (1997) directly engages the spatial regulation model of the city famously proposed by Ellickson (1996) – that there be green zones where no misconduct is tolerated, yellow zones where modest misconduct is tolerated and small red zones where anything goes. By using the same legal and cost-benefit tools Ellickson himself employs, Munzer argues against both the constitutionality and the justice of this model, as well as its efficacy.

This thesis is explicitly concerned with how the Safe Streets Act and Trespass Amendment Act construct and target groups of the urban poor, panhandlers and the homeless, and how the laws then, in turn, limit their ability to be in space and interact with others. If, as David Harvey said, “geography is too important to be left to geographers” and if Lawrence Friedman was also right that “‘law’...is too important to be left to the lawyers” (both quoted in Blomley & Bakan, 1992, 661) then who better to delve into these issues than planners, who work at the crossroads of law and geography. We as planners, be it as researchers or practitioners, work at the moment when policies, laws and plans intersect with the lived experience of the city. This intersection is where this thesis case study resides.

PUBLIC SPACE: HOW IT IS POLITICAL

The Safe Streets Act defines where panhandlers may be and how they may legitimately interact with others. As well as defining and prohibiting “aggressive” panhandling behaviour, it constructs a “captive audience” clause to ensure that no one at a bus stop, Automatic Teller Machine (ATM) or pay phone need be bothered by a request for change that they cannot escape. In doing this, the Act reduces the political importance of public space and further disenfranchises an already vulnerable group. It does so by “space[ing]-out” certain groups of people “by virtue of their supposed ‘geo-legal’ location, and deny[ing] them the protection accorded other citizens” (Blomley and Bakan, 1992, 670).
In this case the protection denied to the urban poor is the ability to be seen in public and enjoy the most basic inclusion in public space conceived as a political space. Public space is a "space of sociality" which can be expanded or contracted (Mitchell & Staeheli, 2006, 144) and it is here, in public, where the most marginalized have the final option of a sort of 'protest by presence'. I share the sense public space has become:

...a battleground over the homeless and the poor and over the rights of developers, corporations and those who seek to make over the city in an image attractive to tourists, middle- and upper-class residents, and suburbanites. This work, and the political and economic practices it critiques...insistently raises the questions that Lefebvre (1996) clearly enunciated back in 1968: Who has a right to the city? (Mitchell & Staeheli, 2006, 144).

I agree with Dikeç that there are two common views of the relationship between power and space that are often cited. Dikeç finds neither useful, and I do not find them useful in this case. One is that "space is political because there are different power relations in space that shape the production of space and...sustain those power relations" and in the second "space [is] political because there are groups with different and sometimes conflicting interests trying to maximize their benefits" (Dikeç, 2005, 172). Both these arguments are true. But space is not political just because power is there. If power is everywhere everything is political, and the argument loses a specificity for the analysis of space in particular. The same occurs with the latter argument. If it is just about another set of competing interests, what makes space special and worthy of unique analysis? Both starting arguments "always already provide an answer to the question 'what is it that makes space political?' (for example, 'it is the power relations')" (Dikeç, 2005, 172). So Dikeç proposes a change in focus from the above positions to one in which

...space becomes political in that it becomes the polemical place where a wrong can be addressed and equality can be demonstrated. It becomes an integral element of the interruption of the 'natural' (or, better yet, the naturalized) order of domination through the constitution of a place of encounter by those who have no part in that order. The political, in this account, is signaled by this encounter as a moment of interruption, and not by the mere presence of power relations and competing interests (Dikeç, 2005, 172).

It is the merit of this moment of interruption that I hope to articulate over the course of this case study and analysis. Public space is critical as it is the only place that this moment of interruption can occur. Many other spaces in our lives insulate us from this moment of interruption of our naturalized order, and generally serve to protect us from the discomfort of the 'other'. It may not be the moment that Dikeç's "wrong can be addressed and equality can be demonstrated," but
without the moment, neither is possible. Without simple presence there can be no possibility of representation. Of course, being seen is not the same as “being represented as a part of a legitimate public,” but it is perhaps more fundamental that when “an individual or a group is excluded from public space, their needs can be ignored” (Kilian, 1998, 118). It is in public space and in that moment of interruption that one can either be made part of community or be made ‘undesirable’. The following theory, Broken Windows Theory, assists in making them undesirable.

**BROKEN WINDOWS THEORY**

The Broken Windows Theory was first articulated by George L. Kelling and James Q. Wilson in the March 1982 edition of the *Atlantic Monthly*. They argued that the visible evidence of a lack of care and attention, like piles of garbage or broken windows, reflected diminished community concern. Signs of disorder were likely to attract increased disorder, taking the neighbourhood from one with a problem with garbage to one with an open drug market, as criminals would assume there was no vigilance there and social controls are weak in this location. According to the theory, both abandoned vehicles and disorderly behaviour from ‘derelict’ human beings had the same eventual effect and sent the same signals of diminished social controls. They write, “We suggest that “untended” behaviour also leads to the breakdown of community controls” (Kelling & Wilson, 1982, 31). They specifically suggest that panhandling is, in effect, a gateway offence, leading an area down the slippery slope to violent criminality:

> The citizen who fears the ill-smelling drunk, the rowdy teenager or the importuning beggar is not merely expressing his distaste for unseemly behaviour; he is also giving voice to a bit of folk wisdom that happens to be a correct generalization – namely, that serious street crime flourishes in areas in which disorderly behaviour goes unchecked (Kelling & Wilson. 1982, 34).

Kelling and Wilson’s nine-page article outlining both a social theory and policing model has inspired urban policing and attitudes tremendously. Its inspiration for the policing changes in New York and other cities around the world has been well documented. Smith describes Giuliani’s assault on the rights of the urban poor in order to “clean up” New York City. This is Broken Windows as a policing practice embodied in the New York City Police document “Police Strategy No. 5” and exemplified at its harshest by Zero Tolerance Policing (ZTP). ZTP is the enforcement of laws against ‘lifestyle crimes’ that are thought to interfere with the quality of life of those who witness the offence. MacLeod (2002) transferred this language of analysis to
Glasgow, concluding that, while Glasgow is not quite New York City, the same ‘entrepreneurial strategies’ that drove the ‘clean up’ in New York are evident there, along with a Broken Windows inspired tendency to call for the enforcement of ‘moral order’ on the streets. Innes (1999) takes a transatlantic approach by comparing ZTP implementation by police departments in both the United Kingdom and the United States.

All three are informed by attaching the rise in these policing drives to “clean up” the city to the increasing influence of neoliberal constructions of the entrepreneurial city. I agree with this intermediation of the relationship between city competitiveness and moral regulation. However, my analysis of Broken Windows will differ somewhat from that provided by Smith, Macleod and Innes. I will be treating it not as a policing approach, but as a legal construction that dictates “appropriate” behaviour by unrealistically portraying the behaviour of the poor as optional and constructs both harm and consequence in a way that offends legal principles of proportionality.

Broken Windows Theory-inspired strategies are often connected to neoliberal constructions of the city in which the city is not valuable because of a favourable geographic location, for example, but instead because the city is commodified. The city is rendered an “economic subject” and is thought of and regulated in terms of its competitiveness “in the world economy of cities” (Osborne & Rose, 1999, 755). Mitchell encapsulates Broken Windows Theory when he writes of cities where “economic logic comes together with language of morality to recreate the public sphere after an image of exclusivity” which is motivated largely by aesthetics (Mitchell, 1997, 306). A city governed by aesthetics, I would argue, threatens citizenship.

CITIZENSHIP

Part of the analysis that will follow in Chapter 7 will concern the disappointing legal interpretation of rights by the Safe Streets Act. The rights examined there are contained in the Charter and are legal rights. Here I would like to turn to a more “planning” notion of citizenship and discuss how citizenship is offended by this law. This returns us to civil society, constructed by Flyvbjerg as having “an institutional core constituted by voluntary association outside the sphere of the state and the economy...The fundamental act of citizenship in a pluralist democracy is that of forming an association of this kind.” But what of the citizenship of those who do not form these associations? Friedmann articulates the barriers to social power or engagement as
consisting, in part, of defensible life space, financial resources, surplus time over subsistence requirements, instruments of work and livelihood and knowledge and skills, all of which feed into and interact with social networks and social organization (Friedmann, 2002, 150). It is very likely that the majority of panhandlers on Vancouver’s streets lack some or most, if not all, of these preconditions for social engagement and the citizenship that Flyvbjerg constructs.

Much of the discussion of the Broken Windows Theory can be tied to a construction of citizenship, though it is one in which citizenship rests in the individual alone. That individual can claim the rights of citizenship only through a fulfilling of the obligations of citizenship (Ellickson, 1996, 1178-1179). I contend that this is a difficult equation to apply to the severely disenfranchised and that often those who espouse Broken Windows Theory “readily impose obligations of behaviour on the poor but there is no equivalent discussion of the obligations of the rich” (Byrne, 1999, 111). It is not a question of redistributing wealth to achieve citizenship for all. Material inequality will always be with us, but “what we must never tolerate is a contemptuous disregard for the qualities of social and political life, which is the sphere of freedom” (Friedmann, 2002, 114) and, I suggest, is also the sphere where citizenship is practiced. The truncated citizenship of the poor can be characterized as a kind of “anti-citizenship” which is assigned to those who are seen as a

...threat to the project of citizenship itself. The emergence of the notions of exclusion to characterize those who previously constituted the social problem group defines these noncitizens or anticitizens not in terms of substantive characteristics but in relational terms; that is it is a question of their distance from the circuits of inclusion into virtuous citizenship (Osborne & Rose, 1999, 52).

Citizenship, while resting with the individual, is a kind of power embedded in the larger social order in order (Byrne, 1999, 25). It is this embedded citizenship, and how it is embedded, that provides a tool for the analysis of a “good” local citizenship contrasting with the characterizations of citizenship created by the Safe Streets Act, which will be explored in this thesis.

The basic condition of local citizenship is visibility in public space, as was stated earlier; those who are not seen can have their needs and rights easily ignored. While visibility is certainly not enough to claim citizenship, it is a necessary, if not sufficient, condition. The connection between visibility and rights will be articulated over the next sections. First I will define “good” as a comparator for the unsettling nature of this legislation.
THE GOOD CITY

The legislation that concerns this thesis is provincial legislation, not a municipal by-law. However, it was driven by a lobby rooted in downtown Vancouver and the urban environment is where it was intended for implementation. Thus, while Vancouver’s city council may not have supported the legislation, the passing of it shapes the kind of city Vancouver can be. In Chapter 7 I discuss this legislation in terms of the rights it both supports and compromises. If I will use rights to explore the damage done by the legislation to both a population and the urban fabric, it seems only fitting to also use rights to define what is “good” in the urban environment. To do this I will turn to the concept of “human flourishing” as articulated by Friedmann.

Friedmann defines this right to human flourishing as the most fundamental of human rights, though it has never been acknowledged as such (Friedmann, 2002, 110). He writes, “Every human being has the right by nature, to the full development of their innate intellectual, physical and spiritual capabilities in the context of wider communities” (Friedmann, 2002, 110). It is in those last five words where the heart of my argument against the Safe Streets Act rests. Friedmann’s construction makes clear that “the potential of human flourishing can only be realized in the context of wider communities. So right from the start, we posit humans...as essentially social beings” (Friedmann, 2002, 110, emphasis mine). It is through access to society and communities that any basic human right becomes possible. The sociopolitical sphere is Friedmann’s primary focus, as this is where the minimal conditions – “political, economic, social, physical, and ecological – for human flourishing can be met (Friedmann, 2002, 111). He links the good city to rights and citizenship through a form of “citizen’s rights...the claims that local citizens can legitimately make on their political community as a basis for the flourishing of all its citizens” (Friedmann, 2002, 111)

The Safe Streets Act and the Trespass Amendment Act offend both the idea of what citizens can legitimately demand of the political community, and the simple basis for human flourishing. They offend both in the very same motion – they demand of the political community the legal reduction of the ability of the already disenfranchised, the already non-flourishing, to participate in the wider community. Panhandlers suffer multiple barriers to participation in the community. I constructed their entry into the community earlier as a sort of protest by presence. While some panhandlers may be able to organize themselves politically, most do not. The ability to be and act in public in a way not dangerous to others is where most of us have our political selves begin,
but for this group it may be where their political self begins and ends. Thus public space and the public sphere are, in many ways, the same thing for panhandlers, the homeless and the desperately poor who do not have access to the necessities beyond which we can indulge ourselves in active citizenship. If they lose public space they lose the public sphere.

**THE PUBLIC SPHERE**

If the public sphere is where politics and the political happen, then who is the public? The public is everyone in theory and less than everyone in practice. Fraser presents ‘public’ as having four understandings, 1) state-related, 2) accessible to everyone, 3) of concern to everyone, and 4) pertaining to the common good or shared interest (Fraser, 1993, 128). Exactly what is of interest to everyone and what is the common good is supposed to be sorted out through democratic contestation. There will be widely varying ideas of whether one’s pet peeve should be of concern to all, and if one’s bright idea does indeed serve the common good. Ideally, no ideas are off limits and “what will count as a matter of common concern will be decided precisely through discursive contestation” (Fraser, 1993, 129). Those who do not fit well within the dominant construction of “everyone” will form “subaltern counter-publics” which defy the claim of the Habermasian, bourgeois public sphere’s claim to be ‘the’ public sphere (Fraser, 1993, 112-123). Over time and through activism, these subaltern counter-publics, having emerged in protest to “exclusions within the dominant publics...[will] help expand discursive space” (Fraser, 124). There are multiple examples of this such as women’s suffrage, the civil rights movement, accessibility rights for the physically disabled and anti-discrimination laws for gays and lesbians. There are also current examples of movements that are simmering and pushing on the edges of the formal discursive space, which has not yet fully made room for them, such as migrant workers and illegal immigrants.

Some of these groups share barriers to political action with panhandlers. They have overcome this through organization and have often had assistance from planners, who are often just those better off and more able to devote time and knowledge to the cause. But two things distinguish these successful groups from panhandlers in Vancouver and are at the core of the reason the emerging groups are succeeding. First, the successful subaltern counter-publics are groups. ‘Panhandlers’ is almost useless as a category, except for legislative purposes, as it describes an action that can be constructed as optional. Chapters 6 and 7 will devote a great deal of attention
to how this is done. Being of an ethnic group, being a woman or being disabled is not optional. Being poor, according to many, especially combined with behaving ‘inappropriately,’ is perfectly optional. This may be the remaining barrier for the emerging groups mentioned above who face accusations that do not ‘have to be’ where they are – for example, picking fruit or sneaking across borders. All groups have variations within them. I have tried to address the fact that some panhandlers are homeless, some not, some are mentally ill, some are not. I treat them as a group because they are targeted as a group.

Aside from their non-optional status the above groups succeeded (or are beginning to succeed) when they made themselves visible. Marches, demonstration and protests at all levels, from dramatic civil rights protests in Birmingham to small acts of protest at Southern voting booths that have gone unrecorded, rendered these groups visible and forced the dominant public sphere, either to let them in or explicitly keep them out – either way, their claim to join would have to be confronted. This increasing visibility is what is so promising about the emerging immigrant and worker struggles. This visibility, which I said may be the beginning and end of the political life of the panhandler, is what is being eroded by the legislation. With this loss of visibility comes a loss of the potential for Dikeç’s moment of interruption in which “wrong can be addressed and equality can be demonstrated” (Dikeç, 2005, 172). Visibility and the possibility of someone more in a position to be politically active being roused to the cause are both diminished. The potential for “counter-planning,” citizen movements to fix their environment (Friedmann, 2002, 98), is lost.

By legislating panhandlers to a realm outside the public and outside the community we have robbed them of the right to “multipli/city,” a primary good Friedmann describes as “an autonomous civil life substantially free from direct supervision and control by the state. So considered, a vibrant civil life is the necessary social context for human flourishing. Multipli/city acknowledges the priority of civil society...and it is for its sake it can be said to exist” (Friedmann, 2002, 112). So, through this legislation we have not only robbed the panhandler of part of what may be their only political action – being present and interacting with ‘us’ – but we have also chipped away at multipli/city for everyone. By eroding the rights of some we create a diminished public sphere for us all. By giving into what Mitchell describes as an “ideology of comfort” (Mitchell, 1997, 325) and enacting Broken Windows Theory-inspired legislation we have clearly valued comfort and ignorance over an honestly inclusive and possibly uncomfortable
public sphere. I agree with Mouffe that there is an increasing tendency to try and legislate away agonistic possibilities and that she is correct when she writes,

it is increasingly the legal system which is seen as being responsible for organizing human coexistence and for regulating social relations. Given the growing impossibility of envisaging the problems of society in a political way, there is a marked tendency to privilege the juridical terrain and to expect law to provide solutions for all types of conflict (Mouffe, 2005, 93).

When we indulge in legislation like the Safe Streets Act, the panhandler is more vulnerable and the political, defined by Mouffe as “the antagonistic dimension that is inherent in all human society” (Mouffe, 1995, 262-263) loses some of its transformative potential.

COMMON GOOD

What happens when the democratic deliberative forces of society are aroused by a special interest group with a distinct dislike for a minority group? The DVBIA was able to call upon the security narrative and the competitive city narrative to demonstrate that it had the ‘common good’ of all of ‘us’ in mind. The provincial government accepted its assessment and changed its mind to pass legislation it originally opposed. This case study explores two failures. The first was that a definition of the common good was not produced that supports the principles of the good city and human flourishing. But it is the people of a city or province who “must argue out among themselves, time after time, in what specific agendas of action the ‘common good’ of the city may be found (Friedmann, 2002, 108). This will not always be a result that pleases all of us, and sometimes it may be a result such as the one in this case study, a result that pleases many but truly benefits none.

Theorists like Friedmann retain a faith in this process of hashing out the common good because it is supposed to have a fail-safe mechanism in the state. This is the second failing. Friedmann writes that “cities are not always hospitable, and mutual tolerance of difference must be safeguarded by the state so long as certain conditions are fulfilled: respect for human rights and the assumption of the rights and obligations of local citizenship” (Friedmann, 2002, 113). This legislation was not something the City of Vancouver could stop; it was outside its jurisdiction, though it was vocal in opposing it. Still, I do not think it is a stretch to extend the responsibility for protection discussed here to higher levels of government. The province failed to protect the
minority from the intolerance and tyranny of special interest, the coalition it gathered and the public support that it did indeed win.

To me the interesting question is not why the state failed. That disappoints me, but it is not in itself interesting that the state gave in to private lobby interests. The interesting question for me is how a call for legislation that is so rooted in a lack of compassion proved to be so compelling. This will be discussed in the discourse analysis of Chapter 6.

INEQUITY

In the previous chapter I quoted Flyvbjerg that in a study of power “the focus is on process in addition to structure” (Flyvbjerg, 2004, 293). This is therefore a study of both process and structure.

If the process was one of discourse creation, the structure of power here has two elements which frame the discussion. The first is, again, the powers held by the DVBIA. It had money, access to government and the more interesting power of access to powerful narratives to shape a convincing causal story. The second is a question of structural powerlessness that limits the action of the panhandler and the poor. Structural inequity and system-wide powerlessness can plague groups of individuals, and this is not dependent on their identification as an analogous group under Canadian law. To explore the contribution of the Safe Streets Act to the existing powerlessness of those targeted by the legislation, I will rely on Young’s construction of the difference between pattern and process of discrimination. Patterns and processes that are unjust “involuntarily position people, constraining some more than others and privileging some people more than others...these structures produce injustice insofar as they afford people different degrees of opportunity to achieve well-being” (Young, 2001, 7).

To uncover discrimination’s patterns and processes we first construct groups using categories of...generally recognized social positions we already know have broad implications for how people relate to each other – class, race, ethnicity...” (Young, 2001, 15) Then by comparing the average status of these groups we may find a pattern of inequality, with patterns defined as “the mapping of the distribution of some good across all social positions at a particular time (Young, 2001, 15).
But finding a pattern is not enough to establish injustice; it could be an irregularity or a matter of group choice not to participate in that good (are those who adhere to strict Amish principles experiencing injustice if they have less access to public transportation than the rest of us?). Legitimately to make a statement of injustice, we must tell a “plausible structural story” to explain the production of these patterns (Young, 2001, 16). Each pattern offers only a fraction of what we need to compile a case for injustice, which lives in

...an account of generalized social processes which restrict the opportunities of some people to develop their capacities or access benefits while they enhance those of others. A large class of social inequalities can be judged as unjust because they violate a broad principle of equal opportunity: that it is unfair to some individuals to have an easy time flourishing and realizing their goals, while others are hampered in doing so (Young, 2001, 16).

These structural relations and processes restrict individual’s flourishing in ways they are not responsible for, and it is not a mere matter of material inequity. These constructions of injustice take institutional organizations and social practice as their object more than distributive patterns per se” (Young, 2001, 16). Identifying accounts of injustice is just one part of the researcher’s job; another and perhaps more important part is “to be able to give an account of how social processes produce and reproduce these patterns” (Young, 2001, 2). I hope to do this through narrative analysis to expose the construction of the panhandler. If the panhandler is constructed as self-indulgent, lazy or threatening and his or her poverty is constructed as optional, stories of blame and punishment can more easily be told about them. This takes the form of a social process creating a group that can be treated without consideration of their basic civil rights.

JUSTIFYING LAW AND GEOGRAPHY

Planning is joyously interdisciplinary. It is what attracted me to planning and, along with its ability to affect change, it is what continues to intrigue me. Friedmann suggests that some of the disciplines that could benefit from a background in planning include “ideological work: theory, social critique, policy work...legal work; media and publicity work” (Friedmann, 1998, 30). I offer the inverse, that my planning education has benefited from this case study’s concern with law, the shaping of discourse in the media, and social and policy critique. The interdisciplinary nature of the case study has given me the opportunity to explore these areas and give myself the beginnings of an education in them. By addressing law through legal critique, public space through critical geography, neoliberalism’s influence on the urban through political theory, and
philosophy through philosophers, all framed by an evaluative planning rubric of the good city, I have hoped to emulate the best of this aspect of planning.

In summary, I want to return to the literature I used to introduce this study, the literature concerned with the connections of geography (a close cousin of planning) and law. This case study centres on what Blomley and Bakan initially called for as an area of focus; the construction of space made when “legal actors designate boundaries between public and private spaces...or consider questions of personal mobility or spatial equality” (Blomley & Bakan, 1992, 670).

To compare the potential for mutual learning from the disciplines of critical geography and critical legal studies, Blomley and Bakan present two quotations, the first from Lefebvre on space and the second from Hutchinson on law:

Lefebvre –

Space is not a scientific object removed from ideology or politics; it has always been political and strategic. If space has an air of neutrality and indifference with regard to its contents and thus seems to be “purely” formal, the epitome of rational abstraction, it is precisely because it has already been occupied and used, and has already been the focus of past processes... Space has been shaped and moulded from historical and natural elements, but this has been a political process. Space is political and ideological. It is a product literally filled with ideologies (in Blomley & Bakan, 1992, 667).

Hutchinson –

For CLS [Critical Legal Studies], critique must begin and proceed with the operation of law as ideology... For CLS the rule of law is a mask that lends existing social structures the appearance of legitimacy and inevitability; it transforms the contingency of social history into a fixed set of structural arrangements and ideological commitments... [T]he status quo and its intellectual footings, far from being built on the hard rock of historical necessity, are actually sited on the shifting sands of social contingency (in Blomley & Bakan, 1992, 667)

Both quotations call attention to what is central to the analysis of this thesis, all of which is positioned in the framework of access to a just and political public space, and the preservation of both legal and human rights. Both quotations confront the seeming neutrality or ‘given-ness’ of the environment, legal or spatial. Through the analysis to follow I will use both law and space to show that this is indeed erroneous. Through analysis urban researchers can contribute to both the understanding of these constructions and where their power comes from. In doing so we can begin the uphill battle of offering alternatives.
CHAPTER 3: METHODOLOGY

HINDSIGHT ON MY FORESIGHT; PLANNING A PLANNING THESIS

I set about this research project with a number of assumptions about what I needed to do successfully to complete it. I would need to read. I would need to read quite a bit. This is how I had written all papers up to this point, and it is again where I started. I read articles dealing with this type of legislation in other jurisdictions, I read political theory so I could know what I meant when I said “neoliberal,” I read the DVBIA and SSC’s documents and press releases to try and construct an understanding of their position. As I tried to develop a more sophisticated position than “this type of legislation disconcerts me,” I turned to legal theory to try and attach the language of rights and the law to my discomfort. I knew I wanted to conduct a Critical Discourse Analysis (CDA). I was intrigued by the degree to which this case study topic is about telling stories; I set about reading CDA methods that would allow me to focus on those stories and looking for interesting voices to include. I knew I wanted to engage the legislation directly and I read to gather the tools to do so. What I did not do, until I absolutely had to, was talk to people. I knew I would do interviews. Indeed, I wanted to do interviews, but I put it off as long as I could. I didn’t want to bother them until I knew what I was talking about, and I did not want to confuse matters for myself until I was comfortable with what the ‘matters’ were in the first place.

I see now that this is a missed opportunity. I am very happy with the interviews I did conduct and I suspect that the attempt to collect more information would have expanded this case study beyond a reasonable size for a Master’s thesis. Nonetheless, I am left wondering what would have happened had I engaged people sooner. This engagement is the difference between the research method I had used in the past to produce papers and the process of producing a living, breathing case study. I am rather stunned I did not see this when I began, but I am very pleased I have come out of the process with this as a lesson.

ASK NOT WHAT YOUR CASE STUDY CAN DO FOR YOU... OR SHOULD YOU?

The case study always had an intention behind it. I was not simply recounting a process or a state of being, I was not just exploring something to see what I could learn. I wanted to offer a
carefully constructed evaluation of something that I saw as troublesome. I wanted to look at the legislation as the result of an imbalance of power. Given this, I turned to Flyvbjerg, the first planning theorist I ever read, to understand how research of this kind is carried out.

What appealed to me most was Flyvbjerg’s construction of phronetic planning research, which he describes as not “methodological imperatives” but “possible indicators of direction” (Flyvbjerg, 2004, 283). The first step in conducting phronetic research is letting go of the rationalism that informs many schools of planning research. This was not difficult in this case, as there was no ‘rational’ planning process and the narratives presented as transparent by the DVBIA and SSC are, as I will show over the analysis, clearly ideological. Flyvbjerg’s second requirement for phronetic research is that “problems that matter to groups in the...communities in which we live should be addressed, and this should be done in ways that matter.” His final requirement is that “the results of the research should be communicated...to fellow citizens and their feedback...listened to” (Flyvbjerg, 2004, 284).

Flyvbjerg asks that researchers into planning and power offer back something that can benefit society, that can help mitigate the “so what” of so much research (Flyvbjerg, 1998, 123). I agree this is useful, admirable and necessary, and thus its appeal to me. I came to planning from history and political science in order to do research that mattered. Nonetheless, the case study I chose is historical, somewhat abstract and without a “client,” so to speak. I worried that it was indulgent, that it was all about what I wanted to learn. This would be a fine thing for a history thesis, but planning research is to offer something different. The previous chapter made my case for how the ideas contained herein are a contribution to the literature, but its contribution to community is dependant on the ideas contained within it being exchanged. This engagement was beyond the scope of the thesis. Other than through conversations I may have and the odd person who may read this, the exchange required of phronetic research seemed impossible and I questioned if what I produced could be valid as a study of power without it.

I was comforted by the quote from Robert Stake that research is not intended to “necessarily map and conquer the world but to sophisticate the beholding of it” which embraces both the limits of research and its value (Stake, 1995, 43). While this may seem to be in contradiction to Flyvbjerg’s idea that research is to offer a path of action, I think Stake captures nicely the limits of a Master’s thesis of this kind. This quote took some of the fear out of research put there by Flyvbjerg. To me, Stake’s idea that research need not “necessarily map and conquer the world”
[emphasis mine] means that it still can conquer and change the world, but the aim can also be more modest and appropriate to an historical Master’s thesis than the phronetic standard that Flyvbjerg suggests. It would still have value.

Flyvbjerg asks that researchers use four questions to frame their research. These are: 1) Where are we going with planning? 2) Who gains and who loses, and by which mechanisms of power? 3) Is this development desirable? 4) What, if anything, should we do about it? (Flyvbjerg 2004, 290). I have used these questions as guiding thoughts as I considered what to examine in this case study and have used them explicitly to frame my conclusions. But I confess a concern with the last question of ‘what is to be done’ with what this research uncovers. As I have said, I offer a few tools and insights better to arm ourselves as we continue to fight against a world that diminishes human flourishing. But is this enough?

My honest answer to ‘what am I going to do about it’ is that I am going to become a planner. I am pleased with the knowledge and skills that I have acquired through my planning education and through this thesis, with which I explicitly sought to widen that education. I will use my education over time as a foundation for the work I will undertake when I am more in a position to act and effect change. It is appropriate at this level that I dedicate most of my energy to learning to think critically about planning, to learn to spot and deconstruct the use of power in this case and the production of knowledge.

It is through this framing that I put this worry largely behind me. My case study would be my contribution to the call to move planning research “beyond the simple dichotomy of actors and structures” and explore how the local can “interact with larger, unacknowledged structures” (Flyvbjerg 2004, 300) such as the competitive city narrative and stereotypes about ‘kinds’ of people and ‘appropriate’ behaviour. Somehow, in worrying about the ‘so what’ factor I had forgotten that the study of planning can sometimes be just as important as the doing of planning.

METHODS

Why a Case Study?

My project is a single-case study asking the ‘how’ and ‘why’ of recent events (Yin 1994, 9). In defining it this way I have considered Yin’s three questions or conditions for determining if a
case study is applicable: “a) the type of research question posed, b) the extent of control an investigator has over actual behavioral events and, c) the degree of focus on contemporary as opposed to historical events” (Yin, 1994, 4). ‘How’ and ‘why’ questions are generally best explored by case study as they “deal with operational links needing to be traced over time, rather than mere frequencies or incidence” (Yin, 1994, 6). ‘How’ and ‘why’ get at the root of what I am trying to uncover – how the legislation came to be, how those it regulates were portrayed in the media, why it was a successful lobby campaign, why other voices failed, and how are we now – better or worse for the enactment of the legislation? As for his second condition of the researcher’s control of events, I obviously had none as this was not a laboratory experiment, but an observation and analysis of something past. This leads directly to the last condition, the historical or contemporary nature of the study. While Yin suggests that case studies are best suited when a “‘how’ or ‘why’ question is being asked about a contemporary set of events over which the investigator has little or no control” (Yin, 1994, 9) I nonetheless chose a case study format for my historical study. While the passage of the legislation and the debate beforehand are historical events, I did have access to participants, which can still allow a historical event to be approached as a case study (Yin, 1994, 8). A case study, as distinct from a history, has the added strength of allowing for the use of documents, artifacts and interviews instead of strictly documentary materials (Yin 1994, 8).

I used two methods to generate data for the thesis – interviews and the collection of a corpus for the Critical Discourse Analysis (CDA). I used this combination to reduce the possibility of misinterpretation over the course of the CDA. It was possible that I could have read ideological intent into the documents examined in the CDA that were incorrect and not the intent of the author. In having the opportunity to interview two of the authors whom I examined in the CDA, I was able to ensure that the information given in the interview supported the CDA outcomes.

**Interviews**

In choosing to do interviews, after I had moved past text-based research, I considered the three factors cited by Lewis (2003): 1) *The nature of the data sought*. Interviews provide for dialogue and the sharing of personal experience or perspectives. They allowed for the collection of an oral history of the DVBIA’s involvement in the process of advocacy that was more subtle than what could have been constructed from press releases. I also wanted to access the opposing voices from the debate. As these voices were often overwhelmed in the media, interviews were the best
place to discover their perspective. 2) *The subject matter.* The essence of what this case study tried to uncover was how knowledge is collected, turned to advocacy and how power structures were built to ensure success. This can only be done through dialogue, due to the complexity of the processes and the “behind the scenes” nature of building power. I knew the DVBIA had been successful, but I did not fully understand why. I knew the BCCLA had not succeeded in dissuading people, but I did not fully know why. 3) *The research population.* It was unlikely that I would have been able to gather these busy people at a specified time for a focus group. Even though the opportunity for those who differ in opinion to engage each other directly would have been interesting, it was impractical. I was also hoping to encourage the interviewees to speak both as representatives of their organization’s position and as individuals. The latter may have been more difficult for them to do in a group situation.

**The Interviewees**

I conducted interviews with key people only, rather than trying to gain a sweeping understanding of how people participated in this process. There was a generous amount of publicly available documentation of this process, such as newspaper articles, press releases, newsletters from participating organizations and annual reports. Thus the interviews did not inform the research at a basic level, but served to personalize and broaden the information collected elsewhere.

By collecting stories through interviews with David Jones of the DVBIA and Kathi Thompson of the SSC, I hoped to be able to answer questions about how the DVBIA sees itself, what its interaction with the City was like on this issue, and how it formulated its worldview about what policy action was necessary and why. I was interested in this internal narrative of the DVBIA and how it constructed the problem and solution. This fascinated me as I find the Broken Windows Theory-based solutions it advocated very disturbing. Yet I am also quite sure that the DVBIA is not made up of monstrous, compassionless individuals who do not care about people less fortunate. What was it then about the ideas of the *Safe Streets Act* that made it so appealing? Did the DVBIA see flaws, despite the fact that it advocated the legislation as a solution to the problem it saw? And, above all, as business gains more of an explicit role in broader areas of planning, how do planning ideas transfer among these groups, and where do they get their planning knowledge?
Through the interviews with Mr. Jones of the DVBI A and Ms. Thompson of the SSC, I was also seeking ‘proof’ that my CDA had correctly constructed the arguments of their association from the public materials that were available to me. These interviews gave me an ability to examine the validity of my previous work.

