

IN THE PUBLIC EYE

Addressing the negative impact
of laws regulating public space
on people experiencing
homelessness

THE WINSTON CHURCHILL MEMORIAL TRUST OF AUSTRALIA

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1. EXECUTIVE SUMMARY

Project	In the Public Eye: Addressing the negative impact of laws regulating public space on people experiencing homelessness
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1.1. The background

Scott¹ is a 42 year old father of five. He has an acquired brain injury, he battles depression and anxiety and he has struggled with alcohol dependence for over 20 years. He has been homeless for large parts of his adult life. Scott approached Justice Connect Homeless Law for assistance with thousands of dollars in fines for being drunk in a public place. Each one was over \$500. His weekly income was \$250. We assisted Scott to navigate the legal system set up to deal with fines and infringements. Two years, four court appearances and 13 supporting reports later, the fines had been resolved. Throughout the protracted process, despite a concerted effort at recovery, Scott had received more fines during relapses. And so the process started again.

Justice Connect Homeless Law is a legal service for people who are homeless or at risk of homelessness.² Each year we provide legal assistance to approximately 200 people who have received fines or charges for 'public space offences', including having an open container of liquor in public, begging, being drunk in a public place, littering, and conduct on public transport (for example, not paying to travel, smoking on the platform or having your feet on the seat).

Homelessness makes it:

- more likely that you will receive fines or charges for public space offences because you are carrying out your private life in a public place; and
- extremely difficult to deal with fines or charges either through payment or navigating the unwieldy legal process.

The laws, policies and practices that seek to regulate public space in Victoria do not effectively address the underlying causes of a person's offending. Instead, financial penalties or charges are issued to struggling people, increasing the strain they're already under. The system also places a burden on legal and community services that assist clients to deal with their fines and charges and causes congestion in the courts.³

¹ Name has been changed.

² Justice Connect Homeless Law was formerly the PILCH Homeless Persons' Legal Clinic. Established 12 years ago, Justice Connect Homeless Law is a specialist legal service for people experiencing or at risk of homelessness. Homeless Law staff work closely with over 400 pro bono lawyers to provide legal information, advice and representation to hundreds of people experiencing or at risk of homelessness each year. Our services are outreach based and client centred, and we don't just focus on legal issues. Our Homeless Law social workers and our relationships with the homelessness sector build our capacity to understand and respond to clients with a range of non-legal needs. Our vision is to improve outcomes for our clients through the provision of holistic legal services and evidence-based advocacy. For more information see www.justiceconnect.org.au/our-programs/homeless-law.

³ See, eg, Justice Connect Homeless Law, *What's the Cost? Infringements System Review* (November 2013) (available at: <http://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/infringements-and-public-space-offences/infringements-public-space-and-homelessness>) (Justice Connect Homeless Law, *What's the Cost?*).

1.2. Enforcement-based approaches to homelessness

The use of enforcement to deal with the presence and activities of people experiencing homelessness in public spaces is not unique to Victoria.

There has been a proliferation of laws, policies and practices internationally that seek to address homelessness through enforcement-based measures. These measures vary significantly in their form, intention and impact. They include laws expressly prohibiting the presence or activities of people experiencing homelessness (such as laws prohibiting sitting, sleeping or lying on the sidewalk and begging); differential or discriminatory enforcement of neutral laws (for example, laws prohibiting jaywalking or public drunkenness); and the collaborative use of enforcement measures, including police involvement and court orders, intended to prompt people experiencing homelessness to engage with services.

When considering enforcement-based approaches to homelessness, the following factors are relevant:

- what the laws are;
- how the laws are enforced by decision-makers and enforcement officers (including police and ticket inspectors, and encompassing collaborative relationships with homeless services as part of 'assertive outreach'); and
- how the justice system deals with people once they have entered it (including through tickets, fines, prison, anti-social behaviour orders or tailored community orders).

At each tier of the enforcement process – through law reform, improved enforcement practices and more effective use of justice mechanisms – there is significant potential to reduce the negative impact of laws regulating public space on people experiencing homelessness.

1.3. Nine cities, over 60 experts – understanding enforcement and identifying alternatives

The Churchill Fellowship gave me the rare privilege of speaking with over 60 experts in nine cities throughout the US, Canada and Europe about homelessness and the regulation of public space.⁴

In addition to organisations like Homeless Law that do both direct casework and law reform work, I spoke with police officers, government agencies, advocacy groups, academics, UN experts, community organisers and people with a direct experience of homelessness in Los Angeles, Washington DC, New York City, Vancouver, London, Edinburgh, Geneva, Lyon and Brussels. In addition to face-to-face meetings with a diverse range of experts, I observed the Red Hook Community Justice Center and the Midtown Community Court in New York City, attended the City of London Anti-Social Behaviour Interagency Working Group, accompanied Pivot Legal Society to a homeless encampment in preparation for potential litigation and attended the fundraising event of Picture the Homeless, one of the US's most active grassroots organisations, founded and led by people who are, or have been, homeless.

There were three main components to this research:

- **Understanding enforcement-based approaches to homelessness** – I wanted to understand the pressures and motivations behind local decisions to use law enforcement to address homelessness, a trend often referred to as the 'criminalisation' of homelessness. I also wanted to learn about the impacts (positive and negative)

⁴ For reflections about each city, as well as links to the websites and work of the organisations and experts I met with, see this blog: Lucy Adams, *In the Public Eye* (available at: www.inthepubliceyeblog.wordpress.com).

of enforcement-based approaches on individuals experiencing homelessness, as well as law enforcement, services, the courts and communities. We need to understand what is behind these laws and policies and what their impacts are if we are going to develop effective, constructive proposals for reform.

- **Changing the conversation** – the regulation of public space and homelessness is often framed as an issue of law and order, safe streets and getting tough on crime. It is important that laws, policies and practices designed to respond to homelessness are informed by evidence about the nature and extent of 'public space offending' (including begging, public drinking, travelling without a ticket and rough sleeping) and its causes. There is currently limited understanding amongst the general public or decision-makers about the impact of these laws, policies and practices on people experiencing homelessness. I wanted to learn about effective ways of communicating about these issues, including how we can challenge stereotypes about homelessness and its causes in a way that makes room for better informed approaches to dealing with visible homelessness in our communities.
- **Creating alternatives to enforcement** – there is no one place that has a perfect model for regulating public space, but I wanted to get new insights about ways of addressing homelessness that look beyond law enforcement and the justice system (or contemplate a different role for these agencies). Through conversations with people working on the ground, the aim was to pull together new ideas for practical, effective models for dealing with homelessness and related public conduct in a way that addresses the causes instead of punishing the symptoms.

One of the consistent messages from my conversations is that decision-makers often turn to enforcement because of a perceived lack of alternatives. Part of this project is about identifying alternatives by highlighting jurisdictions that are doing things differently. If we can see models that are working in other places, there is little justification for us to persist with inefficient, ineffective enforcement-based approaches to visible homelessness in our communities.

1.4. Ten recommendations

Informed by the insights, expertise and practical experience of over 60 experts from over 40 organisations in nine cities, as well as the evidence-base from Homeless Law's provision of direct legal services to approximately 200 clients with fines and charges for conduct directly related to homelessness each year, this report presents 10 recommendations for a better informed, more effective, more efficient approach to dealing with the presence and activities of people experiencing homelessness in public spaces.

It is hoped that these recommendations will inform conversations and contemplations about the way we as a community respond to visible homelessness and hardship, and contribute to a shift away from law enforcement and the justice system as the first resort for regulating public space.

- 1. Recognise that law enforcement is not the obvious solution** – there are practical, workable housing, health and service-based models that more effectively address the underlying causes of a person's homelessness and associated conduct in public places. We need to shift away from the assumption that law enforcement and the justice system are the obvious or only mechanisms for dealing with the use of public space by people experiencing homelessness. If we recognise that law enforcement should not be the automatic first resort, there will be room to consider more efficient and effective responses.
- 2. Distinguish between health problems and criminal ones** – the circumstances that often underpin rough sleeping and associated activities such as public drunkenness or begging (including mental illness or substance dependence) are health issues, not criminal ones. Service-based responses to conduct such as begging and public drunkenness will deliver better outcomes to people experiencing homelessness without the need for the costly use of police, jail and court resources. Service-based responses include sobering up centres, civilian outreach workers and access to housing with tailored supports. There are international examples of how these models work in practice, which show that although they are not inexpensive to implement, they deliver overall cost savings, while also avoiding the harsh impact of tickets, warrants, arrests and jail on a community's most struggling members.
- 3. Acknowledge the reasons behind enforcement** – it is rare that laws, policies or practices regulating public space are developed and implemented with the intention of punishing people for their homelessness (although in practice this is often the impact). Some of the motivations for enforcement-based approaches to homelessness include: a lack of awareness about other solutions; pressure on decision-makers from local communities or businesses; the belief that enforcement is needed to prompt people who are homeless to engage with services; and the 'broken windows' theory of policing, which suggests that minor forms of disorder (for example, jaywalking, begging, graffiti and litter) will, if left unaddressed, result in an increase in serious criminal activity. We need to acknowledge the pressures or motivations that lead to enforcement-based approaches to homelessness if we are going to develop effective, constructive proposals for reform.
- 4. Avoid enforcement-based approaches that react to community discomfort** – many people are uncomfortable with visible homelessness and hardship. This can lead to heightened perceptions of aggression, or complaints from individuals or businesses about the presence and conduct of people experiencing homelessness in their communities. This tension continues to grow as gentrification changes local communities. It is important to consider what shapes community perceptions of people experiencing homelessness so that we can distinguish – both at a policy level and on the ground – between actual aggression, which is unacceptable and can be dealt with via existing justice mechanisms, and perceived aggression, which may be informed by lack of understanding, stereotypes and the general public's discomfort with people experiencing very obvious hardship in our communities. Laws, policies and practices should respond to evidence about crime and its causes, not to uneasiness or annoyance with people experiencing homelessness.
- 5. Collect and rely on evidence about causes and impacts** – there are multiple relevant qualitative and quantitative studies about the impact of enforcement on people experiencing homelessness, the cost to government of ticketing people experiencing homelessness and the circumstances of people who beg. This evidence is, however, rarely gathered by decision-makers either before introducing enforcement-based

approaches or in the course of evaluating the success or otherwise of these approaches. In the absence of a well-informed understanding of the problems and their causes, it is impossible to design responses that effectively address those problems and it is more likely that unanticipated negative consequences will arise (including in the form of significant costs, congestion in the courts and exacerbated hardship for people experiencing homelessness). We need to include quantitative and qualitative evidence in the development and evaluation of laws, policies and practices dealing with the use of public space by people experiencing homelessness.

6. **Work with non-traditional partners** – often we assume that government, police, business, homeless advocates and people experiencing homelessness have incompatible interests in relation to homelessness and public space. Homelessness is a problem for the entire community and it requires us to work together to address it. There is significant potential for these groups to collaborate to provide the expertise, insights and resources needed to develop and implement effective solutions to homelessness and associated conduct in public places.
7. **Break down stereotypes through advocacy, education and awareness raising** – many enforcement-based approaches to homelessness (including new laws, disproportionate enforcement of existing laws and 'crackdowns' or 'blitzes' on conduct in public spaces) are a response to pressure from local communities and businesses who are concerned about the presence and activities of people experiencing homelessness in their local area. Increased community understanding of homelessness, including who it affects and why, will lead to better-informed conversations about appropriate responses to homelessness. We need to communicate personal stories that help challenge stereotypes and build awareness and understanding of homelessness, its causes and its impacts. The role of people with a direct experience of homelessness is critical – their insights are crucial to the development and implementation of well thought out, appropriate, effective responses to homelessness.
8. **Recognise that enforcement is a high-risk option for dealing with people experiencing homelessness** – enforcement-based approaches present risks to the wellbeing and safety of people experiencing homelessness, including excluding them from safe spaces, dislocating existing relationships with services or pushing them into more damaging activities. Although there are respected outreach workers and agencies that identify enforcement as having a role to play, as a last resort, in prompting people to engage with services, there are a number of safeguards that are important components of enforcement-based outreach models, including: they should not be used with extremely vulnerable people, particularly people experiencing mental illness; they must be carefully integrated with individually tailored and immediately accessible support services; and there must always be appropriate warning stages. Importantly, these measures will minimise, but not eliminate the risk that enforcement will have a harmful impact on people experiencing homelessness. In light of the high and unavoidable risks, all decision-makers should question whether these initiatives are justified. Furthermore, prison is not a substitute for supported housing, mental health care or substance dependence treatment and its role as the 'stick' in enforcement-based approaches to homelessness should be re-considered.
9. **Undertake transparent cost assessments before, during and after enforcement-based approaches** – the financial costs of alternatives to enforcement-based approaches to homelessness are often identified as a barrier to their adoption or implementation. There is no doubt that housing, health and service-based responses to homelessness cost money to implement. However, there is often little analysis of the cost implications for government, police and the courts of developing and implementing enforcement-based approaches to homelessness (for example, considering the costs of police time to issue tickets and carry out arrests for 'public space offences', court time to process fines, charges or warrants and jail time). Transparent assessments of the costs of enforcement must be a feature of conversations and decisions about effective and efficient approaches to addressing homelessness and regulating public space in our communities.
10. **Work effectively with law enforcement officers** – there is significant potential to develop strong, effective partnerships with police in a co-operative effort to respond to homelessness and related conduct in public places. Enforcement-based responses to homelessness are resource intensive for police and police are not always equipped to deal with the complex health and social problems underpinning a person's homelessness

or conduct. Local police should work with government and non-government agencies to develop a protocol that aims to: avoid unnecessary interactions with people experiencing homelessness; make sure that where interactions do occur they are appropriate; and support officers to consider options other than fines and arrests when dealing with people experiencing homelessness. Leadership within the police force is essential and the protocol needs to be accompanied by education and training to build police awareness about homelessness, its causes and its impact on people's conduct in public places. Police also need to have access to services and referral pathways, so that they are in a position to link people with supports and play a frontline role in diverting people from the criminal justice path that will not effectively change a person's conduct or address the underlying causes of offending. There should be a stated and measurable goal of reducing the number of tickets given to, and arrests of, people experiencing homelessness.

2. HOMELESSNESS, PUBLIC SPACE AND THE LAW

The laws, policies and practices that seek to deal with homelessness through enforcement-based measures vary significantly in their form, intention and impact. This section:

- Identifies six different types of enforcement-based approaches to homelessness;
- Explains the Victorian context for regulating homelessness and related conduct, including through the fines and infringements system and a recent targeted response to begging; and
- Provides international examples of enforcement-based approaches to homelessness.

This section provides the definitions and context for the discussion throughout this report.

2.1. Enforcement-based approaches to homelessness and 'criminalisation'

When this report talks about 'enforcement-based approaches to homelessness' it refers to the following types of laws, policies and practices.