Through my interview with Micheal Vonn of the British Columbia Civil Liberties Union (BCCLA) I tried to find an alternative voice that was rather lost in the media coverage of “aggressive panhandling” and tried to tease out the reasons its message failed to move enough of the population to prevent the legislation. The interview with Ms. Vonn had a second purpose as well. I had hoped that her background as a lawyer would assist me with the legal analysis I undertook, and it did. This legal component was one reason I chose the BCCLA as a representative organization; its critique of the legislation and mine were rooted in similar principles of legal justice.

I had also considered interviews with the organizations charged with implementing the legislation – the Community Policing Office on Granville and the Downtown Ambassador Program (which is funded and run by the DVBI A). Interviewing the police showed itself to be less than useful as the realities of enforcing this legislation emerged over the course of the study. The DVBI A was generous with me in providing access to data, but was reluctant to allow me to interview any of the Ambassadors, whom they employ.

**In-Depth Interviews**

I knew the interviews I wanted to conduct would be in-depth as I wanted to give as much opportunity for information, intended and otherwise, to emerge. In writing the interview guides and planning the interviews I was influenced by the suggestion made by Legard *et al.* (2003, 142-145) that there are six key features to in-depth interviews, which I kept in mind as I designed and executed the interviews: 1) *Structure is combined with flexibility,* ensuring both that the information I needed was collected but also that the interview is more conversational than survey-like. This allows the participant more room to speak. 2) *Interviews were interactive in nature,* which allowed for new questions and even topics to arise as we spoke. 3) *Probes were used to achieve a depth of response,* which was especially useful when my questions had been anticipated or answered before I could ask them. This is not a technique I employed early in the interviews, as some level of comfort is useful before asking for deeper revelations. 4) *Interviews are, ideally,*
Generative, and new ideas can be created both for the researcher and the interviewee as the discussion and interaction unfolds. This proved to be especially true given the historical nature of the case and the fact that the interviews gave the interviewee the opportunity to look back and reflect. 5) Data should be recorded in its natural form, so audio-taping was employed to ensure that I was able to be as engaged as possible, rather than hunched over a note pad, and that every word could be captured as spoken. 6) Interviews were conducted face-to-face, giving the most opportunity for trust and engagement to be created.

When I transcribed the interviews, I did not initially do a full transcription. I made a “time line” for each, noting the point in the interview where each theme or idea emerged so that I might see the pattern of the conversation. In all the interviews it became obvious that there were themes and ideas that repeated. These repeating themes were the ones I included in the thesis, as quotes or references, in order to provide illumination on the matter discussed or to verify what I had uncovered in my CDA. I felt confident in using repeated themes either to verify my work or to be presented as typical of a position. A single comment, while telling, did not seem as reliable given my desire to uncover the narrative structure of the debate on the legislation.

Narrative and Discourse Analysis

Words matter. Words are the roots of action, and when we define problems, with the specific use of one word and not another, we limit the possible solutions. Often problems and solutions are defined for us by others and delivered together. These messages appeal to us when they match or can change our values. In seeming contradiction to this, I also believe that actions speak louder than words. When words and actions match, we reveal what we truly believe. When they do not, we have used words to placate or pacify someone who disagrees with us, or to make ourselves feel better. Thus, in this case study I tried to tease out where words have matched action and treat this as the move beyond the narrative event. But I am equally interested in when words exist alone, uncoupled to action, as this can reveal just who is seen as needing to be placated.

Flyvbjerg proposes that, “What people actually do in planning is seen as more fundamental than either discourse, text or theory – what people say” (Flyvbjerg 2004, 296). In my case study what was said – through the public debate – was the action leading to the passage of the Acts. An intense examination of the discourse amounts to examining the ‘practice,’ not to avoiding it. I conducted a review of the written record of the public debate about “aggressive panhandling,” the
Safe Streets and Trespass Amendment Acts through newspaper stories, letters to the editor, press releases (such as those from the Safe Streets Coalition and the BC Civil Liberties Association), publications produced for the members of the DVBIA and Vancouver City documents such as the report from the Mayor’s Forum on Livability. Through a critical discourse analysis (CDA) I hoped to be able to unpack some of the messages that were used to generate the public debate and overwhelming public support, and the attendant political conversion, for the proposed legislation. Admittedly, the CDA is rather confined, as suits its role as one component of a Master’s Thesis. I took as a model the CDA system advocated by Norman Fairclough in his work *Discourse and Social Change* (Fairclough, 1992a). It provides not only a theoretically complete model for why CDA is useful and what its limits are, but is also the most clear in its explanation of how to undertake a CDA. I hoped to uncover the compelling elements of the discourse that won such public support. Fairclough’s particular model of CDA, its theory and its application, as well as my additions and modifications will be presented in Chapter 6, where I conduct the analysis.

Through advocacy the DVBIA participated in the construction of the understanding of who the panhandlers were in the downtown (and the province as a whole), what the impact of their presence was and what to do about it. I suspect that it is much as Flyvbjerg found in Aalborg when he wrote that one of the more interesting aspects of his work was examining the interpretations of the problems. He writes that interpretations are critical when one party has “the power behind the interpretations. The interpretation, which has the stronger power base, becomes Aalborg’s truth, understood as the actually realized physical, economic, ecological and social reality” (Flyvbjerg 2002, 360). These interpretations are where power lies, as “interpretation is not only commentary, ‘interpretation is a means of becoming master of something’” (Flyvbjerg 2002, 360).

Exploring the internal narrative will show how the DVBIA defined the problem and the solution, while examining external narrative and discourse in the media will examine how this was turned into a political strategy. A narrative can be converted to political strategy when it has some capacity to link itself to the shared experience and perception of many (Jessop 1997, 29). For me discourse is an essential part of linking the phenomenon Flyvbjerg describes as “...power producing the knowledge that serve[s] its purpose best” (Flyvbjerg 2002) to political success. However, Flyvbjerg represents Foucault as seeing discourse as not only a source of power but as “a hindrance, a stumbling block, a point of resistance and a starting point for opposing strategy” that not only reinforces power but “exposes it, renders it fragile and makes it possible to thwart it”
(in Flyvbjerg and Richardson 2002, 55). Essentially nothing can be done to undo the legislation in British Columbia and Vancouver. Nonetheless, by using CDA to unpack what makes this legislative sensibility so compelling for business and people in general, it may be possible in the future to propose alternatives or counter these arguments in ways that have more impact.

It is acknowledged that the DVBIA is made up of diverse individuals, some of whom may passionately disagree with the organization’s main message as presented in this case study. Still, as the position was presented as the public face of the organization, and my questions about disagreement within the organization were answered in the negative, it is treated as a unified position.

ROLE OF THE RESEARCHER

As planning is highly normative it is unlikely that a researcher will not have a position. To pretend otherwise seems dishonest. My theoretical understanding has brought me to this case study. My responsibility was, carefully and thoughtfully, to employ the research technique of “bracketing,” in which the researcher neutralizes her way of constructing meaning and value during the research process. In order to hear the stories being told I removed my values and listened for the interviewee’s own understanding. In this way I largely prevented my feelings about what was done from getting “in the way of what is empirically happening” (Flyvbjerg 2004, 296). Bracketing “enables the researcher to master a subject matter even when it is hideous” (Flyvbjerg 2004, 297). While “hideous” is a rather harsh description, I have chosen to study the political actions of an organization with profoundly different values from my own. I find legislation like the Safe Streets Act to be problematic, and I am not alone. This position is neither utterly personal nor idiosyncratic and is, as I explained in the previous chapter, a “common view among a specific reference group to which the planning researchers belong” (Flyvbjerg 2004, 291). Remaining neutral in order to collect the story as it was being told was a matter for constant attention.

SUMMARY

In the design of this thesis, the analysis is of two kinds. There is an analysis of the words spoken during the debate that lead to the Safe Streets and Trespass Amendment Acts and an analysis of
what that legislation, once enacted, means for the people it regulates and for all of us as a
community. While theorists from several disciplines have informed my study, the interviewees
are the experts on what they said, what they meant and how they now feel, both in looking back
on the debate and in seeing the impact of the legislation. I hope to have provided a good balance
between theoretically informed analysis, my own voice and the voices of those I interviewed.
CHAPTER 4: WHAT IS A BUSINESS IMPROVEMENT ASSOCIATION?

In this case study I present the DVBIA as an exceptional BIA. To demonstrate that this is the case, in this chapter I will compare it with several other Vancouver BIAs in terms of size, money and mandate. Size and money are rather objective criteria. The mandate of a BIA is a product of the self-image of the BIA and can deviate from the original intention for the creation of BIAs, as found on the Vancouver City web-site and the Provincial web-site. It is this expanded mandate that moves BIAs from planting flower baskets in their area to engagement in more traditional planning activities. How the DVBIA is particularly suited to expand its mandate will be examined extensively in Chapter 6.

WHAT IS A BIA, AND DOES THE ANSWER DEPEND ON WHOM YOU ASK?

In Vancouver, Business Improvement Associations (BIAs) are constituted by the City of Vancouver through powers given it under Sections 455 to 462 of the Vancouver Charter. Sections 456 onwards lay out the rules for the funding and collection of funds for BIAs, insurance requirements and other practical matters. I referred to the original legislation instead of just looking at BIA websites to read their “what we do” sections, as I wanted to try and see what BIAs were originally imagined to be by the Province versus their self images. What were they originally for? What were they supposed to concern themselves with and ‘do’ with the organization?

The Province, through the Ministry of Community Services, defines a BIA as:

A Business Improvement Area (BIA) is an area designated by city council in which businesses and property owners can finance effective marketing, promotional and revitalization programs for the entire area.

A BIA provides both the organized structure and the source of funds to enable local business communities to improve their commercial viability. Authority to create Business Improvement Areas is contained in the Local Government Act.3

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3 http://www.mcaws.gov.bc.ca/lgd/gov_structure/advisory_services/bia/index.htm
BIAs are envisioned as organizations self-funded through non-optional levies, collected by the City and distributed back to the BIA. Businesses would band together into BIAs for the purpose of carrying out “business promotion schemes,” which the legislation defines in Section 455 as the following:

(a) carrying out studies or making reports respecting one or more business areas,
(b) the improvement, beautification or maintenance of streets, sidewalks or city owned land, buildings or structures in one or more business improvement areas,
(b.01) the removal of graffiti from buildings or structures in one or more business improvement areas,
(b.1) the conservation of heritage property in one or more business improvement areas,
(c) the encouragement of business in one or more business improvement areas.

The City of Vancouver also explains BIAs on its website. It frames them in the following way:

A Business Improvement Area (BIA) is an area designated by City Council within which businesses and property owners can implement programs to increase the area’s profile and vitality. A non-profit association of property owners and business tenants is the vehicle by which these programs can be initiated. Through the BIA, area property owners and tenants can develop and implement a strategic plan to improve the area’s physical environment and promote its business.

**How does a BIA benefit the area?**

A BIA can effectively organize and finance area improvement programs that would otherwise be unavailable to area businesses. BIAs are a great vehicle for implementing programs aimed at tourism, promotions, business development, street enhancement, safety and security, research, and more.⁴

The City also offers on its web site a sample budget and a list of possible items that may be found in the budget. The list is reproduced here to demonstrate the kind of activities the City may anticipate a BIA undertaking.

**Typical Items in a BIA Budget**

1) Area promotion/marketing
   - Special events
   - Business directory
   - Tourist brochure
   - Parking coupons, maps
   - Advertisements
   - Street entertainment
   - Christmas lights
   - Flower baskets
   - Banners

⁴ [http://vancouver.ca/commsvcs/cityplans/bia/faq.htm](http://vancouver.ca/commsvcs/cityplans/bia/faq.htm)
2) Maintenance & Security
- Electricity for lights
- Watering flowers
- Graffiti removal
- Sidewalk cleaning
- Crime prevention programs

3) Public Relations & Communications
- Newsletters
- Meetings

4) Research/Consulting
- Market Studies
- Safety & security research

5) Administration
- Manager, events coordinator
- Secretary
- Summer students
- Rent
- Equipment
- Supplies and services
- Audit fees
- Insurance (public liability, directors)\(^5\)

The City describes its relationship with a BIA after its formation only once on the website: “The City has a continuing role assisting with contacts between the BIA and City departments, facilitating the annual funding process, and monitoring BIA budgets.”\(^6\) Other than the financial relationship, which is mandated by the Vancouver Charter, the anticipated relationship seems fairly limited. There is a lead City employee, Peter Vaisbord, who declined to be interviewed for this project, in charge of City relations with BIAs. He is the point of contact for the assistance with reaching the correct City department and sits on the Board of B.C. BIAs. Both the City and the Province seem to suggest from their websites that the BIAs are to be self contained and concern themselves with activities that promote and vitalize their immediate area. The relationship with the City seems to be imagined as one of the need for the services of a department, perhaps a matter of sanitation, parking meters, parade permits and questions about street furniture. The website of the City does not suggest one of the benefits of a BIA is to have a stronger collective voice with which to work with the City to improve plans for the area or to collectively engage with the City in any way.

\(^5\) http://vancouver.ca/commsvcs/cityplans/bia/samplebudget.htm
\(^6\) http://vancouver.ca/commsvcs/cityplans/bia/index.htm
I tried to get a sense of the possible match or mis-match between the City and Province perspectives on BIAs and the self-images of BIAs themselves. I looked at the websites for the BIAs on the downtown peninsula – Gastown, Yaletown, Robson Street and Davie Village. I will introduce the areas briefly for the reader not familiar with Vancouver. Gastown is the historic centre of town and faces the difficulty of being directly next to Vancouver’s ‘bad’ part of town, the Downtown Eastside. Gastown has gritty, inner city elements to its composition that its tries to mitigate to encourage the tourist trade that is heavily supported with t-shirt and knick-knack stores. But one advantage of the area is that it is fairly inexpensive, close to the centre and well stocked with beautiful old heritage buildings that have begun to appeal to young designers, fashion-forward furniture dealers, galleries and the start of artist and new-economy start-up led gentrification. Davie Village is the collection of small and largely independent stores along the length of Davie Street at the southern end of downtown. This is the centre of the city’s gay community and has bookstores and clubs that cater to that community as well as neighbourhood shops that support the general area. Robson Street is a shopping street populated by high-end chain stores and has a very ‘see and be seen’ image that keeps the streets crowded with people whenever the shops are open. Yaletown is the old warehouse district that served the old industrial economy that used to crowd Vancouver’s False Creek. Like inner city warehouses the world over, these have been converted to a sexy, trendy, wealthy neighbourhood with boutiques, restaurants, bars and new-economy activity. A review of the websites of other BIAs establishes that the DVBIA perceives itself differently than others:

GASTOWN BIA

The Gastown Business Improvement Society (GBIS) is taking a lead role in the revitalization of Vancouver’s premier heritage area. The GBIS is a non-profit organization representing Gastown property owners and business owners.

The GBIS provides a variety of programs such as safety patrols, maintenance crews, tourism services and serves as an organizer and catalyst for special events and the continuing revitalization of the neighbourhood.7

DAVIE VILLAGE BIA

A Business Improvement Association (BIA) is an association of business people within a specific district who join together, with approval of the City, to develop a program aimed at stimulating local business.

They join together in an ongoing effort to draw more clientele to their area by improving the attractiveness of the area and promoting it as a good place to shop, visit and do business.

7 http://www.gastown.org/programs/index.html
While a BIA arises from the retail and professional activities of a main street, it has a profound effect on the surrounding area. It serves as an economic and social anchor, helping to stabilize and revitalize the local community.  

**ROBSON STREET BA**

The RSBA is a non-profit business organization that represents a specific geographic area of Robson - the three-block stretch which is the main shopping and dining strip comprising approximately 200 businesses.

The RSBA was created by City Council at the request of local property and business owners in 1991. The Association is funded by a special municipal levy that is paid by all commercial properties in the area. The work of the Association falls into three main categories: 1. Advocacy - Acting as single voice with regards to issues of development, traffic planning, crime prevention etc.; 2. Street Enhancement - Enhancing the street through physical improvements; 3. Marketing - Promoting the area to both locals and tourists through advertising and special promotions.

**YALETOWN**

The Yaletown Business Improvement Association is a non-profit society with a mission to enhance its members' business opportunities by leading action to improve the Yaletown environment and to promote Yaletown as the place to trade and visit.

**DOWNTOWN VANCOUVER BUSINESS IMPROVEMENT ASSOCIATION**

Our Mission:

To champion a vibrant, healthy and diverse downtown.

Our Vision:

The Downtown Vancouver Business Improvement Association will lead in providing member-driven programs and services in the areas of advocacy, crime-prevention, marketing, cleanliness and beautification.

About Us:

Located in the heart of Vancouver's cosmopolitan business district, the Downtown Vancouver Business Improvement Association (DVBlA) serves a 90-block area that consists of 8,000 businesses, property owners and tenants - and attracts thousands of employees, tourists and shoppers every day. The DVBlA works on behalf of everyone who lives, works and enjoys themselves in downtown Vancouver, members, residents and visitors alike.

A dynamic association, the DVBlA is proactive in terms of programs to improve downtown, the promotion of area interests and attractions, public advocacy on

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8 http://www.davievillagebia.com/
9 http://www.rohsonstreet.ca/rsba/
10 http://www.valetowninfo.com/about/
11 http://www.downtownvancouver.net/work/mission.html

41
important issues, and hands-on programs to make downtown Vancouver cleaner, safer, more attractive and more hospitable for everyone.\textsuperscript{12}

The idea of advocacy added to the expanded vision of who is served by the DVBIA, not just businesses but “everyone” who lives works and plays in the area, begins to give an idea of a more extensive mandate for the DVBIA.

\textbf{SIZE AND MONEY}

BIAs all collect their funds in an identical fashion. The BIA sets the rate of levy; while there are several ways to do this all Vancouver BIAs used a dollar amount per $1,000 of assessed value for commercial buildings. This is collected by the City along with property taxes, and the owner of the building then passes the cost back to the business operators within the building. Obviously the more businesses in the BIA the more opportunity it has either to raise quite substantial funds or to keep the costs of individual businesses down by defraying them over a larger number of members. The dollar amount per $1,000 ranges widely in Vancouver BIAs. While not all BIAs list their rate of assessment on their websites, Yaletown BIA did a comparative list for the purpose of its 2004 application for renewal with the City and this will be taken as representative of the levies charged and assessed values. Though there may have been some change in some BIAs, I feel from the other data I could find that the relative differences between them are still accurately reflected by this data. The advantages of a complete set for comparison outweighs the advantages of an incomplete but slightly more recent set of data.

The Gastown BIA covers 118 properties, with a total assessed value of $164,146,434. With a BIA levy rate of $1.85 per $1,000 it is the Vancouver BIA with the most expensive rate of participation and has an annual budget of $304,000 a year. Davie Village has 57 properties with a total assessed value of $95,080,363, a levy rate of $0.78 and an annual budget of $74,379. The Robson Street BA does not use the word “improvement;” perhaps given its high-end shopping image it does not wish for the connotation. The Robson BA has 46 properties with an assessed value of $356,206,563, a BA rate of $0.89 and an annual budget of $316,827. The Yaletown BIA, with 681 properties, has the second largest BIA membership, though its total assessed value of $337,201,050 is still only third highest; it is behind Robson Street, which has the smallest number of properties but the second highest total value. Having a larger number of properties

\textsuperscript{12} \url{http://www.downtownvancouver.net/work/index.html}
allows the Yaletown BIA to have the second lowest assessment rate in Vancouver, charging its members a levy of $0.60 per $1,000 of assessed value, creating an annual budget of $201,113. The DVBIA is the largest BIA in all ways except its levy charge, which is the lowest. The DVBIA, covering about 90 blocks of downtown, contains 2,356 properties with a total assessed value of $5,638,117,569, allowing a small levy of just $0.32 to produce a budget of $1,800,000 a year.

It is not surprising that the total property value and general revenues of a downtown core BIA would outstrip more ‘neighbourhood’ BIAs on the downtown peninsula. But the DVBIA was not constituted at this size. It was originally constituted in 1990 as a BIA 36 blocks in scope, which generated a budget of about $705,000. The expansion in 1998 took its budget to $1.8 million, giving it the scope to expand its activities. This scope of ambition simply cannot be matched by any other BIA, no matter how much it may desire it.

PRIORITIES AND SCOPE OF AMBITION

I began this study because I was interested to explore the advocacy role of the DVBIA in the regulation of panhandling. This sort of regulation is an extra-economic activity amounting to a certain kind of social planning. This struck me as being rather far from what I imagined the mandate of a BIA to be. In this section I will compare how other downtown peninsula BIAs see their role, whether or not it includes advocacy and whom they see themselves as serving. For comparison, the DVBIA formulated a three year strategic plan for 2004 to 2007 and its priorities were listed, in this order, as: Advocacy, Safety & Security, Pedestrian Environment, Access and Image & Marketing. It defines advocacy for itself in the following way, “Acting as a single voice on issues of legislation, regional policy and plans, crime, safety and government relations.”

The Robson Street BA is the only other BIA besides the DVBIA that explicitly mentions advocacy as a role for itself. As quoted above, it defines advocacy as “Acting as single voice with regards to issues of development, traffic planning, crime prevention, etc.” While the ‘etc’ here could certainly allow for the expansion of advocacy into other areas, the listed areas seem to cover physical planning and business issues only. Crime prevention is something that both the City and Province suggest BIAs can accomplish and several, including the Gastown and the DVBIA have their own private security elements to reduce crime. Nothing in the City or Province’s descriptions of BIAs suggest they are expected to become active in development or
physical planning issues. This is perhaps an extension of the mandate of BIAs that has come from inside the BIA movement.

Both Davie Village and Yaletown BIA also mention government relations. Yaletown sees its role as involving government relations, but does not use the word “advocacy.” It mentions both the City and Province level governments in its “Looking Forward” five-year plan, listing its priorities as:

“Some objectives include working closely with the City of Vancouver Mayor, Council and staff on Yaletown projects such as: •Addressing design flaws in public realm (dumpster servicing, traffic congestion, parking issues, pedestrian level lighting, dock usages and permits). •Seeking Provincial Designation as an historic district, to access potential funding opportunities •Redesigning Pacific Boulevard •Establishing a “Town Walks” route through Yaletown, including streetscape improvements and way finding signage (In Yaletown “Looking Forward, The Next 5 years”).

While the provincial government is mentioned, it is not as a lobby or advocacy point, but a matter of historic designation. Yaletown’s hopes for its relations with the City concern physical planning and service delivery and are confined to the immediate geographic area, such as the Pacific Boulevard redesign. Its ambitions for the scope of public realm issues it may ask the City to work with it to address are modest in scope and are very similar in nature to the street improvements envisioned as a role for BIAs.

Davie Village’s Strategic Plan explicitly states that it wants to work with “all levels of government,” which is a phrase I found only on the sites of Davie Village and the DVBIA. Considering the Davie Village BIA has an annual budget of $74,379 a year, it is debatable how active it will be in influencing Provincial politics. The DVBIA, on the other hand, is explicit about working with the City, the Province and regional governing bodies such as Translink and the GVRD where it sees policies that may affect downtown. This is a far cry from Yaletown’s desire to work with the City on issues of street furniture.

The essence of this exceptionalism may be best captured in two of the comments from the About Us section from the DVBIA website, which was quoted above but stands repeating:

The DVBIA works on behalf of everyone who lives, works and enjoys themselves in downtown Vancouver, members, residents and visitors alike.

A dynamic association, the DVBIA is proactive in terms of programs to improve downtown, the promotion of area interests and attractions, public advocacy on
important issues, and hands-on programs to make downtown Vancouver cleaner, safer, more attractive and more hospitable for everyone.\textsuperscript{13} [emphasis added]

Even with the other BIAs flirting with an expanded mandate beyond that suggested by the characterizations of BIAs by the City and Province, nothing else comes close to this. Other BIAs work on behalf of their members. Gastown seeks to revitalize its area by “representing Gastown’s property owners and business owners.”\textsuperscript{14} Robson Street BA defines itself as a business organization and is not explicit about who it works for, but gives its mission as “To establish the image of Robson Street as a unique, diverse, yet comfortable retail area, which strongly appeals to the local market.”\textsuperscript{15} Davie Village BIA has not finished its website, so the clearest statement of its mandate are its objectives. These are all concerned with promoting and retaining business except one that reads “To make the BIA an enjoyable experience for each person who visits.”\textsuperscript{16} This certainly extends who the BIA works for, but it is directly in terms of the Vancouverite or visitor’s experience of the BIA, not the DVBIA sense of “public advocacy.” Yaletown also frames itself in terms of business alone, stating itself as having “a mission to enhance its members' business opportunities by leading action to improve the Yaletown environment and to promote Yaletown as the place to trade and visit.”\textsuperscript{17} This is perhaps the classic vision of a BIA mandate.

So, what makes the DVBIA different? This is something that will be explored extensively throughout this thesis, but I will summarize here what will be discussed. The DVBIA is extraordinarily well-funded, which gives it the ability to build the infrastructure needed for successful advocacy, providing a two-year budget of $118,414 for its advocacy arm for the Safe Streets Act, the Safe Streets Coalition. Its catchment area takes in the high-rise offices and international hotels housed in the core of downtown, creating a membership profile that is to be envied and giving it a source of personal and professional connections that Davie Village and its freestanding stores cannot imagine. And, perhaps most importantly, because it is such a high profile area it can paint itself as an “economic engine” for the entire region. All roads in the GVRD in theory lead downtown. This gives the DVBIA access to the narratives of the competitive city in which economic vitality becomes paramount for all our best interests, and this

\begin{itemize}
  \item \textsuperscript{13} http://www.downtownvancouver.net/work/index.html
  \item \textsuperscript{14} http://www.gastown.org/programs/index.html
  \item \textsuperscript{15} http://www.robsonstreet.ca/rsba/
  \item \textsuperscript{16} http://www.davievillagebia.com/
  \item \textsuperscript{17} http://www.yaletowninfo.com/about/
\end{itemize}
will be explored extensively in the Critical Discourse Analysis to follow. By accessing this it is seemingly much more qualified to speak for all of us than neighbourhood BIAs.

The DVBIA has extended its mandate to include public advocacy on behalf of all of us. It is an economic organization doing social planning. What happened when it turned its attention to panhandling in the downtown? Was the result of this attempt to address extra-economic issues indeed one that results in a world better for all of us? How this came to be and what is means for the regulated panhandler, the DVBIA and the rest of us, is the subject of this study.
CHAPTER 5: THE REGULATION OF PANHANDLING IN VANCOUVER

In this Chapter I will present the recent history of attempts to regulate panhandling by Vancouver City and the involvement of the DVBIA in this process. In doing some, I will also introduce some of the constitutional questions that must be considered when examining legislation that regulates panhandling. I will also introduce the Safe Streets Coalition (SSC), formed as a lobby group by the DVBIA, and discuss it in terms of its understanding of itself as a civil society group.

RECENT HISTORY OF PANHANDLING REGULATION IN VANCOUVER

In April 1998, the City of Vancouver enacted panhandling by-law 7885. This by-law defined panhandling as asking for anything of value through “spoken, written or printed word or bodily gesture for one's self or for any other person” though those with a charitable solicitation license were exempt from enforcement. An administrative report to Vancouver Council’s Standing Committee on Planning and Environment on April 21, 1998, around the time of the passing of the by-law stated:

Over the past few years panhandling, most notably aggressive panhandling, 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 (Taylor, 2002, 9). [all quotations in this document are reproduced as written, save for changes noted]

This report is quoted here to call the attention of the reader to the existence of a number of themes – business interests, quality of life and who is characterized as a citizen of Vancouver – that will re-occur and be explored in depth over the course of this case study. By-law 7885 was the latest attempt to address this issue. This by-law prohibited the following:

- 3. No person shall panhandle on a street within 10 metres of
  (a) an entrance to a bank, credit union or trust company,
  (b) an automated teller machine,
  (c) a bus stop,
  (d) a bus shelter, or
  (e) the entrance to a liquor store.
- 4. No person shall panhandle from an occupant of a motor vehicle which is
   (a) parked,
   (b) stopped at a traffic control signal, or
(c) standing temporarily for the purpose of loading or unloading.

- 5. No person shall panhandle on a street at any time during the period from sunset to sunrise.
- 6. No person shall sit or lie on a street for the purpose of panhandling.
- 7. No person shall continue to panhandle on a street from a person after that person has made a negative response.

Penalties ranged from $100 to no more than $2,000. This by-law was passed by the City with what Patricia MacDonald, the lawyer for the Federated Anti-Poverty Groups of B.C. (formed to challenge the by-law in court), characterized as “a lot of pressure on it from the Downtown Vancouver Business Improvement Association to ban panhandling” (Wilhelmson 2002, 2).

A court challenge on the constitutionality of this by-law was launched by the Federated Anti-Poverty Groups of B.C., which consisted of 132 members groups and 77 individuals. The court date was set for March 2001. On March 1, 2001 the City introduced by-law 8309 which reduced the number of restrictions and repackaged them under the rubric of controlling traffic on the sidewalks. This new by-law banned panhandling so as “to cause an obstruction,” “pack” panhandling in groups of three or more, soliciting after a negative response and soliciting within 10 metres of a bank machine. On March 6, 2001 the City formally withdrew and nullified by-law 7885 on the advice of Francois Letourneux, counsel for the City, as the by-law would not have survived a constitutional challenge. The City petitioned to have the hearing that was scheduled for March cancelled altogether, causing it to be delayed until July 2001. Judgment was rendered in March 2002.

The Federated Anti-Poverty Groups of B.C. re-directed its challenge to focus on by-law 8309 which, it argued still violated the sections of the Canadian Charter of Rights and Freedoms [the Charter] offended by by-law 7885. It lost its challenge and the amended by-law was deemed to be constitutional and within the rights of the City to pass and enforce. The lawyer for the Federated Anti-Poverty Groups of B.C. spoke publicly of this being a victory of sorts as it was made clear that panhandling is a matter of freedom of expression and any attempt completely to ban it – either directly or indirectly – would not stand constitutional challenge. The repealed by-law had acted indirectly to ban panhandling as the 10-metre concentric circles around bus stops and bank machines essentially created a blanket no-go zone on the main downtown streets. It acted directly to ban panhandling, protected as a freedom of expression by Section 2 of the

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18 By-law 8309 has itself since been folded into the regulation of traffic and streets and its content can be found in section 70A of Street and Traffic By-law 2849.
Charter, by permitting this free expression only from sun up to sun down. Governments can violate Charter rights if the limitations satisfy Section 1, which states that such violations must “be demonstrably justified in a free and democratic society.” It would be very questionable that “we don’t want to see you from dusk till dawn” would be considered reasonable justification to curtail the freedom of expression.

The DVBIA had a role in the 2001 court challenge of by-law 8309. In 2001 Charles Gauthier was in the position he still holds as Executive Director of the DVBIA. He filed an affidavit with the court on behalf of the DVBIA, which the decision of Justice Taylor refers to as “the Association” not the DVBIA, thus those terms will be used interchangeably in this background section of the thesis.

Mr. Gauthier’s affidavit gives a brief history of the DVBIA’s involvement in regulating panhandling in Vancouver. Though it was characterized as having been a “recurrent theme in discussions of the Association,” the DVBIA began its formal attempt to have an impact on panhandling in 1995. It instituted a three-prong approach of public education, direct assistance to those in need and lobbying. Public education campaigns were designed to encourage people not to give to panhandlers directly if they were inclined to give, but instead to give the money to formal organizations. The logic was that this would discourage panhandling altogether as it will not be ‘profitable’ and people will still be able to have legitimate needs filled through formal agencies, without having the opportunity to spend the offerings in irresponsible ways. Just before the start of this case study in 2004 the DVBIA had a lengthy internal discussion of launching a similar program of ‘charity keys.’ Vendors in the downtown area would sell these keys, which could then be given to someone soliciting for spare change and redeemed for particular services such as meals at certain shelters. Programs like these are rife with assumptions about the poor and their ability to make decisions properly and ‘responsibly’ about any money they may be given and have reoccurred in the DVBIA’s proposed answers to the problem of panhandling more than once.

The direct assistance element of this approach was also instituted in 1995 with the creation of two groups to provide direct service. The first group was outreach workers, hired to offer assistance and referrals to what the affidavit refers to as “street people,” not all of whom are panhandlers. This program was short lived and disbanded before the enactment of by-law 7885 in 1998. The second group constituted at this time was the Downtown Ambassadors program designed with an
explicit enforcement element, which it retains to this day. Using by-law 7885, the Ambassadors had been instructed by the DVBIA to inform people of the 10-metre geographic restrictions and “move people along” if the individual Ambassador determined that they were in violation of the restrictions of place or position as they panhandled (Taylor, 2002, 15). The Ambassadors were also intended to provide information and assistance to tourists in the downtown core.

The lobbying aspect of the DVBIA’s three-pronged approach will be the central issue of this case study. While I will explore the DVBIA’s anti-panhandling advocacy in 2003/2004, Justice Taylor’s 2001 decision in the by-law case makes it clear that this was not the first time the DVBIA influenced how panhandling is controlled in Vancouver. Justice Taylor writes that there is “no question” the information collected by the Ambassadors and through member surveys was “used to encourage the respondent [the City] to pass by-law 7885... [and] enact legislation that dealt specifically with the perceived problem of panhandling” (Taylor, 2002, 15). Justice Taylor also refers twice to the “clamour from the Association” in response to the City’s presentation of by-law 8390 “despite the clamour by the Association to enact a by-law as draconian as its predecessors [by-law 7885]” (Taylor, 2002, 20 & 36). Justice Taylor makes another comment on the lobbying prong of the DVBIA by referencing “the considerable public debate in which the Association played a loud and public role in decrying the conduct of panhandlers and would have preferred the outright banning of such activity” (Taylor, 2002, 27).

The DVBIA has been for years very vocal about panhandling and has advocated responses such as by-law 7885, here characterized as ‘draconian’ and certainly beyond the bounds of constitutionality. This advocacy had been successful, despite, as Mr. Gauthier stated in his affidavit, the DVBIA having “no empirical studies on the effect of panhandling on commercial activity,” and only an anecdotal conclusion of its members that there is a marked negative effect. Having lobbied for this original by-law and for its replacement to be more aggressive than the City offered in by-law 8309, the DVBIA was left unsatisfied in 2001.

At the same time as the DVBIA was trying to find regulatory means to limit panhandling in the downtown, so was an officer with the Vancouver Police. Then Deputy Chief Constable of the Vancouver Police Department, Inspector David Jones had, in 1997, written a report for the police department on panhandling in Vancouver, which was submitted as evidence in the hearing. Mr. Jones spoke to me about his time in the police force during his interview with me, conducted through the DVBIA, where he has been the Director of Crime Prevention Services since 2003.
He characterized his role in the police department as an activist for street disorder legislation. For Mr. Jones the course of the Safe Streets Act and the Trespass Amendment Act began with the 1997 arrival of Bruce Chambers, the new Chief Constable. Mr. Jones characterizes Mr. Chambers as being surprised at the rural focus of the Trespass Act in BC. The Trespass Act reflected the pioneer history of British Columbia and concerned matters such trespass on unfenced land bounded by natural features such as streams, rivers or ridge lines. Mr. Jones suggests that this focus needed to be expanded to have explicit applications for urban centres. Mr. Jones said there was an attempt to get the government interested at the time, but there was no movement. At this same time Mr. Jones produced his report on panhandling in Vancouver that, other than its appearance in the case explored above, did not manage to generate any action.

In 2001 the recently elected MLA for Vancouver-Burrard, Lorne Mayencourt, came to the police asking what he could do to help them. Legislation similar to the Ontario Safe Streets Act and the Urban Trespass Act was discussed and Mr. Mayencourt said he would like to help, if there was a demonstration of public support. The issue lay dormant until 2002 when Jamie Graham was appointed Chief Constable. At that time Mr. Jones wrote another report for the Vancouver Police outlining the legislation in Ontario. This report went to the planning committee of the police in March 2003, but David Jones himself had already left the police department in December 2003 for the DVBIA. He describes the transition as simply moving from supporting this kind of legislation in one place to doing so in another.

When Mr. Jones arrived at the DVBIA in December 2003 he found the Safe Streets Coalition (SSC) already in place, but in a state he described to me as “nascent.” The DVBIA had decided that something needed to be done about what both Mr. Jones and Kathi Thompson, the President of the DVBIA at the time of the advocacy and the Chair of the SSC, characterized to me as “aggressive and disorderly behaviour” but were unclear as to exactly how to go about it. I asked Kathi Thompson in our interview why the Ontario Safe Streets Act was the main inspiration, and she told me that “key stakeholders said it was working” in Ontario and that advocating for this as opposed to anything else was just a matter of “finding what was working.” The DVBIA was trying to find its feet as a lobby group for ‘Safe Streets’ style legislation and had formed the SSC in October of 2003, just before the arrival of Mr. Jones.

Ms. Thompson described the arrival of Mr. Jones and the confluence of interests and knowledge as “a blessing.” Mr. Jones brought with him the authority of having been a police officer and
knowing how things ‘really work’, as well as the knowledge that MLA Mayencourt had offered to champion legislation like this if public support could be demonstrated. The DVBIA had resources, organization and high profile members, but knew when it officially launched the SSC and its campaign for legislation in March 2004 that they were not yet great enough in numbers or influence to sway government opinion. This was important as the government was initially opposed to this sort of legislation with Attorney General Geoff Plant publicly commenting that there were already plenty of Criminal Code provisions to stop aggressive street behaviour and that he was skeptical the law would stand up to constitutional challenge (Vancouver Sun Oct 13, 2004, A14). The DVBIA never managed to win the support of the Vancouver City Council, which was dominated by the left-wing Council of Progressive Electors (COPE) through this entire process.

THE SAFE STREETS COALITION: Community group or business lobby?

The case study begins at this point, offering an examination of the lobby process and resources of the DVBIA and the SSC. But before moving into the case study, I want to take a moment to offer some explanation of the SSC. Ms. Thompson argues it is a community group made up of concerned citizens who want to make a difference in the communities where they live and work. While her description of the individuals may be accurate, I do not agree that they collectively make up a community group. The SSC is much better described as a business lobby group.

On their website the organization describes itself thus:

The Safe Streets Coalition is an association of over 60 community groups, business associations and local governments who support provincial legislation and government policy aimed at enhancing community safety for all British Columbians and visitors to BC.19

Again the organization itself and the members are described as community groups. An examination of the member list makes this position difficult to defend. A categorization of the 64 members provides the following tally of business organizations:

Chambers of Commerce and Downtown Associations – 14
BIAs – 19
Commercial Associations – 13
Municipalities – 4

19 www.safestreetscoalition.com
The community groups that became members total seven. They are: Yaletown Residents Association, Citygate Inter-tower Community Group, West End Seniors Network, West End Citizens Action Network, Blockwatch Society of BC, Royal Canadian Legion and the Surrey Crime Prevention Society. Seven of the 64 members, a generous 10 percent, were groups that could be characterized as non-business. I asked Kathi Thompson about this during our interview. I asked her in part because the SSC and the DVBIA had been at pains in public statements to be clear that members were active in community service organizations. In our interview, David Jones told me about his personal involvement with Covenant House, which supports street youth. Ms. Thompson had mentioned the work the DVBIA does with United We Can, an organization that supports ‘binners’ or ‘dumpster divers’ in Vancouver who collect cans, recyclables and other saleable good from the trash in the city, and she mentioned her work with the Food Bank. Yet none of these groups, with which the DVBIA has a good working relationship, are members of the SSC.

The SSC used the harm that ‘aggressive panhandlers’ can do to already vulnerable and disadvantaged groups as an advocacy theme, yet the only groups that might meet that criterion on the SSC were the senior citizens groups. How seniors were used as ‘poster children’ for vulnerability in the advocacy process will be covered in the discourse analysis. Here I will just point out the failure to include or persuade those groups that actually work with the financially disadvantaged that the SSC and DVBIA otherwise claim a working relationship with. Ms. Thompson stressed in the interview that not just businesses and tourists suffer from aggressive panhandlers: “...even the mentally challenged were frightened by that type of behaviour... even the homeless were concerned with aggressive disorderly type behaviour. The mentally ill - ask them - they were afraid to stand in line because there was an aggressive person behind them.”

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20 www.asis-canada.org - The security industry certainly had a large interest in this legislation as it will be shown that they were the ones intended to enforce it, which they do for profit.
21 Constituted under the Vancouver Agreement, these Neighbours First projects are described in a backgrounder on the project available from the City as having the purpose to “increase business activity in the Downtown Eastside by improving the sense of security, cleanliness and friendliness of the streets.” The focus is five fold – 1. Cleaning and safety, 2. Volunteer-based neighbourhood watch programs, 3. Marketing and promotion, 4. Public awareness and 5. Evaluation. While this is an organization constituted of both businesses and residents, it has an express business improvement aspect that can’t be ignored.
Yet none of these groups held up as benefiting from the proposed legislation were part of the coalition of advocacy. I asked Ms. Thompson why.

Ms. Thompson initially said that she didn’t think that a non-profit would be able to participate in an advocacy process. When asked about the participation of senior citizens’ groups she said they were motivated by their victimization but did not seem to think that the other groups she mentioned, the mentally ill and the homeless, would be. Ultimately, Ms. Thompson made it clear that there was not enough time to build a broad coalition and get the support of these types of organizations and attention had to be focused where power could be found. She felt the DVBIA had to go with the connections it already had, both business and personal, and that it was looking for the most powerful coalition possible. This suggests that the inclusion of a poverty advocacy or service delivery group was not perceived as adding to the power of the coalition. An inclusion like that would have helped the DVBIA deflect the charge of being anti-poor or lacking in compassion, and would have increased the validity of the SSC’s self-assessment as a community-based group.

The SSC was given a 2003/04 budget totaling $118,414 by the DVBIA and Ms Thompson suggested they also solicited additional funds from members. This access to resources, as well as to the political power of its members, put the SSC in a league most community groups can only dream of. This will be given extensive coverage in the section of this thesis entitled “The Playing Field.” The SSC is a coalition of business interests. In the common understanding of urban governance used by organizations such as the Organization for Economic Cooperation and Development there are three elements – the formal government, the business interests and civil society or the community. Ideally these work together to balance each other’s interests and cooperatively generate good policies and plans for the city they share. The SSC, despite Ms. Thompson’s protestations, did not demonstrate wide civil society support for its legislation through its membership. Vancouver was then under a left-wing COPE Council which openly disapproved of the legislation. It took a powerful set of interests to override the wishes of the City of Vancouver, where the DVBIA is situated, convert a Provincial government into supporting legislation it originally dismissed as unnecessary and go from a lobbying campaign launch to legislation in eight months. To illustrate my point, John Friedmann writes about the way the politics of civil society emancipate those who participate. Through using “trust, reciprocity and dialogue” it makes a larger space for groups with different interests to work together and to “make its multiple voices heard and respected through active participation in
decisions that affect its conditions of life and well being through political empowerment” (Friedmann, 1998, 33). As the case study will show, the advocacy process and the formation of the SSC were not the actions of a civil society group; they were the actions of a well-funded, highly organized business coalition serving a limited interest and strong agenda.
CHAPTER 6: CRITICAL DISCOURSE ANALYSIS; THE INTERPLAY OF DISCOURSE AND SOCIETY

WHY A CRITICAL DISCOURSE ANALYSIS

This critical discourse analysis (CDA) is largely based on the model and tools presented by Norman Fairclough in his book *Discourse and Social Change* (Fairclough 1992a). This book, published in 1992, is still regarded as one of the most important, influential and, most critically, practical books in the CDA lexicon (Wodak & Meyer 2001; Jorgensen & Phillips, 2002). While there are other theorists such as Laclau & Mouffe, Halliday and van Dijk who are actively engaged in the theory and practice of Critical Language Analysis (CLA), it is Fairclough who provides the strongest methodological framework for a relative newcomer to CDA and CLA. I have also chosen Fairclough to provide the framework as I believe his model is not only the most suited to this project, but also the most theoretically complete.

CLA is useful and important because too much of the time “…language is widely misperceived as transparent, so that the social and ideological ‘work’ that language does in producing, reproducing or transforming social structures, relations and identities is routinely ‘overlooked’ ” (Fairclough, 1992c, 211). While the notion that language is transparent may be largely discredited in most social science circles, it is not often enough given attention in professional training or even general education. Work in CLA helps add to the awareness that words are chosen for a reason, even if the people choosing are not completely aware of how they have done so. Human beings make sense of our world through telling stories about it and through listening to the stories of others. The ability to listen critically to those stories is key to independent thought and successful argument.

As brute force loses credibility in much of the world as a method of social control it is being replaced by language, social practices and other more “implicit exercise of power [which] means that the common sense routines of language practices (eg classroom language, or the language of medical consultation) become important in sustaining and reproducing power relations” (Fairclough 1992b, 3). While I see social convention as a preferred method of social control to beatings or public execution, its ‘softer hand’ almost elevates the need for careful consideration of tactics; these become possible to overlook in ways that public executions are not. I do not
disapprove of social order, indeed I cheerfully conform to most social conventions, but when these are seen as ‘natural laws’ rather than human inventions the power relations in society go unexplored. It may be that “ideology is linguistically mediated and habitual for an acquiescent, uncritical reader” (Fairclough 1992a, 28); this is never good, even if the power imbalances we uncover are ones we can live with. I believe we are better off if they are exposed and then rendered, in a sense, optional for acquiescent participation.

Before embarking on an actual discourse analysis Jäger calls for “first and foremost a justification of the project and what is to be investigated, accompanied by an explanation of the theoretical approach and methods…this is necessary and useful to understand the analysis” (Jäger 2001, 54). Fairclough is explicit that projects for CDAs are best formulated outside the theory of CDA, stating these projects should be:

defined first in terms of questions about particular forms of social practice… it is the disciplines which deal with these questions – sociology, political science, history – that we should look to in the first instance in defining research projects. Discourse analysis should best be regarded as a method for conducting research into questions which are defined outside it” (Fairclough, 1992a, 226).

The justification for the project has been introduced through other sections and chapters of this thesis where the research questions and other methodologies are explained. Following Jäger’s advice, I will explain my theoretical model. Definitions and elaborations of the field, the particular model chosen and the reasons for this choice will be dealt with in detail. Little knowledge of the schools and purposes of CDA will be assumed on the part of the reader.

**FARICLOUGH AND CRITICAL LANGUAGE STUDIES**

Critical Language Studies (CLS) of which both CLA and CDA are generally a part, is less a discipline and more an “orientation towards language” which “highlights how language conventions and language practices are invested with power relations and ideological practices which people are often unaware of” (Fairclough, 1992b, 7). Fairclough characterizes five theoretical propositions for CLS, which he describes as “personal” but likely to receive general agreement. For the purposes of my work I will adopt them as well. They are:

1. “Language use – discourse – shapes and is shaped by society.” The relationship is reciprocal.
2. “Discourse helps to constitute (and change) knowledge and its objects, social relations, and social identities.”
3. “Discourse is shaped by relations of power, invested with ideologies.” This is the impact of society on discourse, accomplished, for example, by valuing or devaluing styles of language or conventions.

4. “The shaping of discourse is a stake in power struggles...if discourse conventions constitute the social in particular ways, then control of these constitutive processes would be a powerful covert mechanism of domination.” The conventions of dominant groups may become highly naturalized and ‘just there’, this naturalization can be seen as a sign of power or influence.

5. “CLS sets out to show how society and discourse shape each other” and is “a resource for developing the consciousness of particularly those people who are dominated in a linguistic way” (Fairclough 1992b, 8-10).

Through the explicit reciprocal relationship between discourse and society Fairclough avoids the pitfall of discourse analysis systems that are based solely on the work of Foucault. Foucault’s work on discourse analysis, especially through his claims of the constitutive nature of discourses’ influence on social relations and knowledge, has influenced all the theoreticians and practitioners of CLA used here (Hastings, Stone, Fairclough, Jager) and likely many more. Hastings describes CLA generally as “underpinned by the broadly Foucaultian notion that language, knowledge and power are fundamentally interconnected at the level of discourse” (Hastings, 1998, 192).

However, each of these practitioners cites the same shortcoming of Foucault’s work for the purpose of active CLA. Technically it is limited as it presents no actual model for micro-textual analysis at the level of text, sentence or clause, which is critical for CLA. The more important theoretical limitation of Foucault, according to the theorists discussed here, is his uni-directional view in which language is shaped by and reflective of power. These theorists have attempted to overcome this flaw, while retaining the useful insights on power, language and society, by adding an explicitly recursive element to the model, as stated above in Fairclough’s final theoretical statement – “society and discourse shape each other.”

To explain how he incorporates the principle that language shapes society, Fairclough makes an explicit correspondence between three functions of language and three social dimensions. The three social dimensions are “knowledge, social relations and social identity” which correspond to the three main functions of language:

1. “ideational function – its function in representing and signifying the world” (knowledge),
2. “its relational function, in constituting and changing social relations” and,
3. “its identical functions, in constituting and changing the social identities” (Fairclough, 1992b).
All of these functions can be served simultaneously and unconsciously as we identify ourselves and others, make sense of the world, and convince others of our interpretation's validity. We all make choices about “the design and structure of their clauses which amount to choices about how to signify (and construct) knowledge and belief” (Fairclough 1992a, 177). Often these utterances are reflections of discourses that are socially available to us, other times they are attempts to reorder the social – our success in the latter depends largely on how much power we have, or how much access to the power of others.

The general criticism of CLA (which will be distinguished from CDA from this point forward, with CDA referring only to Fairclough’s particular model) is that it focuses too much on text/talk and ignores the larger world where ‘real’ things happen. This is a criticism that Fairclough himself directs at many CLA models. Often a CLA will focus on the text alone, taking ‘discourse’ to mean what is contained within the text or texts. Fairclough’s CDA makes the distinction between text – which is one dimension of a discourse, the “written or spoken product of the process of text production,” – and discourse itself, which “emphasizes interaction between...writer and reader, and therefore processes of producing and interpreting speech and writing...” (Fairclough, 1992a, 3). I will add that while I think it is critical to situate the analysis of the text in the world at large, I do think that textual events are not ‘just talk’. As this case study demonstrates, debate and legislation, despite being spoken and written elements, are themselves ‘real’ things that happen to people. Debates define and shape both values and world-views, while legislation dictates how people are allowed to move through the world. For Fairclough, as for me, “ ‘Discursive practice’ does not here contrast with ‘social practice’: the former is a particular form of the latter” (Fairclough 1992a, 71). A more complete presentation of his model will explain how this relational construction functions, both as a theory and a method.

Fairclough’s model has three dimensions because every “discoursal instance has three dimensions: it is a spoken or written language text; it is an interaction between people, involving the processes of producing and interpreting the text; and it is part of a piece of social action – and in some cases virtually the whole of it” (Fairclough 1992b, 10). A CDA has three corresponding dimensions – a descriptive analysis of the text itself, an interpretive examination of the interactions between the producer and reader/interpreter/consumer of the text and an “explanation of how the interaction process relates to the social action” (Fairclough 1992b, 11). These are not so much discrete steps to be taken one at a time; the researcher will often move back and forth between them. How texts are produced and how they are then interpreted is dependent on the
larger social actions they are embedded in (a conversation in a doctor’s office, a State-of-the-Union address, a parent scolding a child). The “nature of the text, its formal and stylistic properties on the one hand depend upon and constitute ‘traces’ of its process of production, and on the other hand constitute ‘cues’ for its interpretation” (Fairclough 1992b, 11). Beyond this interaction comes the explanatory analysis. This is of great importance for this study as it provides an opportunity to explore why some discourses are more powerful and persuasive than others, why some win and some lose in their attempts to shape the social order. For Fairclough, CDA is not a means in itself. Just as theories outside of it should inform the research questions, so should the goals of the CDA lie beyond simple involvement with a text. CDA is concerned with how we use language to understand the world, and how our understandings are shaped by both the language available to us and the language that appeals to us.

Our word choice may reveal our ideology. When we choose a word we discard other choices; there would have been several ways to communicate the essence of our story. There are often facts that are fairly objective, that are part of the reality we all share, that are not really a matter of ideology. Facts like these would be that I went to the store, got what someone else needed and was as quick as possible about it, but there was a line up that increased the time it took. The relationship, where we are, perceptions of power, obligation and entitlement will all shape how I recount this to the other person, how I apologize, if I apologize, how many terms of exaggeration I will use (I flew there, the line took forever), if I will appeal to their experience to gain understanding (this has happened to you, right?). While this is more a domestic and relationship-based example than an ideological one, it serves to illustrate the point that our words capture not only what we express but also how we wish to express it and how we render it legitimate.

There are alternative ways of giving meaning to experiences, and each way of giving meaning to this experience or set of experiences entails an interpretation offered from our particular theoretical, cultural, ideological or positional background. While this may be less true in the physical sciences, it does hold for the communication of policy and politics. It is true that when one changes the words, one changes the meaning of an action. The classic example of this is the ‘terrorist or freedom fighter’ debate. How we signify meanings reveals quite a bit about us and our intent, whether we mean it to or not. Much of how ideology works in texts is dealt with by Fairclough in a technical way and will be discussed more during the analysis. Fairclough’s concern is not just with what is said by a text, but who says it, what resources of power are available to them, how the interpreter reads it and how that relationship is embedded in a larger
social world the producer seeks to influence. This three-part attention excuses him from the
criticism directed at CLA that it is just concerned with talk.

ADDING STONE’S CAUSAL STORIES

To expand on the idea of the ideological work of texts I want to complement Fairclough’s very
textual and technical analysis with Stone’s work on causal stories in policy formation. I will do
this for two reasons. The first and most practical is that Fairclough’s CDA model at its purest
requires a level of linguistic skill and technical knowledge of grammar I do not have. While I
will employ some of his technical tools, I cannot pretend to be able properly to deal with the text
at the sub-clause level. Since I will have to ‘compromise’ his model somewhat I wanted an
additional one to ensure that I do not simply execute a ‘sloppy’ CDA but rather a hybrid better
suited to my abilities. Secondly, I like the narrative focus of Stone’s work. Fairclough and Stone
have been successfully combined by Hastings (Hastings 1998) to create a model that is both
based in CDA and yet does not require exclusive use of highly technical linguistic tools.

Stone’s work deals specifically with policy formation as opposed to Fairclough, whose model is
not specialized. She views policy formation as competition over narrative formation, with much
of the battle being won or lost in problem construction as “problem construction is a process of
image making, where images have to do fundamentally with attributing cause, blame and
responsibility” (Stone, 1989). I share her social constructionist view of policy making and agree
that:

...our understanding of real situations is always mediated by ideas...fought over in
politics...political actors use narrative story lines and symbolic devices to manipulate
the so-called issue characteristics, all the while making it seem as though they are
simply describing facts (Stone 1989, 282).

Social constructionist views of policy formation and problem setting are a challenge to the more
positivist views. Constructionist positions do not see a simple line between knowledge and
reality and assert that “the categories we use to divide up, describe and give meaning to the world
are socially, culturally and historically contingent” (Hastings 1998, 193). These broader
processes are connected to the language we use to assign meaning. Both when we identify a
‘problem’ and when we propose a solution we are choosing to signify some things and ignore
others.
Stone proposes that the root of policy formation and problem setting is the causal story, which is the mechanism by which we move an 'issue' from a realm that is not amenable to human action to one in which the issue is something that can be affected by human agency. She cites a classic example of the work by Crystal Eastman in the early 20th century. Her study “Work Accidents and the Law” showed that work accidents do not occur because workers are careless but because employers benefit from providing unsafe machines and working conditions (Stone 1989, 289). Eastman moved something that ‘just happens’ into the realm of what can be affected by political action. These stories have both an empirical and a moral dimension. Empirically they ‘explain’ the mechanisms by which one group harms another. The moral or normative dimension assigns the blame for harm (sometimes harms are inadvertent and not preventable). It is this moral dimension that makes the harm a matter of intent and thus controllable (Stone 1989, 283).

This thesis picks up after the causal story had to some extent been written; the problem had been defined and legislation offered as a solution. However, Stone stresses that causal stories are not formulated once; they remain contested as they are used to formulate alternative policy responses and assign blame and “the burden of reform very differently” (Stone 1989, 283). The sides in the debate (be they internal to an organization fighting over new in-house policy or opponents across a political aisle) “act as if they are trying to find the ‘true’ cause, but they are always struggling to influence which ideas are selected to guide policy” and these fights are “fights about the possibility of control and the assignments of responsibility” (Stone 1989, 283).

I add a dimension that is not in her model. I agree that these fights over cause, responsibility and blame are a matter of ideology or power struggles and that both sides equally manipulate the perception of cause to justify their own points of intervention. The goal of her research is to simply provide ways to define these elements of ideology and manipulation, success and failure. However, this thesis also has an agenda of evaluation as well as explanation of the success of ideologies. Planning is inherently normative, and I recognize that my interpretations of things would not be received in the same way by someone with a different perspective. However, this is the joy of planning for me, the ability to use theory and practice to take a stand. In a normative discipline the prospect of dispute can never be a matter of dissuasion.
Causal arguments do four things besides the initial transfer of an issue to the realm of human action. They:

1. "either challenge or protect an existing social order;"
2. through "identifying causal agents, they assign responsibility to particular political actors so that someone will have to stop the activity, do it differently, compensate victims or possibly face punishment;"
3. "can legitimate and empower particular actors as 'fixers' of the problem;" and
4. "can create new political alliances among people who are shown to stand in the same victim relationship to the causal agent" (Stone 1989, 295).

If Stone is right and the battle for framing cause and blame is key to driving an agenda, it is clearly a legitimate research activity to research how arguments are formed in order to see:

1. what accounts for the success of some causal assertions but not others?
2. what are the political conditions that make one causal theory seem to resonate more than others? (Stone 1989, 293)

For me this is the link between Fairclough and Stone. The answer to these larger questions is found in the discourse, in the texts the advocates and opponents produce. Approaching texts with the intent of answering these questions and attaching discourse production/consumption to the ability to shape the world through policy does not produce a CDA that is 'just about talk' and nothing real.

COHERENCE AS A CDA TOOL

One of the dominant CDA tools that I will employ will be what Fairclough calls 'coherence.' This is where much of the ideological work of a text takes place. In this context, coherence is not a property of the text itself but rests in the textual interpretation (Fairclough 1992a, 83). Texts only “make sense” to a reader that can make sense of them; they do not make sense in a vacuum.

A reader must be able to infer meaningful relationships between parts of the text. These parts may be as small as words, or as large as the links between the current text and previous ones. The interpretative principles used by the reader are often “cued” by the text itself, requiring the reader to supply the ideology, seemingly out of her own good sense. The reader has a sense of agency when she supplies the necessary assumptions about the social reality (Hastings 1998, 203).

Fairclough uses the illustrative example in the following set of assumptions “She is leaving her job on Wednesday. She is pregnant.” In order for us to make sense of these sentences and how they can travel together, we must supply the ideological principles about pregnancy, the role of women, the role of mothers, the health of pregnancy or a host of others. As readers and interpreters we are asked by the text to supply “bridging assumptions” in the form of ideological
'givens' in order to make the implicit and unstated connections make sense (Hastings 1998, 202). If we cannot supply them, the statement makes no sense to us.

While Fairclough describes the phenomenon, Hastings presents a clear case for what this actually does – "It is precisely because the reader is required to supply connections or to work at making sense of a piece of discourse that they come to believe themselves to be an autonomous individual, a 'subject' which is prior to ideology" (Hastings 1998, 203). Ideologies work best when they are invisible and can seem like common sense or 'just the way things are'. Readers are subjected – made to be active and engaged subjects rather than passive receptive objects - by the texts when they are cued to provide ideological connections. The more naturalized an ideology appears to be - the more common-sense like - the more power is likely to be processed by the group that benefits from it. Coherence can be uncovered by attempting to construct resistant readings, tracing the assumptions in the text to the necessary ideological root and examining degrees of ambivalence in the text.

THE CORPUS

The collection of discourse samples and supplementary data depends on the 'archive' – what is relevant and available. Samples that are typical, atypical, diverse or taken from moments of crisis or change in the debate may make good fodder for analysis (Fairclough 1992a, 226-227). Especially in a project with a smaller number of samples, such as this one, samples should be chosen “so that they yield as much insight as possible into the contributions of the discourse to the social practice under scrutiny” (Fairclough, 1992a, 230). Interviews can be used to augment printed texts as well.

Jäger also discusses the choice of a corpus and I will use his advice to complement that of Fairclough. Jäger explicitly discusses the practical limitations of forming and analyzing a corpus. He is clear that while one may intend to explore representations of women in ‘the media’ it is unlikely one will be able to examine all media, or even every women’s magazine. The choice of sector should be explained; why is this particular text source the best one for the researcher’s purposes? At this point Jäger suggests it will become clear to the researcher that not every instance of the discourse needs to be carefully analyzed (though as much as possible should be collected). This is because most salient elements of a theme may present themselves rather quickly and simply begin to repeat. The example he uses is the representation of women in pop
songs where a few examples could likely be used with confidence “because we can expect to find extremely exemplary densities” (Jager 2001, 52-53).

Fairclough also stresses that the corpus is not a tidy entity to be perfectly collected and complete before analysis can begin (Fairclough 1992a, 228). Research into what is collected and attendant research methods, such as interviews, will continue to produce and uncover more texts that need to be folded into the analysis. This is a source of consolation to me as it allows the actual analysis to begin, despite the knowledge that there are texts that I need but which can only be acquired from individuals I have yet to interview. So in many ways this document is a working draft and will likely still feel like one even when I submit the final copy, as there would always have been more dimensions to explore or texts to add.

I will take Jäger’s starting place as my own and explain my choice of text sources. It may seem odd that I have not included any guest articles, letters to the editor or other direct statements from Lorne Mayencourt, the MLA who championed the DVBI’s request for legislation and brought forward M202, the first version of the Safe Streets Act as a private member’s bill. The reason for this is that his articles are not, in my opinion, where the real ideological battle was fought. Only about 20 percent of any one of his guest articles in the Vancouver Sun or the National Post deal with the Safe Streets Act (his original or the later government version) directly. The bulk of his articles concern the expanded services the Government is proposing for the poor and disadvantaged – funding for housing, addiction services, mental health, skills training and the like. The Safe Streets Act is certainly defended, but the articles are intended to refute claims that the government is “ignorant of the root causes of poverty” and to demonstrate that the Safe Streets Act and the amendment to the Trespass Act are just “two parts of our comprehensive, holistic approach to creating safe, caring and orderly communities” (Mayencourt 2004, July 26 Vancouver Sun). Of course, the way this government funding distribution is used in debate us intended to show that the government, and Mayencourt, are not without compassion. It serves to answer one theme of the opposition to this bill – that the government is failing to address the ‘root causes of poverty’ and instead just wants a band-aid. But the issue of what is aggressive panhandling, who commits it, why they do, who is affected and how the victimization occurs, all of these issues this thesis considers critical to the public debate, are absent.
The corpus as it stands (July 25, 2006) is made up of three sources –

1. Newspaper clippings, which are divided into letters to the editor, single-author articles (regular columnists and guests) and editorials. Letters to the editor are from both ‘players’ in this debate, such as the chair of the Safe Streets Coalition (SSC) and from ‘regular folk’. The latter will serve as a substitute for reader research as it will give a small window into how the debate may have been received. These will be used in the legislative analysis and the conclusion of this paper.

2. Press releases from the Safe Streets Coalition (SSC) and Downtown Vancouver Business Improvement Association (DVBIA) (where they vary). These provide a direct and unmediated window into the message that the SSC hoped to have conveyed in the press.

3. The presentation by the DVBIA to the Union of BC Municipalities (UBCM) that David Jones (DVBIA, director of crime prevention services) described as being “instrumental” to getting the UCBM’s vote in support of the legislation. While this is more an ‘internal’ document in that it was used for a target audience, it was persuasive to a large group of people with power to lobby the government.

Here I will deal with three articles from this larger corpus, all of which appeared in the dominant local paper – the Vancouver Sun. On October 13, 2004 an editorial appeared in the Vancouver Sun entitled “Safe Streets law alone won’t make cities safer.” The BCCLA’s Policy Director Micheal Vonn published an article in the Vancouver Sun on October 20, 2004 headlined “Laws for Us, Laws for Them” and subtitled “The Safe Streets Act, ostensibly aimed at all ‘aggressive’ behaviour, is really about punishing society’s most vulnerable.” Nine days later on the same “Issues and Ideas” page of the Vancouver Sun David Jones of the DVBIA responded directly to this with an article headlined “Safe Streets Law: A Realistic View” and subtitled “Despite some claims being advanced, new legislation will not be used to ‘sweep the streets of people’.” The titles reflect an ideological view, though it is unclear if the authors titled their own pieces or if titles were assigned by an editor hoping to reflect, or even to deflect, the crux of the argument. This lack of clarity as to the text producer prevents a close examination of the titles themselves.

I have chosen these articles because they were published just before the final reading and passage of the Acts on the October 27, 2004. The public debate had occurred, the call-in shows had been broadcast, letters to the editor and editorials had been published and read. In many ways these
articles are the culmination of the debate. It is also important that these letters occurred after the government introduced its own Safe Streets Act on October 7, 2004 in order to satisfy what it saw as demand for it while avoiding perceived constitutional issues with the Private Member's Bill originally proposed by Lorne Mayencourt. These articles criticize and defend Bill 71, the legislation eventually enacted, rather than Bill M202, which was withdrawn when this government-sponsored legislation was offered. They are also all typical of certain positions that are apparent throughout the debate.

The scale of both the thesis and this CDA simply does not allow the individual presentation and evaluation of all the articles for and against this legislation. The Vancouver Sun editorial deals with the ‘practical’ concerns of enforcement and questions about the general usefulness of this type of legislation and is a good example of an on-the-fence position towards the legislation – a sort of qualified acceptance. It is my assessment that Micheal Vonn’s article nicely sums up the ‘moral’ complaints about the legislation as presented by opponents throughout the debate and I present it here as representative. It also provides an introduction of the legal and policy issues of the law, which I will cover extensively in the policy analysis in this thesis. Mr. Jones’s article is a direct response to Ms. Vonn’s article, responding to its challenges. Since the DVBIA was the original sponsor and strongest advocate for this legislation its ‘final’ defense of the legislation on October 20, 2004 is a strong choice to represent its side. It is one of the most complete public presentations of what the legislation was intended to do and how it is supposed to do it. This article addresses (though rather vaguely) issues of why this legislation is ‘necessary.’ This rarely happened during the debate with this element of its argument generally confined to more ‘internal’ documents like the presentation to the UBCM.