Enforcement-based approaches to homelessness

1. **Express laws** – laws that directly prohibit the activities of people experiencing homelessness, including laws prohibiting sleeping in public places, sitting on sidewalks and begging.⁵
2. **Neutral laws with a disproportionate impact** – neutral laws that impact disproportionately on people experiencing homelessness because they are more likely to be carrying out their private activities in public (for example, drinking in public or public urination).⁶
3. **Neutral laws enforced differently** – neutral laws (for example, laws prohibiting jaywalking, public drunkenness and public transport offences and general 'stop and search' powers) that are enforced differently because of the increased visibility of people experiencing homelessness and/or attitudes of law enforcement officers toward people experiencing homelessness.
4. **Targeted collaborative enforcement** – targeted use of police enforcement (for example, arrest or move-on powers) in collaboration with homelessness support agencies to 'disrupt' rough sleepers and promote engagement with services.
5. **'Crackdowns' or blitzes** – more intensive, targeted enforcement of existing laws prohibiting, for example,

⁵ There is often debate about whether people who beg are experiencing homelessness. This is discussed further in parts 4.2 and 6.1 below.

⁶ See, eg, Dr Tamara Walsh, *Homelessness and the Law* (Federation Press, 2011) 71. Dr Walsh notes that laws creating public space offences 'criminalise behaviour conducted in public space that would be lawful if conducted in private space, such as urinating, drinking alcohol or being drunk'.

begging, sleeping in public places and sitting on sidewalks, for short periods as part of a direction by government or law enforcement officers.

6. **Tickets, fines, court orders and sentences** – use of tickets, fines, court orders and sentences, including community corrections orders and ‘anti-social behaviour orders’, to deter or modify the movement and activities of people experiencing homelessness.

When considering enforcement-based approaches to homelessness, the following factors are relevant:

- what the laws are;
- how the laws are enforced by decision-makers and enforcement officers (including police and ticket inspectors, and encompassing collaborative relationships with homeless services as part of ‘assertive outreach’); and
- how the justice system deals with people once they have entered it (including through tickets, fines, prison, anti-social behaviour orders or tailored community orders).

My research did not assume that there is no role for enforcement in addressing homelessness and use of public space. I considered models that balance enforcement with service provision and learned from international research about what works and in what circumstances.⁷ I learned about the benefits and the often high risks of enforcement-based approaches to use of public space by people experiencing homelessness.

Accordingly, references to ‘enforcement-based approaches to homelessness’ in this report are not necessarily critical. Many of the experts I spoke with saw some role for enforcement, particularly in relation to rough sleeping and begging and these models have been given careful consideration (for example part 4.1).

The term ‘criminalisation’ of homelessness is used throughout this report. ‘Criminalisation’ is widely used in the US,⁸ but is not commonly used in the UK and has only recently been invoked in other parts of Europe.⁹ The term is succinctly explained by O’Grady, Gaetz and Buccieri as ‘[the] use of policing and the criminal justice system as central features of our response to homelessness’.¹⁰

‘Criminalisation’ does not necessarily capture all enforcement-based approaches to homelessness, including, for example, ‘designing out’ people experiencing homelessness through measures such as modification of park benches or use of ‘trespass barriers’. ‘Criminalisation’ could also be interpreted as a partisan term and is commonly used for advocacy purposes to criticise enforcement-based approaches to homelessness. This report does not use the term in that way. Rather, it is used to recognise the reality of most enforcement-based approaches, which is that using law enforcement mechanisms to address homelessness means that people enter the criminal justice system. Even carefully considered, service integrated, last resort enforcement measures still entail interaction with the criminal justice system and this is something we should be open about when considering the benefits and risks of such approaches.

⁷ See, eg, Sarah Johnsen and Suzanne Fitzpatrick, *The Impact of Enforcement on Street Users in England* (Joseph Rowntree Foundation, 10 July 2007) (Johnsen and Fitzpatrick, *The Impact of Enforcement*) 7, citing R Pawson and N Tilley, *Realistic evaluation* (1997) 85.

⁸ See, eg, National Law Center on Homelessness and Poverty and National Coalition for the Homeless, *Homes not Handcuffs: The Criminalization of Homelessness in US Cities* (Washington DC, July 2009) (NLCHP and NCH 2009, *Homes not Handcuffs*).

⁹ See, eg, European Federation of National Organisations Working with the Homeless (FEANTSA), *On the Way Home? FEANTSA Monitoring Report on Homelessness and Homeless Policies in Europe* (2012) (FEANTSA, *Monitoring Report*).

¹⁰ Bill O’Grady, Stephen Gaetz and Kristy Buccieri, *Can I See Your ID? The Policing of Youth Homelessness in Toronto* (The Homeless Hub Report Series, No 5, 2011) 7 (O’Grady, Gaetz and Buccieri, *Can I See your ID?*).

2.2. The Victorian context



Homelessness, public space offences and fines

There are 22,789 people experiencing homelessness in Victoria; 1092 people sleep rough and others stay in refuges, temporary accommodation or rooming houses, sleep in cars or couch surf.¹¹

The lack of a safe and secure home means that you are carrying out most of your life in public places. In addition, you are reliant on public transport, experiencing severe financial hardship and may be dealing with other complex circumstances including deteriorating mental health or escalating substance use. Homelessness also makes you very visible to enforcement officers. As the system currently works, these factors mean that, during periods of homelessness, people can accrue multiple charges or thousands of dollars in fines and infringements for a range of behaviours directly related to their homelessness.

Justice Connect Homeless Law assists about 200 clients every year with fines and infringements directly related to homelessness.¹² The main offences that our clients present with are: having an open container of liquor in public, begging, being drunk in a public place, littering, and conduct on public transport (for example, not paying to travel, smoking on the platform or having your feet on the seat). People sleeping in their cars or travelling between crisis accommodation often also incur fines for parking or tollway offences.

Overwhelming debts and prison

The most common type of enforcement we see is that our clients are issued with infringements (i.e. tickets or citations) for these offences, rather than a charge and summons (which were more common in many of the cities I visited).

A fine for being drunk in a public place is approximately \$600 and a fine for not having a valid public transport ticket or for having your feet on the seat is \$212. The average weekly wage in Australia is \$1422.70 (as at May

¹¹ Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness 2011* (Australian Government, Canberra, 2012).

¹² Between 1 July 2012 – 30 June 2013, Homeless Law took 310 enquiries from people seeking assistance with fines and infringements. We opened 166 new matters for clients needing legal assistance with fines and infringements directly related to homelessness.

2013)¹³ and the weekly income of a person on Newstart Allowance (Australia's most basic level of social welfare) is \$248.50, i.e. 17.5% of the average weekly earnings.

This means that an infringement for not having a ticket on public transport is 85% of a Newstart recipient's weekly income. A fine for being drunk in public is 240% of that weekly income.

A person's poverty and special circumstances may mean that they are unable to pay their fines or engage with the review process within required timeframes. Infringements and penalty costs and fees can become overwhelming debts and cause significant stress and financial strain for disadvantaged Victorians.

If a person does not address their infringements, warrants are issued and the person can have their licence or registration suspended or their property seized. Clients with no assets, who are not eligible for community work (for example, because the amount owing exceeds \$15,000 or there are factors such as mental illness, substance dependence or caring obligations that would prevent them completing the work), are arrested, brought before the court and can face imprisonment.¹⁴

In summary, what we see through our work is that the burden of multiple infringements and the threat of enforcement, including the risk of imprisonment, exacerbate the stress and social exclusion of homelessness.

The 'special circumstances' process (and its costs)

A strength of the Victorian system is the 'special circumstances' process, which allows a fine or fines to be waived where it can be shown that a person's mental illness, substance dependence and/or homelessness caused them to be unable to understand or control the offending conduct.¹⁵ Unfortunately, it is an unwieldy, inefficient process, which often takes over 12 months and makes it very difficult for clients to stay engaged.¹⁶ It also imposes a significant resource burden on legal and community services that assist clients to deal with their infringements and creates congestion in the justice system.

By way of example, in 2013 Homeless Law engaged an independent consultant to analyse the resource implications of the infringements system. The consultant reviewed 13 infringements files run by Homeless Law and made the following key findings:

- **Overwhelming debts** – on average, individuals accumulated 18 infringements each, valued at \$6,363 per person. One person had 61 infringements, with a total value of \$17,237.
- **Difficult to resolve** – duration of cases can vary, with cases analysed taking between 6 months and 2.5 years to resolve. The average time taken to resolve an infringements matter was 14 months.
- **Expensive** – the average cost to pro bono law firms of running an infringements matter was \$19,825 per case. One case required an investment equivalent to \$54,000 in fees to resolve.¹⁷

The current system is a costly one, both in terms of its impact on vulnerable people and its strain courts and services.

Begging in Melbourne

In 2005 Victoria repealed the *Vagrancy Act 1966* (Vic), but retained the offence of 'beg or gather alms' in the *Summary Offences Act 1966* (Vic).¹⁸

¹³ Australian Bureau of Statistics, *Average Weekly Earnings* (Australian Government, Canberra, May 2013) (available at: <http://www.abs.gov.au/ausstats/abs@nsf/Products/6302.0-May+2013-Main+Features-Australia?OpenDocument>).

¹⁴ *Infringements Act 2006* (Vic) s 160.

¹⁵ *Infringements Act 2006* (Vic) ss 3, 25 and 65.

¹⁶ For an overview of the operation of the 'special circumstances' process, see Lucy Adams, 'One Decade On: Fines, Infringements and Homelessness continued ...' 25(2) (2012) *Parity: Policing Homelessness* 23.

¹⁷ Justice Connect Homeless Law, *What's the Cost?*, above n 3.

In 2008 Homeless Law surveyed people begging in the City of Melbourne: 54% had a mental illness; 73% were experiencing long-term unemployment; 23% were victims of domestic or family violence; and 90% were sleeping rough or staying in men's shelters, squats or rooming houses.¹⁹

In early 2013 in response to a reported increase in 'aggressive' begging, an enforcement-based approach to begging in the City of Melbourne was commenced.²⁰ Operation Minta is a coordinated response by the City of Melbourne, Victoria Police and the Salvation Army (with some involvement from other agencies including the Magistrates' Court and Homeless Law).

Under Operation Minta, people begging in the City of Melbourne are charged and required to attend court on a nominated day. They are then put on a compulsory diversion program by a Magistrate. Defendants' matters are adjourned for three months during which they are required to participate in the court ordered diversion program:

The diversion program would be pretty basic: attend at the Salvos, and get a health check with some counselling and advice; take advantage of the available health, training and employment opportunities; and stay off the streets ... If beggars continue to beg, or continually fail to meet the very basic requirements of a diversion program, legal consequences should follow.²¹

At the time of the Operation's introduction in 2013, there was significant media attention on begging in Melbourne, much of which was negative.²² In recent months, the public conversations around homelessness and poverty in Melbourne have shifted slightly. On 5 January 2014, Wayne 'Mousey' Perry, was fatally stabbed while sleeping under a bridge in central Melbourne.²³ Mr Perry's tragic death has increased community awareness of the danger and hardship that homelessness brings with it.²⁴ It has drawn attention to the fact that homelessness services cannot keep up with demand and that 86 Victorians are turned away each night.²⁵

The City of Melbourne has also recently published the results of its qualitative research involving interviews with 35 people sleeping rough in the Melbourne. *Living Rough in Melbourne* aims to capture: 'the lived experience of those who live rough in the city of Melbourne, with a view to better understanding the pathways into, through and out of rough sleeping'.²⁶ The research identified that:

[T]hroughout their lives, many of the participants had experienced violence, sexual abuse, poverty, neglect, incarceration and exposure to drugs or alcohol from a young age ... the pathways into homelessness are complex and individual. These are people whose lives have been defined by disadvantage.²⁷

These changes to awareness and perceptions of homelessness in Melbourne create an opening for careful consideration of how we respond to visible homelessness and hardship, including begging, in our community.

¹⁸ Summary Offences Act 1966 (Vic) s 49A. See Fergus Shiel, 'Begging to remain a criminal offence', *The Age*, 23 April 2003.

¹⁹ PILCH Homeless Persons' Legal Clinic, *We Want Change: Calling for the abolition of the criminal offence of begging* (November 2010).

²⁰ See, eg, Lord Mayor Robert Doyle, 'I have a plan to deal with scourge of our streets', *Herald Sun* (10 March 2013).

²¹ *Ibid.* See also, John Masanauskas, 'Police appeal to public to refuse aggressive begging' *The Australian* (19 April 2013).

²² See, eg, Lord Mayor Robert Doyle, above n 20; John Masanauskas, 'Tough love plan for city beggars and homeless' *Herald Sun* (10 March 2013); Adrian Lowe, 'New Plan for city's beggars' *The Age* (11 March 2013); Samantha Donovan, 'Melbourne denies begging crackdown' *ABC PM* (11 March 2013); Rebekah Cavanagh, 'Beggars forced to ask for money because he says he is barely getting by' *Herald Sun* (10 March 2013).

²³ See Aisha Dow, 'Teen in court over Morgan Wayne 'Mousey' Perry's death' *The Age* (7 January 2014); Caroline Zielinski, 'Murder charge laid over death of Wayne 'Mousey' Perry' *The Age* (7 January 2014).

²⁴ See, eg, Aisha Dow, 'Family and friends farewell Wayne 'Mousey' Perry' *The Age* (10 January 2014); Aisha Dow, 'Murdered homeless man Wayne "Mousey" Perry a grandfather, says son' *The Age* (10 January 2014); Aisha Dow, 'Hundreds gather to show Wayne "Mousey" Perry's death not in vain' *The Age* (17 February 2014); Kathy Marks, 'Forgotten in life, a victim shames a city: The violent murder of a homeless man triggers Melbourne's remorse' *The Independent* (12 January 2014).

²⁵ Australian Institute of Health and Welfare, *Specialist Homelessness Services 2012-13* (Cat No HOU 273, Canberra) Table VIC 6.4: Daily average of unmet requests for assistance 2012-13, adjusted for non-response.

²⁶ City of Melbourne, *Living Rough in Melbourne: Street Count 2013* (January 2014) (City of Melbourne, *Living Rough in Melbourne*).

²⁷ City of Melbourne, *Media Release: Finding a Way Out: New Study Into Homelessness* (29 January 2014) (available at: <http://www.melbourne.vic.gov.au/AboutCouncil/MediaReleases/Pages/Findingawayoutnewstudyintohomelessness.aspx>). See City of Melbourne, *Living Rough in Melbourne*, above n 26: 78% of participants had been exposed to drugs and alcohol as a teenager, 70% experienced childhood sexual or physical abuse, 67% had left school early, 45% had a disability of some kind and 21% had been in state care. Half of those interviewed had been assaulted at some stage while living on the streets.