**THE VANCOUVER SUN EDITORIAL**

One theme of the opposition was that there was no need for this legislation as there are laws in place to deal with aggressive individuals (this is also raised in Ms. Vonn’s article). The Editorial Desk cites the Government’s own initial reservation when Mayencourt launched his Private Member’s Bill, citing Attorney-General Plant’s comments that there were possible constitutional issues and “whether it was needed because of existing legislation and existing by-laws.” The editorial continues: “Critics, including the opposition New Democrats, say the real issue is poverty and the new law will punish people for being poor. Plant now defends the government’s version of the bill by arguing that economic circumstances are never an excuse for bad behaviour.” With this last line the Attorney General attempts to sweep away moral qualms about
the legislation. In response the Editorial Desk postulates: "He is right, of course, but it is not at all clear that simply outlawing bad behaviour in these circumstances will make it go away."

This is a moment where cohesion will succeed or fail. It is a cue to the reader to produce a bridging assumption that asks the reader to decide the moral validity of the Act. The bridging assumption is strongly encouraged by the "of course" which makes it just a matter of common sense. In order to agree with the Sun and the government the reader must agree that all behaviours described in the laws are 'bad'. We must agree that this behaviour causes harm worth legislating. If we cannot supply the link between the violation as constructed by the 'captive audience' section of the legislation then this 'bad' does not connect to the 'of course.' To achieve coherence readers/interpreters of this set of sentences need to equate a harm as defined by the captive audience section with a harm caused by the aggressive panhandling. Thus politely asking for money from someone at a bus stop creates harm equal to using threatening gestures and abusive language at a street corner.

The editorial addresses also the issues I label as 'practical' – questions of need for the legislation, enforcement concerns and what the legislation can be expected to achieve. The Vancouver Sun's Editorial Desk had disagreed with the need for this legislation since the beginning, writing on May 14, 2004 “…we’re more inclined to share the views of Attorney-General Geoff Plant and Solicitor-General Rich Coleman – there are already sufficient laws for dealing with panhandlers who become too aggressive. Its just a question of enforcing them.” The October 13, 2004 editorial seems to be more of two minds now and closes in the following fashion:

The new law will be meaningless unless it is enforced, and trying to enforce the Safe Streets Act will be problematic. First, many of the culprits targeted by the legislation will be of no fixed address, a.k.a. homeless. If they refuse or are unable to pay fines, will there be any public benefit in throwing them in jail? We think not. Many of the panhandlers are either mentally ill or suffering from drug addiction. These people need help not harassment. There are also others, however, who are aggressively wielding their squeegees or begging essentially for the money. If municipalities are willing to put the resources needed into enforcing the new legislation, these people may be persuaded to find other avenues of employment.

The editorial questions, as did other opponents, the usefulness of legislating the behaviour of the addicted and mentally ill – a query based on the presupposition that they are not as in control of their actions as 'we' are. This group is still a 'problem', but requiring intervention of a different kind– “help, not harassment.” In many ways this argument, also cited by Ms. Vonn, is an

22 Under Bill 71 it is an offense to solicit anyone waiting to use or just finishing with a payphone, bus stop, ATM, anyone getting in or out of a vehicle or in a parking lot or in a vehicle stationary in the roadway.
alternative causal story for aggressive panhandling. It is not exclusively a choice of behaviour for a handful of bad people who are a threat to everyone and are rational enough simply to modify their behaviour when threatened with consequences; it is at least partly the result of people who are mentally ill, addicted, or both, being on the streets. This is the group that the *Vancouver Sun* refers to as the ‘many’ as opposed to the ‘others,’ constructing one group as more numerous.

Many versus others constructs for us a balance that is less than, say, ‘the majority’ and ‘a few’ but still suggests a perception that the problem is one with a different cause than the proponents suggest.

This may be a clue as to why this argument against the legislation was not as successful as the argument for aggressive panhandling legislation. Stone, in her discussion of what make a causal story also talks about strong and weak defenses to proposed causal stories. Here the presence of mentally ill patients on the streets is taken as a given. This is a presupposition (Fairclough 1992a, 120). Sometimes presuppositions are things introduced at the start of a text and then assumed through the rest of the text; sometimes they are carried over from previous texts by the same producer or from general circulation and thus assume exposure/knowledge from the interpreter or reader. The editorial is presupposing knowledge on the part of the reader of a history of budget and service changes in mental health care in the Lower Mainland, such as the long standing public issue of budget cuts at Riverview Hospital for the mentally ill both in the 1990’s and again in 2002. If the reader cannot fill in a presupposition such as ‘there is not enough treatment’ then it is difficult to naturalize the notion that Vancouver has mentally ill people on its streets. Thus, ‘many’ of the instances of aggressive panhandling are caused by earlier government policies that have left the mentally ill with reduced services. Stone suggests that as one side of a political battle tends to push the definition of a problem towards the realm of human action, the other will seek to “push it away from intent towards the realm of nature [not amenable to human action] or to show that the problem was intentionally caused by someone else [requiring different human action that the proposed]” (Stone, 1989, 292).

While not saying explicitly that this state is ‘caused’ by cutbacks, the reader must explain the presence of mentally ill people on the streets; the lack of services is the only reasonable explanation for this in Vancouver or anywhere. Stone argues that the weakest defense against a causal story (which is essentially what opponents must formulate) is to suggest that the problem is someone else’s fault (Stone 1989, 292). The newly accused will often fight back, generating yet another opponent, and because it leaves the problem in the realm of action - if the problem
was made it can be unmade. Here, by implicitly blaming earlier government choices the
opponents are doing both:

1. they are setting themselves up to be ‘disproved’ through things like Lorne
   Mayencourt’s articles discussed earlier that show all the government is doing to fix
   the root causes, and

2. they confusingly leave the problem in a realm where it can be fixed but then offer
   no concrete alternative.

Their implicit solution – getting the mentally ill and the addicted into treatment - violates one of
Stone’s other requirements for success – that the “implicit prescription entails no radical
redistribution of power or wealth” (Stone 1989, 294). What they have implied certainly does.
The logic against the Safe Streets Act that suggests that it will not be effective against ‘many’ of
the people committing the act because they are mentally ill and drug addicted asserts a complex
causal story Stone 1989, 285). A complex causal story is similar to an accident as it “postulates a
kind of innocence” as no one actor can control the entire system or “web of interactions” (Stone
1989, 289). This makes complex explanations less effective politically as they do not “offer a
single locus of control. Hence one of the biggest tensions between political science and real-
world politics. The former tends to see complex causes of social problems, while the latter
searches for immediate and simple causes” (Stone 1989, 289).

Offering this as a reservation about the need for and usefulness of the legislation is to propose
that the legislation is doomed to have little or no impact because it cannot be enforced fairly or
reasonably against “many” of the people on the street. Saying that a majority of the instances of
aggressive panhandling will not be solved without removing the mentally ill and addicted from
the streets is almost destined to fail in the face of a simple solution. It would require the
redistribution of wealth, complex discussions of freedom of movement versus institutionalization
and we may have to find a way to house the mentally ill in our communities or otherwise take a
series of difficult, complicated and likely tax-increasing steps. As an alternative argument this is
doomed to be ineffective and unappealing politically. Its appeal cannot compare to a narrative
causal story that identifies a concrete locus of intervention and requires nothing from us as
individuals but agreement to a new law that does not affect us.

The Vancouver Sun editorial, however, closes with a very on-the-fence position. It has no
problem with the regulation of those “aggressively wielding their squeegees or begging
essentially for the money” if cities can find a way to implement this. A careful reader might wonder what those not begging ‘essentially for the money’ are indeed begging for. It does not make total sense unless one reads as transparent the final clause, that with the legislation, “these people may be persuaded to find other avenues of employment.” To make this coherent the reader needs to supply a bridging assumption that some people are street-involved as a choice. To make this coherent we need to agree that there is a marked difference between the mentally ill or the addicted and “these people.” We all know who “these people” are. They are the ones who make the rest of us, who get up every day, go to work, put on ties, get master’s degrees, pay mortgages and other things that are difficult, look like fools. They have it all figured out; they are playing the system. “These people” are the equivalent of the welfare mother having more kids just to get more money, the ingrate living in social housing that won’t get a job, the immigrant running welfare scams, the people happily living off ‘our’ money. They are the people who make us feel duped, like they found a way to shirk all the responsibilities that we can’t seem to.

They are presuppositions – the stereotypes we all understand and do not even need to state. Presuppositions like this “are propositions which are taken by the producer of the text as already established or ‘given’ (though there is the question of for whom they are given)” and Fairclough uses the example of “the Soviet threat” which became more than a simple presupposition and became a ‘preconstructed’ expression that circulates ready-made (Fairclough 1992a, 120). They are easy fodder for policy intervention arguments, they tap into sometimes ugly, deeply-rooted cultural ideologies. Often these are so internalized that they are invisible; as such they ask us to make people into the other and a target of our ire because we ‘know’ all about them. It is a “common strategy in causal politics to argue that the effects of an action were secretly the intended purpose of the actor. If people sleep on grates or work in dangerous jobs they must have chosen to do so because they get more satisfaction out of those activities than anything else” (Stone 1989, 290).

The Editorial Desk assumes “these people” are in their position by choice, as is clear from the idea that if they could not do this then they would “find other avenues of employment.” Instead they ask us for more money. One must assume if the legislation is to affect their behaviour then these are the people doing it in an intentionally aggressive way (as opposed to the inadvertent aggression of the mentally ill). They are on the streets by choice hoping to intimidate more money out of ‘us’. This is a massive teleological fallacy: one cannot use the effects of actions as evidence of the wishes and motives of the actor – I feel uncomfortable, therefore they are out to
make me feel uncomfortable. In matters of the law, intent is usually a factor to be proved in deciding guilt, just not here. We ‘know’ what “these people” intend. This is an excellent “political ploy, because the person who turns out to have willed harm [our intimidated discomfort] while concealing his malevolent intent [behind asserting need] is a doubly despicable character...a potent rally cry” (Stone 1989, 290). Indeed this character is such a potent rally cry that the Editorial Desk, which is not overly supportive of the legislation and worries about its effect on the mentally ill, hopes that at the very least it will give this character reason to clean up his act and go get a job, even if it is generally useless against the ‘many’. This is one aspect of the argument for the legislation that is both a source of its power and one of the deepest sources of my concern about it from a social justice perspective. It is laden with assumptions of the ‘other,’ their motives and the implicit assumption that being street involved is for many a choice or way to shirk social responsibility. Who wouldn’t want to legislate this away? Then “these people” not only can’t make me feel uncomfortable but they also have to get a job like I do.

MICHEAL VONN – BCCLA

I will not treat this article to the same level of ideological scrutiny that I will the other samples from the corpus, providing only modest close textual analysis. In not doing so I realize that I am open to accusations of ‘playing favourites’. The reason for this is that in the policy analysis I will explain the ideological and legal arguments behind my evaluation of the legislation and the assumptions in this article will be echoed and engaged there. This article, while being anti-legislation on dominantly ethical grounds, does have one technical opposition, in line with the Government’s original assessment – that there are “ample provisions to deal with intimidating and dangerous behaviour under the Criminal Code.” While the BCCLA agrees that aggressive panhandling “should not be tolerated,” it is suspicious of the legal need for the new laws.

Here I will present this article largely as the ‘set up’ for the David Jones article, which is a stated response to the arguments given by Ms. Vonn. Quotes will illustrate her point about ‘laws for us and laws for them’, and how she constructs the ‘real purpose’ of the legislation, both of which Mr. Jones takes issue with directly, so the reader of this text can evaluate my comparisons.

Ms. Vonn opens with the following scenario –

Imagine this. You’re late for work, waiting for the bus and you realize all you’ve got is a $10 bill. So, you ask around, looking for someone to change your 10 or just to flip you a
twoonie to help you out. Sound illegal? It would be under the proposed Safe Streets Act. Whether or not you are worried about that probably depends on who you are.

She then gives a brief description of the ‘captive audience’ section of the Act and continues,

So, any enterprising Brownie who attempted to sell cookies to ‘captives’ could be charged. Except that isn’t going to happen. Proponents of this legislation claim it targets behaviour and not people. But that’s very hard to believe. Everyone knows this law is about panhandling. This isn’t a law for us, this is a law for them.

Her closing ‘real life’ example is

The fact that it is absurd to think of this Act being invoked against a kindly veteran offering Remembrance Day poppies is a reminder of the real aim of the legislation, which is to prevent certain people from occupying public space...It’s designed to be applied in a discriminatory manner.

And what has lead her to believe that this is the actual intent is the following:

Proponents of the Safe Streets Act maintain that the Criminal Code provisions are not working and somehow inadequate to deal with ‘aggressive panhandling.’ However, I have yet to hear why this is. This failure to explain encourages the surmise that the real aim of the legislation is to sweep the streets of people who some are uncomfortable seeing or meeting in public places. The mere threat of invoking the Safe Streets Act against an individual will presumably ‘move them along’ to the extent that it could effectively create ‘no-go’ zones in certain parts of the city. It is well to remember that this legislation’s prime proponent is the business lobby.

She states that panhandling is a right protected by the Charter’s right to free expression. The DVBIA acknowledges this as well, which is why the Safe Streets Act does not attempt to prohibit the act itself, just the manner in which it can be conducted. I do agree this legislation is at least partly about our general discomfort with the despair of others, but I do not think the DVBIA in its wildest dreams believes that it can remove panhandlers from view entirely. To claim that this is their intent I think opens this oppositional view to the accusation of misunderstanding or even liberal hysterics. Her reason for coming to this conclusion is interesting however. The DVBIA did not clearly and publicly explain in the press its perception of why the Criminal Code provisions are inadequate for what they see as the problem that needs solving. It did offer small explanations during the debate. One was in a letter to the editor of the Vancouver Sun by the Chair of the Safe Streets Coalition on May 18th 2004 saying that:

Provincial laws would allow police to attend to a complaint and choose from a number of different options – warn, ticket or arrest. The arrest option under a provincial statue is critical. Used as a last resort for repeat or non-compliant offenders, it attaches a real and immediate consequence to unwanted and aggressive behaviour.

This offers nothing about why the Criminal Code does not provide this. It asks us to assume that it simply does not, and I doubt it would fill Ms. Vonn’s requirement of an explanation. But explanations were offered at length in the presentations the DVBIA gave to municipal
associations and other BIAs. It is interesting that the exact inadequacy of the code and the remedies they propose (beyond possible penalties) was something they never felt the need to offer the public at large. They assumed an ‘expert voice’ that said “trust us, it is like this.” It is unclear if they saw the public at large as a separate audience from the associations they spoke to in hopes of recruiting them as co-advocates for this legislation.

As for her ‘real life’ scenarios, these are accurate descriptions of actions that would be considered offences under the Act, as will be examined in the analysis of Mr. Jones’s article. She concludes her article with “It’s designed to be applied in a discriminatory manner. And so, despite being aimed at ‘them’ – who are among our most vulnerable citizens – it takes away from everyone’s rights in a democratic society. Give that some thought the next time you find yourself short of change for the bus and dependent on the kindness of strangers.” She is constructing a very different split among those that panhandle on Vancouver streets than the Editorial Desk did in the previous argument. She has divided them into criminals (those who could be reined in by the Criminal Code provisions on assault, extortion, uttering threats…) and the needy. Society in general is thus split into three – the criminals, the needy and the rest of us – with her argument “It is cruelly insensitive to suppose that those of us who are not poor have a right to ask for assistance but those of us who need it most cannot.” She embodies the anti-legislation argument of, essentially, ‘it’s not fair.’ It is not fair from both a legal/democratic aspect (and this is the only clear representation of this theme I was able to find) and from a compassionate perspective (which appears frequently in letters-to-the-editor from members of the public). She is asking us to construct non-criminal panhandlers universally as being legitimately needy. As a political argument this may have been too tall an order in a world where “these people” from the previous article are so deeply internalized and in a world where ‘compassion fatigue’ is a state discussed in popular media.

The causal story here is even more complicated than in the previous story. We have moved beyond the problem being caused by the lack of services to the mentally ill to a causal story almost entirely situated in the ‘natural realm’ – the poor are always with us. Short of the massive re-distribution of wealth mentioned earlier as a killer for the political effectiveness of causal stories, there is no agent that can be held accountable in her narrative. She moves the issue of panhandling back to the realm where it cannot be affected by human action. The simple appeal of easy intervention is politically much better equipped to appeal to people than a complex
explanation about why there are poor on the streets and why our compassion should prevail over our desire to regulate this fact through ‘unfair’ legislation.

Still, as politically problematic as they may be, the arguments she presented were enough to prompt an article of reply from the DVBIA. To the best of my knowledge this is the only time they deemed this action necessary.

DAVID JONES – DVBIA

Mr. Jones opens his op-ed article with:

An October 20 op-ed article by the B.C. Civil Liberties Association claimed that the Safe Streets Act is simply about prohibiting all panhandling and that the act will have unintended consequences. The article cited the examples of a Brownie being charged for selling cookies or someone being charged for asking for change to use a pay phone. These are hardly realistic scenarios. In fact they are just plain silly and serve to obscure the real purpose and intent of the legislation. The Safe Streets Act has been crafted to protect people from precisely the misapplication of the law described by the B.C. Civil Liberties Association. To run afoul of the legislation, a person must act in an aggressive manner while soliciting. Holding your hat out or asking for money will not cause a problem. For captive audiences, there is no blanket prohibition on soliciting in the vicinity of an ATM or pay phone. The act permits this activity provided it is not done to a person who is waiting to use, using or leaving the devices within a five-meter boundary.

Let us consider Ms. Vonn’s Brownie at a bus stop. Mr. Jones refutes the use of this as an example by saying that the aggressive behaviour is what dictates the Brownie’s legal status. This is either a willful or accidental mis-reading of Ms. Vonn’s argument. She is not proposing a rabid Brownie who will not take no for an answer, she is testing the application of the captive audience clause, not the measure of aggression. The Brownie certainly could be charged for selling cookies to people waiting to use, using or leaving the use of an ATM, bus stop or pay phone, no matter how sweetly she went about it. Concern for Brownies and those like them is reflected in the crafting of the Act that Mr. Jones refers to. Bill 71 had a provision added between the first and third readings that stated no offence would be committed if one solicits within 5 meters of an ATM if one has the permission of the owner or occupier of the premises where the ATM is located. This means that if they ask permission from the owner or occupier, panhandlers, Brownies and Little League Teams needing new uniforms can solicit outside the Safeway or 7/11. The question becomes for whom this provision was put in place. I suggest it is not for the panhandler. Even with this provision the Brownie at the bus stop could be prosecuted as the provision only covers ATMs.
We will turn back to Mr. Jones’s text. He calls these scenarios “unrealistic,” “silly” and serving only to “obscure the real purpose and intent of the legislation.” If, as we have seen, these scenarios are indeed possible and true to the legislation as it is drafted, then what about them is silly and obscuring? It seems that Mr. Jones is saying they are silly because it would never happen, that this would never be an enforcement issue. Mr. Jones is not able or willing to provide the bridging assumption Ms. Vonn calls for that would provide coherence to her argument of the injustice of selective application. For Mr. Jones it seems to be unproblematic that this legislation will be enforced against panhandlers and not Brownies because he does not share Ms. Vonn’s ideological assumptions. For Mr. Jones it is not what the law could be used to do in these “silly” cases that is of concern but the “real purpose and intent.”

Ms. Vonn suggests that the proponents of the legislation argue this is about behaviour not people, and indeed they do. Responding to Ms. Vonn’s complaint that the reasons for the inadequacies of the Criminal Code have not been stated, Mr. Jones offers the following: “The Safe Streets Coalition has never said that the Criminal Code provisions are inadequate to deal with aggressive panhandlers. Our point is that the Criminal Code is a heavy-handed and cumbersome tool. We want to change behaviour, not criminalize it.” So the Safe Streets Act does not criminalize anything that is not already criminal, but will somehow be different than the Criminal Code provisions in how it can affect people’s behaviour. I largely accept his statement that they want behaviour to change, whether they limit themselves to this because of Charter rights or sensitivity is not the issue. I accept, as does the BCCLA, that aggressive panhandling is not something that should be tolerated. ‘Aggressive’ is constructed in a clear way in the government sponsored Bill 71, much more clearly than in the original Private Member’s Bill championed by the DVBIA. It spells out behaviour that none of us would wish to experience.23 Let us accept for a moment that the Act will prove more effective in policing that behaviour. What will be left behind?

It is the captive audience clause that is the most ideologically laden section of the Act. In order to give coherence to it we are required to agree with the construction of harm. This Act, with the aggressive definition and the captive audience clause, defines three things: who is a ‘good’ panhandler, who is a ‘bad’ panhandler, and what sort of harms they do us that need to be stopped.

23 In paraphrased terms aggressive is action, threat or words that would cause a reasonable person to fear for their safety and/or that after a “no” is offered in response to a solicitation the solicitor may not block your path, abuse you verbally, follow you, approach you in a group or continue to solicit you. The Act in its entirety is included in Appendix 4.
The Safe Streets Act asks us to equate being threatened and harassed (aggressive behaviour) with being unavoidably confronted by poverty and need that we cannot flee, that we are 'captive' to. The possible penalties are the same for each of these. What is left after this legislation is the right to be quietly in a place other people can walk by as quickly as possible and politely ask for money. This Act not only restricts 'aggressive' panhandling, it creates the passive panhandler, providing me with at least a 3 metre buffer from his or her neediness if I am in a place where I may need to remain. This creation of passive panhandling via a thorough a definition of aggressive panhandling is an example of Fairclough's understanding of how control through force is replaced with the "implicit exercise of power [which] means that the common sense routines of language...become important in sustaining and reproducing power relations" (Fairclough 1992b, 3). The problem with constructing my discomfort at not being able to run away from someone's need as a harm will be covered extensively in the legal and policy analysis section in this thesis. But the legislation only makes sense if the interpreter can agree with this construction of 'captive' panhandling as a harm great enough that we need legislative protection from it. The captive audience clause and the aggressive clause are vastly different, yet were regularly presented as both being about "aggressive" or threatening behaviour, which no one wants and provides a powerful political discourse. As a causal story it is perfect – it assigns clear blame, clear need for reform and a single locus of control.

Mr. Jones and Ms. Vonn disagree also on the ability of this act to "sweep the streets" of those we do not wish to see. Jones refutes this by arguing: "Despite the claims of the BC Civil Liberties Association, this legislation will not, cannot, be used to 'sweep the streets of people'." Is this true? The Safe Streets Act can't perform in the way that Ms. Vonn suggests. The passive panhandler constructed by this Act, provided that they are not on private property, can remain politely in place as long as they follow the rules. Their right to do so is protected by the Charter. What the DVBI A does call for are the use of area restrictions as a penalty for violations of the Safe Streets Act and the Amendment to the Trespass Act. Area restrictions are just that – an offender has, as part of his punishment, the distinction of being banned from an area as small as a block or store front to as large as a municipality. While this does not 'sweep the streets' it does raise questions about what problems these restrictions are intended to solve and for what sort of harm the DVBI A sees these as being appropriate punishments. The function and justice issues of area restrictions will be examined in the next chapter.
Area restriction will serve to just “move them along” as Ms. Vonn contends, this is their purpose by definition. The DVBIA assumes the threat or enactment of area restrictions will modify people’s behaviour – that duplicating their behaviour in another location will not provide the same satisfaction that the original location provided. Again, unless one can supply a bridging assumption that the actions prohibited are a matter of choice and everyone who may violate them has control of their faculties, it is difficult to imagine this as true. Banning someone from North Vancouver or the 1000 block of Broadway unless they are in transit through the area does suggest ‘we just don’t want you to be our problem here’ more than it does a sustainable solution. The punishment suggests that the harm caused is one of both behaviour and simple presence and both are being punished. If aggressive behaviour alone – threatening and abusive actions or words making reasonable people fear for their safety – were the sole target of the punishment then “go do this somewhere else” would be an utterly unacceptable mode of punishment and imprisonment and treatment for the addiction or anger issues would be much more suitable. It is difficult to imagine it being publicly defensible to request a punishment of “You make me feel afraid for my life, just go do that somewhere else” unless it is a restraining order for a very personal threat, which this is not. The issue must be of both behaviour and presence. The DVBIA in championing legislation of this kind is asking us to agree that removing the presence solves the problem of behaviour, for which I am unable to supply a bridging assumption that renders this coherent. I can only imagine that it solves the problem of presence, which is very much ‘moving people along’. The DVBIA seems to suggest that area restrictions are not just punishment but somehow serve a therapeutic purpose, serving to alter behaviour through their enactment or threat of enactment. The specifics of area restrictions will be dealt with extensively in the legislative analysis in Chapter 7.

The largest bridging assumption the interpreter is asked to bring to the coherence of the legislation is almost so large as to hide in plain site. Will the Act indeed give us “safe streets?” What are safe streets, what are they free of, what characteristics do they possess? This is not a piece of “aggressive behaviour” legislation; it will not provide me with a less cumbersome way to deal with the belligerent Toronto Maple Leafs fan who just will not stop trying to get me to support his team. It will not protect me from evangelists, Satanists, or overly enthusiastic planners who want to follow me down the street in groups of two and convince me to sign a petition. Seemingly, I would be “silly” if I did not want to be offered Brownie cookies at the bus stop, even though it is now my right not to have it happen. But I am not silly if I want a 5 metre buffer zone between someone else’s desperation and myself. This is not a loitering provision –
while I can be assured of no one, politely or otherwise, asking me for money while I wait within 5 metres of the bank machine, I cannot be assured of someone not loitering with the intent to rob me three meters away. While the definition of aggressive makes sense, the harm constructed by the captive clause is not something that aligns with a justice perspective and a resistant reading of these assumptions raises almost more questions than answers.

**DISCOURSE INFLUENCES SOCIETY...**

In the theoretical section of this chapter, Stone’s construction of the causal story and its political role was introduced. She offered four things that causal stories do besides creating policy problems by shifting issues from the realm of the natural to the real of human action. They:

1. “either challenge or protect an existing social order,”
2. through “identifying causal agents, they assign responsibility to particular political actors so that someone will have to stop the activity, do it differently, compensate victims or possibly face punishment,”
3. “can legitimate and empower particular actors as ‘fixers’ of the problem,” and
4. “can create new political alliances among people who are shown to stand in the same victim relationship to the causal agent” (Stone 1989, 295).

Does the DVBIA’s advocacy of Safe Streets legislation qualify as a causal story? The answer to each of Stone’s products of a causal story in many ways serves to frame the continuation of the research from this point.

With regard to the first product of causal stories (challenging or protecting social orders), I will explore further the relationship of this advocacy position, the legislation and the ideological appeal behind it to larger, deeply embedded narratives such as the security rhetoric and the competitive city rhetoric. If these connections can be made, there is sound argument for how the Safe Streets Act and the logic that supports it do perpetuate and strengthen the existing urban social order.

Concerning the causal agents of the second product (identifying causal agents and blame), it certainly took a problem that existed in the urban fabric and assigned blame and responsibility for it. While this was not the first time there were attempts in Vancouver to legislate panhandling, it certainly captured enough of the public imagination to allow this assignment of blame and suitable remedy to carry the day, meeting the second criterion of what a causal story does.
The third product is the production of legitimated 'fixers'. It remains to be seen as further research is carried out on this project – but it does seem that the DVBIA did see this success in advocacy as a legitimization of itself as a fixer of social ills downtown. Its annual report and strategic plan envision more activity of this kind, which suggests that it at least sees itself as legitimated.

The fourth product of political alliances are certainly produced. Two kinds of strong political alliances were formed. The first is practical and political – the DVBIA managed to recruit over 60 allies in the form of other BIAs, municipalities and even a small handful of citizens groups to the advocacy role. This alliance certainly increased its power. But, more interestingly, a quick examination of Stone's wording and its implications for the power of these kinds of social narratives is warranted. She states these alliances are dependent on people being united by victim position. With a rhetoric that creates the duality 'safe/unsafe' for the street it becomes almost impossible for anyone not to be in the victim position. It is also incredibly difficult to refute the logic, as one is then seemingly in favour of 'unsafe streets' and obviously either in denial of or insensitive to another's insecurity.

This CDA has attempted to demonstrate how the discourse around the Safe Streets Act sought ideologically to win support for its legislation and how it successfully changed the social order in doing so. In this close examination of several texts I have tried to show some of the ideological assumptions that underpin this discourse and to connect them to larger social trends. The legislation asks us to assume that panhandling, either aggressively or when one is 'captive' based on one's inability to flee, is the point of greatest leverage for creating a safe street. The next section will do this more explicitly as I examine the two dominant themes that DVBIA has access to that I believe ensured its success in the quest for this legislation – the economic competition argument and the discourse of safety and security.

...AND SOCIETY INFLUENCES DISCOURSE

Fairclough's model indicates that discourses are operating on numerous scales – from the smallest personal interaction to newspaper stories to grand meta-narratives that circulate and influence thought and discourse at often unconscious levels as they naturalize to be 'the way things are'. Having given a descriptive textual analysis and an interpretative examination of the interaction between the producer and reader/interpreter of the text, I will turn to Fairclough's final
element, an “explanation of how the interaction process relates to the social action” (Fairclough 1992b, 11). I will discuss some of the larger social narratives that the more local discourse of the Safe Streets Act took place within, fulfilling the need to discuss not only how texts shape society (through local examples and problem framing) but how society shapes texts (through the influence of larger narratives that frame how we understand the world).

Stone suggests that causal stories are likely to succeed as problem-framing narratives when the following conditions are met:

...if the proponents have visibility, access to the media and prominent positions; if the theory accords with widespread and deeply held cultural values; if it somehow captures or responds to a ‘national mood’; and if its implicit prescription entails no radical redistribution of power or wealth (Stone 1989, 294).

The last condition of the redistribution of wealth was briefly addressed earlier. Access to power and media for both the advocates and their opponents will be dealt with at the end of this section. It is the central two conditions that will be examined next. Were there deep cultural values and a local version of a national mood that could be tapped into by the proponents of the legislation?

There are two meta-narratives that I suggest played into the success of the DVBIA in building support for its drive to legislate what Kathi Thompson repeatedly called in our interview “aggressive and disorderly behaviour on the streets.” The competitive city narrative provides the equivalent of Stone’s cultural value and the security narrative is equivalent to a local mood. Together they provided the DVBIA with a way to link its advocacy to grand narratives that are deeply naturalized and provided it with incredible leverage.

THE COMPETITIVE CITY NARRATIVE

Neoliberalism and competitiveness are narratives that provide a strong discourse that governs how the city is imagined by many, how problems are understood and potential solutions evaluated. Jessop writes “…the current consensus on the need for ‘entrepreneurial cities’ can be interpreted as a product of convergent public narratives about the nature of key economic and political changes... narratives which have been persuasively (but not necessarily intentionally) combined to consolidate a limited but widely accepted set of diagnoses and prescriptions for the economic and political difficulties now confronting nations, regions and cities…” (Jessop 1997,
30). In the neoliberal project the city is the best point of leverage to harness the forces of globalization; it is in the city that the ‘footloose’ capital, its knowledge workers and elite financiers connect with the economy. Of course the world is not exactly this way, but the “truth effects” of this larger discourse are more important in many ways than any truth about how the world ‘actually’ works (Jessop 1997, 28). Because these images govern thought about the city, it has become “a privileged site for the problematisation of control in that, within these broiling, rolling, mutating, branching and reconnecting flows of speed and informality, it marks out a concrete field of localization and concentration where the exercise of government appears potentially possible” (Osborne & Rose 1999, 749). Competitiveness is the link between the theory and the practice of urban neoliberalism. This competitive city is, in essence, the outcome of “neoliberalized spatial relations” (Peck & Tickell 2002, 386).

This narrative has been internalized by the DVBIA and is visible in much of their in house literature, their annual reports and their conscious efforts to “brand and market” Vancouver’s downtown. But no matter how ‘obvious’ these narratives seem to those who have internalized them, neoliberalism and the competitive city were in no way inevitable outcomes to the collapse of Fordism and the Keynesian welfare state. Far from being ‘natural’ or ‘true’ they were constructed through publicly repeated narratives that served initially to calm the fears brought about by the collapse of Fordist manufacturing. The narrative at its coarsest was that Fordism failed because Keynesian policies ruined the economic system. In order to escape the failure cities must be restructured to make wealth-creation a priority in the face of competition and, in an urban version of trickle-down Reagan-omics, this priority became the pre-condition for economic and social good for everyone (Jessop 1997, 33). In a self-fulfilling fashion these narratives helped create our understanding of how the world ‘works’, and also seemed to offer within them the only possible solutions to navigating its difficulties. The success of the narratives of competitiveness and market forces emerge not as normative but as natural, practical and inevitable. “Alternative ways of defining and resolving current problems” simply fall away (Jessop 1997, 33).