2.3. International examples of enforcement-based approaches to homelessness

Enforcement-based approaches to homelessness take a range of different forms and I wanted to get a sense of what these laws, policies and practices look like in other jurisdictions. This section collates a number of examples that fall into the six categories of enforcement-based approaches to homelessness identified in part 2.1:

1. laws that expressly prohibit the activities of people experiencing homelessness;
2. neutral laws that impact disproportionately on people experiencing homelessness because they are more likely to be carrying out their private activities in public places;
3. neutral laws that are enforced differently because of the increased visibility of people experiencing homelessness and/or attitudes of law enforcement officers toward people experiencing homelessness;
4. targeted use of enforcement in collaboration with homelessness support agencies to 'disrupt' rough sleepers and promote engagement with services;
5. 'crackdowns' or blitzes or enforcement for short periods as part of a direction by government or law enforcement officers; and
6. use of tickets, fines, court orders and sentences to deter or modify the movement and activities of people experiencing homelessness.

There may be some debate about which category these examples fall into (particularly regarding the cause of differential enforcement and, accordingly, whether an example falls into category 2 or 3). In fact, a number of the examples listed could fall into either category 2 or 3 depending on the nature of enforcement. Furthermore, many enforcement activities will involve more than one of these components. For example:

- a blitz or 'crackdown' (5) using an existing law that prohibits sitting, sleeping or lying on the sidewalk (1), which is enforced through arrest and sentencing (6); or
- targeted use of enforcement in collaboration with homelessness support agencies to disrupt rough sleepers and promote engagement with services (4), which relies on laws that expressly prohibit 'vagrancy' (1) and where an anti-social behaviour order regulating movement and conduct will be applied for in the event of non-engagement with services (6).

This is not intended to be a comprehensive summary of enforcement-based mechanisms in the jurisdictions I visited. The examples are provided to give context to the analysis carried out below, including the motivation for different enforcement-based measures and their impact on people experiencing homelessness, services, communities and the courts.

Type of enforcement-based law, policy or practice	Jurisdiction and example
1 Express laws – laws that expressly prohibit the activities of people experiencing homelessness	Los Angeles – prohibition on sitting, sleeping or lying on the sidewalk Section 41.18 (d) of the <i>Los Angeles Municipal Code</i> provides that '[n]o person shall sit, lie or sleep in or upon any street, sidewalk or other public way'. Violation of s 41.18(d) is punishable by a fine of up to \$1000 or up to six months imprisonment. ²⁸ Toronto – panhandling and squeegeeing

²⁸ Sarah Gerry, 'Jones v. City of Los Angeles: A Moral Response to One City's Attempt To Criminalize, Rather than Confront, Its Homelessness Crisis' (2007) 42 *Harvard Civil Rights – Civil Liberties Law Review* 239, 241–242 (available at: http://www.law.harvard.edu/students/orgs/crcl/vol42_1/gerry.pdf) (Gerry, *Jones v City of Los Angeles*).

The Ontario *Safe Streets Act 1999* was introduced in response to an increase in homelessness and concerns about associated increases in panhandling and 'squeegeeing' (window washing at traffic lights). The Act prohibits solicitation 'in an aggressive manner' and of a 'captive audience'. It defines:

- 'solicit' to mean 'to request, in person, the immediate provision of money or another thing of value, regardless of whether consideration is offered or provided in return, using the spoken, written or printed word, a gesture or other means'; and
- 'aggressive manner' to mean 'a manner that is likely to cause a reasonable person to be concerned for his or her safety or security'.

It identifies examples of aggressive solicitation, including: '[s]oliciting while intoxicated by alcohol or drugs'; and '[c]ontinuing to solicit a person in a persistent manner after the person has responded negatively to the solicitation'. In relation to solicitation of a 'captive audience', the Act provides that a person must not solicit a person who is: using, waiting to use, or departing from an automated teller machine; using or waiting to use a pay telephone or a public toilet facility; waiting at a taxi stand or a public transit stop; in or on a public transit vehicle; in the process of getting in, out of, on or off a vehicle or who is in a parking lot; or in or on a stopped, standing or parked vehicle on a roadway.

Denver – ban on urban camping

In May 2012 Denver passed the *Unauthorized Camping Ordinance*, which makes it a crime for a person to shelter from the elements while residing on any public or private property, without appropriate permission: 'Under this law, it is illegal for homeless people to sleep, sit for extended periods, or store their personal belongings anywhere in Denver, if they use any form of protection other than their clothing (for example, a blanket or a piece of cardboard to sit upon)'.²⁹ Violations of the urban camping ban can result in fines up to \$999 or one year imprisonment.³⁰

Hungary – Constitution provides for prohibition of rough sleeping

On 11 March 2013 the Parliament of Hungary adopted the Fourth Amendment to Hungary's *Fundamental Law*:

'Article XXII

- (1) Hungary shall strive to provide the conditions for housing with human dignity and to guarantee access to public services for everyone.
- (2) The State and local governments shall contribute to creating the conditions for housing with human dignity by striving to guarantee housing for every homeless person.
- (3) An Act of Parliament or local government decree may outlaw the use of certain public spaces for habitation in order to preserve the public order, public safety, public health and cultural values.³¹

England – begging and rough sleeping

Sections 3 and 4 of the *Vagrancy Act 1824* respectively deal with:

- 'Every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms'; and

²⁹ Denver Homeless Out Loud, *The Denver Camping Ban: A Report from the Street* (3 April 2013) (available at <http://lssuu.com/denverhomelessoutloud/docs/surveyreport>) 7 (Denver Homeless Out Loud, *Report from the Street*).

³⁰ Ibid.

³¹ See Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on extreme poverty and human rights, *Letter of Allegation: Hungary*, UA Housing (2000-9) Poverty (1998-11) HUN 1/2013 (12 March 2013) (available at: [https://spdb.ohchr.org/hrdb/23rd/public_-_UA_Hungary_12.03.13_\(1.2013\).pdf](https://spdb.ohchr.org/hrdb/23rd/public_-_UA_Hungary_12.03.13_(1.2013).pdf)) (Hungary 2013 Letter of Allegation).

Type of enforcement-based law, policy or practice	Jurisdiction and example
<p>2 Neutral laws with a disproportionate impact – neutral laws that impact disproportionately on people experiencing homelessness because they are more likely to be carrying out their private activities in public places</p>	<p>– ‘Every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or wagon, not having any visible means of subsistence and not giving a good account of himself or herself’.</p> <p>Victoria – begging or gathering alms Under s 49A(1) of the <i>Summary Offences Act 1966</i> (Vic) ‘[a] person must not beg or gather alms’.</p> <p>Public urination in US cities In 2011, the National Law Center on Homelessness and Poverty (NLCHP) surveyed 154 homeless advocates (43%), service providers (51%) and people who were experiencing or had experienced homelessness (6%) about enforcement-based approaches to homelessness in their cities. When asked whether people experiencing homelessness in their cities were given citations or arrested from conduct in public places, 73% said homeless people were arrested or given a citation for public urination or defecation.³² In March 2011, UN independent expert Catarina de Albuquerque, who is mandated by the UN Human Rights Council to examine human rights obligations for access to safe drinking water and sanitation, noted that local statutes prohibiting public urination and defecation, ‘while facially constitutional are often discriminatory in their effects’ and, further: ‘Such discrimination often occurs because such statutes are enforced against homeless individuals, who often have no access to public restrooms and are given no alternatives’.³³</p> <p>Victoria – public drunkenness laws Despite several major reports recommending that public drunkenness be decriminalised in Victoria,³⁴ s 13 of the <i>Summary Offences Act 1966</i> (Vic) continues to provide that ‘any person found drunk in a public place shall be guilty of an offence’ punishable by a fine of up to eight penalty units.³⁵ In December 2009, changes to the <i>Summary Offences Act 1966</i> (Vic) expanded the use of infringement notices for public drunkenness offences. These changes were part of ‘an initiative by Government to give police greater powers to combat violence and antisocial behaviour’.³⁶ Under the new powers, between 16 December 2009 and 18 July 2012, 32,474 infringement notices were issued for being drunk in a public place.³⁷ In 2011/2012, 14,557 people were taken into custody where the custody reason was listed as ‘arrest – drunk’.³⁸</p>
<p>3 Neutral laws enforced</p>	<p>New York City – stop and frisk</p>

³² National Law Center on Homelessness and Poverty, *Criminalizing Crisis: The Criminalization of Homelessness in US Cities* (Washington DC, November 2011) 17–18 (NLCHP 2011, *Criminalizing Crisis*).

³³ UN independent expert Catarina de Albuquerque, ‘US discriminates on right to safe water and sanitation, says UN expert’ *UN News Centre* (4 March 2011).

³⁴ See, eg, Report of Ombudsman Victoria and Office of Police Integrity, *Conditions for Persons in Custody* (July 2006) 18 (available at: <http://www.opi.vic.gov.au/index.php?i=85>) (Ombudsman and OPI Report); Smart Justice, *Reducing Alcohol-Related Violence* (25 May 2010) (available at: www.smartjustice.org.au); Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into Public Drunkenness* (2001); Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into Strategies to Reduce Harmful Alcohol Consumption* (2006) xxvi.

³⁵ *Summary Offences Act 1966* (Vic) s 13. ‘Public place’ is defined extremely broadly in s 3 of the *Summary Offences Act* and includes: public highways, roads, streets, bridges, footpaths, alleys or thoroughfares; parks, gardens and other places of public recreation or resort; railway stations, platforms or carriages; wharfs, piers and jetties; public vehicles ‘plying for hire’; churches or chapels open to the public ‘or any other building where divine service is being publicly held’; Government schools or their land; public halls, theatres or rooms ‘while members of the public are in attendance at, or are assembling for or departing from, a public entertainment or meeting therein’; markets; licensed premises or authorised premises within the meaning of the *Liquor Control Reform Act 1998* (Vic); race-courses, cricket or football grounds; and open places that the public are permitted to have access to, whether with or without payment for admission.

³⁶ Victoria Police, *Crime Statistics 2011/2012* (3 September 2012) 49.

³⁷ *Ibid.*

³⁸ *Ibid.*

Type of enforcement-based law, policy or practice	Jurisdiction and example
<p>differently – neutral laws that are enforced differently because of the increased visibility of people experiencing homelessness and/or attitudes of law enforcement officers toward people experiencing homelessness</p>	<p>'Stop and frisk' is the police practice of temporarily detaining people on the street, questioning them, and possibly also frisking or searching them. Section 140.50 of the New York Criminal Procedure Law authorises a police officer 'to stop a person in a public place ... when he reasonably suspects that such person is committing, has committed or is about to commit either (a) a felony or (b) a misdemeanor'. Approximately 685,000 stop and frisks were carried out in 2011.</p> <p>Approximately 2.4 million stops occurred between 2009 – 2012. Close to 150,000 arrests resulted from those stops (i.e. only 6% of stops resulted in arrest). On 12 August 2013, a federal court judge found that the stops disproportionately impacted minorities (84% of people stopped were black and Latino despite these two groups only making up 52% of the city's population) and were unconstitutional (i.e. the New York Police Department (NYPD) had violated the equal protection clause in the Fourteenth Amendment and the Fourth Amendment, which prohibits unreasonable searches and seizures).³⁹</p> <p>Jaywalking and illegal street vending in the Downtown Eastside, Vancouver, Canada</p> <p>In 2013, the Vancouver Area Network of Drug Users (VANDU) and Pivot Legal Society filed a complaint against the Vancouver Police Department after the results of a freedom of information request showed that 95% of tickets issued under the <i>Street and Traffic Bylaw</i> (for jaywalking and illegal street vending)⁴⁰ had been issued in the Downtown Eastside (DTES) (the Vancouver area with the highest concentration of homelessness and poverty).⁴¹</p> <p>The data showed that 1448 tickets were given out in the DTES, followed by 28 in the next highest neighbourhood. The complaint highlighted that the enforcement of these offences and the issuing of tickets was discriminatory and disproportionately targeted homeless and low income residents in the DTES.</p> <p>The Police Board dismissed the complaint. Pivot and VANDU subsequently asked the Office of the Police Complaint Commissioner to review this dismissal. The Complaint Commissioner found that the Police Department's report was flawed, and called on the Police Board to develop a policy aimed at reducing the number of tickets issued for minor offences in the Downtown Eastside.</p> <p>Pedestrian citations in LA's Skid Row</p> <p>A review of 'pedestrian citations' (walking on the 'don't walk' signal, jaywalking and walking on a roadway) showed that Safer Cities Initiative police issued about 875 pedestrian citations per month in Skid Row. This compared with 6,977 pedestrian citations per month written by all the officers of the Los Angeles Police Department across the entire City. Skid Row makes up 0.18% of the City's area and 0.26% of the City's population, but was home to 12.5% of pedestrian citations. Analysis indicated that 'all other things being equal, the odds of a person receiving a pedestrian citation are between 48 and 69 times greater in Skid Row than in the rest of the City'.⁴²</p> <p>Various public conduct under local US laws</p> <p>In the 2011 NLCHP survey of homeless advocates, service providers and people who were experiencing or had experienced homelessness, respondents reported arrests, citations or both in their city for the following offences:</p>

³⁹ *Floyd v City of New York* 08 Civ 1034 (SAS), 2013 US Dist (SDNY 12 August 2013).

⁴⁰ City of Vancouver British Columbia Street and Traffic By-Law No 2849 ss 12 and 66.

⁴¹ Douglas King, *VANDU and Pivot Allege Discrimination by VPD in By-Law Ticketing* (6 March 2013) (available at: http://www.pivotlegal.org/vandu_and_pivot_allege_discrimination_by_vpd_in_by-law_ticketing) (King, *VANDU and Pivot Allege Discrimination*).

⁴² See Gary Biasi et al, *Policing Our Way Out of Homelessness? The First Year of the Safer Cities Initiative on Skid Row* (24 September 2007) (available at: http://www.ced.berkeley.edu/downloads/pubs/faculty/wolch_2007_report-card-policing-homelessness.pdf) (Biasi et al, *Policing Our Way out of Homelessness?*) 30.