The kinds of policing and legislative strategies discussed in this paper seem to travel hand in hand with this narrative of the city as well. As cities began to define themselves in terms of competitive rather than comparative advantage, image began to matter and it radically extended “the economic and extra-economic factors which are relevant to [wealth creation] (Jessop 1997, 29). Ward characterizes the situation in terms of boosterism: “Urban leaders begin to spend more
time on place promotion...and focusing on selling the city in terms of new lifestyle experiences. As part of this... a range of new policing strategies was introduced, in order that new users of the city could work and play while remaining sheltered from those whose very presence might disrupt this very carefully manufactured ‘utopia’ “ (Ward 2003, 118). The fit is evidenced by the incredible similarity of solutions and policies that are on display around the world (Jessop 1997, 31). The Safe Streets Act of concern to this thesis is just one of many equivalent pieces of legislation enacted at various levels of government in Ontario, Winnipeg, Calgary, Seattle, New York and San Diego as well as being a close cousin of the Anti-Social Behaviour Orders (essentially tickets issued for ‘anti-social behaviour’ that can include curfews, eventual area bans or potential jail terms for violating these restrictions) in the United Kingdom.

NARRATIVE IN ACTION

That economics is a key part of the healthy functioning of a city is not a matter of dispute in this thesis, nor is the legitimate knowledge of conditions ‘on the ground’ that is held by business owners or operators and is of great use to the city in planning for growth or change. The logic of the business community being involved in shaping the policies that will affect it is fairly obvious. Comprehensive planning in which the city’s planning institutions simply know best what is right for everyone has itself been discredited; involvement of stakeholders in planning processes is seen as the right thing to do and something that produces better policy. But what happens when these business and economic interests use the neoliberal competitive city rhetoric to drive the creation of social and extra-economic policies, as did the DVBIA in the case of pursuing the Safe Streets Act? Does “the rhetoric of universality that characterises economics thus serve as a screen for policies that are inherently partial in their application?” (Zender, 2003, 168)).

The narratives of the competitive city and neoliberalism intersect to provide business with a powerful position of authority and importance from which to lobby. The effectiveness of a narrative “…in promoting governmentalizing or regularizing practices which support the ‘entrepreneurial’ city depends in turn on its links to wider cultural and institutional formations…” (Jessop 1997, 31) like business improvement associations, which then claim the right to speak for the “best interest” of the city. While many special-interest groups claim to speak for the entire city, there is a profound difference in this instance. When the leader of the dog-owners’ society speaks about the need for off-leash parks, she may claim the entire city would be better off — more people would own pets which are known to keep people healthier, there would be more
exercise and socialization and we could claim to be a truly pet-friendly city. While these might be issues many can identify with, many other people will respond, “Why should I care, I don’t own a dog.” When business speaks about how the city’s competitiveness is being enhanced or threatened there are very few people who respond, “Why should I care, I don’t need jobs in the city.” The narratives of the competitive city qualify business to speak for everyone who ‘matters’ to neoliberalism and to discount the concerns of those who are non-compliant as laziness, deviance or even as dangerous to the entire project of urban growth. As Jessop explains, “The pervasiveness of this sort of entrepreneurial narrative is closely linked in turn to the parallel discursive constitution of specific sites of economic activity as ‘natural’ (common-sense, taken-for-granted) units of economic management, regulation or governance” (1997, 31).

Jessop articulates two concepts by which market interests and the state interact with each other and the population: the hegemonic project and the accumulation strategy. Jessop defines a hegemonic project as the “organization of different ‘class relevant’ (but not necessarily class conscious) forces under the political, intellectual and moral leadership of a particular class (or class fraction) or, more precisely, its political, intellectual and moral spokesman” (1983b, 100). A hegemonic project is concerned with broad social or political themes “such as military expansion, moral regeneration, social reform or political stability” (Jessop 1983a, 155). The development and success of a hegemonic project require that a claim of general interest or benefit be put forward regarding the activities or policies that advance the interests of the project. This general interest must also extend its logic to opposing activities that may hamper the advancement of the hegemonic project, though some concession will often be necessary (Jessop 1983a, 155). Accumulation strategies, on the other hand, are simply models for economic growth combined with a plan to accomplish it (Jessop 1983a, 149). The business community most often puts forward accumulation strategies, though they may come from politicians, technocrats or academia (Jessop 1983a, 160).

Jessop originally cast hegemonic projects and accumulation strategies as theories of the nation state, but they are also lenses through which to view urban political action, especially in the networked, competitive city. Jessop’s characterization of the hegemonic project as the purview of the state and the accumulation strategy as belonging to business is no longer true now that the state has handed more power to the private and third sector through partnership models of governance. This structural difference is further reinforced by the nature of the neoliberal narrative. While economics is the explicit territory of the accumulation strategy, which is
traditionally more technical in nature, this paper contends that the neoliberal narrative of competition grants economic concerns the weight of moral regeneration and political stability. The gravity now attached to ‘keeping the city competitive’ is equal to leading the city to battle, as everything of value is perceived to ride on this. This evolution means the distinction has blurred and that economic plans from the business community can now function as hegemonic projects. Localism, whereby ‘front-line’ stakeholders are seen as the ones with ‘real’ understanding, is a discourse of increasing currency. The DVBIA certainly used its role as a downtown organization and its member surveys of those “on the front lines” as legitimating both their knowledge of the problem and their qualification to offer a solution in defiance of the desires of the City government and, initially, even the Provincial government. Peck suggests the changes in institutions and the rise of partnerships (such as BIAs) and networks have encouraged the leaders of the business community to see themselves as able to speak for the whole city, allowing their interests to form hegemonic projects (1995, 30). These go well beyond simple accumulation strategies, although their intent is economic development. As neoliberalism has extended itself beyond economics the hegemonic projects it supports can easily connect economic and extra-economic issues; here the DVBIA bound together ‘urban disorder’ and economic vitality.

Hegemonic projects must be seen to be of wider benefit (Cox & Mair 1988, 309), much like the wide victim base that Stone cites as good for the success of causal stories. For example, a coalition in support of development may form or join a hegemonic project that shares its class interests. Such a coalition may seek to stifle opposition by suggesting that resistance (sometimes but not always constructed as class based) would damage jobs or the inflow of investment and reduce the opportunities that would otherwise be available to everyone. According to the narrative, the sacrifices or compromises it is asking for are required to increase the ability to compete effectively (Collings & Hall 1997, 131). Cox and Mair suggest, basically, that a hegemonic project can appeal to the general loyalty of a community to “displace local class conflict into a competitive rivalry between localities” (1988, 318). An effective hegemonic project, especially in this neoliberal climate of the entrepreneurial city, can easily override those trying to discuss why there are poor inner-city neighbourhoods. The discussion instead becomes, as it very clearly did in this case study, why the poor limit the ability of a neighbourhood to attract tourism and, by extension, why they are a threat to everyone’s livelihood. One group with a strong hegemonic project and access to power can create a logic of inevitability for its goals that makes resistance by others much more difficult.
The competitive city rhetoric and the neoliberal narrative are excellent material for a hegemonic project, which makes the interests of business paramount and almost impossible to refute. The business lobby’s ability to present its narrative as having the general interest or ‘greater good’ at heart is immense. After all, so the narrative goes, if business is where money and jobs come from, the business community should know best if we are competitive enough for jobs to remain safe and, if not, what we need to do. Narratives have appeal based on their ability to resonate with “...(and hence their capacity to reinterpret and mobilize) the personal (including shared) narratives of significant categories or groups of those who have been affected by the contingent development of the post-war economic and political order” (Jessop 1997, 30). The plausibility of a narrative depends on how it can help make sense of what is being experienced (Jessop 1997, 31). The more general interest narratives that can be folded into a hegemonic project (such as economic health, safety or livability narratives), the more likely they are to succeed. This is when ideology is most effective, as it is not seen as ideology but just as ‘the way things are’. The more naturalized a discourse or narrative, the more ‘common-sense’ like it appears, the more it is the equivalent of Stone’s “deeply held cultural values” that ensure the success of a causal story.

The DVBIA is, inherently, an economic organization. When it organized the Safe Streets Coalition (SSC) to demonstrate support for the legislation, the SSC was largely made up of BIAs, Chambers of Commerce, Hotel and Tourism associations and other economically focused organizations. Yet the economic benefits of the Safe Streets Act and its ability to be used to ‘clean up’ the streets downtown were not often cited by the DVBIA or the SSC. When I asked both Mr. Jones and Ms. Thompson about this choice they seemed surprised by the question. I had wondered if it was a conscious choice by the DVBIA to allow the groups within the SSC, such as BC Tourism and Tourism Vancouver, to address this aspect (which they did quite vocally) and not to frame the ‘problem’ in terms of economics. It seems it was nothing as calculated as that. Both Mr. Jones and Ms. Thompson thought it was perfectly obvious and understood that the DVBIA was interested in what it saw as the economic impact of panhandling and ‘disorderly’ behaviour. They were both surprised I felt the need to ask and suggested that it was not a choice to avoid an economic framing; it was just that it was so obvious to them that they assumed it was obvious to those receiving the message of their advocacy efforts. I suspect they are right in this and that I was assuming too much sophistication in message crafting. Ms. Thompson made the point several times that the city needs business to flourish and for a healthy business environment to exist as “we all need each other.” Despite the obvious influence of Mr. Jones’s policing background, they both spoke from a position of business having needs in the city and that
fulfilling those needs is a basic requirement of everyone’s welfare. Mr. Jones cites comments from hotels that they were getting comment cards from visitors saying they would never come back to Vancouver because of panhandling. Certainly the motivations of the DVBIA were economic, and it assumed this aspect of its message was also obvious, and the competitive city rhetoric gave it a legitimacy to craft that message as a greater good for all of us. Having members of the SSC, such as Tourism Vancouver, step forward and be quoted in the newspaper as authorities on the economic impact, as Walt Judas of Tourism Vancouver was on July 5, 2004 in the Vancouver Sun, makes the point absolutely clear.

If the neoliberal model and its attendant requirements to create a ‘viable business environment’ are simply accepted, it becomes possible to assign blame for its failures and externalities. These blames fall not on the system itself, which is seen as a matter of ‘neutral’ laws of the market and its needs, but on the locality, the presence of ‘undesirables’, or unwillingness to face the ‘truth’ of the way things work. Blame is localized and failure is not a matter of capitalism’s instability, but rather of poor local administration. Neoliberalist narratives both define the failures and offer self-fulfilling solutions. We must understand that these ‘obvious’ and ‘natural’ solutions are not the only possible outcome; they are the product of a very compelling narrative. If we agree that, in the end, neoliberalism and its attendant forms are just stories we tell to make sense of the world, other stories then become possible. A causal story linking the competitive city to the need to regulate panhandling to ensure continued competitiveness is just one way to construct both the problem and the solution. The urban condition can be understood in a myriad of other ways.

SECURITY

The security narrative operates at several levels in the world. Despite the passage of half a decade we are still living – logically, but mostly rhetorically – in a ‘post 9/11 world’. While panhandling is not international terrorism, we do live in a world where the security rhetoric has begun to trump nearly every other position, and security has come to be seen as an unexamined good to be achieved at all costs. Ms. Vonn of the BCCLA has projected security cameras for downtown Vancouver based on the press conference in which Jamie Graham, the Chief of Police in Vancouver, said the words “Olympics” and “terrorism” in the same sentence. Whether she is right remains to be seen, but this example illustrates a concern of those focused on civil liberties and social justice. Lucia Zedner, in an article tellingly entitled “Too Much Security” focuses those concerns in the following way:
The compelling attractions of security, backed by the equally threatening allusions to risk, have promoted the language of security and insecurity over any larger consideration of the threat its pursuit poses, not least to accountability, equality and justice... In the public sphere, the promise of security or the threat of insecurity is all too often sufficient to silence countervailing concerns about the damage done to individuals or social justice" (Zedner 2003, 174)

What has actually been done to individual rights and justice by the quest for ‘safe streets’ in Vancouver will be assessed in the policy analysis; the important point here is that security acts as a trump for nearly every other argument. It happens at an international, national and local level. The threats change – from terrorists to home invasion to aggressive panhandling; the power of the rhetoric does not. Our seemingly visceral response to the call for security positions us all as potential victims of insecurity – exactly what Stone suggests is the most telling indication of the success of a causal story, a large pool of people linked by their actual or potential victim status (Stone 1989, 295).

A more uniquely urban layer of this quest for security, which certainly existed in a powerful form before the additional baggage of the 2001 attacks on the World Trade Centre and the Pentagon, manifests in gated communities, SUV purchases and classically middle-class fear of the urban in general. I do not think this phenomenon is as heightened in Vancouver as it is in many other North American cities, but its presence is certainly visible and is manifest in security guards at ATMs, the Downtown Ambassadors on patrol, alarm system signs on houses and the very fact that the Safe Streets Act captured the imagination to such a degree. This security phenomenon was discussed in a week-long series on the Canadian Broadcasting Company (CBC) radio program Ideas. The episode entitled “The Shadow of Security,” addressed the issues of the quest for security and the dangers this holds. The quest for security or safety is a vicious cycle – the call for security ‘proves’ the existence of insecurity and the constant indications of the presence of security heightens our sensitivity to the possibility of threat. When we are surrounded by signs promising 24-hour security and constant patrols we assume that without them we would be in danger and only this thin line of protection keeps us safe. When we invoke security, political debate is disrupted or eliminated and precaution intensifies, increasing alarm as much as calming fears. Ian Loader, a criminologist at Keele University in England, also calls our attention to the concerns that security discourse at the urban level displaces other ways of thinking about things. It can re-frame questions that we may otherwise have considered as needing more investigation or political discussion. In summarizing this problem he said:
What security does is to suggest a state of emergency and suggest that the normal processes of political deliberation and negotiation have to be peripheralized or, in certain cases, suspended. So, the language of security is the language of exception. It’s the language of suspension. It’s the language of imperative. And those kinds of thing don’t fit very well with my understanding of democracy (Ideas, March 10, 2004).

The state of constant security awareness that we live in makes us very susceptible to arguments of risk and safety. We already ‘know’ that areas like downtown are dangerous because we see security measures that tell us so and these combine with age-old images of the dangers of cities and the ‘kind of people’ one finds there.

Security discourses are nearly impossible to debate – for the reasons stated above and for the difficult fact that security and safety create a binary situation. Ms. Vonn spoke of her frustration at trying to debate the Safe Streets Act as Policy Director for the BCCLA. She appeared on a number of point-counterpoint information programs during the debate over the proposed legislation. Her first frustration was always being cast as the counterpoint as the DVBIA and members of the SSC had the distinct advantage of setting the debate and its agenda. She found herself repeatedly in the awkward position of being “for unsafe streets.” She said it is impossible to count the times during “very fiery debates” that she faced the accusation that “if you are apt to criticize this bill, clearly you are in favour of my grandmother being assaulted on public streets.” The debate was exactly the emergency situation Loader suggests – one requiring the suspension of the debate, in which one’s opponent’s critiques can simply be dismissed as “silly” because one day more of the present situation means one more grandmother harassed, one more innocent tax payer or credit-card-wielding tourist frightened away. The paradigm of vulnerability has undoubted utility, as the ‘little old lady’ became the poster-image for the Safe Streets debate. Ms. Vonn’s personal frustration with this was twofold. Primarily, she found it troubling “to have an image of female vulnerability exploited to create oppression for other vulnerable people” and secondly it tied to the safety discourse, which she described as being simply “a set up.” It was something that you could not counter with complicated discussions of rights, freedoms or questions of justice; it was something that you could not counter at all within the logic of its causal story. As the opponents of the legislation were not framing the debate they could only emerge looking ‘soft on crime’.

Our increasing obsession with risk now governs how many of us move through cities, how some of us choose to live in them and the designs we prefer. Collectively we like cul-de-sacs because they make for easy observation – as there is no through traffic you are present because you have
business there, and if you do not you are easily tracked. We prefer malls (quasi-private spaces) to main streets (truly public spaces). Malls are clean and orderly through security features we are likely not even aware of. Jonathan Simon also spoke on the Ideas program “Shadow of Security” and explained the thesis of his forthcoming book Governing Through Crime:

It’s not just the people who are being directly managed by the correctional system who are governed through crime. It’s also middle-class families that situate their domestic lives in environments and in procedures of living that are focused on crime risk or the fear of crime… vast portions of the middle and upper class live their lives in ways that are shaped by the fear of crime and in that sense they are governed through crime… equal to the prison, as a kind of architecture of governing though crime, is the gated community… the infrastructure of life that is shaped by crime for many middle-class Americans is exacting enormous costs on their ability to get other things done… And in that sense, as much as I think the poor are harmed by both crime and the criminal justice system, in some ways, the middle class is equally disabling itself with this new regime (Simon, Ideas, March 10, 2004).

While this sort of extreme case is blessedly rare in Vancouver, it does hold a core of truth in Canada and in the GVRD. The middle-class shoppers are part of the victim group that the DVBIA hopes to protect in order that they feel ‘safe’ coming to spend money in the slightly shady ‘downtown,’ so common in myths of urban danger.

The question seems to be - Why has our obsession with risk grown so out of proportion with the dangers we actually face? Why do we drive our children everywhere when the risk of an accident is higher then the risk from a ‘bad man’ in a trench coat? Zygmunt Bauman suggests this is partly the result of a sort of transference. As we increasingly realize that our world is out of control our anxiety increases. Crime is one area we can focus our attentions, and the attentions of our government, and still feel like we are making ourselves more secure with relatively quick and easy fixes (Bauman 1998, 116). Neither we nor our governments can do much about the overwhelming roots of our increasing anxiety; fixing global warming, job outsourcing, economic instability and other large concerns remain beyond us. So we pass laws against panhandlers to try and make ourselves feel safer, regardless of the true impact or the actual threat. A great deal of political capital to be had here. While Bauman suggests that this is why governments so often drive these pieces of legislation (Bauman 1998, 117), in this case study it was more a matter of the government seeing which way the parade was going and racing to get in front of it. Of course, in the case of the Safe Streets Act there are issues of how this behaviour itself came to be constructed as criminal, which is something that will be addressed in the policy analysis.
Whether our sensitivity to risk is a luxury born out of how little urban danger we really face in the GVRD, a matter of transference, or part of a complex security conundrum, it is still a very real way of approaching urban dangers. As our access to security grows generally, we increasingly stop competing for the ability to acquire goods and start competing for the ability to avoid what bads we imagine are left. This is the very logic behind the gated community or the ability to hire a security company. As we become more risk sensitive and risk adverse we are more compelled by arguments that promise to provide security. Richard Ericson appeared on the Ideas program to discuss the ‘risk society’. Most of his academic work, including the book he co-authored with Kevin Haggerty called Policing the Risk Society (Haggerty & Ericson, 1997), specifically concerns how the police are involved in gathering and communicating information on risk.

Ericson characterizes the roles of security and risk that he suggests are over-riding how we move through our environment:

So, there’s a kind of fuelling of fear through the very mechanisms that are supposed to alleviate fear, and this leads to more and more extreme precaution, and we may say that we’re now in a kind of precautionary society, where any imaginable risk is subject to extreme measures, extreme caution or even pre-caution, being cautious about even how we’re being cautious (Ericson, Richard. Ideas, March 17, 2004).

And so, despite the fact that I could find no actual episodes of violence against taxpayers and tourists reported or cited in the DVBIA’s process of advocacy, the mere risk, the discomfort, the feeling of possible threat were enough to tap into all our feelings about security, safety, the urban, the suspicious person, the poor and every other stereotype and fear that circulates around us. Ms. Vonn is right that it is as simple as a binary – you are for safe streets or you are for unsafe streets. Once the DVBIA was able to construct safe streets for economic gain, it became almost impossible to have discussions about criminal law, fundamental justice, appropriate policing, or civil rights. To try to do so meant you did not care about grandmothers. Just who is or is not entitled to feelings of security is something that resonates through this debate. Zedner writes about the risks of security itself in the following way: “Although sections of the population are rendered permanently marginal, though anxiety is increased, and though civil liberties, trust and other core social goods are injured, the selling of security proceeds unrestrained (Zedner, 2003, 174).”

And so the competitive city, economic health and the security dialogue come together in the quote from Tourism Vancouver’s other spokesperson, Ray LeBlond, who says, “Visitors look for safe travel and Vancouver has long enjoyed a reputation as a safe city. So we’re concerned about any complaints about people feeling unsafe” (Vancouver Sun, Jul 5, 2004, pg E4). Not ‘many
complaints', not assaults experienced and reported to police - just ‘any’ complaints about security are enough to set off economic alarm bells. This is despite the Economist again ranking Vancouver as one of the safest cities in the world to be in for business and Conde Nast again ranking Vancouver, for the second year in a row, as the best city in the Americas to visit – right as the legislation they advocated to protect all these besieged tourists was being passed. The DVBI was in an excellent position to set the causal story, and had access to narratives that gave it both legitimacy as the framer of the problem and a position as the champion of victims. With the Safe Streets Act it offered a quick fix to an otherwise difficult problem. The fix allowed us to know all about ‘those kind’ of people and how they threaten us without requiring any sort of debate on justice or civil rights. The economically-based competitive city argument legitimated the perceived need for the legislation and the security issue of ‘safe streets’ provided a trump to any attempt at debate. As a consequence, the “potential social exclusion is exacerbated by the common tendency, both individual and collective, to overstate exposure to risk and hence demand even greater protections” (Zedner, 2003, 166).

THE PLAYING FIELD

Again, Stone’s requirements for the political success of a causal story are:

1. if the proponents have visibility, access to the media and prominent position;
2. if the theory accords with widespread and deeply held cultural values;
3. if it somehow captures or responds to a ‘national mood’;
4. and if its implicit prescription entails no radical redistribution of power or wealth.

(Stone, 1989, 294)

I have tried to demonstrate above the difficulties faced by opponents of the legislation and the advantage held by the proponents given the causal story being told and the environment it was being told in. The causal story as presented by the DVBI and the SSC did all the things a causal story must do, including assigning a clear point of blame and reform, providing a clear locus of control for the problem, and creating an extensive victim alliance among not only members of the SSC, but also among grandmothers and the population at large. The limitations faced by opponents of the legislation are equally clear. Their alternative causal story was complicated, potentially expensive and limited their ability to create a simple story of blame, responsibility, reform and solution. Combine these strikes with the benefits that larger more naturalized

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narratives, just discussed, supplied to the DVBIA and the SSC, and it is no surprise the opposition failed to stop the legislation.

I have not yet directly addressed the practical matter Stone cites of access to media, visibility and the prominence of the advocates. Even underdogs with everything stacked against them can win a fight on a level playing field. How much of an impact did the nature of the SCC and its members have on the ability of the opponents to get their messages across and heard?

Both Ms. Vonn and Ms. Thompson addressed this in our interviews. I asked Ms. Vonn if she had a sense of why there was no coordinated effort on the side of opponents in the same way that there was with the formation of the SSC. She laughed and said:

“Sure I have a sense of why not. You’ve got municipalities and massive business interests in favour and you’ve got who on the other end? We could always form a coalition of poverty advocates if only we have the money to hire a coordinator and have a campaign. So there were various things that were done piecemeal, [its] unsurprising it was not a coordinated effort. The kinds of resources it would take to generate the reports and generate the Op-Eds, it was hit and miss. This was something that ignited a whole lot of interest in people who have concerns about rights and with people more focused on poverty writ large... Inevitably they heard from people “Tell me you are doing something, we are concerned but our hands are full, we are concerned but we are busy trying to feed people”. This kind of advocacy effort is very difficult to sustain, for those interests.”

The DVBIA Annual Report for 2005 gives the budget for the SSC. From March 2003 until March 2005 the budget for the SSC was $118,414, with $38,129 spent between April 2003 and March 2004 and, after the launch of the campaign in March 2004 the budget for the year increased to $80,285. This expense falls under the expenses of the Maintenance and Security Committee, which also has a staff allocation of $81,201 a year, which is vastly higher than the next highest committee staff allocation of $48,479 for the Marketing and Communications Committee. The staff allocation, which certainly includes Mr. Jones, suggests a focused concentration of resources in this committee, which also has over half a million dollars allocated to the Downtown Ambassadors program on its portfolio as well.

These financial allocations show both the dedication of the DVBIA to security activity in the downtown and demonstrate the disparity between its resources and the resources available to poverty or civil liberties activists. With $80,285 and a year to use it, how different would the message delivery from the opponents have been? It is impossible to tell; opponents would still have been faced with the political deficits of their causal story with a complicated, resource-
heavy and nebulous problem frame. They also suffered to some extent from being a bit blindsided by the SSC; when the SSC launched its public campaign on March 11, 2004 it had been in existence since October 2003 with a steering committee and the intention of building a coalition for the purpose of calling for legislation. When it launched its campaign, it was already a coalition with an organized message with all its ducks in a row, and a secret weapon that Ms. Thompson and Mr. Jones both said was the difference between success and failure.

The SSC hired GPC International, which is a division of Fleishman-Hillard International. GPC is a government relations firm of licensed lobbyists whose reason for being is, according to its website – “Our job is to help our clients’ point of view prevail with the audiences that matter most to them.” This move is certainly not an underhanded one. This is a professional lobby group, governed by the rules that apply to all lobbyists. They are paid for these connections; the ability to open doors and provide targeted access to those in power. I do not mean to suggest that the hiring of this firm was in any way ‘cheating’ in this advocacy project; in fact it may have been the smartest thing the DVBIA could have done given that Ms. Thompson and Mr. Jones characterize it as one of the pivotal moments when things turned around. They saw the job of the DVBIA and the SSC as one of building and demonstrating support for this legislation, which they did admirably well. But this alone would not have been as effective in convincing the government to support the legislation. They credit GPC with the speed of the process. The SSC launched its public campaign in March 2004 and the legislation it called for was passed in October 2004. Eight months from appeal to a Private Member’s Bill to government sponsored legislation is certainly efficient.

GPC’s website gives an idea as to the potential assistance the SCC received which their opponents, disorganized due to constraints of time and money, did not:

Established in 1995 as GPC Public Affairs, Fleishman-Hillard Vancouver is one of the leading full-service communications companies operating in British Columbia. In February 2006, GPC Public Affairs and Fleishman-Hillard combined operations under the Fleishman-Hillard name.

Fleishman-Hillard’s Vancouver office provides a full complement of strategic communications, government relations, and public affairs services to a range of local, national, and international organizations. Sharing a passion for helping clients achieve great results, our team of experienced professionals is relied on by many of the nation’s leading organizations to help manage their strategic communication challenges and opportunities. We offer a depth of expertise in practice areas such as: government affairs and advocacy consulting, issues management, government communications, communications program planning
and execution, media relations, marketing communications, community relations and consultations and crisis communications. Our sector expertise includes natural resources and the environment, technology, healthcare, financial services and transportation.25

GPC was perhaps the last piece in the puzzle of the DVBIA and SSC’s ability to frame and make real their causal story. The story being told by these groups had all the qualities needed for political success; the combination of the profile of the members and spokespeople of the SCC (including mayors and prominent business people), and the purchased assistance from GPC for access and message shaping was potent. It was not an even playing field for the opponents. True, there were some people with significant profile who were against the legislation – Vancouver’s City Council, then dominantly COPE, was against the legislation. Members of Council generated a few Op-Ed pieces and appeared on the radio debate programs. But they were trapped in the same causal story and narrative dilemmas as the other opponents, despite their position. They were still framed as out of touch with the real experience on the streets, and unconcerned for both public safety and the needs of business. Without professional assistance with spin and access, granted to the SSC by the hiring of GPC, they were lost.

Ms. Vonn articulated frustration at having to argue against the immediate emotional appeal of such a question as “There are people who are afraid, why do they have to be when I have a simple solution? What do you want to do about it?” with the rational logic of rights and liberties that can only say that the “why” is extremely complicated and there is no simple solution. Coupling all the problems of the alternative causal stories with arguing against what could fairly be described as a political machine of the DVBIA, the SCC and GPC, was never a level playing field.

SUMMARY

Throughout this section I have attempted to explore the three levels of Fairclough’s model for CDA – a description of textual examples themselves, an interpretive examination of the interactions between the producer and reader/interpreter of the texts and, finally, with the discussion of larger narratives and practical consideration, an “Explanation of how the interaction process relates to the social action” (Fairclough 1992b, 11). I have also attempted to answer two of Stone’s questions that she suggests justify research as important or useful; these

are “what are the political conditions that make one causal theory seem to resonate more than others?” and “what accounts for the success of some causal assertions but not others?” These questions are not disconnected from Fairclough’s model, as the first is a question that operates closer to the locality, where texts influence society as well as the practical considerations of access and power, and the second provides another point of access to the larger influences of society on texts and localities.

In the next section I will turn to the legislation itself. It is this legislation that is the tangible result of the narratives discussed in this section and is where ‘talk’ becomes real for those it is enforced against.
CHAPTER 7: THE ANALYSIS – How behaviour becomes a crime.

CRIME AND CRIMINALITY

Crimes and criminals are products of particular times, places, narratives and causal stories. While ‘appropriate’ activity varies through time and space, some basic principles explored here are not new or particular to Vancouver or BC. Edgerton gives context to the timelessness of aspects of the law and social inequality through a 1762 quote from Jean-Jacques Rousseau: “The universal spirit of the Laws, in all countries, is to favour the strong in opposition to the weak, and to assist those who have possessions against those who have none. This inconveniency is inevitable, without exception” (Quoted in Edgerton, 1985, 228). I believe that in some ways we have moved past Rousseau’s ‘inevitability’ and proven that the law can protect the weak against the strong. But this is not the purpose or the intent of the legislation examined here.

We punish in part based on how we construct crime. Oc and Tiesdell present a set of five ways we can construct crime. The fact that there are at least five supports the notion that crime, criminality and law are indeed socially constructed, just as policy and the economy are. These five are not mutually exclusive, as to a large extent they are a matter of world-view or perspective. They are:

- Crime as a criminal law violation – i.e., a ‘black letter law’ definition of crime.
- Crime as a norm infraction – i.e., violation of moral and social codes
- Crime as social construct – i.e., crime is dependent on how certain acts are labeled and on who has the power to label.
- Crime as ideological censure – i.e., law supplies some people or groups both the means and the authority to criminalise the behaviour of others.
- Crime as historical intervention – i.e., law (and thereby crime) is created and applied by those who have the power to translate their interests into public policy.

(Oc & Tiesdell, 1997, 22).

Here I explore the criminalizing of behaviours Mr. Jones categorizes as a “nuisance” (quoted in Vancouver Sun, 2004, March 11, B8), particularly those of the “captive audience” section of the Safe Streets Act. This is an analysis best captured by the third description, crime as a social construct. I am sure that the DVBIA and the SSC would argue that the Safe Streets and Trespass Amendment Acts are matters of the second construction; these Acts simply legislate the normal moral and social codes that were being flouted. Over the course of this section I will examine
how the behaviours and acts were constructed by the DVBIA and SSC as both optional and constituting a harm worthy of legal intervention. I argue in the following section that a simple protection of norms of behaviour was not all that was in question and, even if it was, that these codes as constructed by the DVBIA were inadequate to warrant the legislation.

It is also useful, by way of introduction, to consider what Zedner characterizes as a “old” versus “new” penology. The old penology operated on a “fundamental assumption…that those who do not violate criminal law have the rightful expectation of enjoying their liberty without interference.” Zedner contrasts this to a new penology, which is more actuarial in sensibility. It constructs techniques for “identifying, classifying and managing groups sorted by levels of dangerousness” (Zedner, 2003, 167-168). The individual slips from view and is only a member of an aggregate suspect population. This is a tragically fitting complement to our already extensively demonstrated ability to turn the poor into the ‘other.’ And when “power is unequally distributed, the more powerful are likely to attempt to hold the less powerful strictly responsible for their behaviour” (Edgerton, 1985, 227). Instead of leaving be those individuals not violating criminal law, through the Safe Streets Act we have created a new criminal group whose presence warrants suspicion as a threat to us.

**IF THE SAFE STREETS ACT IS THE SOLUTION, WHAT IS THE PROBLEM?**

A sensible place to start with an analysis of a piece of legislation as contentious as the Safe Streets Act would seem to be “what was the problem?” I will try to re-construct the argument for the legislation as presented by the DVBIA and the SSC. I will use press releases, advocacy presentations to eventual Coalition members, newspaper articles and the information gathered in the interviews.

When asked to characterize the problem this legislation was to solve I received exactly the same wording from both Ms. Thompson and Mr. Jones – “aggressive, disorderly behaviour.” This phrase came up enough times in the interviews for me to conclude that this is the ‘on message’ characterization of the problem that they formulated and stuck to, which is a wise move in an advocacy process. Only when I asked for examples of this was panhandling mentioned, and indeed this is the only behaviour addressed by the Safe Streets Act.
The contention was that ‘aggressive disorderly behaviour’ was growing in the downtown despite the municipal by-laws and Canadian Criminal Code [Criminal Code], and that member surveys done by the DVBIA had cited this as a growing concern. Being an organization that likes to respond to the members’ needs in order to preserve what Thompson characterized as “economic viability,” it undertook another attempt to address this issue. Mr. Jones categorized the problem as partly being about Vancouver itself, saying,

“People get so consumed with the softer side and everyone wants to feel like they are a caring individual for people... Vancouver is the epitome of the death of a thousand cuts of kindness, we are so kind we have created a slum in the downtown area... because of the inability to see both sides of the equation. You have to have a balance between human services and the behaviour, and that is what the essence of this [legislation] was.”

While there are municipal by-laws to address this issue, they were considered ineffective. The City panhandling by-law 8390, brought in to replace the constitutionally challenged by-law, was described to me by David Jones as “a piece of fluff” and useless to the police. Mr. Jones explained the uselessness as coming from the nature of municipal statutes, which contain no arrest provisions. Tickets can be issued. Unless the ticketed individual has an asset that can be assailed in some way (such as the refusal to renew car insurance by the Insurance Corporation of British Columbia if there are a certain number of outstanding speeding tickets issued by the Vancouver Police) the tickets are meaningless, and Mr. Jones contends they are regularly treated as such. He is convinced that much of the behaviour the DVBIA and SSC object to is a matter of choice and a lack of consequences. This municipal by-law covered only ‘pack’ panhandling in groups of three or more, obstructing pedestrian traffic and continuing to solicit after receiving a negative answer. Mr. Jones characterized the Criminal Code as too “cumbersome” to act as an effective deterrent or enforcement mechanism for this type of behaviour. But the truth is that much of the behaviour the DVBIA and SSC sought to regulate was not constructed as criminal before the legislation passed, and so the Criminal Code would have been useless to them as it was too high a bar to clear.

This term, ‘aggressive, disorderly behaviour,’ is actually a difficult phrase to analyze or counter. It is obviously something none of us want, but what exactly is it, and how does it relate to the legislation? In its presentation to the Union of British Columbia Municipalities the SSC cited calls for service to District One of the Vancouver Police to demonstrate this increased disorder and the need for Safe Streets legislation. This is the district that covers the downtown peninsula and where David Jones was a district commander before coming to the DVBIA. In the
presentation – alternately given to different groups by David Jones, Charles Gauthier and Kathi Thompson – six different graphs are shown indicating a month-by-month increase in calls for service in six categories over 2003 and early 2004. The categories cited are Person Screaming, Hold Suspect, Mischief in Progress, Disturbance, Suspicious Person, Harassment and Assault in Progress. The category “hold suspect” calls occur when the internal security at a store, or private security generally, apprehends a suspected shop-lifter or trespasser and holds them until police arrive. While these statistics vary up and down on a month-by-month basis, it is fairly obvious that there is an increase over time in their number, though there is no attempt to adjust for population changes or other factors over the two-year period. It is also important to note that calls for service do not necessarily equal an actual crime.

Sorting out why these calls were increasing is beyond the scope of this paper. A multitude of factors could be at issue. There may be an increase in the number of people on the street; those screaming could be mentally ill or feeling threatened. Those people on the street may be there because they have decided that living on the street is the best lifestyle choice for them, or because about a year after its election in May of 2001 the provincial Liberal government instituted three month waiting periods for social assistance, or it could be the remains of the previous New Democratic Party government’s decision to employ three month waiting periods for immigrants. In late 2002 the police and the City of Vancouver agreed to apply pressure to the open drug market in the Downtown Eastside. Mr. Jones suggested in our interview that this caused a great deal of anxiety in the West End and among Downtown business owners as the concern was that this market, its dealers and addicts, would be pushed into their neighbourhoods. Mr. Jones suggested that during the media coverage of this possibility, in late 2002 and early 2003, people started seeing the homeless person who had been in their alley for years as a suspicious person and increased calls ensued.

It may be that the RCMP’s recent review of its policy on reporting crimes to the media ties to this phenomenon. On July 31, 2006 a front-page story ran in the Vancouver Sun titled “Crime stories frighten public.” In it the RCMP speculate that their spokespeople and media officers are contributing to public fear rather than reassuring people when they report crime and police interventions. Their own surveys discovered that despite 14 percent of British Columbians having experienced a burglary in the past two years, and only 5 percent an assault, 68 percent percent were concerned their family would fall victim to crime. Those who get most of their news from television are more likely to be afraid than those who read newspapers, who are in turn
more afraid than those whose news comes from the radio. Thus the RCMP will review their policy as they are concerned “whether a highly proactive news media-relations policy serves to unnecessarily raise public fear” (Vancouver Sun, 2006, July 31, A1).

Possibly the increased number of ‘suspicious person’ related calls for service was a result of media reporting and the neighbourhood’s heightened sensitivity. Mr. Jones admits this himself. It is impossible to sort out, in the span of this paper, what is real, what is a matter of unnecessary alarm, what is a matter of the behaviour the DVBIA cast as ‘optional’ disorderly behaviour and what might be non-optional increases in homelessness from changes to government social services. They are all possible factors, which suggests that the causal story the DVBIA paints about the problem, blame and need for reform may be a bit too simple.

Whatever the reason, there is an increase in calls for service in these areas, and if increases in these things are happening, then the streets can be fairly said to appear more disorderly to residents and businesses. That is not hard to concede. The question then becomes, how do these categories the SSC presented relate to the justification for the legislation? They were presented to illustrate the need to regulate disorderly behaviour, but what effect will the legislation have on the categories presented?

The “problem” that the Safe Streets Act was intended to solve is actually quite difficult to tease out from these statistics the DVBIA and SSC presented, my discussions with the DVBIA and from its media releases. This is in part because the statistics the DVBIA used to prove disorder and the need for legislation are largely things that the proposed legislation would in no way affect. Again, the categories used in its presentations were Person Screaming, Hold Suspect, Mischief in Progress, Disturbance, Suspicious Person, Harassment, and Assault in Progress. Unless the person screaming is doing it while panhandling or is screaming because he or she is being aggressively panhandled, or the suspicious person is panhandling aggressively or to a captive audience, then this Act is of no use whatsoever. Before the statutes discussed here were implemented, a call to the police about harassment or assault would indicate something well above simple aggressive panhandling, and if a panhandler were assaulting or harassing someone then there were criminal statutes in place to address the assault. If a panhandler’s behaviour was below the criminal threshold then it may have been disconcerting, but it was not against the law.
Micheal Vonn of the BCCLA expressed this same frustration in trying to debate DVBIA and SSC representatives during her appearances on point-counterpoint programs. She felt she never really received an answer to her repeated question of “What is the problem?” that allowed for a clear debate. The starting position for her question was that the coverage of aggressive behaviour was redundant and covered by the Criminal Code, and if this is the case, is the problem one of enforcement? Are people being assaulted regularly and we do not know about it because the police are not responding to enforce the law? In which case if the police do not enforce the Criminal Code, how will they be available to enforce this legislation? She never felt there was an adequate response to the question of exactly what the mischief was they were creating new laws to counter. I faced similar frustration with the repeated “aggressive and disorderly behaviour” that I received as I tried to tease out the problem as well. The DVBIA was adamant that it was not legislating people, it was legislating behaviour, but the disorderly behaviour it cited as requiring mitigating is not in the legislation. It targets panhandling behaviour alone.

In trying to tease out “do we actually have a problem and is this the tool to solve it” Ms. Vonn had offered the services of the BCCLA. If there was a legal deficit, if there were crimes happening that were not being dealt with, then the BCCLA would have been very interested in offering an opinion and helping with the legal aspect and how it could be addressed. It was not taken up on this offer at all. She eventually felt there was no other choice than to decide that it was “pretty clear” that there was a “proactive framing” of the issue that prevented deeper analysis. Ms. Vonn summed up her frustration in a way that rang very true to me and explained my own confusion as I tried to pin this question down. She said “On some level this entire debate was a proxy for a debate we refuse to have. And this would explain to me why we couldn’t be intellectually honest on some level.” The question of issue framing and proxy debates will reoccur several times in this study. Here I call attention to this to explain the frustration I share with Ms. Vonn about my inability really to pin down the problem framed by the DVBIA and how the legislation was directly to address it.

BROKEN WINDOWS

As having Mr. Jones and Ms. Thompson frame the problem clearly had proved problematic, I had hoped to find theories of policing and legislation that would assist in doing so. I asked both Mr. Jones and Ms. Thompson if they were familiar with Broken Windows Theory and if they
connected the legislation they were advocating to this theory. Mr. Jones answered positively to both questions, though he hesitated to call the legislation a form of Zero Tolerance Policing, he preferred to call it crime prevention through legislative design. Ms Thompson was familiar with the Broken Windows Theory; the DVBIA had over the years brought in guest speakers to talk about the theory and she was able to do a simple summary of the basic principles of it. However, she had never connected it to the legislation they were advocating before I asked her, but upon consideration she said, “I suppose so.” While her endorsement is a weak one, I think that the statements to the positive by Mr. Jones, with his policing background, confirm my connection between the Safe Streets Act, the Trespass Amendment Act and Broken Windows Theory. Mr. Jones himself has used some of the classic terminology from Broken Windows Theory, such as categorizing the legislated behaviour as a “nuisance” (Vancouver Sun, 2004, March 11, B8). The B.C. legislation is crafted to address the same issues that Broken Windows Theory calls attention to and that the same critiques apply to both.

Rather than engage Kelling and Wilson’s original text from the Atlantic Monthly (briefly introduced in Chapter 2 of this thesis), I will consider the application of this theory in a 1996 article by Robert Ellickson. This article from the Yale Law Journal is both more academic and is concerned with the legislative actions required to engage and actualize the policing theories of Kelling and Wilson. It is more representative of the motives and actions of those advocating for a legislative answer (rather than a policing answer) to the ‘problem’ of panhandling in Vancouver. I also think that Ellickson’s articulation of chronic street disorder is the clearest equivalent of the DVBIA’s “aggressive disorderly behaviour,” especially as constructed under the “captive audience” section of the Safe Streets Act.

Ellickson defines “chronic street nuisance” as occurring “when a person regularly behaves in public space in a way that annoys...most other users, and persists in doing so over a protracted period” (Ellickson, 1996, 2) and “behaviour that 1) violates community norms governing proper conduct in a particular public space, 2) over a protracted period of time, 3) to the minor annoyance of passersby. Protracted, non-aggressive panhandling and bench squatting are paradigm examples” (Ellickson,1996, 4). This chronic street behaviour constitutes a harm for Ellickson because of three “inter-related reasons” that make this “amount to severe aggravation.” These are 1) it is public, so can effect thousands, 2) it is constant and so its impact is cumulative over days, weeks, months and 3) it “may trigger broken windows syndrome” (Ellickson, 1996, 5). He notes that most ordinances of the 1990’s had focused only on “single acts of disorderly
behaviour, like aggressive solicitation” which he considers inadequate (Ellickson, 1996, 5). The Safe Streets Act comes much closer to fulfilling his requirements for addressing low-level chronic disorder with its inclusion of a “captive audience” clause to minimize the need for people to be confronted at all, however politely. Ellickson does recognize that while cities are by nature somewhat gritty, nonetheless,

…it is plausible that many pedestrians, who tolerate minor episodic street nuisances as part of the hustle-and-bustle of the streets, would favour devising means for controlling chronic miscreants. The gravamen of the pedestrians’ grievance is the protractedness of the offence (Ellickson 1996, 5).

While Ellickson recognizes that controlling this behaviour is “legally complex” (Ellickson, 1996, footnote 48) he sees that as no reason not to. The regulation of this kind of behaviour is possible for Ellickson for the same reason it is possible for the DVBIA and the SSC: because it is optional behaviour. Mr. Jones said in our interview that our social safety net was perfectly adequate to provide for deserving people like families with children,

but if you want to be an alcoholic or a drug addict, and even drug addicts mostly have places to live, so we are dealing with mental health mostly or people who just choose to be urban campers. This is how they are showing their rebellion against a system they are unable to negotiate or comprehend - ‘I’m just going to lie in the streets and do what I want to.’

These “urban campers” in Mr. Jones’s opinion are apparently engaging in an extreme sport rather then seeking shelter because they have no other home. Here the both the actions of someone mentally ill and ‘urban camping’ are optional behaviours. David Jones used this phrase “urban campers” in his interview with me and seemed to distinguish them from ‘real’ homeless people. I am concerned by the phrase as it sounds like something undertaken on a lark by bored and disaffected suburban kids or “street kid wannabees”, which is another term used by Mr. Jones in his report submitted as evidence in the Vancouver by-law challenge (Taylor, 2002, 16). I think the phrase and its implied contrast to ‘actually homeless’ unduly allows the DVBIA and the SSC to construct the behaviour as optional. To accept it we must supply bridging assumptions that make us active in ‘figuring this out’ for ourselves. If urban camping in private parking lots is optional behaviour, and the DVBIA and SSC see the ‘difference’ between this and homelessness, and they only target the campers on a weekend adventure, then this absolves them of the accusation of targeting people not behaviour.

Mr. Jones continued in our interview with the following assessment of the level of regulation that had existed,
I equate it to kids, you say ‘Johnny don’t hit your sister. Johnny you hit your sister. You hit her again you are going to your room. You just pushed her that time, but if you hit her you are going to your room. Johnny, ok that was a little rough, but it wasn’t quite a punch...’ That doesn’t work. There has to be maybe a migration towards something, but it has to be a lot faster and there has to be an actual consequence.

While I think there is a marked and profound difference between the disciplining of a child and the abrogation of the right of citizens to regulate their behaviour, it is clear what he is trying to illustrate. The SSC presents “aggressive, disorderly behaviour” as a matter of optional behaviour from unrepentant individuals who acted this way because they could get away with it. Advocating legislation that attached consequences to this action was thought to generate self-policing for the optional, ‘bad’ behaviour.

In fact, this tendency to re-personalize poverty is part of a larger trend. Ms. Vonn hinted at it when she referred to the entire debate, such as it was, as a proxy debate for things we will not talk about, such as whose fault it is this situation exists in the first place. For Ellickson and for others begging is “an option, not an inevitability” (Ellickson, 1996, 12) and begging is similar to getting drunk, a lapse in self control, not an essential action and can be avoided through personal restraint. If one has not yet elected to practise this self-control, the legislation should provide one with the incentive. If one fails further there will be discipline, and either way the problem is solved. This is the clarion call of this type of legislation and has been since it was made famous in New York City by former prosecutor and then Mayor Rudolf Giuliani and those who supported him, who constructed the legislation as encouraging “lifestyle” changes among the previously delinquent (Innes, 99, 401). Mitchell writes of this type of legislation that “proliferation of anti-homeless legislation clearly indicates that the battle has been won by those who seek to re-personalize homelessness... [it is] seen to reside in those who refuse to use the numerous social services...[it is] seen as a choice” (Mitchell, 97, 318). While Mitchell focuses on homelessness, and this is not quite the same as panhandling, I think the same feelings about the level of poverty apply.

Ellickson contends that “a regular beggar is like an un-repaired broken window – a sign of the absence of effective social control mechanisms in that public place” (Ellickson, 1996, 13). I disagree. I have deep concern about any social theory that can comfortably and easily reduce human beings to metaphors and similes. I contend the regular beggar is more likely the sign of the breakdown of social supports at a much larger level, as will be discussed below. Ellickson opens his article with the line “To the bewilderment of pedestrians in the 1980’s, panhandlers,
aimless wanderers pushing shopping carts and other down-and-out individuals appeared with increasing frequency in the downtown areas of the United States “(Ellickson, 1996, 1). I will turn for a moment to what so bewildered the pedestrians in Ellickson’s apparently Rockwell-esque United States.

While it is well outside the scope of this paper to present an economic rationale for the economic plight of an increasing number of people in the developed world, this debate should take into account some basic neoliberal theory. It serves not only to illustrate the economic and policy changes but the construction of the individual as responsible for their state, which is essential to the re-construction of poverty as a matter of fault and behaviour a matter of self-control. The core priorities of neoliberalism – “lean bureaucracies, fiscal austerity, enhanced labor market flexibility, territorial competitiveness and the free flow of investment and capital” (Brenner & Theodore 2002a, 361) – have been deeply incorporated into political programs where they are packaged as necessary reforms to respond to the “ineluctable” forces of globalization. The economic logic tends to give neoliberalism an apolitical guise that is far from accurate (Peck & Tickell 2002, 400). The results of the economic project have deep impacts on social and political structures as neoliberalism calls for the deregulation of markets, the roll-back of state services and state ownership, and the “use of market proxies in residual public sector” activities (Jessop 2002, 454). Neoliberalism paints individuals as responsible and active subjects, in charge of securing their own well-being. Thus, “[i]n this view, citizens as active agents – or clients – operate on a governance terrain whereon previous distinctions between state, civil society and market are largely blurred, as ‘marketization’ rules each of those domains and the relationships among them” (Kiel 2002, 582).

Early and powerful neoliberal proponents in Prime Minister Thatcher and President Reagan’s governments called for a clean and radical break with the Keynesian principles that had gone before. The 1980’s are described by Peck and Tickell as the “roll back” phase of neoliberalism when those advocating for the modernizing forces of neoliberalism won over the preservationist forces that had struggled through the 1970’s to keep the older structures more intact (Brenner & Theodore 2002a, 359). This roll back phase saw an era of cost cutting, the withdrawal of the state as much as possible from social reproductive roles that were privatized and ‘efficiency’ seen as the best practice for creating a good business climate, the ultimate goal (Brenner & Theodore 2002a, 373).
Peck and Tickell characterize the next phase of neoliberalism as the “roll out” phase, which began with Prime Minister Tony Blair’s Third Way in Britain and President Bill Clinton’s reforms in the United States, and which started to create the policy environment that sets the context for cities now. The first roll back wave of neoliberalism proved to be unsustainable, even in the medium term, as it was strictly a project of dismantling – ridding the economy of regulation, unions, state ownership and other aspects of a Keynesian directed economy – without engaging in “purposeful construction of alternative regulatory systems” (Peck & Tickell 2002, 286). The policies of the roll out era re-introduced government interventions in order to contain the externalities produced by the attempt at radically free market policies, such as the apparently bewildering homeless. Loic Wacquant describes this dynamic: “the same parties... who yesterday mobilized... in support of ‘less government’ as concerns the prerogatives of capital... are now demanding, with every bit as much fervour, ‘more government’ to mask and contain the deleterious social consequences... of the deregulation of wage labour and the deterioration of social protection” (Peck & Tickell 2002, 389). I contend that the Safe Streets Act falls within this construction. The roll out phase saw an increased intervention from the government in social issues, and an extension of neoliberal logic to extra-economic areas as well. While neoliberalism initially presented itself strictly as an apolitical economic system of management, concerned only with interest rates, trade and inflation, it also began to require “invasive social policies” around immigration, crime, policing, welfare, “urban order and surveillance” (Peck & Tickell 2002, 389).

Today’s new expanded form of neoliberalism is not simply about deregulating and promoting market growth. It is “…also oriented towards the establishment of new flanking mechanisms and modes of crisis displacement through which to insulate the powerful economic actors from the manifold failures of the market, the state and governance that are persistently generated within the neoliberal framework” (Brenner & Theodore 2002a, 374). Most important for this paper is the ideology’s call for the consistent hyper-regulation of the lives of the non-compliant through vastly expanding the definition of urban ‘disorder’ and its regulation, of which the Safe Streets Act is a part.

I disagree with Ellickson, Mr. Jones and Ms. Thompson who construct panhandling as optional behaviour. I accept the possible existence of the near urban-myth level spectre of the person who drives to “work” in a nice car, changes in a public bathroom, panhandles for a day to make hundreds of tax free dollars then drives home, Mr. Jones swears this person exists. But I cannot accept that this is a lifestyle choice for most. As stated in the introductory chapter, when
panhandlers were introduced as a group, I hold to Munzer’s construction of the issue as it is to me the most clear and concise. He writes that most who panhandle do so because it is either their only source of income or a way to augment meagre income:

it does not say that all panhandlers beg for defensible reasons. Some panhandlers may be able-bodied and employable, and beg because they enjoy the rhythm of street life and prefer asking for money to working for it. Other panhandlers may lie to induce passersby to give. There may even be some individuals who panhandle temporarily as a part of a prank or dare...However, because sustained begging in public spaces invites opprobrium and requires a good deal of effort, it would be implausible to claim that most panhandlers beg for unjustifiable reasons such as those just mentioned (Munzer, 1997, 5).

It is important to remember that the DVBIA sought not just to regulate panhandling behaviour that was openly aggressive. The law it advocated for also made illegal the polite request to a “captive,” which is behaviour that is merely annoying or uncomfortable, identical to Ellickson’s chronic street disorder.

Despite Ms. Thompson’s assertion that it was just a matter of having a problem and seeing the Ontario Safe Streets Act as a solution, this legislation is part of a larger trend. New York is perhaps the most often explored example of legislating ‘lifestyle offences’ (Innes, 99, 399) and is famous for its Zero Tolerance Policing ‘clean up’ of its streets. The DVBIA and the SSC, intentionally or otherwise, have used much of the same logic and language. Beck and Willis define the problem with the term ‘nuisance’ in the following way:

The term nuisance is widely used as a convenient shorthand for members of the public being upset in any way whilst shopping. This may include shoppers being subject to behaviour which causes them distress, or it may involve the unwelcome and unwanted presence of certain persons in the shopping environment. It may manifest through unpleasant or offensive gangs of youths...and distress cause by prostitutes, vagrants, beggars, drunks or buskers (Beck and Willis, 1994, 31).

They divide these into social and physical incivilities, but interestingly include “pollution” of an area by vagrants and beggars as a physical incivility. They describe them as being “seen in themselves, irrespective of their actions, as contaminating the environment” (Beck and Willis, 1994, 31). They construct the offences in the same way as Broken Windows Theory, the DVBIA and SSC.

While the Safe Streets and Trespass Amendment Acts are mild in comparison to the ZTP and Broken Windows policing systems in many other North American cities and around the world, I find them no less troubling. The Charter of Rights and Freedoms [the Charter] has seen to it that
Panhandling cannot be banned altogether as an activity. However, legislation like the Safe Streets Act redefines aggressive from a Criminal Code offence to meaning simply actions that are discomforting. In legislating against that experience, this legislation reifies what Mitchell calls an "ideology of comfort" (Mitchell 1997, 325). It is a manifestation of Broken Windows Theory, confirming Mr. Jones's assessment. Jeremy Waldron, a professor at the New York University School of Law where he specializes in legal philosophy, has written eloquently about why this is problematic at any level of implementation. His summary argument calls together the economic and social forces that make Broken Windows Theory appealing. These are the narratives I have argued against for the length of this thesis. I believe his summary is an excellent encapsulation of what happened in British Columbia with the passage of the Safe Streets Act. For me, he articulates why this type of causal story and legislative solution is so deeply troubling. He writes:

Mainly, however, what I want to say about the Broken Windows Theory is the following. Prosperous societies in the West... have entered into a bargain with the devil. For decades we conjectured that poverty for some would lead eventually to a deterioration in the quality of life for everyone, even for the rich and comfortable. And on the basis of that conjecture we sought to mitigate the worst effects of inequality. We did so in our own interest, as well as on the basis of more altruistic and social justice concerns... Since 1980, however, the United Kingdom first, then the United States, and then other countries following their lead have decided to test that conjecture and, if possible, refute it. (This is the devil's bargain I refer to.) Now we are working on a different hypothesis: maybe extreme poverty for a substantial section of society can be tolerated with impunity, without undermining (even in the long run) security and quality of life for the most prosperous... Maybe aggressive policing strategies mean that we can have all the glamour of a prosperous-looking society without doing very much... to help the poor, the unfortunate, and those who have made disastrous choices. And who knows? Maybe that hypothesis is true... with a huge pay off – a sort of compassion-fatigue dividend – for those of us who are prospering. Maybe. But it does seem a bit much – it seems unconscionable, in fact – to complain about and stigmatize the poorest of the poor for refusing to cooperate with this experiment in the cosmetics of injustice, for refusing to play their part in this new scenario in which we tolerate and benefit from inequality while protecting our illusions and sensibilities. It does seem a bit much to characterize the poorest of the poor as 'broken windows' relative to a self-image of righteous prosperity and order... (Waldron, 2000, 9-10).

APPROPRIATE BEHAVIOUR AND CITIZENSHIP

That the DVBIA and SSC were so careful to stress that they wanted to regulate behaviour – to ensure it was what Ms. Thompson described as “appropriate” – raises another set of concerns. 'Appropriate' is a word reflective of a notion of community standards or how 'ordinary' people are. When we are talking about the streets, however, who is the community? Munzer points out
the list of users to illustrate the problem: “pedestrians, motorists, tourists, business owners, shop clerks, commuters, office workers, panhandlers, bench squatters and the many others who spend time in city spaces may not form a “community”…Hence, their varied behaviour may give rise to no clear rules, and perhaps no rules at all, governing bench squatting and non-aggressive panhandling” (Munzer, 1997, 8). Munzer’s talk of non-aggressive panhandling is directly related to the “captive audience” section of the Safe Streets Act, though Munzer is addressing legislation that would eliminate panhandling altogether. Nonetheless, it clearly raises the issue of who gets to be the “community” with the standards.

As Munzer adds “One cannot legitimately sidestep this by arguing that all but panhandlers…make up the community” (Munzer, 1997, 8). Panhandlers may not be justifiably or ethically excluded from this group. Thus, if they are part of the community, their behaviour may not be ‘misconduct’ at all. Oc and Tiesdell represent the traditional approach held by those who favour the regulation of “lifestyle offences” in the public realm. They write

In any moderately liberal country, to countenance greater freedom is also to countenance the potential freedom to adversely infringe the freedom of others. This relates to the freedom to commit a crime or to transcend a level which society has deemed formally (by law) or informally (by tradition or custom) to be detrimental to the general well-being of the society. Freedom therefore carries a (moral) responsibility for individuals not to engage in anti-social or criminal behaviour…Thus what must also be considered is the degree to which individuals are held to be responsible and accountable for their actions and behaviour. (Oc & Tiesdell, 1997, 23).

In stark contrast to this, Waldron makes plain the deep flaw in this “community norm” laden sensibility. In his article “Homelessness and Community,” he addresses this in a way I think gets to the heart of the social justice issue of the Safe Streets Act. He asks, “Are the norms – relative to which human windows seem ‘broken’ – norms of order for a society in which it is envisaged that everyone has a home to go to…Or are they norms of order based on an honest grasp of economic reality in an unequal society?” (Waldron, 2000, 9). Can the destitute, if their requests for money are offensive and annoying to ‘our’ standards, be expected to conform to them? In a world where there are destitute, can we concoct a ‘community’ that does not include them and justify their further marginalization based upon that? This is at the heart of what is troubling about the Safe Streets Act and legislation like it. It helps to reinforce a notion of an exclusive citizenship, based on ideas of productivity in which taxpayers, shoppers and even tourists are citizens and those perhaps most in need of protection are not.
This takes us towards what MacLeod calls “a post-justice city” that “limits the performative dimensions of societal membership to those capable of confirming a financial ‘stake-holding’” (MacLeod, 1997, 609). By fearing, regulating and reducing the rights of the ‘other’ we have entered a troubling paradox. What the DVBI A and SSC refused to admit is that the ‘other’ groups, “frequently demonized as a threat to law and order, may themselves be at the highest risk of violence and abuse of all. In this way ‘othering’ can obscure the nature of the power relationships involved” (Pain, 2000, 374). Seeking “freedom” from poorly constructed threats, paradoxically, “has a strong tendency also to infringe upon individual liberties. This infringement of liberties affects everyone, but...more worrying still, although the infringement of liberties is universal...its burdens are far from evenly felt.” (Zedner, 2003, 169).

There comes a point at which the argument of the DVBI A and SSC, that they were calling for the regulation of behaviour and not people, starts to break down. How likely is it that a member of the DVBI A itself may fall afoul of this law by asking for spare change? In theory her liberty is just as restricted by this legislation. If a member of the DVBI A did ask someone for change at a bus stop, should he find himself with only a $20 bill, would he be prosecuted? There is a point at which the standard of ‘acceptable’ behaviour the DVBI A wants to require of everyone becomes farcical, if not tragic, when applied to those whose very standard of personal financial security is so different.

HYBRID SPACES

We all think we know what public and private mean – mine, yours, ours; shared or not shared; me and mine alone or everyone together. These personal meanings are constructed by a combination of law (places I cannot go) and use (places I can go). But the regulation of space has become complicated in a way that I do not think occurs to most people who are neither those concerned with it as a subject of analysis nor those who fall subject to its regulation. Other than academics, real estate agents, the lease-holders of property in malls and those considered ‘undesirable’, I do not think many people have cause to consider who actually owns and controls the space they access freely and consider to be ‘public’. I base this supposition, perhaps unfairly, on the fact that I never really gave it much thought before an introduction to planning literature and many of my friends and acquaintances seem a bit surprised to have it pointed out to them.
Spaces are divided by law and use into public, private and hybrid. Although these are sometimes spoken of as forming a continuum characterized by “level of access, type of agency and interest served” (Button, 2003, 229), hybrid spaces are actually private in their ownership and have all the rights of private property attached to them. They are hybrid because most of “us” use them as public space to visit and move through as we please, though “by our very presence in them we consent to the controls imposed upon us” (Zedner, 2003, 170). These spaces include malls, bus stations, train stations and some plazas attached to private developments. All of these spaces require we surrender degrees of our personal liberties, airports being the most vivid example of this. We may not even be aware we are being asked to surrender personal liberties to move through these spaces, as most of our common actions and ways of being are considered ‘acceptable’ by the owners of the space. The difference lies not in how they are used, but in the categories of rights processed by the owners, their agents and the users (Kilian, 1998, 124). The line between acceptable and unacceptable is not the same in these spaces as in public spaces. In public it is the criminal threshold that must be crossed before someone can legitimately interdict your behaviour. If one were to try skipping the length of the downtown Vancouver Pacific Centre mall while singing “The last train to Clarkesville” at the top of one’s lungs, one would quickly find out that the space is private and those within it are subject to whatever standard of behaviour the ownership elects to enforce. It is important to recognize “that many constituents of public space are privately owned, managed and regulated elements of the public sphere” (Smith, N. & Low, 2006, 5). This includes everything from bus stations that facilitate our movement to the malls that increasingly serve as the agora for many of us.

That in “many towns and cities private shopping malls have replaced the high streets” (Button, 2003, 229) means that we have already reduced our opportunity for Dikey’s moment of interruption as we have nearly completed the “moving of the spaces of sociability onto private property” (Mitchell & Staeheli, 2006, 153). The private property rights extended to the shopping centres mean that the owners and their agents can absolutely and arbitrarily decide who gets in and who does not. This is not meant to connote malice; it is simply their right to behave in this fashion. These spaces are not public as they are not spaces anyone can enter. This is not an injustice; it is a fact of property law. Private property is fundamentally defined through the principles of exclusion and partiality (Mosher, 2002, 44). Owners of hybrid spaces, which are essentially private, are free, at whim, to exclude anyone from their property and are free to treat individual cases with partiality, selectively to ban some and not others. Given this, and being one who believes both in the power of the moment of interruption and the fundamental necessity of
the marginalized to be seen, I believe the regulation of selectively ‘inappropriate’ behaviour and people in public space becomes even more troublesome.

The agents of private owners are most likely to be security guards. According to a five-year study by the Law Commission of Canada, security guards out-number police in Canada two to one (Vancouver Sun, July 26, 2006, A4). They are increasingly the face of policing and control, not only by virtue of the expanded private spaces they patrol, but through their increased role in public spaces as well. Mitchell and Staheil call attention to this “rewriting the rules of public property, transforming the laws that govern it” (Mitchell & Staheil, 2006, 153), which was what was done by the DVBIA and the SSC in their successful advocacy of the Safe Streets Act. This rewriting can combine with private security to create what they contend is a “new kind of property relation...of spaces formally owned by the state, by the public, but that are subject to control and regulation by private interests. Examples include sidewalks patrolled by business improvement district-hired security forces...” (Mitchell & Staheil, 2006, 153). This is exactly the kind of space that constitutes Vancouver’s downtown streets, which are patrolled by the DVBIA’s Downtown Ambassadors. Mitchell and Staheil contend that these spaces exist because these pseudo-private spaces “have become necessary to the redevelopment of downtown under a system that makes accumulation – the increase of value – the primary reason for maintaining or improving public spaces of the city, and in which sociability and spectacle are merely the means to that primary goal” (Mitchell & Staheil, 2006, 153). These become spaces where “economic logic comes together with language of morality to recreate the public sphere after an image of exclusivity” which is motivated largely by aesthetics (Mitchell, 1997, 306).

Patrol by private security as opposed to by the police raises an issue of training levels. Innes argues that since Micheal Banton’s 1964 work, The Policeman in the Community we have known that the police, with a great deal more training than private security, use mental maps of “environments and people in them, as means of rendering a complex social reality understandable and appropriate to police interventions...this internal map [establishes] how, when and why police engage people...[and] may influence the amount of aggression used by officers in patrolling neighbourhoods with different socio-economic profiles” (Innes, 1999, 404). I suggest this not only applies to neighbourhoods but sections of neighbourhoods, such as a doorway, and to people of “different socio-economic profiles.” This is not to fault the police; this is the sort of mapping we all do to assist in navigating our professional and social worlds. I think that
comprehensive police training can (but does not always) alert a person to the tendency to stereotype locations and people and help to resist it.

I doubt, however, that the vastly less comprehensive training received by security guards is equally as inoculating against this tendency. British Columbia attempted legislation to regulate private security in 1992, but this was “abandoned in favour of working with the industry to improve regulation” (Tibbetts, 2006, A4). Thus it is not clear exactly what training private security does receive as it is not regulated and consistent across all agencies. I am concerned that cognitive maps of people and places may further heighten the tendency for selective enforcement to ‘move along’ those about whom the assumptions are made. The lack of required, comprehensive training for private security, increasingly patrolling our public spaces, may increase the likelihood of behaviours we dread in police – cowboyism, profiling, selective enforcement and excessive enforcement.