Type of enforcement-based law, policy or practice	Jurisdiction and example
	<ul style="list-style-type: none"> - Public urination/defecation - 73% - Camping/sleeping in public - 55% - Loitering - 55% - Panhandling - 53% - Public storage of belongings - 20% - Sidewalk-sitting - 19%. <p>When asked whether people experiencing homelessness are disproportionately targeted by law enforcement, 65% of respondents said that they believed homeless people are more likely than other individuals to be given citations and/or arrested for similar violations.⁴³</p>
<p>4 Targeted collaborative enforcement – targeted use of enforcement in collaboration with homelessness support agencies to ‘disrupt’ rough sleepers and promote engagement with services</p>	<p>London – assertive outreach</p> <p>The UK has been the site of sophisticated homelessness reduction strategies since the 1990s.⁴⁴ One aspect of strategies to reduce homelessness, particularly rough sleeping, is a number of collaborative ‘tough love’ approaches to homelessness and public space, involving homeless outreach agencies, police, housing services, local councils and/or drug and alcohol services.⁴⁵</p> <p>One example is Operation Poncho: ‘Operation Poncho is an integral part of the approach to engaging with rough sleepers and highlights the effective partnership of Broadway, City of London departments and the police. The operation is running five days a week, financed from the homelessness budget and the Cleansing Services Department of the Built Environment’. Operation Poncho involves homeless outreach workers patrolling streets with police at approximately 1:00 – 3:00am to ‘disrupt’ rough sleepers and prompt them to engage with services.⁴⁶</p> <p>New York City Encampments Initiative</p> <p>The New York City (NYC) Department of Homeless Services (DHS) has worked closely with homeless services, the NYPD, Sanitation and Parks on a revamped outreach strategy, including Street Stat and the Encampments Initiative. Street Stat is a monthly meeting of DHS, the Department of Health and Mental Hygiene and outreach partners, including the NYPD, Sanitation and Parks to discuss (amongst other things): housing placements, homeless encampments, the number of involuntary transports of people into shelters (under mental health legislation), deaths of people experiencing street homelessness and 311 response times (the non-emergency alternative to 911, which is staffed 24 hours and responds to calls from the community about homeless people by sending out an outreach team).</p> <p>The Homeless Encampments Initiative involves the enforcement agency (for example, NYPD or Sanitation and Parks) attending the encampment site with DHS outreach workers. They speak with the people living there about their options and the timeframes for removing the camp (2–3 weeks is often given). An anecdotal estimate was that about 30% of people accept the City’s offer of accommodation and others move on. One example DHS provided was two men who had been homeless for eight and 15 years</p>

⁴³ NLCHP 2011, *Criminalizing Crisis*, above n 32, 17.

⁴⁴ See, eg, Suzanne Fitzpatrick, Peter Kemp and Susanne Klinker, *Single homelessness: An overview of research in Britain* (Policy Press, Bristol UK, 2000) (Fitzpatrick, Kemp and Klinker, *Single homelessness*).

⁴⁵ *Ibid* 6.

⁴⁶ See Director of Community and Children’s Services, *Rough Sleepers Update* (12 July 2013) (available at: <http://democracy.cityoflondon.gov.uk/documents/s23237/PAn%202.pdf>).

Type of enforcement-based law, policy or practice	Jurisdiction and example
	respectively who moved into accommodation through this model of outreach and enforcement. ⁴⁷
<p>5 'Crackdowns' or blitzes – more intensive, targeted enforcement of existing laws as part of a direction by government or law enforcement officers</p>	<p>Vancouver – pre-Olympic Games ticketing blitz A 'ticketing blitz' began in late 2008, in the lead up to the 2010 Olympic Games. A year-end report showed 1,264 municipal and provincial bylaw-violation tickets were handed out in December 2008 alone, compared to 544 tickets in all of 2007.⁴⁸</p> <p>Begging blitz in the City of London In the early months of 2013 the City of London Police undertook a blitz on people begging in the City (an area of one square mile with a resident population of approximately 7,400 but a daily influx of approximately 300,000 commuters and business people per day).⁴⁹ Police Sergeant Mark Montgomery from the City of London Police Street Intervention Team explained that, after arresting 48 people and seeing the same faces 'again and again', they thought: 'this is ridiculous, surely there's got to be a better way of dealing with this'. Sergeant Montgomery said the motivation to implement a program that addressed the causes of offending behaviour led to Operation Fennel.</p>
<p>6 Tickets, fines, court orders and sentences – use of tickets, fines, court orders and sentences to deter or modify the movement and activities of people experiencing homelessness</p>	<p>Anti-social behaviour orders Anti-social behaviour orders (ASBOs) were introduced by the <i>Crime and Disorder Act 1998</i> and strengthened by the <i>Police Reform Act 2002</i>. They are civil orders that exist to protect the public from behaviour that causes or is likely to cause 'harassment, alarm or distress'. Applications for ASBOs can be made to the Magistrates' Court acting in its civil capacity or the order can be requested if a defendant is convicted of an offence in the criminal courts. It is a civil order, but breach is a criminal offence carrying a sentence of up to five years jail.</p> <p>The kinds of conditions attached to ASBOs include that the individual must not:</p> <ul style="list-style-type: none"> – enter a prescribed geographical area; – be within sight of any entrance of a railway station unless in possession of a valid ticket for departure within one hour; – ask any person in a prescribed geographical area for money except as part of a retail or banking transaction or under a contract of employment or legitimate benefit claim; or – be in possession or any item that is believed by officers to have been modified for drug use, <p>for a set period (often 2 – 3 years).</p> <p>Ticketing in Ontario under the Safe Streets Act The <i>Safe Streets Act 1999</i> makes aggressive panhandling and 'squeegeeing' and offence. A total of 67,388 tickets were issued throughout 2000 – 2010, with a total value of \$4,043,280; \$8,086.56 of the fines has been paid over the 11 year period.⁵⁰</p>

⁴⁷ Based on conversation with, and material provided by, representatives from New York City Department of Homeless Services, the NYPD and Sanitation and Parks on 18 November 2013.

⁴⁸ Sunny Dhillon, 'Ease up on minor Downtown Eastside offences, Vancouver police urged' *The Globe and Mail* (5 December 2013).

⁴⁹ Department of the Built Environment, *City of London Resident Population: Census 2011 (2011)* (Department of the Built Environment 2011, *City of London Census*).

⁵⁰ O'Grady, Gaetz and Buccieri, *Can I See your ID?*, above n 10, 10.

Type of enforcement-based law, policy or practice

Jurisdiction and example

Community courts – orders targeted at underlying causes

Community courts 'seek to address crime, public safety, and quality of life problems at the neighborhood level'. They are multi-jurisdictional in that they cover a range of legal issues arising in the community, including some or all of family law, criminal matters and housing and tenancy, and a range of different support services are co-located at the court site. Core characteristics of their sentencing practices are: 'the increased use of alternative sanctions; a decrease in the probability of a "walk" without meaningful consequences; a reduced likelihood of a jail sentence; increased use of secondary jail sentences for initial noncompliance; stricter monitoring and enforcement of the court mandate; and an emphasis on procedural justice in the judge-defendant interaction'.⁵¹

⁵¹ Cynthia G Lee, Fred L Cheesman, David B Rottman, Rachel Swaner, Suvi Lambson, Mike Rempel and Ric Curtis, *A Community Court Grown in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center* (National Center for State Courts, Williamsburg VA, September 2013) (available at: http://www.courtinnovation.org/sites/default/files/documents/RH_Report_ES.pdf) (Lee et al, *A Community Court Grown in Brooklyn*).

3. WHAT MOTIVATES ENFORCEMENT-BASED RESPONSES TO HOMELESSNESS?

There are a range of social, political and economic factors that underpin enforcement-based approaches to homelessness. Understanding the motivations for certain approaches is key to identifying:

- what the aim of the law, policy or practice is (for example, to reduce or remove visible homelessness from city centres or to promote engagement of people experiencing homelessness with services);
- whether the initiative is achieving its aim; and
- whether an alternative approach could achieve that outcome more effectively and efficiently.

With this in mind, I wanted to understand the pressures that had led to enforcement-based responses to homelessness in the cities I visited.

I overwhelmingly heard that enforcement-based approaches to homelessness are not usually motivated by punitive intentions. While the impact is often punitive, the factors that lead to these laws or practices are usually more complex than an intention to punish people experiencing homelessness.

The key causal factors include:

- a lack of understanding of alternative ways of dealing with homelessness;
- public pressure on government decision-makers and law enforcement, often stemming from:
- community discomfort with visible poverty, including concerns about ‘aggressive’ activity by people experiencing homelessness and poverty; and
- changing city dynamics as a result of gentrification and/or business and retail concerns about the commercial impact of people begging or sleeping rough near their premises;
- the view that enforcement is needed to prompt people who are homeless to engage with services; and
- the ‘broken windows’ theory of policing, which suggests that minor forms of disorder (for example, jaywalking, begging, graffiti and litter) will, if left unaddressed, result in an increase in serious criminal activity (this approach focuses on cleaning up minor disorder with a view to reducing serious crime).⁵²

Often it is a combination of these factors that contributes to intensified enforcement in response to homelessness.

Each of these motivations is discussed in more detail in this section.

⁵² George L Kelling and James Q Wilson, ‘Broken Windows: The police and neighborhood safety’ *The Atlantic* (1 March 1982) 29 (Kelling and Wilson, *Broken Windows*).

3.1. A local response to a complex problem

In explaining the proliferation of local US laws criminalising homelessness, Executive Director of the National Coalition for the Homeless, Jerry Jones, said: 'it's not always deliberately punitive. Often criminalisation is used by local decision-makers confronted with a problem for which they don't know the real solution ... [it's] used because local officials don't have better ideas'. Mr Jones also said, 'the larger mistake is using the law to address homelessness ... it's the wrong policy instrument'.

Jeremy Rosen, Policy Director at the National Law Center on Homelessness and Poverty (NLCHP), also spoke about the proliferation of enforcement-based approaches to homelessness in US cities and the circumstances behind this:

Unfortunately I think we have seen an epidemic in terms of new laws and policies, largely at the city level, with respect to criminalisation over the past few years. We've been in a period of economic downturn and seen cuts to social services at all levels of government whether it's Federal, state or local government. It seems that under those conditions our communities feel challenged and instead of responding to homelessness by providing housing and social services, they instead adopt the approach of either arresting their way out of the problem or by essentially pushing people who are homeless out of their communities and sending them somewhere else.

Similarly, Professor Stephen Gaetz from York University in Toronto said criminalisation measures are 'tied to the inadequacy of our response to homelessness ... because we're not sure what else to do, we get law enforcement involved'.

In addition to prompting government representatives to introduce new laws or initiate more intensive enforcement of existing laws, the lack of awareness of alternatives also impacts on the decisions made by law enforcement officers on the ground. Nan Roman, President and CEO of the National Alliance to End Homelessness, summarised it well when we spoke about the need to create alternatives for police: 'if they don't know what else to do, police will arrest people'.

One of the aims of this report is to build awareness of alternatives to enforcement-based approaches, both for government decision-makers and for law enforcement officers, so that the justice system is not seen as the automatic solution when trying to deal with the presence and conduct of people experiencing homelessness in public places.

3.2. Public pressure – visible hardship, discomfort and perceived aggression

In Melbourne, one of the factors that motivated the City's targeted response to begging, Operation Minta, was a reported increase in complaints about 'aggressive begging' in the CBD.⁵³

Professor Stephen Gaetz from York University in Toronto touched on a similar issue when he talked about the introduction of the Ontario *Safe Streets Act 1999* in response to an increase in homelessness and heightened concerns about panhandling and 'squeegeeing' (window washing at traffic lights). The *Safe Streets Act* makes squeegeeing and some forms of panhandling illegal and Professor Gaetz expressed concern about the public sentiment behind the Act's introduction, particularly the public appetite for enforcement. He said: 'as long as we make homelessness visible, there are people who don't want to see it and who are afraid of it and that's what decision-makers are responding to'.

⁵³ See above at part 2.2.

It is important to consider what shapes community perceptions of people experiencing homelessness so that we can distinguish – both at a policy level and on the ground – between actual aggression, which is unacceptable and can be dealt with via existing justice mechanisms, and perceived aggression, which may be informed by lack of understanding, stereotypes and the general public's discomfort with people experiencing very obvious hardship in our communities.

Increased ticketing in Toronto under the Safe Streets Act – evidence-based or reactive?

O'Grady, Gaetz and Buccieri analysed tickets issued under Ontario's *Safe Streets Act 1999* (for aggressive panhandling and 'squeegeeing') over an 11 year period using data obtained from the Toronto Police Service and the Ontario Ministry of the Attorney General via freedom of information.

They found that, despite the decrease in homeless people begging and squeegeeing (in 1999, 29% of their street youth sample reported panhandling and squeegeeing as their main source of income compared with less than 3% in 2009; and the 2009 City of Toronto Street Needs Assessment also showed a decline in panhandling as a source of income from 17.4% in 2006 to 9.7% in 2009), the number of tickets issued by the Toronto Police Service under the *Safe Streets Act* increased from 710 in 2000 to 15,324 in 2010 (an increase of 2,147%).

O'Grady, Gaetz and Buccieri ask: 'are police responding to a dramatic ... growth in aggressive panhandling and squeegeeing, or is the increase in ticketing part of a broader strategy to respond to the enduring visibility of homeless persons in public places in Toronto?'⁵⁴

In considering the impact of enforcement on street users in England, Dr Sarah Johnsen and Professor Suzanne Fitzpatrick conducted interviews with 27 members of local communities where 'enforcement interventions' had been implemented.⁵⁵ Their research considered the local pressures that prompted a shift toward enforcement.⁵⁶ Based on the interviews, Johnsen and Fitzpatrick note that, while not groundless, 'community fears may well be heightened by an instinctive fear of those who are visibly "different"'.⁵⁷ They found that '[c]oncerns voiced by members of the local community were usually founded on a fear of threat or danger, rather than a personal experience of verbal or physical abuse from street users'.⁵⁸ Further, the research showed that 'while incidences of verbal abuse and/or physical violence are not uncommon *within* the street population – particularly among street drinkers – such expressions of aggression are only very rarely directed at members of the wider public'.⁵⁹

Assistant Chief Diane Groomes of the District of Columbia Metropolitan Police Department also noted the difference between perceived aggression and actual aggression: 'a lot of the business community are concerned about panhandling. Most is not aggressive, but if it is aggressive, it's due to people's circumstances, including their mental health. When I was commander, most assaults I saw were homeless people against other homeless people. It was very rarely against another member of the community'.

Emeritus Professor Gary Blasi from UCLA School of Law directed me to the work of Robert Sampson and Stephen Raudenbush, which discusses 'seeing disorder' in the context of the 'broken windows' theory.⁶⁰ Their research examined what shapes individuals' perceptions of disorder and proposed that 'perceptions of disorder are socially constructed and are shaped by much more than actual levels of disorder.' They assessed this hypothesis using

⁵⁴ O'Grady, Gaetz and Buccieri, *Can I See your ID?*, above n 10, 10.

⁵⁵ Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7.

⁵⁶ *Ibid* 9.

⁵⁷ *Ibid* 11.

⁵⁸ *Ibid* 11.