Thus the right to the city starts to be thrown into question, and those deemed undesirable start to “have a decreasing claim on public spaces that are reconstructed as pseudo private” (Mitchell & Staeheil, 2006, 153).

Since the street is one of the last non-optional public spaces in which we all must move, it is the place we should worry most about a pseudo-privatism that enforces a standard of behaviour, constructed as optional, in order to spare us the moment of interruption.

TRESPASS AMENDMENT ACT

The Safe Streets Act was needed, according to the DVBIA and SSC because of the ineffectiveness of the Vancouver by-law and the difficulty of enforcing, at the panhandling level, the Criminal Code provisions against uttering threats or threatening people with bodily harm. The Trespass Amendment Act was needed to update the legislation in many ways. The Trespass Act in BC before the amendment had a strong rural focus, concerning itself with the ownership of hay bales on property bounded by streams not fences. This is not surprising given the rural, resource-based history of the province and the DVBIA makes a good case for it needing an update to accommodate the urban environment.
However, in their press releases and advocacy materials, I find the SSC’s portrayal of the limits of the BC trespass legislation and the Criminal Code highly suspect. When the SSC launched its public campaign its first press release included the following statement:

Amendments to the Trespass Act will enable owners of private property in urban settings to have a suitable enforcement action for known troublemakers. This legislation will give private property owners the legal authority to refuse, either orally or in writing, a problem individual access to their property. Currently, owners have no ability to take any precautions to protect their property (SSC Press Release, March 10, 2004).26 [emphasis added]

In an October press release, towards the end of the advocacy process, this was modified slightly and read:

Amendments to the Trespass Act will enable owners and occupiers of private property to have a suitable enforcement action for known troublemakers. The legislation will give private property owners and occupiers the legal authority to refuse a problem individual access to their property. Currently, owners and occupiers have no ability to take this key action to protect their property (SSC Press Release, October 5, 2004). [emphasis added]

This difference is subtle, but the second presents the situation of property owners as a little less extreme. Still, upon reading both constructions I found myself thinking, “800 years of common-law and owners have ‘no ability’ to protect their property?” The truth is that there were laws in place but they were awkward to use. The SSC had some legitimacy to their claim about the Trespass Act being in need of updating, but it is not that there was no right of private property, as they imply. It rather overstated its case, perhaps in the interest of making it as compelling as possible. The awkwardness of use lay in the fact that in order to have someone ejected from one’s property by the police the situation must elevate to “assault by trespass,” which Mr. Jones explained required physical contact. Either the trespasser must touch the person trying to remove them or the owner must use commensurate force to try and remove the one trespassing. Mr. Jones also characterized the police as unwilling to engage the legal system for what they saw as a property use dispute. The Trespass Amendment Act would allow the police to be engaged without the need for physical contact, if there is a refusal to leave after a written or verbal request. Though this left the question of why the police would be available to enforce this amended Trespass Act if they had been unwilling to enforce the other? Mr. Jones addressed this with me in our interview. He made it clear that this legislation was never meant to be enforced by the police. It was again assumed that the legislation itself would be enough to deal with the optional choice to trespass.

26 All press releases from the SSC are available at http://www.safestreetscoalition.com/
Failing this change in the lifestyle of the potential offenders, there were other changes to the law that would diminish the need for the police.

The *Trespass Amendment Act* changed who can order people off property. It was expanded to define "occupiers" as "a person entitled to maintain an action of trespass in respect to those premises" or a person who "has a responsibility for and control over the condition of the premises or the activities there carried on" which entitles business operators who rent or lease to the same access under the law to trespass provisions as the formal owners of the property, which is reasonable. It also adds a provision granting authority to ban people from private property to an "authorized person," who is defined as "a person authorized by an occupier of premises to exercise a power or perform a duty of the occupier under this Act." In practice what this means is that private security forces and the Downtown Ambassadors can be granted the right to act on behalf of the occupier or owner and demand that people leave the premises. Mr. Jones has made it clear that most businesses have done this.

The legislation in which the *Trespass Amendment Act* characterizes an offence was presented in the section "Introducing the Legislation" in the first Chapter of this thesis. The restrictions themselves are in no way unreasonable for private property. I like the idea that if I ask someone to stop urinating, Morris dancing or offering salvation through Jesus on my balcony they have to, and it is an offence for them to return and do it again. But it is not that simple. None of the provisions of the *Trespass Amendment Act* seem, when taken at face value, to be unreasonable as a protection for private property. But I contend that considering its source of sponsorship by the business community it bears looking at more closely in terms of how enforcement was envisioned by the DVBA and SSC and what the penalties for the offence are. I suggest that this raises the issues of public space, private policing, access to justice and the regulation of the vulnerable.

Mr. Jones's much appreciated assistance enhanced my understanding of how those issues tied into the *Trespass Amendment Act*. I had several rather detailed questions about the policing aspect of this legislation, which I had not been able to answer in reading the public statements about the legislation. Given his own policing background he was invaluable in helping me sort out the rather vague policy motives (encapsulated by Ms. Thompson who basically said there was a problem and this legislation worked in Ontario so it would work here, without being able to offer any concrete assessment of how or why) from the actual enforcement intent and process. Since his policing background was one of the reasons that Ms. Thompson described his timing in
joining the DVBIA as a “blessing,” it is fair to say that his statements do indeed define how the DVBIA intended this legislation to function.

While, as stated above, Mr. Jones was clear that it was not really intended for the police to enforce this amended legislation, the SSC and DVBIA welcomed the fact that the provincial legislation, unlike the municipal by-law, does have an arrest provision to deal with those who proved utterly recalcitrant. The ability of an owner or occupier to transfer to an “authorized person” the right to say “You are trespassing,” newly granted under the Trespass Amendment Act, bestows private security with new powers. Private security could always say that they would prefer you not be where you were, but this led to the accusations the Downtown Ambassadors faced in the decision of Justice Taylor in the Federated Anti-Poverty Groups v. Vancouver case discussed in the first chapter of this thesis. The Ambassadors had been “enforcing” by-law 7885 (found unconstitutional) by “acting as agents for various businesses by encouraging panhandlers to ‘move along’ where, in the view of the Ambassadors, they were trespassing on private property...In this respect the Ambassadors have clothed themselves with the authority of the police to enforce the by-law. This assumption was not only wrong in law, but contrary to any direction given by the police or the respondent [the City of Vancouver]” (Taylor, 2002, 15). Thus, in this case, and up until the Trespass Amendment Act of 2004, the Ambassadors and private security generally were not allowed to act for an owner and not qualified in law to decide what was trespass and who was committing it. They were themselves subject to restrictions, though these, if violated, were not often challenged as those they “enforce” against, such as the homeless or panhandlers, have a rather reduced ability to access justice. Aside from issues of credibility in a charge against a security officer, they largely lack the stability, financial ability and luxury of security required to undertake a lengthy court proceeding.

Now, under the new laws, anyone “found” on signed private property (section 4 (2)) is assumed not to have permission to be there. Private security on private property can construct an offence under the Act by simply giving the person notice, orally or in writing, to leave or stop their activity (and this is partly directed at skateboarders). If the person does not leave “as soon as practicable,” which I assume leaves time for the urban camper to break camp, or stop the activity immediately, then an offence has occurred for which they can be arrested. They can also be arrested if they ever return or again begin the activity on the premises. The SSC had called for this to be enacted so it could be used against “known troublemakers” in their March 10, 2004 press release. I suspect there is a kind of ‘chemical soup’ created by these two Acts. The Safe
Streets Act, with its rather low bar of offensive action, creates known troublemakers who can then be watched for in hybrid spaces and ejected under the amended Trespass Act by the first security guard they encounter. I am concerned, as is Ms. Vonn, that the Trespass Amendment Act was intended for selective enforcement. Malls and other hybrid spaces that are private but intended for public access, have newly granted rights to create an offence for which one can be arrested out of "I said I didn't want you around here."

These security guards do not just operate in malls and obviously private spaces. The Downtown Ambassadors operate on the public streets, but can enforce this in the spaces that seem to exist between public and private, such as doorways. They are entitled under this Act to do exactly what the DVBIA said it was not going to do – to move people along. I find it difficult to imagine that they will not move people from the doorways of the business district under these new powers if they were already doing so, though illegally, under the by-law ruled unconstitutional. They will serve again to reduce the visible reality of Canadian economics and reduce the possibility of the moment of interruption.

That the Trespass Amendment Act was intended for enforcement by private security generates a kind of "Criminal Code Lite," a telling construction that came out of my discussion with Ms. Vonn which encapsulated much of what concerns me about the intention to enforce this legislation with private security. It is the creation of offence, enforcement of property rights and a display of authority that is impossible to track or challenge. There is a reason that the DVBIA found the Criminal Code "cumbersome" to enforce; the Code required the highest standard of proof to abrogate, curtail or limit the rights of citizens. As Ms. Vonn said in our interview, the Criminal Code is difficult to use because it "maintains the highest standard for a whole raft of rights because what is at issue is so important. You can't argue for Criminal Code Lite...because this is the state telling you what you can and cannot do." If it was designed to be enforced privately because it is 'easier' than genuine Criminal Code enforcement then what is being said is that rights themselves are just too hard, too difficult to consider and deal with, especially if we "know" all about the "kind of people" we are dealing with. The same would hold to be true for seeking to add new, previously unregulated behaviours to criminality under the Safe Streets Act. Ms. Vonn shares my concern. She spoke of the illusion of protection through the possibility of court challenges, which are assumed to be available to all but which are not going to happen "on the collection of soda cans and bottles." The challenge of "well, if you don't think this is just why don't you challenge it in court" is one that does not recognize realities. She says "I can't
imagine that the most cursory access-to-justice analysis would give you any faith in that as a resolution. It is illusory that there is a mechanism by which you could make such a challenge if this is operating in the way we think it is” by which she means “below the [formal legal] radar.”

The *Trespass Amendment Act* raises a host of concerns about the city spaces that are hybrid public/private, but which are increasingly our dominant public spaces that are being ‘sanitized’ at the expense of the vulnerable, thus criminalizing ‘being’ and reducing opportunity for the moment of interruption. While the legislation solved the problem of those without homes sleeping on private property, the debate was without a discussion of what we anticipate as the alternative. I doubt the alternative of living in public would be acceptable to either the DVBIA or the SSC.

Both the *Safe Streets* and the *Trespass Amendment Acts* create strict-liability offences. This means that neither requires the proof of wrongful intent or negligence on the part of the offender, there is no requirement to demonstrate *mens rea* (intent), only *actus reus* (that the act occurred). The only defense against a strict liability offense is due diligence – that the accused undertook every possible action to ensure that the offense would not occur. Considering that the charge is “I caught you here,” it would seem unlikely this offense would provide much shelter for an accused. There is a civil standard of proof, yet the ultimate punishments for the offenses are criminal in nature and, as I will argue in the next section, problematic when examined from a perspective of proportionality and justice.

**AREA RESTRICTIONS**

Ms. Vonn contended, both in the media and in our interview, that the nature of the debate led her to believe this legislation was about moving people along. I am afraid I am forced to question the protestations of the DVBIA and SSC that this is not the case and side with Ms. Vonn. This supposition is reinforced by the criminal penalty called for by the SSC and DVBIA and articulated by Mr. Jones, both to me in our interview and in the press. The DVBIA and SSC called for area restrictions as the dominant form of penalty to be used against those who could not or would not self-correct under the new legislation. There have been prosecutions under the *Safe Streets Act* and area restrictions are indeed the penalty imposed.

David Jones described area restriction in his article, previously addressed in this thesis, “Safe Streets law: A realistic view.” He describes the ticketing and enforcement this way “A violation
ticket – a summons, in effect – may be appropriate in some instances. In other instances a Provincial Appearance Notice may be a better process, so that police can apply for an area restriction to reinforce the need for change in behaviour of the problem individual” (Vancouver Sun, October 29, 2004, A19). In our interview Mr. Jones repeated this saying,

...if we are forced to bring a person in front of a judge we don’t want a fine, we want an area restriction...it gives the police an instant arrest, they don’t have to go through any other process, it’s a breach of a court order and is an instant arrest... If you start violating court orders you may actually do some time... The area restriction shifts it out of the provincial context into the criminal context. Just as with any court order it is a criminal offence [to violate it]. So if you want to go through this labyrinth, people trying to get you to comply and be cooperative [via tickets and warnings], and then if you want to throw it in the face of the judge it is a different situation.

I construct why this is problematic much as Zedner does when she counters that “against the argument that these measures have the power to reduce reliance upon criminal sanction, lies the counter probability that they will nonetheless tend to result in the criminalization of trivial offending behaviour as a result of breach of civil orders” (Zedner, 2003, 175). This is exactly what the DVBIA and SSC anticipated.

Mr. Jones, in advocating for the new legislation, made it clear that police having “the arrest option is critical...it attaches a real and immediate consequence to nuisance behaviour” (quoted in Vancouver Sun, 2004, March 11, B8). I will discuss area restrictions in this context to see if they are appropriately scaled to the offences as constructed by the legislation and if they can be supported from a civil liberties perspective.

The freedom of movement is protected by Section 6 of the Charter, but only at the national level. Mobility protections can also be constructed in Section 7 and the right to “life, liberty and security of person,” though defining the scope of that legal construction is beyond the scope of this thesis. Those under Canadian law are free to live and work in any province, assuming they professionally qualify in that jurisdiction. But there is no such freedom of movement guaranteed at any lower level and provinces and municipalities can legitimately restrict our ability to be where we wish. Area restrictions are one way of doing this to people who have come afoul of the law. The fact that area restrictions are the preferred end-of-the-line for the DVBIA and the SSC when an offender under the Safe Streets or amended Trespass Acts proves recalcitrant makes their argument that they do not want to “move people along” look more problematic.
What area restrictions do is rather obvious – they make it a violation of a court order for one to be in certain areas. These can be as small as a city block or as large as a municipality. There are very good reasons to limit where an individual can be. The most obvious one is a peace bond or restraining order when there is a very real connection between the presence of someone and a tangible threat to an identified individual. No civil libertarian in her right mind would object to that. But does the criminality constructed by the Safe Streets Act, which is behaviour that is less extreme than that regulated by the Criminal Code, constitute behaviour that is similar to this? Does this individual pose enough of a “threat” to justify their being banned from an area? To explore this, I want briefly to explore why we punish and the question of proportionality. The question of why we punish is essentially “in what circumstances the state is entitled to intrude upon individual liberties, the nature of these intrusions and their capacity to achieve their purported goals” (Zedner, 2003, 173). Proportionality is the question of the relationship between the means of punishment and the crime itself or means of punishment and the end sought (reform, for example).

We punish for many reasons – we punish to deter further offences by others, we punish to reform, we punish to censure, we punish to make ourselves feel better (safer, avenged, superior), we punish to make the offender feel bad, we punish because people should be responsible for the consequences of their actions. Censure of all kinds “conveys the message that certain conduct is wrong and the actor is at fault for having engaged in it; censure thereby also reaffirms the importance of the rights of the person injured” (Hirsch, 1990, 272). And the intent does not have to be to teach the person a lesson so they can then join the standards of the community as a result. It can simply be that we punish not to make them share our values but simply because we already do share them (von Hirsch 272). I think this is what happened in British Columbia with the success of the Safe Streets Act. It can be captured in the logic as constructed by the DVBIA - if these people refuse to control their behaviour we will ticket them, then ban them from the area, then arrest them if they return. This is not punishment to reform and add someone to the community, though I imagine the DVBIA and SSC members would say that the individual had the chance to do so over the course of the ticketing and first court appearance. Sometimes we punish simply to add credibility to a censure, which is what the DVBIA has said it wants to do – create consequences for refusing to conform to the required behaviour. But the stringency of the punishments they called for belie this. It is difficult to imagine the intended “deprivations [of an area restriction] as having merely the function of showing the censure is seriously meant or helping the actor focus on the morality of his conduct” (von Hirsch, 1990, 275.)
It is inherently a punishment that does just what the DVBI and SSC said they did not want to do – move people along. Banning an individual who cannot or will not fit to the standards we would like to see in an area can only be described as designed to move ‘problem’ people out of an area, with little consideration to where they might go next. We punish here, in effect, to banish and remove those who offend our sensibilities. How they do little more than this is the subject of the section to follow on the construction of offence as harm worthy of legislating against.

I also question if this is a punishment that can be upheld by the principle of proportionality. This would require first that a crime worthy of punishment be committed. This is itself on shaky ground in this analysis, but I will leave that aside for the moment. If a crime is committed then we are required by the legal principles of proportionality to punish in a way that fits the gravity of the crime. It is a perversion of justice to send a murderer to prison for six weeks if a car thief is sent away for six years; this is encapsulated in the saying “punishment must fit the crime.” This is in no way radical. Here we are speaking of a punishment that is the precursor to jail, in the sense that it is the final opportunity to conform. It adds a layer to avoiding jail, however, for one must not only not engage in the actions forbidden in the Safe Streets Act and the Trespass Amendment Act, one must also not enter the area from which one is banned.

One man, for the crime of repeated aggressive panhandling was banned from the entire District of North Vancouver and is not to be found there, “except while in transit on a highway,” for a period of one and a half years. The Vancouver Sun characterizes this as “a clear message that aggressive panhandling will not be tolerated” (Vancouver Sun, 2004, March 5, B3). But the “extent and costs of such restrictions need to be set against the vaunted benefits of security” (Zedner, 2003, 171). This man was not charged under the Criminal Code and jailed for assaulting or threatening someone, which would have removed him as a genuine threat to safety. Instead he was charged with, essentially, making people feel threatened, and banished from the area. We do not know that he lived in North Vancouver, but if he was enough of a presence to attract this level of ire, it is safe to assume he spent a great deal of time there. Banishing people from the place where they know others and are known is essentially banishing them from their cumulative social capital. And, in this case, it is doing so to the kind of person who is likely least able to afford to have that happen. It may have been a network of a case-worker, the nice guy who used to buy him a coffee now and then, the drop-in centre he knew about, the places it was safe to sleep, or a fantastic set of little old ladies who are afraid to say no. The DVBI would have us believe the last reason is
the only reason they are there. Given the analysis of the debate, narratives and legislation thus far, it should no longer be a surprise that ‘safety’ measures tend to target particular sections of society and that the curtailments of ‘universal’ liberties are suffered only by that minority. The loss of liberty suffered is generally balanced against the ‘greater good’ or collective security. But, as is argued by Kleinig in his critique of situational security measures, these divisions tend to favour those who have over those who have not and, given this, “there is a strong likelihood that the individuals who are most likely to be burdened with responsibility...will be least able to carry this burden” (Kleinig, 2000, 49).

If censure is issued to demonstrate balance between the taking of responsibility for actions and the importance of the rights of the offended, how does this equation look here? There is no single “offended” person. Under the Safe Streets and Trespass Amendment Acts these are strict-liability crimes that do not have to be proven beyond a reasonable doubt and intent does not need to be constructed, just the act witnessed. They create, in essence, an offence that requires only a civil burden of proof, yet can result in harsh criminal sanction. So while, in theory, it is all our ‘rights’ he has offended (as he could have made any one of us nervous), I suggest it is more likely the shop he used to hang out near or the sidewalk cafe he got too close to, whose desire to be comfortable has been given supremacy. I find this beyond compassionless. If his actions had been truly serious he would have been charged under the Criminal Code with assault and would have been placed in jail or on probation. Area restrictions serve to move people along and their effect is “a dramatic curtailment of liberty” (Zedner, 2003, 171). In doing so they also serve to threaten the security of the person by stripping social capital from those who can least afford to lose it. In doing so they violate civil liberties and proportionality.

I will now turn my attention to the “captive audience” section of the Safe Streets Act and consider how it constructs an offence worthy of punishment in the order of what is described above.

THE PRINCIPLE OF HARM

The difficulty I have with understanding this legislation and the main reason I have for believing it offends principles of justice is how it constructs harm. The DVBJA and the legislation it advocated, constructs harm similarly to Ellickson. To respond to this construction of panhandling as producing harm, I will be relying heavily on the work of Jeremy Waldron. Waldron has based
much of his own philosophical work on the principles of John Stuart Mill. Mill’s principle that will concern me most here is the Harm Principle, articulated in Mill’s essay “On Liberty.” While I have read “On Liberty,” I have chosen to rely on Waldron’s analysis of Mill’s Harm Principle, rather than engaging Mill directly, for two reasons. First and foremost, Waldron is a philosopher and I am not. Secondly, over the course of his work Waldron has applied this principle to a number of modern arguments not envisioned in Mill’s original work, such as the pornography debate, the rights of gays and lesbians, and the rights of the homeless to be included in conceptions of society at large. This provides a model for the application of the principle to modern concerns such as Broken Windows Theory and models of policing that I would not be able to construct as soundly, should I start from Mill’s Harm Principle alone. Given that the Principle is itself treated by Waldron as an element extractable from Mill’s larger work and freestanding in this regard, I will not devote a section of this paper to placing it within Mill’s own canon.

The Harm Principle states “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others” (Mill, 1975 edition). Thus the state has every right to limit our actions to maintain order and prevent harm. While this is not generally controversial, my research in the field of penal philosophy suggests that it is indeed debated by a small circle of legal theorists. For the purposes of this study however, I accept that the state has the right to regulate actions to prevent harms. This is not at issue. I also think that this Principle rather nicely encapsulates much of what drives our justice system and that none of those I have interviewed, regardless of their position in this matter, would disagree with this statement of the purpose of law. Thus it seems reasonable to use it as a starting place for evaluation.

What is at issue is how harm itself is constructed; this alone is the legitimating basis for the abrogation of rights. I contend that the kind of harm proposed by Ellickson and articulated by the DVBIA and SSC is the equivalent of what Waldron calls “moral distress.” This equation has been made before in slightly different ways such as Mitchell’s contention that at the root of this type of regulation is aesthetic principles (Mitchell, 1997, 306) that are offended, or Kilian’s examination of “appropriate use” (Kilian 1998, 118), which is inherently a moralistic construction. Waldron defines moral distress as

...the fact that people in one group find the views, tastes, or the lifestyle of others in their community disturbing. Even if the action (or a book or a film) is not directly
harmful, in the sense that it does not actually contribute to the causation of injury, loss
or danger, still may be perceived as indecent, insulting, degrading, threatening or
distressing in less tangible ways (Waldron, 1987, 410).

I contend that a person can cause exactly the same sensations as the book or film. Waldron
suggests that in order for there to be a complete analysis of this moral distress it is necessary to
untangle “the various ideas that come together when we talk about a person being disturbed by
another’s behaviour” (Waldron, 1987, 411). This complete untangling is well beyond the scope
of this paper as it would require multiple and deeply personal interviews with all sorts of groups
who claim to be affected negatively by panhandling in Vancouver – businesses and their
employees, seniors, women versus men, shoppers, tourists or others. Many of the aspects to be
considered that Waldron lists are also more suitable to his immediate concern with debates over
pornography and homosexuality and do not as directly apply to feelings about poverty and
panhandling. However, the elements he lists that do resonate with this study are “the perception
of threat… the vehemence of moral condemnation, the feeling of outrage, the elements of pity,
contempt sublimated guilt…” (Waldron, 1987, 411).

While I will not untangle these elements on an individual or even collective basis, there is enough
material in the research interviews and the written materials of the various participants to start to
suggest some of what may be in operation here. Thus, I am not attempting to diminish any
confrontations that would suitably have fallen under the Criminal Code. I am concerned here
with the ‘new’ harm that this legislation is trying to prevent that was apparently, in the eyes of the
legislative proponents, inadequately covered by the Criminal Code and the Municipal by-law. I
think this construction of moral distress as harm is in part at the root of the frustration Ms. Vonn
of the BCCLA faced in trying to define the ‘problem’ in order to have a proper debate with the
DVBlA or SSC representatives.

Ms. Vonn said in our interview that, while she found discovering people’s level of fear
educational, she could not get to the root of it in the debate because,

for some piece of this it did boil down to something that Canadians are having a terrible
time with. We couldn’t talk about what the law is and what are real rights and what are
not real rights and what this is really meant to do, because underlying this is the sort of
quaking, quivering horrid ambivalence about [the questions] ‘is poverty voluntary?’ Do
you bring it on yourself? Are we responsible? We don’t want to go anywhere near
that, it is just too tremulous in terms of its emotional impact. And so we are going to
talk about this is terms of proxies – [like] what about public safety – because we aren’t
prepared to talk about [people] living in poverty in a country of abundance.
I contend that she is right. This was a debate, at least in some part, about guilt. Perhaps this is why the DVBIA representatives felt the need to tell me about their community service work, to absolve themselves. I am convinced that one of the reasons people dislike panhandling is what Waldron refers to as “sublimated guilt.” I certainly know that this more than anything is at the root of my own discomfort when confronted with “spare some change?” Sometimes I say yes, often I say that I do not have any. Really? Even though I am a grad student I have something I could honestly spare most of the time. I could give this person $2 and just make coffee at home today instead of buying one. I know I have it, I feel as though they know I have it, and so if they remain near me somehow, perhaps at a bus stop, I do feel increasingly uncomfortable. Not through fear, but through guilt. Guilt can easily, and especially if sublimated, turn to outrage or anger – perhaps of the “get a job” variety. I singularly do not like feeling guilty, but is it a harm from which I should be protected through the abrogation of someone else’s human rights (mobility, assembly, expression)? I do not believe it is.

Instituting a captive audience clause to keep ‘these people’ away from me when I cannot flee from their obvious desperation is an attempt to insert an intervention at the point of a second order harm. There is an analogy I always use when explaining this principle to people unfamiliar with it. If I am upset when I see those television advertisements full of starving African children, what is the best way to ease my distress? Is it to reduce the distress I feel at their distress (the second order harm) or to feed them and eliminate their distress (the first order harm)? Do we ban the ads from television so I can live in blissful ignorance of a brutal truth in the world or do we have a world in which I am exposed and perhaps moved to help, or at least am forced to see that the world contains this? If something is distressing, it is important that others be distressed by it and the foundation of moral distress is horror at seeing another person suffer (Waldron 2000, 7). Is this not the most basic and appropriate reaction to the distress and suffering of another human being?

Ms. Thompson said in her interview that limiting panhandling kind of behaviour is about protecting her quality of life. Of course the quality of life of all citizens will go down when a growing number of us live without shelter, beg for money in the streets, rummage through garbage for things that can be sold and have limited access to private spaces, where our most intimate needs can be cared for. But what do you choose as the point of intervention? Which problem will you choose to solve? If you view what Waldron calls the “respondent suffering” as suffering which is both an independent matter and the one that needs intervention and relief “one
might do one’s best to ensure that the first order suffering took place...out of sight or...by education or conditioning...deaden the effective response” (Waldron 2000, 7). This is exactly what the “captive audience” clause starts to do.

If you choose to solve the second order harm two things happen. Above all we deny the legitimacy and primacy of the first order suffering. But we also collectively agree that we value ignorance and comfort over knowledge and rights. Munzer, in his own critique of Ellickson’s work writes,

Seeing the distress of those who panhandle or bench squat is not, or at least not merely an annoyance. It is rather, or also, an experience of getting information, which no rational person should consider a social harm, about the lives of a significant portion of the poor in America [or wherever you live] (Munzer, 1997, 20).

This is closely tied to the Appropriate Distress Argument that Mill articulates in “On Liberty”: moral distress is not in any way an immediate indicator of harm, it can be good for our growth as progressive beings.

Certainly other kinds of moral distress could be at play here besides guilt. In the critical discourse analysis section of this thesis I discussed briefly the range of emotions that come from being certain that one knows all about ‘these people.’ As was said earlier, ‘these people’ are the ones that make us look foolish for having jobs and mortgages while ‘they’ (every welfare queen and Employment Insurance scamming immigrant) play the system ‘we’ pay for. This sort of outrage would certainly make being ‘pestered’ for ‘more’ money than they already get from us feel like an offence, like something they have no ‘right’ to do to you. If one ‘knows’ there is a job for everyone who wants one and ‘all’ they have to do is decide to get one, one is likely to be quite offended. Waldron addresses this in his discussion of how the homeless are regarded and while not all panhandlers are homeless and not all homeless panhandle, I think there are enough similarities in how the groups are perceived to transfer his arguments. Is this offence at being asked for money a harm requiring legal intervention? Mill’s Harm Principle would say no. This kind of discomfort would again be a social good. Not because it is good for bigots to squirm but because moral challenge and new ideas disrupt comfort and prompt learning.

“Ethical confrontation” (Waldron 2000, 6) is not comfortable; it can be absolutely painful. But if no one is ever disturbed by anything, moral and intellectual life and “ethical and cultural
progress” (Waldron 2000, 6) grind to a halt. With this particular offence, anger at the ‘laziness’ of the poor, Waldron describes it as a cognitive dissonance that is associated with the visible refutation of the claims that Americans [or Canadians] are proud to make about their society” and that social policy made to protect this from damage through the offence of cognitive dissonance is problematic or even dangerous as “social stability should not depend on any comprehensive misunderstanding of social reality on the part of citizens (Waldron 2000, 8).

Using personal offence as a test for harm and the need for intervention fails to serve as a necessary and sufficient condition for legislation. It may be that the offense only serves to prove the power and possible necessity of the argument or act that offends, and not to prove either the righteousness of the offended or the existence of harm. Thus as Waldron summarizes “A creature who defined his interests - even in part - in terms of being free from the shock of ethical debate or free from anxiety about the grounds and worth of his lifestyle would be left the satisfied ‘fool’ in Mill’s Utilitarianism” (Waldron 2000, 6). I cannot applaud a law founded on the principle of keeping the comfortable ignorant and free from the distress of the marginalized or the reality of the system that benefits them but disenfranchises others. The constant sight of panhandlers and homeless people is disconcerting. Their presence raises questions about the security we assume to exist in our own lives and are symbols of uncertainty. The desire to regulate against uncertainty is one of “the most fundamental temptations of power” but the danger is that “the lower the level of power, the more people’s lives are contingent on the behaviour of others” (Marris, 1998, 13). If we give in to our desire to behave as if panhandling is an optional action designed to intimidate and offend us, we will indeed show that the “burden of uncertainty thrust cumulatively downward” can serve to marginalize those least able to bear the whims of our desire for certainty.

This example above also raises the specter of the rights language that saturated the debate, both from the DVBA and SSC representatives and in letters to the editor. One letter from Jaleen Grove of Vancouver, which I will use as representative, appeared in the May 15, 2004 edition of the Vancouver Sun. Ms. Grove wrote “The B.C. Civil Liberties Association claims any person has the right to approach another person and ask for change. But what about the right to be in public unaccosted?” She continues, “Some people think banning panhandling limits freedom of speech, and sweeps the problem under the rug” (Vancouver Sun, 2006). She ends by calling for a raise in taxes for social spending and an outright ban on panhandling. First, lets spend a moment on the “claim” of the BCCLA that there is a right to panhandle, which seems to annoy Ms. Grove. I turn again to the case of the Federated Anti-Poverty Groups of BC v Vancouver (City) as it dealt
directly with this question. One of the challenges launched against the City and both by-laws was that in regulating panhandling the government was regulating and limiting freedom of expression. Section 2(b) of the Charter addresses this in the following way:

2. Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication...

But is panhandling included in this? Justice Taylor founds it does. Justice Taylor quotes Justice Lamer from the decision of Irwin Toy Ltd. V. Quebec (A.G.) 1989. Justice Lamer wrote,

"I have already discussed the nature of the principles and values underlying the vigilant protection of free expression in a society such as ours. They were also discussed by the court in Ford, {1988} 2 S.C.R. 712 and can be summarized as follows: 1) seeking and attaining the truth is an inherently good activity; 2) participation in social and political decision making is to be fostered and encouraged; and 3) the diversity in forms of individual self-fulfillment and human flourishing ought to be cultivated in an essentially tolerant, indeed welcoming, environment not only for the sake of those who convey and meaning but also for the sake of those to whom it is conveyed."

Justice Taylor continues, “Panhandling is a tool used by those in poverty to engage in dialogue with the rest of society about their plight. As such, it is a form of expression” (Taylor, 2002, 30). The state has a right itself to limit the enjoyment of fundamental rights, but only is such as way as to conform to Section 1 of the Charter which holds that rights are “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” Justice Taylor held that the state does have the right to limit the kinds of expressions, such as panhandling, which may form an obstruction, such as panhandling at traffic lights. So Ms. Groves is wrong that it is a mere ‘claim’ of a right to panhandle. Indeed, the right to panhandle is a fundamental right of expression that conforms to Mill’s ideas of the progressive individual not only for the individual requesting assistance, but “also for the sake of those to whom [the expression] is conveyed.”

What about the right Ms. Grove’s wants us to consider for her, the “right to be in public unaccosted?” We do not actually have Charter protected ‘rights’ that govern our interactions on a citizen-to-citizen level. Rights protect us from undue intrusion by the state; laws protect us.