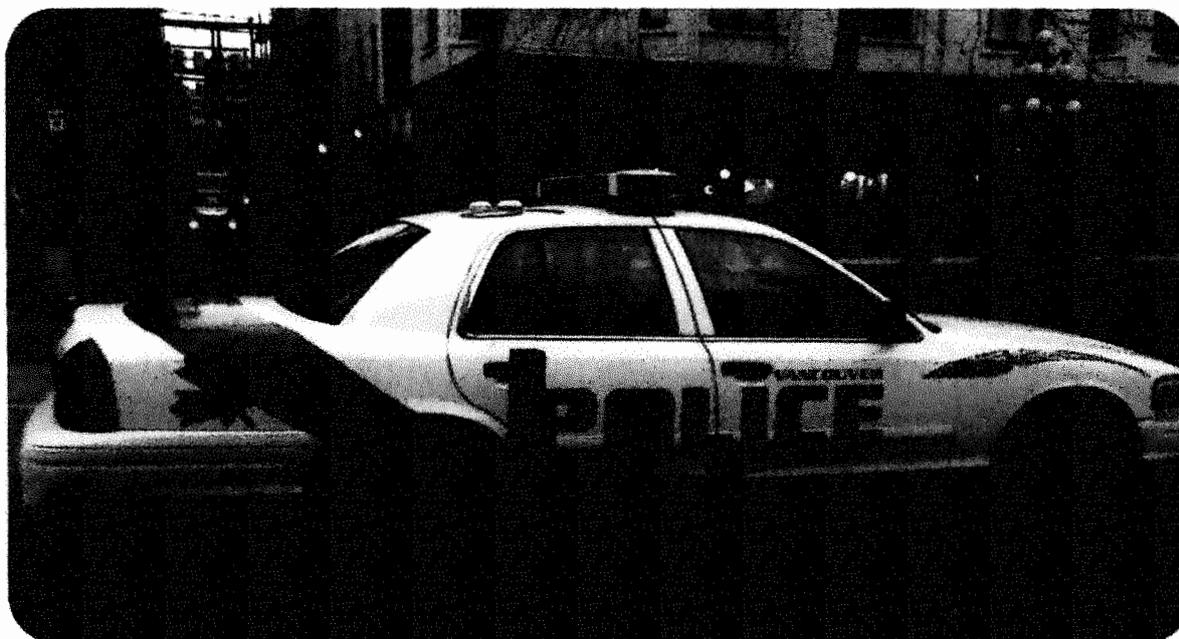
⁵⁹ Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 11.

⁶⁰ Robert J Sampson and Stephen W Raudenbush, 'Seeing Disorder: Neighborhood Stigma and the Social Construction of Broken Windows' 67 *Social Psychology Quarterly* (2004) 319 (Sampson and Raudenbush, *Seeing Disorder*).

census and police data on key neighbourhood characteristics, compared with personal interviews and the observation of city streets (through video-taping street scapes from the window of an SUV).⁶¹ They concluded that 'concentrated poverty, proportion black, and proportion Latino are related positively and significantly to perceived disorder'⁶² and 'in fact, social structure proved a more powerful predictor of perceived disorder than did carefully observed disorder'.⁶³ In short, 'perceived disorder reflects more than meets the eye'.⁶⁴

The UN Special Rapporteur on Extreme Poverty and Human Rights (2010 – 2014), Ms Magdalena Sepúlveda Carmona, also spoke of the way in which 'perceptions, prejudices, stigma and stereotypes perpetuate discriminatory social attitudes' and influence public policy. She described stigma as 'a major obstacle to effective poverty reduction strategies' and said 'crackdowns on people living in poverty through law and policy are happening everywhere and in my view it's stigma and prejudice that motivates these approaches – the idea that poor people are lazy and it's their fault'. The Special Rapporteur also identified the role the media plays in generating and perpetuating these attitudes, noting that: 'the media feeds into this idea of the deserving and undeserving poor'.⁶⁵

In addition to prompting the introduction of new laws or stronger enforcement of existing laws, perceptions and stereotypes of, and discomfort with, visible homelessness can also inform how laws are enforced on the ground. I heard a clear example of this in Vancouver where a police officer identified Mr Shawn Cossaboom's passive presence as 'obstructive solicitation'.



⁶¹ Ibid 320. In addition to physical disorder such as graffiti, broken windows and litter, they considered 'social disorder', including 'the presence or absence of adults loitering or congregating, drinking alcohol in public, peer group with gang indicators, public intoxication, adults fighting or arguing in a hostile manner, selling drugs, and street prostitution' (326).

⁶² Ibid 330.

⁶³ Ibid 330.

⁶⁴ Ibid 329.

⁶⁵ See also Raquel Rolnik (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context) and Maria Magdalena Sepúlveda Carmona (Special Rapporteur on extreme poverty and human rights), 'Foreword' (Rolnik and Sepúlveda, *Foreword to Mean Streets*) in Guillem Fernandez Evangelista and Samara Jones (ed), *Mean Streets: A Report on the Criminalisation of Homelessness in Europe* (2013) (Evangelista and Jones, *Mean Streets*) 12: 'We have noted with alarm the rise in stigmatising and hostile language used by politicians and sections of the media to justify discriminatory public policies toward homeless persons and persons living in poverty. Prejudices preclude policy makers from addressing the systemic factors that create poverty and homelessness, and instead paint the most disadvantaged people as authors of their own misfortune and therefore less deserving of respect, rights and public resources'; Magdalena Sepúlveda Carmona, *Report of the Special Rapporteur on Extreme Poverty and Human Rights* (4 August 2011) A/66/265 [7] (Sepúlveda, *Report of the Special Rapporteur*).

Visible hardship as an obstruction in Vancouver

In his blog, *Asking for Help Will Cost You*,⁶⁶ Douglas King, Barrister and Solicitor with Vancouver's Pivot Legal Society, writes about his client Shawn Cossaboom who received 20 tickets for begging in five months.

The tickets were for 'obstructive solicitation'. Shawn was sitting with a book and his dog outside the local Safeway, he didn't ask for money verbally, he just used a sign. There hadn't been any complaints and the supermarket permitted him to be there. On one occasion, Shawn was given a ticket for begging and when he didn't reach out to take it, the officer dropped it on the ground and ticketed Shawn for littering.

When questioned by the judge at the trial, the police officer noted that Shawn hadn't been physically obstructive, but 'people were obstructed by Shawn's presence'. The prosecutor acknowledged this was not what the law meant, and asked the judge to acquit.

Mr King writes:

That one question, and answer, says a lot about how many of us view poverty in our city. Its existence offends us. We want it to be gone, but we don't have the means to fix it. Police officers feel the need to act, and dig into their toolbox to grab what they have been trained and told to use, in an effort to force the sight of poverty into remission ... At Pivot we don't pretend to know all the answers, or to have all the solutions. Our hope is that as a society we will continue to move forward, and use the law as a tool to open doors and minds, not suppress the most vulnerable members of our society ... At the end of the day poverty has never left town because someone gave it a ticket.

In formulating laws, policies and practices for dealing with visible homelessness and its symptoms, including begging, we need to be mindful of the fact that public uneasiness, while not always unwarranted, is often informed by stereotypes, stigma and a fundamental misunderstanding of the circumstances of people experiencing homelessness.

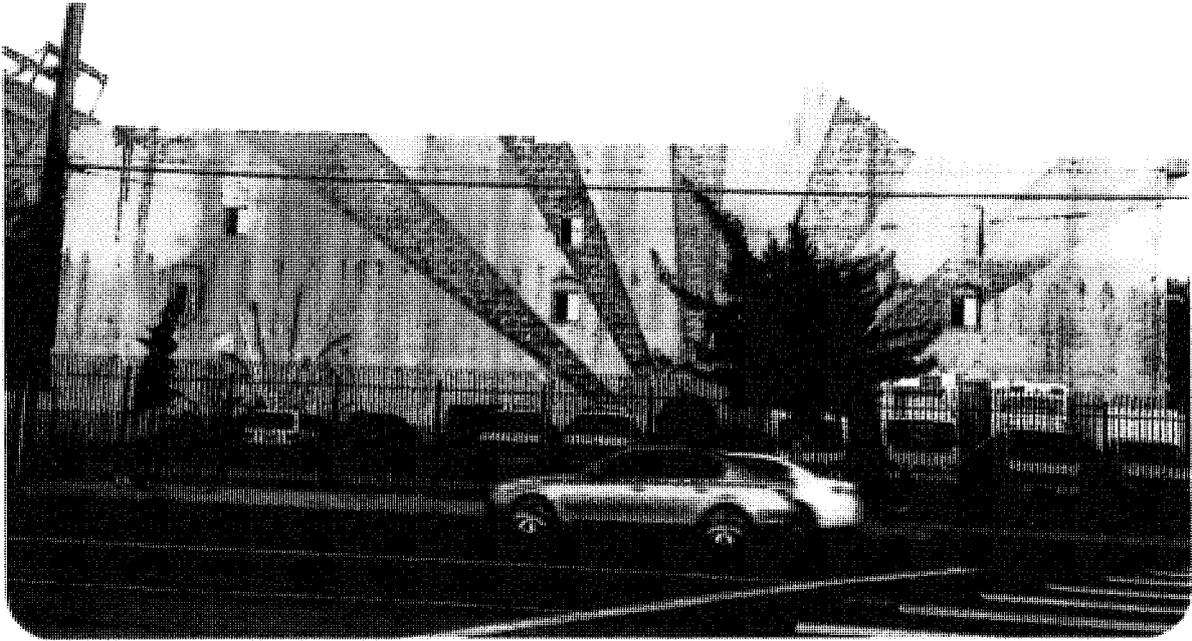
We should avoid introducing reactive enforcement-based responses to homelessness. These approaches will fail to address the underlying causes of the conduct because the conduct itself (or its agent) has been miscategorised. Laws, policies and practices that avoid reacting to stereotypes and assumptions about people experiencing homelessness and instead rely on evidence are better equipped to deal effectively with the complex circumstances that underpin homelessness and related conduct in public places.

3.3. Changing communities and commercial concerns

Another causal factor behind enforcement-based approaches to homelessness is the disharmony between changing city landscapes and visible hardship and poverty. Executive Director of the National Coalition for the Homeless, Jerry Jones, touched on this when he spoke about 'local laws put in place to push people out of locations that are developing' and 'selective enforcement that occurs to get homeless folks out of areas that are gentrifying'.

One of the clearest examples of the way in which friction between visible homelessness and gentrification can contribute to intensified enforcement is Los Angeles's Skid Row.

⁶⁶ Doug King, 'Asking for Help Will Cost You' *The Pivot Blog* (25 November 2013) (available at: http://www.pivotlegal.org/asking_for_help_will_cost_you).



RISK mural: part of the Skid Row Freewalls Project, a collaboration by the Skid Row Housing Trust and LALA Arts



Beds outside an overflowing LA shelter (photograph from Public Counsel)

The changing landscape of LA's Skid Row and the Safer Cities Initiative

Los Angeles's Skid Row has the highest concentration of homelessness in the US, with an estimated 5000 people experiencing homelessness living in a 50 block area.⁶⁷

This concentration was the product of city planning strategies in the 1970s, which aimed to contain homelessness and increase homeless services in Skid Row.⁶⁸ As a result, services providing shelter, housing, food, clothing, health care and addiction treatment are also located in Skid Row.⁶⁹

For decades, this concentration meant that LA's homelessness problem was largely invisible to the mainstream population; out of sight, out of mind. The central location is, however, increasingly sought after for business and residential use (Skid Row 'abuts a fashionable area the city is trying to redevelop')⁷⁰ and the confronting hardship of Skid Row sits uneasily with this shift.⁷¹

In addition to the density, the visibility of homelessness on Skid Row is amplified by the presence of many of the hardships that can accompany homelessness. It has been estimated that 'well over two thirds of the homeless population on Skid Row have a severe and chronic mental illness, a serious addiction problem, or very frequently, both major mental illness and a substance abuse problem'.⁷² Professor Gary Blasi suggested that the visibility of the homeless population in Skid Row was heightened by 'media coverage and attention brought to the area by the rapid redevelopment and gentrification occurring in recent years', including 'no fewer than 165 articles, columns, and other pieces referring to homelessness and Skid Row' published by the *Los Angeles Times* in an 18 month period.⁷³

It's in this context – i.e. a high concentration of homelessness, and the hardships that accompany it, in a changing city landscape – that the Safer Cities Initiative (SCI) was commenced in September 2006⁷⁴ and 50 additional Los Angeles Police Department (LAPD) officers were added to patrol the central LA area, in particular a five block area of Skid Row.⁷⁵

There are conflicting views on the role gentrification played in the decision to introduce SCI. LAPD Senior Lead Officer Deon Joseph said:

Many in the Skid Row community and outside of it have asked and have been asked "Why SCI?" Some have said that it is for gentrification, others have tried to tout that this is some adversarial movement against the poor. These are complete falsehoods because the service providers of Skid Row are not going anywhere ... What we are for is ridding this community of the lawlessness ... we are trying to create an environment conducive to real change in the lives of those with the will to change.⁷⁶

General Dogan, a resident of Skid Row and member of the LA Community Action Network, articulated an

⁶⁷ See Blasi et al, *Policing Our Way out of Homelessness?*, above n 42, 9: 'Comprising about 0.85 square miles, Skid Row contains about 0.18% of the land area in the City but about 7.6% of the homeless population, a density 42 times the citywide average'.

⁶⁸ See, eg, Harold Katz (former Chairman of the Citizens' Advisory Committee on the Central Business District Redevelopment Project), 'Skid Row Housing' *Los Angeles Times* (30 August 1987): 'We did an intensive study of Skid Row and its impact on the downtown community and came up with the policy of containment and increased services. It is my opinion that, if this committee was reformed now and an update of the study performed, we would come up with exactly the same recommendations'.

⁶⁹ See Los Angeles Community Design Center, 'Skid Row: Recommendations to Citizens Advisory Committee on the Central Business District Plan for the City of Los Angeles, Part 4: Physical Containment' (1976) cited in Blasi et al, *Policing Our Way out of Homelessness?*, above n 42, 10.

⁷⁰ Paul Boden, 'The Quality of Whose Life? An Introduction to America's Modern Anti-Poor Movement' *Huffington Post* (5 October 2010).

⁷¹ See, eg, Nicholas Dahmann with the Los Angeles Community Action Network, 'Los Angeles: I Do Mind Dying Recent Reflections on Urban Revolution in Skid Row' (2010) 2 *Los Angeles Public Interest Law Journal* 210, 215: 'Landlords, developers and other business interests became increasingly anxious and reactionary, fearing the presence of poor and homeless people threatened their profits. In 2006 they escalated their gentrifying efforts to push the "New Downtown" into and across Skid Row'.

⁷² Blasi et al, *Policing Our Way out of Homelessness?*, above n 42, 12.

⁷³ *Ibid* 10.

⁷⁴ See Patt Morrison, 'Homelessness in Los Angeles—Part One: the Safer City Initiative' *Southern California Public Radio* (26 January 2011) (Morrison, *Safer City Initiative*).

⁷⁵ Press release: Los Angeles Police Department: *Chief Bratton Gives Safer Cities Update on Skid Row* (8 June 2007) (LAPD SCI Press Release).

⁷⁶ LAPD Senior Lead Officer Deon Joseph, 'Why Safer Cities Initiative?' *LAPD Blog* (4 March 2009) (available at: http://lapdblog.typepad.com/lapd_blog/2009/03/why-safer-cities-initiative.html).

alternative view:

The only thing they care about is removing the poor and brown people off of Skid Row so that these yuppies in the lofts can walk their \$5000 French poodle down Main Street without seeing Ed the wino or Ted the panhandler. This is what it's all about – it's all about displacing the poor, the homeless. The first year SCI put 50 cops [in Skid Row], they spent \$6.2 million on just 50 cops but they spent \$5 million citywide on homeless services. All this money for what?⁷⁷

What is largely uncontested is the scale of enforcement as part of SCI. A report on the first year of the SCI estimated that the LAPD had issued approximately 12,000 citations (the majority for 'pedestrian violations'), which was 48–69 times the rate of citations issued citywide.⁷⁸ Figures from 2009 estimated over 30,000 citations and 25,000 arrests since the SCI's commencement.⁷⁹

Not dissimilar to the 'containment' of Skid Row in Los Angeles, Vancouver's rough sleeping population is concentrated in the Downtown Eastside (DTES), particularly in Hastings Street. The Vancouver Homeless Count conducted on 13 March 2013, 'while always an undercount', identified 1,600 people experiencing homelessness, comprised of 273 people who were unsheltered and 1,327 who were sheltered.⁸⁰ Also similar to Los Angeles, the central location of DTES is increasingly coveted for condominiums and commercial use and there is palpable concern that changes to the area will push low income people out of its familiar streets.⁸¹ In addition to being 'priced out' of the community, DJ Larkin, Barrister and Lawyer from Pivot Legal Society explained that the residents fear that the movement of wealthier people into their community brings with it tougher treatment of the original residents. She commented 'the moving organism that is [the DTES] is very complicated' and said she wouldn't be surprised if there was another increase in ticketing in response to new residents' discomfort with visible hardship in their adopted streets and consequent pressure for tougher enforcement in relation to public space offences.

On top of the concerns of residents, are the concerns of business and retailers. The significant potential for positive collaboration with business in developing solutions to homelessness is discussed in part 6.2. In the absence of a constructive relationship, however, business lobby groups, including Business Improvement Districts in many cities in the US, Canada and the UK, can be a vocal source of pressure for 'crackdowns' on homeless people in public places motivated by commercial concerns.

Johnsen and Fitzpatrick's research on enforcement responses in England refers to the view of business proprietors that 'the presence of street users deterred potential customers from entering their shops' and quoted a Leeds shop proprietor: '[Begging] actually puts people off and turns people away. You'll actually see people make a diversion to go away from them and that possibly actually turns people away from our store'.⁸²

As previously 'undesirable' parts of cities become increasingly occupied by residents and businesses that are uneasy with visible poverty and homelessness, decision-makers and law enforcement officers will come under greater pressure. Police Sergeant Mark Montgomery from the City of London Police Street Intervention Team said:

⁷⁷ Morrison, *Safer City Initiative*, above n 74.

⁷⁸ Press Release: Los Angeles Community Action Network with Gary Blasi, Nicholas Dahmann, Anat Rubin and Forrest Stuart, *Safer Cities Initiative Third Year Analysis* (September 2009) cited in Blasi et al, *Policing Our Way out of Homelessness?*, above n 42; Gary Blasi and Forrest Stuart, 'Research Report: Has the Safer Cities Initiative in Skid Row Reduced Serious Crime?' (15 September 2008) (available at: http://wraphome.org/downloads/safer_cities.pdf) (Blasi and Stuart, *Has the Safer Cities Initiative Reduced Serious Crime?*). See also LAPD SCI Press Release, above n 75, which reported that between 17 September 2006 when SCI commenced and 1 June 2007, 'the uniformed component of the Safer Cities Initiative, comprised of the Safer Cities Task Force, Eastside Detail and officers assigned to the Metropolitan Division Mounted Unit' had: made 1,800 felony arrests and 1,300 misdemeanor arrests; performed 8,000 warrant checks; impounded 208 vehicles; issued more than 8,000 citations; and responded to 424 calls for service.

⁷⁹ See Blasi and Stuart, *Has the Safer Cities Initiative Reduced Serious Crime?*, above n 78.

⁸⁰ Eberle Planning and Research, *Vancouver Homeless Count 2013* (August 2013) (available at: <http://vancouver.ca/files/cov/report-2013-homeless-count-2013-oct8.pdf>).

⁸¹ See, eg, Travis Lupick, 'Protesters target Cuchillo as another symbol of gentrification in Vancouver's Downtown Eastside' *Straight.com* (5 July 2013).

⁸² Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 10.

We face pressure from residents, business people and politicians to 'clean up the streets' or move homeless people on. We have to remind them that it's not an offence for homeless people just to be in public and, unless there's legislation that empowers us, we can't just move people on.

It's helpful to recognise the community dynamics that are often behind tougher enforcement-based approaches to homelessness, which on their face may seem to come directly from law enforcement officers or government. We need to work on improving community awareness and understanding of homelessness and its causes, with a view to reducing the public appetite for enforcement and making room for more thoughtful responses to homelessness by government and community members.

3.4. Using enforcement to promote service engagement

The UK has been the site of sophisticated homelessness reduction strategies since the 1990s.⁸³ Despite years of these successful programs, however, the economic crisis, combined with tough cuts to welfare and social services and a lack of affordable housing, have seen a worrying resurgence of homelessness in England and present a risk for Scotland's first class homelessness prevention model.⁸⁴

In the earlier landscape of successful homelessness reduction, particularly rough sleeping, England developed a number of collaborative 'tough love' approaches to homelessness and public space, involving some or all of homeless outreach agencies, police, housing services, local councils and drug and alcohol services.⁸⁵

Liz Blackender, Team Leader City Outreach and Pan London Personalised Budgets at Broadway Homelessness and Support summarised the philosophy that underpins the multi-agency approaches to rough sleeping in the UK: 'it's not okay for people to sleep rough. They're not going to be left alone. We live in the 21st Century and everyone should have a roof over their head'. Ms Blackender explained that the police are seen as having a role to play in assertive outreach: 'we use a multi-agency approach, including some disruption which can encourage entrenched rough sleepers to engage with outreach services and consider change'.

I saw this inter-agency cooperation in practice at the monthly City of London Anti-Social Behaviour Interagency Working Group, which has been running for over 18 months and is attended by a range of government and non-government services, including police, housing services, homelessness outreach agencies, local council and substance misuse services. There was a high level of information sharing and collaboration at the meeting; individuals were identified by name and updates were provided on whether or not they are engaging with services (for example, housing or drug and alcohol). Where individuals weren't engaging with the services on offer, enforcement-based responses, including arrests under the *Vagrancy Act 1824*⁸⁶ or an application for an anti-social behaviour order (ASBO), were discussed.

The collaboration between different agencies is strong and Ms Blackender explained the understanding that 'if you work in partnership with other agencies, you get results ... we're all singing from the same song book'.

⁸³ See, eg, Fitzpatrick, Kemp and Klinker, *Single homelessness*, above n 44: 'Statutory responses to homelessness initially focused on families with children rather than single people ... The growing numbers of single homeless people sleeping rough in the late 1980s prompted central government to establish a series of Rough Sleepers Initiatives (RSI); first in London in 1990, and then elsewhere in England and in Scotland'. The Rough Sleepers Unit and the Scottish Homelessness Task Force prioritised homelessness prevention and reduction from 1999 and 2000 respectively.

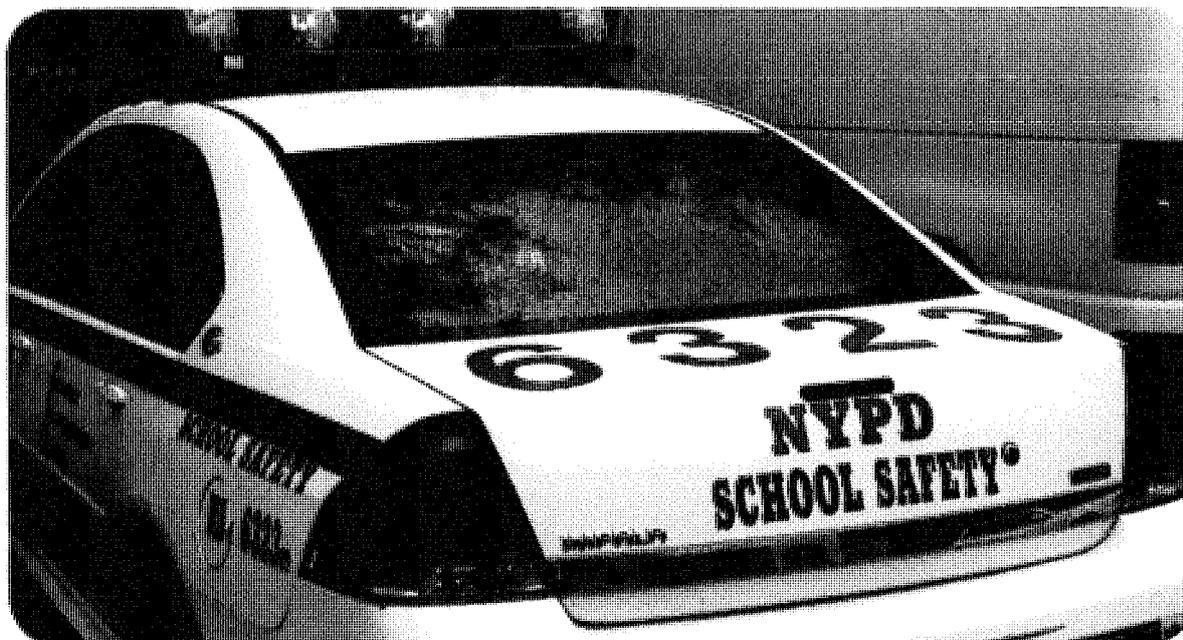
⁸⁴ Suzanne Fitzpatrick, Hal Pawson, Glen Bramley, Steve Wilcox and Beth Watts, *The Homelessness Monitor: England 2013* (December 2013) and *The Homelessness Monitor: Scotland 2012* (December 2012) (both available at: <http://www.crisis.org.uk/pages/homelessnessmonitor.html>).

⁸⁵ See, eg, Fitzpatrick, Kemp and Klinker, *Single homelessness*, above n 44.

⁸⁶ See *Vagrancy Act 1824* which makes it an offence to beg (s 3), persistently beg (s 4) and sleep rough where it can be shown that the individual has been directed to a 'free' place of shelter and has failed to take this up (s 4). If convicted people can be fined (but not imprisoned).

In this model, the motivation for an enforcement-based approach is a commitment to the idea that people can be offered services and encouraged to engage to a point, but beyond that, the stick of enforcement has a role to play in moving people off the streets.⁸⁷

3.5. Crime prevention, public order and broken windows



George Kelling and James Wilson published 'Broken Windows: The police and neighborhood safety' in the *Atlantic Monthly*⁸⁸ in 1982 and since that time, as a theory of policing and crime prevention, '[f]ew ideas have become more influential than "broken windows".⁸⁹ The theory can be summarised as the idea that: 'if minor offenses and local disorder are not addressed, they will create an environment that encourages more serious crime'.⁹⁰

The wording in Kelling and Wilson's original article is less benign:

The citizen who fears the ill-smelling drunk, the rowdy teenager, or the importuning beggar is not merely expressing his distaste for unseemly behavior; 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 behavior goes unchecked. The unchecked panhandler is, in effect, the first broken window. Muggers and robbers, whether opportunistic or professional, believe they reduce their chances of being caught or even identified if they operate on streets where potential victims are already intimidated by prevailing conditions. If the neighborhood cannot keep a bothersome panhandler from annoying passersby, the thief may reason, it is even less likely to call the police to identify a potential mugger or to interfere if the mugging actually takes place.⁹¹

⁸⁷ See, eg, Fitzpatrick, Kemp and Klinker, *Single homelessness*, above n 44, 6, which refers to 'the threat of punitive action if they do not take up the opportunities offered' as underlying the UK approach to homelessness.

⁸⁸ Kelling and Wilson, *Broken Windows*, above n 52.

⁸⁹ Sampson and Raudenbush, *Seeing Disorder*, above n 60.

⁹⁰ Greg Berman, 'NYC's Midtown Community Court: 20 Years of Testing New Ideas' *The Crime Report* (17 October 2013) (Berman, *NYC's Midtown Community Court*).

⁹¹ Kelling and Wilson, *Broken Windows*, above n 52, 29.

The outdated wording of the original article has not stopped the theory enjoying significant traction. Its influence extends beyond law enforcement agencies and the 'place-based' approach of broken windows has also been adopted by innovative justice programs that aim to regenerate local communities. By way of example, the Midtown Community Court in New York City recently marked its twentieth birthday and the celebratory reflections included recognition that 'the Court was inspired, at least in part, by James Q Wilson and George Kelling's groundbreaking "Broken Windows" theory'.⁹² The court's mission 'to reduce both crime and incarceration by linking misdemeanor defendants to community restitution projects and social services instead of short-term jail sentences' arose from:

the realities of the early 1990s, when low-level crime—shoplifting, fare-beating, vandalism and the like—seemed a permanent feature of New York City. Lacking other options, judges at the time often had to choose between sentencing defendants to a few days of jail time and nothing at all. Either choice failed to impress upon victims, the community, or defendants that these offenses were being taken seriously.⁹³



New York City: Midtown Community Court

The broken windows theory suggests that police and enforcement have a role to play in maintaining community order which will, in turn, lead to safer communities. It provides support for using law enforcement to regulate public spaces and its followers are likely to be strong opponents of alternative mechanisms for dealing with visible homelessness and the conduct that can accompany it:

This wish to "decriminalize" disreputable behavior that "harms no one"—and thus remove the ultimate sanction the police can employ to maintain neighborhood order—is, we think, a mistake. Arresting a single drunk or a single vagrant who has harmed no identifiable person seems unjust, and in a sense it is. But failing to do anything about a score of drunks or a hundred vagrants may destroy an entire community. A particular rule that seems to make sense in the individual case makes no sense when it is made a universal rule and applied to all cases. It makes no sense because it fails to take into account the connection between one broken window left untended and a thousand broken windows.⁹⁴

Interestingly, the theory is not solely aimed at reducing crime, but also at minimising fear of crime. Kelling and Wilson state:

⁹² Berman, *NYC's Midtown Community Court*, above n 90.

⁹³ *Ibid.*

⁹⁴ Kelling and Wilson, *Broken Windows*, above n 52, 29.