27 We do have human rights that can be violated by individuals, for example, an employer or coworker. The state has tribunals to assist in enforcing those rights. I am speaking here of Charter rights in an attempt to be consistent in the thesis. It is also unlikely that Ms. Groves has a persuasive argument that panhandling interferes with her human rights.
from the actions of other citizens. I have no ‘right’ to not be assaulted, slandered, harassed or mugged. I have instead the legal protection from these things in the form of laws. If someone violates the criminal law in an act against me, they can be prosecuted by the state. The person charged then has actual rights that govern the state-to-citizen relationship. They cannot be unduly deprived of their rights by the state; the offender can be imprisoned and deprived of liberty but only with due process. There is no ‘right’ of the kind Ms. Grove feels entitled, it is impossible to have ‘rights’ govern this relationship between herself and another citizen who asks her for money. Nonetheless, panhandlers are seen to threaten an increasingly perceived ‘right’ to be without discomfort. They are seen to do so directly as unpredictable, desperate and frightening people, or indirectly by disrupting our understanding of ourselves as charitable, or our state as adequately kind, and our economy as adequate for all. This ‘right’ to be without any of these discomforts is increasingly seen as some sort of fundamental right in need of protection (Mitchell, 1997, 325).

Ms. Vonn, arguing against this legislation from a civil rights position, was frustrated also by this loose lay-construction of a ‘right’ not to be bothered. She felt that people were constructing this as “I feel there is a wrong, ergo I must have a right,” which is simply not the case. Of course it does not help when those who should know better indulge in this sloppy and confusing ‘rights’ language. Even Attorney General Plant introduced the Safe Streets Act with the comment “It’s about preserving the rights of citizens and visitors to our province to go about their daily business and activities without being aggressively panhandled…” (Vancouver Sun, October 8, 2004, A1). The rights in question in this debate are the fundamental rights of the regulated, not of the panhandled, and we are in danger of “creating a legal fiction in which the rights of the wealthy…are sufficient for all” (Mitchell, 97, 305). Mitchell suggests that these laws that regulate the movement and behaviour of the poor and homeless reify an “ideology of comfort” (Mitchell, 1997, 325), and I agree.

I discussed briefly in the discourse analysis why Ms. Vonn had such a difficult time refuting these emotional “I have a right” arguments with a reasoned explanation of the fact that, no, you have no such right. Through this entire section I have been trying to suggest that we are better off exactly because Ms. Grove has no such right – no right to insulation from the truth about poverty in Vancouver or BC, no right to deny the citizenship of the disenfranchised and just ‘make them stop it’. It may not be more comfortable, but we are better for it. The political and environmental theorist Dryzek draws a distinction between the things we want as consumers and the things we
want as citizens, and I think this is illuminating to the circumstance here. He argues, “As a consumer I may want to make use of the freeways to get to work more quickly, as a citizen I may demonstrate against the construction of the freeways because they destroy communities and natural areas (Dryzek, 1997, 117). I suggest that this same dichotomy of consumer preferences and citizen preferences is in operation here.

As consumers we want a pleasant environment in which we are not constantly reminded of poverty, or disconcerted by the unpredictable. We want to go about our business free of worry, guilt or discomfort. As consumers we find the quick fix offered by the Safe Streets Act appealing, it justifies the “right” we feel we have. I argue that what was lost among the narratives of safety, competition, ‘I have a right’, and the ideology of comfort were our citizen preferences. It is antithetical to citizenship itself to abrogate or restrict the fundamental freedoms of some. This limits the freedoms of us all, though the burdens are not likely to be distributed universally. The citizen preference is tragically difficult to hear over the din of the other narratives, though consumer preferences should never be a trump for citizen preference. As Zedner tells us, “In the public sphere, the promise of security or the threat of insecurity is all too often sufficient to silence countervailing concerns about the damage done to individual or social justice” (Zedner, 2003, 174).

It could be that one finds those who have not bathed or groomed disgusting and has a simple visceral response to them and thus want them kept away. Some people are possibly genuinely afraid, some people may very well feel threatened by the desperation of the individual. Perhaps this panhandler, this time, will become desperate enough to steal a bag or pick a pocket; thus it would be better if none of them were allowed to get close. Perhaps it is the mental illness that creates the fear of dealing with someone we find potentially unpredictable. Perhaps everyone that is poor is different enough from us for us to feel inherently as if they live by different rules and are by nature unpredictable. There is a host of ways by which we can be “offended” by panhandling and panhandlers, and I suspect none of us is immune to all of these types of offence all of the time.

But the Harm Principle suggests that harm is only a necessary but not sufficient ground for the abrogation of rights or the regulation of behaviour. The point of the Principle is not to elevate “every little incident of harm into a pretext for legitimate prohibition” (Waldron, 1987, 412) but
to create a threshold for the legitimacy of this elevation.\textsuperscript{28} If every offence was elevated, our ability to extend rights to groups that are minorities or somehow seen as threatening to the majority would be impossible. In fact, it can be said that when the offence is that of the majority by a minority (such as religious freedom or the rights of homosexuals) standards applied for turning an offence into harm worth legislating against should be even higher. If it is not, the potential simply to regulate away what makes the majority nervous or uncomfortable is too great, and the burden to be borne by the already marginalized group is unacceptable. We drift here towards the external preference argument, whereby, if enough bigots are offended by mixed-race couples, then there can be said to be a large benefit to the majority if we ban mixed-race couples from public. This example should make the point clear, to legislate on this preference is a perversion of justice (Munzer, 1997, 9). Innes addresses this explicitly in terms of the Broken Windows Theory by arguing that Kelling and Wilson’s arguments of the rights of community over the rights of the individual

...fails to recognize that the maintenance of a basic moral acceptance of certain universal rights may be of more significance for certain groups... power and liberty [are] not distributed uniformly... Therefore some degree of protection at the level of the individual from unjust discrimination by the majority needs to be maintained (Innes, 1999, 407).

This is exactly what failed to happen in this case.

That failure explains the “captive audience” clause of the Safe Streets Act. It is the only bridging assumption I can apply, that allows this causal story of blame, regulation and reform to make sense. I asked both Mr. Jones and Ms. Thompson about the captive audience section of the legislation, as I think it is the section that most opened the DVBIA up to accusations of wanting to regulate people not behaviour. Ms. Thompson was unaware that the legislation had both an aggressive behaviour and a captive audience section and since she had not read the legislation she was unwilling to comment. Mr. Jones with his policing background was more able to explain it to me. I asked him about what the clause is supposed to protect us from and he began, “you are sitting at a bus stop and somebody is coming down there and badgering you…” I interrupted him at this point as this “badgering” behaviour is already covered in the aggressive behaviour section. No one is allowed to continue to solicit after receiving a negative response, period. This example

\textsuperscript{28} I readily do acknowledge that moral distress can be an indicator that harm has occurred. I would prefer to see it applied to cases where the harm is more traditionally constructed, such as child pornography. From the justice perspective inherent in this thesis and in my personal bias, this example of distress is more likely to stand analysis as a harm legitimating legal protection.
does not explain the need for the captive audience clause to further protect us. Mr. Jones took my point and started again, saying that at a bus stop or other place designated by the clauses,

you are captive and they are asking for money and just standing there. It’s the fact that you have no place to escape...its aggressive behaviour, but its aggressive in sort of a passive aggressive way because you feel trapped and that heightens your security and safety alarm, so it’s by definition aggressive.

According to Mr. Jones, my feelings about the intentions of a person whose only offence is to remain near me after I have refused charity make the behaviour “by definition aggressive.” Again this is the teleological fallacy we encountered during the discourse analysis. It assumes the intent of the action based on an outcome. I would like to try and further piece together how the DVBIA constructs these feelings as harm worthy of legislative prevention.

Is there a morally or ethically justifiable equation, to be quite utilitarian about this, to equate the cumulative multiple discomforts experienced by ‘us’ when solicited by ‘them’? I am not sure, nor is Waldron, that distress of this kind belongs “on the debit side of any plausible utilitarian calculus” (Waldron 2000, 5). The *Safe Streets Act* explicitly constructs as a harm the experience of sitting at a bus stop, minding your own business, having someone say “can you spare some change” and then leaving after you say yes or no. I may experience a range of things during this encounter, possibly even a positive feeling of having been able to assist a fellow human being. But the possibility I may experience a discomfort or offence has been constructed as a legal harm with legal penalties and punishments for the other person. It bears stressing here that this law-violates the principles of civil liberties and John Mill, both of which are designed to keep the bar for making an offence into a legal harm high. Legal theorist Hudson concerns himself with risk as it is used to target groups of individuals, and what he writes is easily applied here to the intellectually dishonest and philosophically flawed construction of genuine harm. He argues,

Justice is now very much less important than ‘risk’ as a preoccupation of criminal justice/law and order policy; the politics of safety have overwhelmed attachment to justice in the institutions of late-modern democratic polities. If someone, or some category of persons, is categorized as a risk to public safety, there seems to remain scarcely any sense that they are nonetheless owed justice (Hudson, 2001, 144).

It is profoundly disappointing that British Columbia abrogated rights without a higher bar to construct the risk for harm.\footnote{I recognize that hurt feelings or offence can constitute harms to be legislated against, such as the Hate Crime legislation in Canada. I think a much stronger argument can be made for actual harm occurring in actions regulated by that legislation than what is regulated by the *Safe Streets Act*.} The avoidance of serious harm is one of the most basic of human motives and necessities, and is universal. The universal need to avoid serious harm “generates
two basic needs: for the physical health to continue living and to be able to function effectively, and for the personal autonomy or ability necessary to make informed choices about what to do in a given social context" (Smith, D. 1997, 24). The Safe Streets Act reduces the ability of panhandlers, a disadvantaged group whose physical health is likely not as good as those with more regular and substantial income, to make their own informed decision about asking for charity from those better off. I imagine panhandlers make choices about whom to solicit. Whether one sees oneself as their 'mark' or as the difference between their having enough money to buy a bed for the night or not, is not at issue. The law restricts their ability to make a choice that is based on the ability to avoid harm – buy food, shelter, or water – in order that we not experience an inconvenience, nervousness or discomfort that has been constructed as the superior harm. This is, to say the very least, morally flawed.

JUSTIFYING VIGILANCE

Of course, Vancouver is not Smith’s “revanchist” city (Smith, 1998, 1). Vancouver has not swept the public streets of the poor and destitute, though the coming Olympics give reason for serious concern that Vancouver may see more regulation of the “undesirable.” While it is constitutionally impossible to ban panhandling from public space altogether, if panhandlers have all been removed, this right becomes moot. I worry that this slide to hyper-regulation may have begun with the Safe Streets Act. We have justified to ourselves legislation which imposes

a hierarchy, dividing those who are ‘nuisances’ or whose behaviour constitutes a nuisance, from those who are ‘not’...the line is explicitly drawn: panhandlers are on one side and everybody else is on the other. The objective of the laws works against the quality of life and tranquility of panhandlers; by virtue of this legislation they are deemed less worthy of respect and consideration than everyone else. Further, pursuant to the Ontario legislation [which is the model for the BC legislation] they are considered an automatic threat to safety, regardless of their actual comportment on the street (Graser, 2000, 65).

I am disappointed by the rather emaciated review of the fundamental right to freedom of expression that was used in the constitutional challenge of the Ontario Safe Streets Act. The Oakes test, the constitutional test that requires not that the speech be proven worthy of protection, but that the government’s reasons for limiting it be good enough (Graser, 2000, 62), was applied in the Ontario case, but far too much consideration was given to ‘feelings’ and surveys like the ones the DVBIA and SSC used to “prove” the need for the legislation here. They, and those arguing in the Ontario case, used ‘quick tick’ surveys as ‘proof’ of the level of public
disconcertion at the problem. These sorts of ‘quick tick’ surveys and their telephone equivalent
(i.e., are you afraid of aggressive panhandlers none of the time, some of the time or all of the
time?) have been criticized as “inappropriate to quantify human behaviour, given the
psychological complexity of experiencing and fearing crime” (Pain, 2000, 368) as well as often
containing rather loaded questions.

Despite these constitutional protections the DVBIA and SSC did manage to have a law passed
that serves to ‘move-along’ people inconvenient to the environment. Despite the limiting nature
of these constitutional protections, we have given into the appeal of legal solutions to “quality of
life crimes” in much the same way New York did (MacLeod, 1997, 607-8). We are also drifting
into a privatization of public space that, while not as stark as some jurisdictions that make parks
private, is nonetheless of concern. I do not see our relative liberality as a reason to be less critical
and less vigilant, I see it as a reason to be more critical and more vigilant as we have the luxury of
public space to preserve, rather than the truly uphill battle of public space to reclaim. But this is
in no way ensured. I would like to quote a letter to the editor from August 24, 2006, just ten days
ago as I write this conclusion. It read:

I am a New Yorker, but I spend my summers as a guest here in your wonderful city.
I’m neither squeamish nor insensitive to the suffering of others, but it is intolerable to
leave the Orpheum Theatre after a brilliant concert only to face a wall of filthy, stinking
beggars holding signs reading “I’m HIV positive” in one hand and reaching out to you
with the other. Why should every third doorway on some streets shelter a teenage
runaway, some of whom I guess are ill or drug-tripping? Why should I be forced to
step around blanket-wrapped unconscious (sleeping?) bodies on the sidewalks on my
way home every evening? Why should every B.C. Liquor Store be guarded by a
phalanx of drunks? Believe it or not, we do not tolerate these things in New York City.
Freedom is a wonderful thing, but it’s Canada’s sensible Charter of Rights and
 Freedoms that reminds us there are “reasonable limits prescribed by law [that] can be
demonstrably justified in a free and democratic society... E.F. Bergman, Vancouver
(Vancouver Sun, 2006, August 24, A16).

This is the increasing call we will see as the Olympics approach. This is the construction of
‘injustice’ that will have to be argued against. This is not “I feel unsafe,” this is “I am
discomfited,” which we have already once allowed as reason enough to abrogate rights. This call
is for much more than the limiting of certain panhandling activity; the New York model goes
much further, as this letter attests.

I am concerned that through this thesis I have uncovered not Friedmann’s “good city” used at the
beginning to provide and evaluative frame for this analysis, but the potential for a slide towards
dystopia. Friedmann tells us that illuminating these dystopic elements in our society is not fruitless as “it may alert us to certain tendencies in the present that, if allowed to continue unchecked, would lead to a thoroughly abhorrent world” (Friedmann, 2002, 104).

In response to the article arguing that panhandlers are killing the convention trade, Kathi Thompson has written to the Vancouver Sun in her capacity as the Chair of the Safe Streets Coalition. Her letter is as yet unpublished, but it was included in an e-bulletin to members of the DVBIA; the final paragraph reads as follows:

The majority of panhandlers are passive, but their presence can be disturbing to visitors. Many are resistant to outreach and are panhandling to support their drug habit. Perhaps our current council should contact Kelowna who have introduced legislation which deals with the non-aggressive but problematic numbers of panhandlers by limiting the time a person can sit or lie in the public street (Thompson, 2006, August 20, e-bulletin).

Given all I have argued here about access to minimum resources, citizenship, rights and the bitterly ironic tendency to legislate the use of public space as if everyone had access to private space, the problems with this reference to increased legislation and what it proposes should be apparent. We are in danger of sliding towards dystopia. We must make sure that the logic to sweep aside the desperately poor and not “tolerate” homelessness or poverty makes a better city, is not a logic that triumphs here.
CHAPTER 8: WHERE DOES ALL THIS LEAVE US?

A BARGAIN WITH THE DEVIL...BUT DID IT WORK?

The Safe Streets Act and the Amended Trespass Act have been in effect in British Columbia since January 2005. So where are we now? I had asked Ms. Vonn how she would respond to the DVBIA’s contention that the legislation had worked and disorder was down. Her position was that whether it “worked” does not change the original criticism that the DVBIA and SSC set out to criminalize behaviour that should never have been criminalized. I would like to return for a moment to Waldron’s bargain with the devil, quoted in the previous chapter. Waldron contends we have abandoned the idea that society ensures quality of life for all by assuring the basic necessities of life for all and that now

we are working on a different hypothesis: maybe extreme poverty for a substantial section of society can be tolerated with impunity, without undermining (even in the long run) security and quality of life for the most prosperous... Maybe aggressive policing strategies mean that we can have all the glamour of a prosperous-looking society without doing very much...to help the poor, the unfortunate, and those who have made disastrous choices. And who knows? Maybe that hypothesis is true... with a huge pay off – a sort of compassion-fatigue dividend – for those of us who are prospering. Maybe (Waldron, 2000, 9-10).

But has this legislation in British Columbia, driven forward from downtown Vancouver, achieved this “compassion-fatigue dividend” Waldron speaks of as possible?

As I complete this thesis the Vancouver Sun again has front-page headlines that read “Beggars, Drug Dealers Kill Convention Business” (Vancouver Sun, 2006, August 18, A1) and letters to the editor calling for more legislation and “tough-on-crime judges to deal with these parasites” (Brown, 2006, A10). Frustration with the issue of panhandling in Vancouver is an ongoing issue. The causal story framed by the DVBIA was not only unjust, as I have argued over the course of this thesis, it was also an ineffective construction of the issue, as I have also argued. It seems that the appealing, simple causal stories of blame and reform are inadequate to frame and ‘solve’ a problem of such complexity.

It seems it is not that the bargain with the devil works, as Waldron reluctantly admits it might, but rather that we may actually compound the problem with regulations such as this. Marris writes of the paradox created by attempting to control the actions of others while retaining choice of action
for ourselves. He argues that “ultimately it impoverishes everyone, the more we try to defend our freedom of action by refusing to commit ourselves to others, the more uncertainty we generate...the more we provoke a politics of defensive exclusion” (Marris, 1998, 14). Now that this debate has raised the specter of legislation as a ‘solution’ to the issue of panhandling, I am concerned that it will not be a matter of our collectively admitting that it did not work, but rather of deciding that we simply do not have enough.

SURPRISES AND QUESTIONS FOR FURTHER STUDY

Non-Planners and Planning Knowledge

As with any research project, I was surprised by elements of what I discovered or failed to uncover through the case study. One of my research questions was

- How did the DVBIA come to see a form of Broken Windows based legislation as the answer to its concerns about the comfort of shoppers and shopkeepers in the downtown? What is its understanding of what Broken Windows legislation can do and where does it come from?

As researchers we ask questions because we believe they will be revealing, and because we think they are useful and legitimate questions to answer. In doing so we do not assume the answers, but we do assume a degree of ‘answer-ability’ to be revealed through the case study. Nonetheless, I failed to uncover the answer to this research question to my satisfaction.

When I formulated this research question, the larger question that was on my mind was “how do non-planners get their planning knowledge?” I wondered how a business organization came to decide these pieces of legislation were the most effective response to the problem they saw. I knew the DVBIA had hosted the International Downtown Association conference in 2004. This conference had included as speakers mayors from cities that had instituted Broken Windows Theory based legislative and policing responses to downtown issues. I had hoped to uncover a ‘knowledge chain’ of some kind, a response like “Well, I heard this speaker back in 2002 and then the Mayor of Austin spoke at the Conference and once I heard about that city’s response I started seeing what other cities did and called a friend in Winnipeg who told me about a book she read...”
I think part of the problem is that people do not always know exactly what they know, or how
they came to learn it. Kathi Thompson certainly did learn about Broken Windows Theory from
speakers brought in by the DVBIA and could be fairly clear about its central thesis, but claims to
have never connected this theory to the legislative response she advocated so strongly. She says
she came to decide this legislation was the answer when she heard Ontario had a Safe Streets Act
that worked, and she saw no reason that it would not work here if it worked there. David Jones
certainly did understand the connection between Broken Windows Theory and the legislation, but
this is a benefit of his previous career in law enforcement, which makes him unusual. I regret I
was only able to interview two of the three main voices of the DVBIA on this issue. Charles
Gauthier’s holiday schedule prevented me from meeting with him. I had assumed that I could
uncover a process of knowledge exchange. Perhaps if this topic became the focus of study,
instead of a constituent part, it would still be possible. I think that this aspect of knowledge
exchange alone would make an interesting case for further study, and a comparison could be
made between the lead advocacy voices among non-planners in Vancouver, Winnipeg and
Toronto, all of which have legislation in a similar vein.

This case does confirm my personal suspicion about “best practices” and rapid policy transfer. I
recognize that there are indeed practices that are best; there are excellent examples of innovative,
just and successful ways of carrying out planning, service delivery or community development.
These should be acknowledged as such and should stand as examples to be emulated. However, I
am always initially worried by the phrase “best practice” as I fear what it often means is “We
don’t have the time, money, inclination or skills to design policy for our specific situation. So,
since other places have what look like the same problems, we are just going to use their solution.
It worked for them, so it will work for us.” I fear this is what happened here in British Columbia,
and certainly Kathi Thompson expresses her support for the British Columbia legislation in these
terms. I wonder, but do not know for certain, if these transfers are more likely to happen when
policy is driven by non-planners who see a planning or legislative action somewhere else and
simply like the look of it. I understand that sometimes planning and community development
departments do not have the time or budget for extensive in-house policy development, so
borrowing occurs in the professional planning world as well. But I would like to know if it is a
more common occurrence when non-planners, especially those of a special-interest nature like the
DVBIA and SSC, drive planning solutions. I wonder also if access to narratives like safety and
city competitiveness, considered ‘universal’ urban problems, drives policy transfer as well.
Whither BIAs?

It would be fruitful to explore how BIAs see themselves and where they see themselves as “heading” as advocates for the needs of their areas. The DVBIA is very clear that it sees itself as an advocate with a “leadership role” on issues such as the Canada Line/RAV rapid transit link from downtown to the airport, the Olympics, the expanding Convention Centre and land use planning issues (DVBIA, 2005, Annual Report). This thesis has elaborated on the unique advantages of the DVBIA compared to the average BIA. But other BIAs were not interviewed to uncover if they see this kind of advocacy as a fitting role and something to be aspired to, as this was outside the scope of this thesis.

The BIAs of British Columbia (BIABC), the association of business improvement associations, has grand visions for BIAs in general. It sees an expanded role for them, less in line with how they are envisioned by the City of Vancouver and the province of British Columbia but more in line with the self-image of the DVBIA. Its website states,

An area of importance to many BIAs is the introduction of social programs and community work programs. Many BIAs are initiating programs that deal specifically with homelessness in downtowns, graffiti, panhandling, youth and anti crime related programs, safety, traffic and green space issues. In addition, BIAs have expanded their roles to include community planning and business recruitment to their list of goals... BIAs respond to and reflect the needs of individual areas. They can act as merchant associations, initiators of revitalization projects, coordinators of civic planning processes, a key spoke in economic development teams, and a positive voice when addressing street issues. (http://www.bia.bc.ca/what.php)

There is an explicit expansion beyond the business environment to the broader realm of planning, including “community planning” and acting as “coordinators of civic planning processes.” How realistic is this expansion? How do they expect to achieve this? Are they using the words “civic planning” in the same way it would be used by a planner? If so, I have concerns about the ambitions of private business interests to coordinate these processes. This leads directly to my last suggestion for further study.

BIAs and Governance

Also outside the scope of this thesis was the question of the role of BIAs in governance. Exactly how does the City of Vancouver see BIAs? Are they a mechanism of partnership governance?
Can they assist in the coordinated inclusion of the voice of enterprise into planning processes where this is balanced against the needs of civil society and the needs of government? This, with less emphasis on the balancing of interests, seems to be how BIAs envision themselves. If the City does not, how concerned is it about the expanded mandate? If the City does see BIAs as a partnership mechanism, how can this case study, in which a BIA drove forward provincial legislation the City did not support, be explained? Where did the opportunity for co-operation fail?

We are told by governance literature that cooperation mechanisms and institutional thickness make for more balanced policy – but here there are indications that cooperation broke down as the DVBIA appealed for provincial solutions to local problems. We are told by much of the economic geography literature that cities are the new big players, largely removed from dependence on the state’s policy environment and able to chart their own paths – yet here the City was overridden from below (the DVBIA) and above (the province). This suggests that this could be a case that, while it is only a snapshot of one place at one moment, could provide interesting questions to ask of generalized governance theory and raise points of caution for what cooperative governance can accomplish. The latter is particularly important as I think governance has become, against the advice of Friedmann, “a good in itself” (Friedmann 2002, 24) and a best practice without regularly stated reservations about its abilities.

SO WHAT?

Flyvbjerg presents us with four questions to use as researchers to ensure our research properly acknowledges the role of power, acts in the interests of those with less of it and has the potential to offer the means to change things. His questions are

- Where are we going with planning?
- Who gains and who loses, and by which mechanisms of power?
- Is this development desirable?
- What, if anything, should we do about it? (Flyvbjerg 2004, 290)

I will use these questions to frame my conclusions. The answer to “Where are we going with planning” is troubling. The passage of this legislation, and the court decisions in Ontario in which its Safe Street Act was challenged, show that we are giving increasing deference to feelings when constructing harm. This allows the ready passage of Broken Windows style legislation. The question “Who gains and who loses” has both an obvious answer and a more complicated
one. Obviously, those already disenfranchised by poverty as well as facing the possible added burdens of mental illness, addiction, homelessness or a combination of these, have reduced access to the city, and face an increased possibility of sanctions as their behaviours were made into offences. But more subtly, we all lose. By sanctioning sloppy constructions of harm and eroding fundamental freedoms we are compromising the citizenship available to us all.

The advocates of this legislation spoke about the balance of rights and responsibilities, suggesting that those being ‘disorderly’ were not holding up the responsibilities end of the bargain and had fewer grounds on which to call for their rights. It is true that each poor person is indeed “an agent, a proper subject of freedom, and a potential bearer of obligations” (Waldron, 1993, 9). But in turn it cannot be overlooked that

poor people are...in our society, needy agents surrounded by plenty. Why should they refrain from simply taking the resources they need? What reasons can we give them? Putting the matter in this light helps us to see...much more clearly the issues of power, freedom and mutual consideration that are at stake...between those who benefit from the rules of property and those who shoulder all or almost all of the burdens (Waldron, 1993, 25).

It is this mutual consideration that is lacking. We ask the desperately poor to live up to the social contract, but how can we justify this? We should not be surprised that the marginalized do not acknowledge social duties, when we ignore their social rights (Friedmann, 1998, 34). I worry we are creating a society in which citizenship is based on access to private property. This emaciated citizenship serves none of us, and we all lose.

My posture on “Is this desirable?” is apparent throughout this document.

This brings us to “What, if anything, should we do about it?” This is a much more complicated question. It is difficult as this study is an historical one; short of a constitutional challenge, nothing can be ‘done’ about the Safe Streets Act and Amended Trespass Act in BC. But, given the impending Olympics, it is not unreasonable to think that more legislation, regulation or policing in this vein may be in Vancouver’s future. Thus it is possible to imagine how the information compiled in this thesis may be a guide to defending against this next wave. We know that those against regulation of this kind are burdened with causal stories that are complicated and expensive, that often get lost among the easy and compelling narratives of competition and safety. Perhaps a complicated and expensive causal story may not be as important as the question of organization and access. Now would be the time to begin the formation of a group like the now
disbanded Federated Anti-Poverty Groups of BC that fought against the original panhandling by-law here in Vancouver. If a group could be formed now, fundraising could begin and research, media and legal talent be assembled. Then the advantage of framing the causal story early may fall to those against Broken Windows style policing and regulation.

Friedmann justifies utopian thinking when its “concrete imagery is informed by those values we hold dear” and it is made up of both critique and constructive vision (Friedmann, 2002, 104). I have offered a great deal of critique of the values I see reflected in the Safe Streets Act. On the practical side, I believe a concrete grasp of how causal stories function and the advantages and disadvantages of each alternative can make for more effective counter-lobby to this type of legislation. I have offered a suggestion for the early formation of a coalition of activists to attempt to enter the next battle early. But for a truly visionary, and perhaps utopian, offering I must turn to Ms. Vonn. In what she describes as her more visionary moments, she envisions a world in which the ability of strong lobby groups to generate data is balanced by obligatory alternative studies. When powerful interests lobby the government then someone (either the interests themselves or the government) would pay for a study that critically examines both the argument being used to lobby and the possible impacts of the solution called for. What she essentially asks for is a social impact assessment, much like developers must pay for an environmental impact assessment when it is acknowledged they stand to profit from the use of land that is potentially sensitive. If we recognize the ability of power to abuse sensitive flora and fauna to garner profit and benefit, how much more important would it be for us to recognize that power can further disenfranchise marginal groups for profit and benefit? This would go some way towards leveling the playing field that is so imbalanced when groups like the DVBIA lobby and poverty-activists have resources that are simply not comparable. This would perhaps help to move the utilitarian principles I used in the analysis into the sphere of policy and ensure that, at least at the level of inputs, each person counts for one, nobody for more than one (Waldron, 2000, 10).

The utopian vision lent to us by Ms. Vonn is a world in which planning and government recognize the need to offer as much protection to groups of people on the margins of ‘community’ as we do to wetlands and riparian environments. This would be a world in which those too disenfranchised and concerned with basic survival to speak for themselves would, by law, have to be given a voice of more equal weight to those who sought to regulate them. These studies would have to be combined with the political will to say ‘no’ to legislation like the Safe
Streets Act, with all its powerful support, if the outcome of the impact assessment was unacceptable. This is perhaps the most utopian element of all.
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APPENDIX 1

MAP OF VANCOUVER
http://www.vancouver-bc.com/maps.html

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APPENDIX 2

MAP OF VANCOUVER DOWNTOWN
http://www.britishcolumbia.com/Maps/?id=26

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APPENDIX 3

MAPS OF BIAS DISCUSSED

NOTE: Davie Village does not provide a map of its area. It covers Davie Street at the south end of Downtown from Burrard St. to Broughton Ave.

*Downtown Vancouver Business Improvement Area Map*
http://www.downtownvancouver.net/work/areyou.html

This figure has been removed due to copyright restrictions. The figure removed was a map of the territory covered by the Downtown Vancouver Business Improvement Association. It can be viewed at the above URL.

*Robson Street Business Area* http://www.robsonstreet.ca/map

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*Yaletown BIA* http://www.yaletowninfo.com/visitors/maps.aspx

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*Gastown BIA*
http://gastown.org/guide/map.html

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APPENDIX 4

THE LEGISLATION

The sections of the Safe Streets and Trespass Amendment Acts discussed in this thesis read as follows. My own comments for clarification and notes on what I have omitted are offered in square brackets.

The Safe Streets Act

1. In this Act "solicit" means to communicate, in person, using spoken, written or printed word, a gesture or another means, for the purpose of receiving money or another thing of value, regardless of whether consideration is offered or provided in return.

2. (1) A person commits an offence is the person solicits in a manner that would cause a reasonable person to be concerned for the solicited person's safety or security, including threatening the person solicited with physical harm, by word, gesture or other means.

   (2) [the "aggressive" definition] A person commits and offence is the person engages, in a manner that would cause a reasonable person to be concerned for the solicited person's safety or security, in one or more of the following activities during a solicitation or after the solicited person responds or fails to respond to the solicitation:

      (a) obstructing the path of the solicited person;
      (b) using abusive language;
      (c) proceeding behind or alongside or ahead of the solicited person;
      (d) physically approaching, as a member of a group of 2 or more persons, the solicited person;
      (e) continuing to solicit the person

3. (1) [Definitions, excluded here]

   (2) [ the "captive audience" definition] Subject to subsection (3), a person commits an offence who does any of the following:

      (a) solicits a person who is using, waiting to use, or departing from a device commonly referred to as an automated teller machine;
      (b) solicits a person who is using, or waiting to use a payphone or public toilet facility;
      (c) solicits a person who is waiting at a place that is marker, by use of a sign or otherwise, as a place where a commercial passenger vehicle regularly stops to
pick up or disembark passengers [a bus stop, written to include city busses and private tourist busses];
(d) solicits a person who is in, on, or disembarking from a commercial passenger vehicle;
(e) solicits a person who is in the process of getting in, out of, on or off of a vehicle or who is in a parking lot.

(3) [omitted here, states it is not an offense to solicit 5 meters or more from these places]
(4) No offence is committed under subsection 2 (a) if the person soliciting
(a) has express permission, given by the owner or occupier of the premises on which the automated teller machine is located, to solicit within 5 meters of the automated teller machine, and
(b) solicits only on the premises.
(5) A person commits an offence if the person, while on a roadway, solicits a person who is in or on a stopped, standing or parked vehicle ["squeegee" prohibition].

4 (1) [Definition of a “peace officer”]
(2) A peace officer may arrest without warrant any person who the peace officer believes on reasonable and probable grounds is committing an offence under this Act.

The Trespass Amendment Act

The Trespass Amendment Act characterizes an offence under the Act over two sections that read as follows.

4. (1) Subject to section 4.1, a person commits an offence if the person does any of the following:
(a) enters the premises that are enclosed land;
(b) enters premises after the person has had notice from an occupier of the premises or an authorized person that the entry is prohibited;
(c) engages in an activity on or in premises after the person has had notice from an occupier of the premises or an authorized person that the activity is prohibited;
(d) engages in activity on or in premises after the person has had notice from an occupier of the premises or an authorized person that the activity is prohibited.
(2) A person found on or in premises that are enclosed land is presumed not to have the consent of an occupier or authorized person to be there.
(3) Subject to section 4.1, a person who has been directed, either orally or in writing, by an occupier of premises or an authorized person to
   
   (a) leave the premises, or
   
   (b) stop engaging in an activity on or in the premises,
   
   commits an offence if the person
   
   (c) does not leave the premises or stop the activity, as applicable, as soon as practicable after receiving the direction, or
   
   (d) re-enters the premises or resumes the activity on or in the premises.
APPENDIX 5 – UBC RESEARCH ETHICS BOARD
CERTIFICATES OF APPROVAL, NEXT 2 PAGES