But how can a neighborhood be "safer" when the crime rate has not gone down—in fact, may have gone up? Finding the answer requires first that we understand what most often frightens people in public places. Many citizens, of course, are primarily frightened by crime, especially crime involving a sudden, violent attack by a stranger. This risk is very real ... But we tend to overlook another source of fear—the fear of being bothered by disorderly people. Not violent people, nor, necessarily, criminals, but disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed.⁹⁵

The controversy of the broken windows theory will not be resolved by this report. For present purposes, it is adequate to point out that, when considering the motivations behind enforcement-based approaches to public space and homelessness, we need to be mindful of the view that the visible minor disorder of homelessness and poverty needs to be addressed as part of 'a larger strategy to prevent and reduce crime ... [and] to address social conditions that contribute to crime'.⁹⁶ Unless we are able to present constructive solutions that address these concerns – either through limiting public disorder via other means or through addressing the public's perception of, and reaction to, disorder – suggestions for alternatives are likely to meet strong opposition.



New York City: Central Park

⁹⁵ Ibid.

⁹⁶ William J Bratton, Former Chief of Police, Los Angeles Police Department, 'What Skid Row Offensive?' *LAPD Blog* (17 August 2006) (available at: http://lapdblog.typepad.com/lapd_blog/2006/08/what_skid_row_o.html).

4. THE IMPACTS OF ENFORCEMENT-BASED APPROACHES TO HOMELESSNESS

One of the aims of the fellowship was to get insights about the impact of different enforcement-based approaches to homelessness on homeless individuals, services, enforcement agencies, courts and communities.

Keeping in mind the six categories of enforcement-based interventions (see part 2), some key factors that are relevant to the impact of enforcement are:

- what the laws are (i.e. what conduct is prohibited);
- how the laws are enforced, by whom and for what purpose; and
- the enforcement mechanism, including tickets, fines, court orders or sentences.

As discussed, the motivations for enforcement-based approaches to homelessness are complex and varied and what the approach intends to do will determine whether or not it is successful. By way of example, the Safer Cities Initiative in Los Angeles has been identified by many as a success because its intention was to reduce crime and, by some evaluations, it has done so.⁹⁷ In doing so, however, it has taken an overwhelmingly heavy toll on an already struggling population, imposed a strain on the courts and prison system and required a reported annual investment of approximately \$6 million.⁹⁸

It is important that we evaluate programs regulating public space in the broad context in which they exist. A narrow impact assessment will disguise potentially costly impacts. With this in mind, this section discusses the following impacts – both positive and negative – of enforcement-based approaches to homelessness and public space:

- Impacts on **people experiencing homelessness**
 - Linking people with services, successful interventions or ‘turning points’
 - Entrenching marginalisation and isolation
 - Personal marginalisation – limiting access to services and leading to more damaging conduct
 - Practical exclusion – jailed and excluded from safe spaces, employment and housing
 - Financial marginalisation – overwhelming debts spiralling into something bigger
- Impacts on the **community**
 - Increased public safety and order and deterrence
 - Reinforcing and responding to public stereotypes about homelessness

⁹⁷ Richard Berk and John MacDonald, ‘Policing the Homeless: An Evaluation of Efforts to Reduce Homeless-Related Crime’ (2010) 9 *Criminology and Public Policy* (2010) 813 (Berk and MacDonald, *Policing the homeless*).

⁹⁸ Blasi et al, *Policing Our Way out of Homelessness?*, above n 42, 7: ‘The estimated cost of just the 50-officer SCl Task Force in Skid Row is about \$6 million per year. [In 2007] the City has budgeted \$5.7 million out of the same General Fund for homeless shelters and services for the entire City’.

- Impacts on **police and relationships with communities**
 - The strain on police
 - Diminished trust in law enforcement and broken relationships with police
- Impacts on the effectiveness and efficiency of the **justice system**
 - The burden on legal services
 - Judicial responses and congestion in the courts
- The **financial costs**.

4.1. Impacts on people experiencing homelessness

Much of the focus when considering the success or otherwise of laws or practices regulating public space focuses on 'cleaning up the streets' and, accordingly, impact is assessed using measurements such as reduced numbers of rough sleepers or people begging in the local area and fewer complaints about people experiencing homelessness.⁹⁹

This section considers the personal, health, financial and legal impacts of enforcement-based approaches to homelessness on the individuals themselves. If we are aiming to address underlying causes of offending conduct, the impact on the people whose conduct is being targeted is a critical consideration in any intervention.

Linking people with services, successful interventions or 'turning points'

Some of the experts I spoke with saw a role for enforcement – primarily in the form of police intervention through use of move-on powers or arrests and potentially with the prospect of a court order such as an anti-social behaviour order – in addressing rough sleeping and problematic conduct in public places. They noted though that it must be accompanied by services and, crucially, the interests of the person must be at the heart of it: 'It's a different story if the sole reason for the action is to clean up the streets'.

The City of London Police's begging initiative, Operation Fennel, is an example of a program where enforcement (in the form of targeted police approaches of people begging and collaborative engagement with services, underpinned by the prospect of an anti-social behaviour order) features as a component of homeless outreach.

Operation Fennel – City of London Police linking people begging with services

Operation Fennel has been running since June 2013 and has the stated intention of providing 'help, guidance and assistance to persons suspected of begging with a view to preventing further offences'.¹⁰⁰

The City of London Police have reported on the outcomes in relation to the 180 tickets for begging issued to 94 people between July – November 2013.¹⁰¹ The majority of the reported outcomes are focussed on linking people with services, assisting them to move into housing and building relationships and understanding between the police and people who are begging in the City of London. Two of the outcomes are responding to other aims (i.e.

⁹⁹ See, eg. Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, viii: 'Affected members of the public and enforcement agents, were not unsympathetic to the vulnerability of street users, but were clear that their top priority was a reduction in the negative impact of street culture on their daily lives. Most felt that the strategies adopted in their local area had been successful in bringing about a sharp decline in street activities'.

¹⁰⁰ Operation Fennel, *City of London Policing Plan 2013–2016* (December 2013) (document provided by City of London Police on 2 December 2013) (*Operation Fennel, City of London Policing Plan*).

¹⁰¹ *Ibid.*

'prolific beggars' leaving the City area and praise from the business community). The final outcome, which is 15 applications for anti-social behaviour orders (ASBOs) comes at the end of a process that appears to be genuinely aimed at prompting engagement with supports and addressing the underlying causes of the person's begging.

Operation Fennel is discussed in detail in part 6.4 below.

The research of Dr Johnsen and Professor Fitzpatrick assesses the impact of enforcement on the welfare of 'street users' in England.¹⁰² The research for the report, *The Impact of Enforcement on Street Users in England*, involved case studies of five different local areas that had introduced 'enforcement interventions' in response to 'problematic street culture', particularly begging and street drinking. The research considered the motivations for these interventions and, importantly, 37 in-depth interviews were conducted with current or former 'street users' to assess the impact of enforcement on their wellbeing.

The below case study extracted from Johnsen and Fitzpatrick's report provides an example of an enforcement-based approach – in this case the use of anti-social behaviour order and subsequent prison sentence – presenting a turning point or critical intervention for a person experiencing homelessness and substance dependence.

Adam – ASBO and prison as an intervention point

'Aged 33, Adam was living in shared accommodation run by a drug treatment agency while subject to a two-year ASBO for begging. He had lived in local authority care from the age of 12, where he was introduced to drugs by other residents in a children's home. Adam claimed that much of his life could be described as "a mission to self-destruct", evidenced by a self-perpetuating cycle of drug abuse, dealing, burglary, prison and homelessness (including extended periods of rough sleeping): "I'd lost interest in life really, I didn't want to know.... It was get up in the morning, do what I had to do and spend the rest of the day using drugs".

He was targeted by a street community police team and arrested regularly for begging, while being offered intensive support by the street outreach team. Having lost hope of ever being drug free because of previous relapses, Adam rejected all supportive interventions at the time. He was served an ASBO but carried on begging and breached it several times: "I didn't care what they were saying.... If you want to send me to prison, send me to prison". Adam had recently served a 10-week sentence for breaching his ASBO and had successfully remained 'clean' since release, but found it difficult to explain why treatment had 'worked' this time. His health had improved dramatically, he had re-entered education, was working as a volunteer, and looked forward to establishing a relationship with a daughter he had never met. He concluded that "I think I am probably an ASBO success story.... I had my first clean birthday as an adult about two weeks ago".¹⁰³

Johnsen and Fitzpatrick undertake a careful analysis of the factors that influence the impact of enforcement on individuals. They ask: 'when can enforcement benefit street users?' and identify the following policy and practice conditions in which enforcement action is most likely to have positive benefits for street users:¹⁰⁴

¹⁰² Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7.

¹⁰³ Extracted in full from Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 27.

¹⁰⁴ Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 44.

- it must always be carefully integrated with individually tailored and (immediately) accessible supportive interventions, so that support workers can take advantage of any ‘window of opportunity’ for engagement that enforcement might present;
- it requires effective interagency working between police and support providers (including accommodation, drug and alcohol and outreach services);
- harder enforcement measures (including ASBOs) should only be used as a last resort, after appropriate ‘warning stages’, and should never be used with extremely vulnerable street users, particularly those people with mental health problems; and
- ‘blanket’ enforcement policies are inappropriate.¹⁰⁵

Johnsen and Fitzpatrick are cautious though: ‘the existence of these conditions in no way guarantees success, but positive outcomes appear highly unlikely if these arrangements are not in place when any enforcement initiative is implemented’¹⁰⁶ and further, ‘if taken into account within enforcement strategies, these considerations will minimise, although not eliminate, the risk of harm to vulnerable street users by enforcement action’.¹⁰⁷

The adverse consequences of enforcement, the risks of which Johnsen and Fitzpatrick note are high and cannot be eliminated, are discussed in the next section.

Entrenched marginalisation and isolation

While, as discussed in part 3, it is rare that the intention of public space regulation is solely to punish people for their disadvantage, the impact of enforcement-based measures, including tickets, arrests and anti-social behaviour orders, can be punitive regardless of the intention or motivation. There is a risk that enforcement-based approaches, even when thoughtfully implemented, can further marginalise people:

- personally (though interfering with service engagement and pushing people into more damaging activities);
- practically (through geographical exclusion, jail, ineligibility for housing and criminal records); and
- financially and socially (through overwhelming debts and the risk of jail stemming from tickets and fines).

In these ways, enforcement-based measures can risk impeding rather than supporting people’s exit from homelessness.

Personal marginalisation – interfering with service engagement and pushing people into more damaging activities

The use of law enforcement to address conduct directly related to homelessness (including sleeping rough, begging or public intoxication) is intended to, and often does, affect the activities and movements of people experiencing homelessness. While there is debate about the ‘deterrent’ effect of enforcement-mechanisms (particularly fines and tickets (see part 4.2)), the risk of being approached by police, arrested, repeatedly ticketed, becoming the subject of a court order or even jailed, may alter the conduct of people experiencing homelessness in unanticipated, unhelpful and even damaging ways.

In relation to anti-social behaviour orders in the UK, Peter Cockersell, Director of Health and Recovery at St Mungo’s, one of Britain’s largest charities supporting people who are homeless or at risk of homelessness, said that it was relatively uncommon for their clients to be the subject of ASBOs because St Mungo’s does a lot of work with the police and encourages them to work with services and supports rather than resorting to an ASBO. He said support workers would prefer the police to engage with them rather than apply for an ASBO because ‘often

¹⁰⁵ Ibid ix–x and 46–8.

¹⁰⁶ Ibid x.

¹⁰⁷ Ibid 52.

[ASBOs] can prevent people doing things that are useful to their recovery ... sometimes, not always, they are blunt and unhelpful instruments'.

A London-based homeless outreach worker I spoke with said that once people are the subject of an ASBO, 'they are constantly in and out of prison; as soon as services start to do something, he's whisked off to prison'.

In contrast to Adam's 'ASBO success story' above, Johnsen and Fitzpatrick's report contained the following case study of a homeless teenager who had resorted to sex work to support his drug dependence to avoid the police crackdown on begging and being jailed for breach of his anti-social behaviour order.

Matt – turning to more dangerous activity to avoid going to prison for begging

'Aged 19, Matt had had a stable childhood until his father left when he was eight years old and his mother developed a heroin habit. He left home when he was 15, by which time he already had a heroin addiction himself, and later took crack. He said that he craved the drugs to "... give you some peace and take away the pain". He had 'sofa-surfed' (staying with different friends) and slept rough since then.

Matt was heavily involved in begging and was moved on and arrested for this many times, ultimately receiving an ASBO for begging that barred him from the city centre. He had also been an occasional Big Issue vendor but again, since being excluded from the city centre, did not do this any more. He had not breached his ASBO but had become involved in street sex work to feed his drug habit, and claimed that this was a direct result of the restrictions imposed by his ASBO.

He was not offered any support as part of the ASBO process, and was extremely bitter about the impact of the ASBO that drove him, as he saw it, into sex work. He seemed very isolated and the only support he was receiving was on an informal basis from a project worker who saw him on the street in her own time.¹⁰⁸

Examples like this make it apparent that enforcement-based approaches, including targeted 'crackdowns' on conduct of people experiencing homelessness in public places, are high risk practices that carry the potential to have negative and harmful effects on vulnerable people.

Unless the people implementing these strategies – often the police on the beat – are equipped to balance these complex personal and policy considerations, there are significant risks that using arrests, tickets, move-on powers and court orders to regulate public space will have a harsh and damaging impact on people experiencing homelessness.

Practical exclusion – jailed and excluded from safe spaces, employment and housing

As discussed in part 3.1, enforcement-based approaches to homelessness are often local responses to local concerns. Often they are responding to community or business pressure about visible homelessness and poverty. Alternatively, they may be designed in co-operation with local homelessness agencies to prompt engagement by people experiencing homelessness or they may be designed to tackle low level crime with a view to preventing more serious crime in a particular community.

¹⁰⁸ Extracted in full from Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 23–4.

Given this local focus, it is easy for assessments of the success of enforcement-based measures to be narrowly concentrated on local indicators.

By way of example, enforcement-based initiatives in London are localised and primarily implemented borough to borough. Evaluation shows that Operation Fennel has been very successful at reducing the number of people begging on the beat of the City of London. While the figures show that a number of people have stopped begging and are engaged with services,¹⁰⁹ for others it is not clear whether they have stopped begging or moved to an area with fewer police resources.

We need to be mindful of the risk that this type of enforcement will simply push homeless people to move themselves on and in doing so to become more isolated, less safe and more difficult for services engage with.

This risk was examined in relation to the ban on 'urban camping' in Denver, Colorado.

The risks of excluding homeless people from central areas – Denver, Colorado

In May 2012, Denver passed the Unauthorized Camping Ordinance, which makes it a crime for a person to shelter from the elements while residing on any public or private property, without appropriate permission: 'Under this law, it is illegal for homeless people to sleep, sit for extended periods, or store their personal belongings anywhere in Denver, if they use any form of protection other than their clothing (e.g., a blanket or a piece of cardboard to sit upon)'.¹¹⁰ Violations of the urban camping ban can result in fines up to \$999 or one year imprisonment.¹¹¹

Local council representatives suggested that the ordinance is 'the first step in providing services to those who truly need them, while simultaneously creating a healthy environment for residents of Denver's urban core' and indicated that police were using their discretion in enforcing the ban so that people are linked with services rather than arrested.¹¹²

The Denver Police Department reported that 158 street checks for unauthorised camping impacting 386 members of the homeless community occurred in the first four months of the urban camping ban. Local advocacy organisation, Denver Homeless Out Loud, and the University of Colorado then undertook a survey of 512 members of the homeless community to determine the impact of the ban on their lives (see part 6.1).

A snap shot of the survey results is:

- 57% of survey respondents were contacted by police regarding violations of the camping ban.
- 83% of those were asked by police to 'move along' without being offered alternative services.
- 76% were issued a formal oral or written warning of camping ban violation.
- 26% were arrested or cited for other violations (the most common citations were violations of park curfew or trespassing on private property).
- Only 12% of respondents were advised by police of available social services; 4% of respondents said the police contacted an outreach worker to help them.
- 52% of respondents who used to sleep downtown said they did so because that area was safe and well-lit and 66% said they now usually sleep in more hidden and unsafe locations.

¹⁰⁹ Operation Fennel, *City of London Policing Plan*, above n 100.

¹¹⁰ Denver Homeless Out Loud, *Report from the Street*, above n 29, 7.

¹¹¹ *Ibid.*

¹¹² See, e.g. Albus Brooks, 'Denver's camping ordinance helps us address needs of homeless' *The Denver Post* (19 July 2013).

- 40% have tried to get into shelters more often, but 63% say shelters are more crowded and harder to get into than they used to be; 73% report being turned away from shelters with some frequency.
- 60% report that they get less sleep as they frequently are being 'moved along' (or live in fear of this), and feel less secure in the new areas they are finding to sleep.
- 58% say that it has become more necessary to avoid the police (4% say the police have become more helpful).¹¹³

In summary, the respondents indicated that they find it increasingly difficult to access overcrowded shelters, they avoid well-lit and safe downtown areas for hidden locations and they feel less safe.¹¹⁴

In relation to efforts to reduce visible homelessness in particular geographical areas, Professor Blasi reminds us: 'over policing of homelessness doesn't address homelessness, it just moves it'. One of the places that it moves people to is prison. Both under ASBOs in the UK and broken windows policing in the US, I heard about people cycling in and out of prison. One person Professor Blasi spoke about was a woman called Annie. Annie has been arrested 93 times and the first 60 times were for being on the same corner of the same intersection (under s 41.18(d) of the *Los Angeles Municipal Code* which prohibits sitting, lying or sleeping on the footpath). She moved corners and the process started again. She was recently sentenced to six months in prison (although was released early due to prison overcrowding). Annie is homeless and has a mental illness.

In New York City I also heard about people being taken into the cells for the night for public space offences and the consequences this had. Nahal Zamani, Advocacy Program Manager, Government Misconduct and Racial Justice with the Center for Constitutional Rights (CCR) coordinated 54 interviews with people who had been stopped under the NYPD's stop and frisk policy as part of CCR's report *Stop and Frisk: The Human Impact*.¹¹⁵ Ms Zamani spoke about homeless people who were sleeping in shelters being arrested for a 'quality of life offence', put in lock-up and losing their bed because it had been unattended for over 48 hours.¹¹⁶ She described it as: 'a forced introduction to the criminal justice system via tickets and arrests for minor offences'.

In addition to the immediate impact of physical exclusion or jail, enforcement-based approaches can have longer term impacts on individuals, including through the imposition of criminal records which can limit employment opportunities¹¹⁷ and, in some cases, eligibility for affordable housing.

By way of example, in the US, it is common for people to be denied access to social housing because of a criminal record.¹¹⁸ Given the abundant evidence regarding the need for stable housing to minimise the risk of recidivism,¹¹⁹ this is a harsh and perplexing policy. It was explained to me as a matter of discretion of social landlords: only around one-quarter of people nationally who need a housing subsidy get it; 'will they house the single mum or the guy with a criminal record?'¹²⁰ In this environment, the impact of convictions for public space offences is acute – they directly prevent people exiting homelessness.

¹¹³ Denver Homeless Out Loud, *Report from the Street*, above n 29, 8–9.

¹¹⁴ Tony Robinson, 'Denver's camping ban is counterproductive' *The Denver Post* (19 July 2013).

¹¹⁵ Center for Constitutional Rights, *Stop and Frisk: The Human Impact* (July 2012) (available at: <http://stopandfrisk.org/the-human-impact-report.pdf>) (CCR, *Stop and Frisk: The Human Impact*).

¹¹⁶ *Ibid* 9.

¹¹⁷ See, eg, NLCHP 2011, *Criminalizing Crisis*, above n 32, 32 regarding the impact of criminal records on employment: 38 out of 50 US states permit employers to ask about or rely on arrests that never resulted in convictions when making employment decisions. In Victoria, criminal records will be released with any finding of guilt for a period of ten years from date of sentencing (five years if sentenced as a minor) and include findings of guilt where no conviction is recorded.

¹¹⁸ See, eg, NLCHP 2011, *Criminalizing Crisis*, above n 32.

¹¹⁹ See, eg, Justice Center, the Council of State Governments, *Housing* (available at: <http://csgjusticecenter.org/reentry/issue-areas/housing/>).

¹²⁰ See NLCHP 2011, *Criminalizing Crisis*, above n 32, 34: 'Despite the need of many homeless individuals for permanent housing, many Public Housing Authorities (PHAs) use overly exclusive policies when determining whether an applicant with a criminal record is eligible for public housing'. See also, US Department of Housing and Urban Development, "One Strike and You're Out" Screening and Eviction Guidelines for Public Housing Authorities' Notice PIH 96-16 (HA) (1996). In 2011, following commitments made during the Universal Periodic Review, the Department of Housing and Urban

Financial marginalisation – overwhelming debts spiralling into something bigger

In 2013, Homeless Law worked with six people who had experienced homelessness and been issued with fines or tickets for conduct directly related to their homelessness (including begging, being drunk in public and travelling on public transport without a ticket). The project, *In the Public Eye – personal stories of homelessness and fines* captured the participants' insights in short films, audio recordings and photographs.¹²¹

The six participants talk about the impossibility of paying fines on limited incomes and the complexity of the process required to address fines and infringements. They talk about being overwhelmed financially and psychologically by their infringements.

Julia – the stress of \$2000 in public transport fines

Julia* found herself homeless after having to leave private rental. During her time staying in emergency accommodation and couch surfing she accrued about \$2000 in fines for travelling on public transport without a ticket and failing to vote. She said:

Well the effect of having the fines is very stressful because when you are unemployed or you are on a pension it is pretty difficult to survive as it is – because the fines are quite expensive and if you are on a pension or any kind of Centrelink payment it is a lot of money, it is quite a large percentage of your fortnightly budget and you don't have a spare \$200 just to give to a fine and if you are homeless as well it is even more stressful because it's already incredibly stressful not having a place of your own.¹²²

*Name has been changed

Emma – the build-up of fines for begging

Emma became homeless at 16. During her time sleeping on the streets she got fines for not having a tram ticket and for begging. She has two young sons and is now housed. She said:

I got a lot of fines during my time being on the streets due to either not having a ticket on public transport, on the trains, which is probably quite a common occurrence, and then there was also the fines with beg alms – when I was begging on the streets to support my drug habit ... The effect of fines on my life I guess – at the time there wasn't really much of an effect but now it is – they built up and built up and you get quite a shock to see how much they really add up to. Even with my lifestyle at the moment and trying to budget the fine system is just ridiculous – how is someone on a pension expected to pay \$250 for not having a ticket?¹²³

Darren – overwhelming fines for public drunkenness

Darren has been homeless on and off for almost 15 years and has struggled with alcohol addiction since his teens. A combination of these two factors has resulted in him getting about \$15,000 in fines. He said:

Development issued a letter to Public Housing Authorities (PHAs) recommending that they reduce exclusion from public housing for ex-offenders, but despite this, many PHAs continue to bar many ex-offenders from eligibility. See National Law Center on Homelessness and Poverty, *Cruel, Inhuman, and Degrading: Homelessness in the United States under the International Covenant on Civil and Political Rights* (submitted to the UN Human Rights Committee on 23 August 2013) 8 (NLCHP, **Human Rights Committee Report**).

¹²¹ Justice Connect Homeless Law, *In the Public Eye – personal stories of homelessness and fines* (August 2013) (available at: <http://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/infringements-and-public-space-offences/public-eye-personal-stories-homelessness-and-fines>) (**Justice Connect Homeless Law, In the Public Eye**).

¹²² *Ibid* (Julia).

¹²³ *Ibid* (Emma).

The impact of the fines in my case just got harder because I kept getting more of them. Before I was able to address or pay for the existing one I already had I would cop another one and another one and it just got overwhelming. I was unable to pay due to the fact that I was only on Newstart at that time and living in boarding houses, which the rent there was pretty much a third of my payment so I couldn't live.¹²⁴

In Vancouver, Aiyanas Ormond, Community Organiser from Vancouver Area Network of Drug Users (VANDU), spoke about tickets issued for minor offences such as jaywalking, illegal vending and public urination escalating into warrants for failure to appear in court. Mr Ormond said they see VANDU members going to jail as an indirect consequence of tickets for minor offences. He also said: 'Another part of the dynamic is that people start to rack up long rap sheets for procedural offences and when they come before a court the lengthy list and failure to appear warrants make a harsher sentence more likely'.

Professor Blasi also paints a picture of tickets and citations spiralling into larger criminal matters under the Safer Cities Initiative in LA's Skid Row:

For most residents of the City, a citation for jaywalking or walking against a signal light are a reminder, an inconvenience, and an unplanned expense. The "fine or bail" for the most common violation, walking against the "don't walk" signal is \$25.00. But by the time the various penalties and assessments are added (including sums earmarked for court facilities, DNA testing, and emergency medical services), the total comes to \$159.00. Again, for many of us this may be an inconvenience. But to someone subsisting on County General Relief, it is equal to nearly three weeks total income. And for a person with no income at all, there is no possibility of paying the "fine or bail." Those who do not pay can try to contest the citation in court, but a very high proportion of those cited in Skid Row are simply too disabled to comprehend what that might entail ... An interaction that began with an officer writing a ticket to a mentally disabled person unable to get his shopping cart across the intersection in time will have a more severe result the next time that person encounters a police officer: he will be arrested and taken to jail pursuant to the warrant. Fragile arrangements for food and shelter are likely to be disrupted and possessions lost in the shuffle. Certainly, there is no apparent mental health benefit to a trip to the County Jail, even for a short time.¹²⁵

Javier Beltran, Directing Attorney of the Los Angeles Inner City Law Center Homelessness Prevention Project, spoke about the flow-on effects of citations or warrants for public space offences once people are housed. He said a lot of the issues they see with people facing eviction for rent arrears are 'to do with other baggage, including trying to pay their citations or warrants. It's hard for people to prioritise and it can jeopardise their housing'.

The above accounts make it clear that the burden of multiple citations or fines, the threat of enforcement and the very real risk of prison can exacerbate the stress and social exclusion of homelessness.

In thinking about policies and processes for regulating public space, we can't ignore the impact tickets have on people's already difficult circumstances and their future opportunities – it doesn't stop with the ticket.

The wisdom of using financial penalties to regulate use of public space by people experiencing the social and financial hardship of homelessness should be re-considered. In addition to the personal financial burdens they place on people experiencing or exiting homelessness, the financial costs they impose on the justice system are discussed in part 4.5 below.

4.2. Impacts on community safety and wellbeing

As discussed in part 3, the impetus for enforcement-based approaches to homelessness is often concerns about the impact of visible homelessness, and associated conduct, on the quality of life of other members of residential

¹²⁴ Ibid (Darren).

¹²⁵ Blasi et al, *Policing Our Way out of Homelessness?*, above n 42, 30-1 (citations omitted).

and business communities. Decision-makers are required to balance the circumstances of the general community against those of individuals experiencing homelessness.

This section considers the impact of enforcement-based approaches to public space on communities. It discusses two different impacts:

- increased public safety and order, including through deterrence; and
- reinforced or legitimised public stereotypes about homelessness.

Increased public safety and order and deterrence

As has been discussed throughout this report, members of the general public or businesses can be uncomfortable with the presence of people experiencing homelessness sleeping rough, begging or drinking in their neighbourhood. In response, enforcement-based measures are introduced to address this conduct or remove it from local areas.

As has also been discussed, in many cases the issue is *perceived* disorder or lack of public safety, rather than an actual threat or risk. As Johnsen and Fitzpatrick acknowledge, however, ‘the impact of these [street] activities on other members of the community must be given due regard when assessing the overall appropriateness and justice of interventions, particularly where street activities have a major impact on particular sections of the community’.¹²⁶

With this in mind, this section considers whether enforcement-based initiatives are effective in improving public safety and order in local communities through reducing crime and ‘anti-social behaviour’, including any deterrent effect of potential enforcement.

The table below provides a snap shot of evaluations and assessments of enforcement-based initiatives in terms of whether or not they have improved public order and safety. The examples focus only on reported outcomes as they relate to actual or perceived improvements in public safety and order – they are of course not comprehensive evaluations.

Jurisdiction	Enforcement-based approach	Impact on public safety and order
Los Angeles	Safer Cities Initiative (SCI) – 50 new police officers deployed to police Skid Row (see part 3.3)	There are conflicting views on whether the SCI has reduced crime in Skid Row. Berk and MacDonald’s evaluation of the SCI found a small decline in each type of crime (nuisance, property and violent crimes) after the SCI was implemented and, while this trend was also found in comparison areas (i.e. areas where SCI had not been introduced), their analysis indicated a downward trend unique to the Central Division of Los Angeles, where the SCI was targeted. ¹²⁷ In contrast, Blasi and Stuart analysed figures for the year prior to the launch of SCI and the year after and compared the data on crimes occurring in Skid Row with those occurring in the remainder of the Central Area. They found that, ‘as to overall serious or violent crime, the reduction in crime in the SCI

¹²⁶ Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 7.

¹²⁷ Berk and MacDonald, *Policing the homeless*, above n 97.

Jurisdiction	Enforcement-based approach	Impact on public safety and order
		<p>deployment area was not statistically significant from the reduction in the non-SCI area'.¹²⁸ Their figures show:</p> <ul style="list-style-type: none"> - The SCI resulted in about 750 arrests per month. - Of these, more than half (55.3%) were for drug offences. Of the drug offences, there were a nearly equal number of arrests for drug sales as for drug possession and the high percentage of drug sales arrests appeared to result from 'buy/bust' stings targeting ordinary addicts. - Of the non-drug offences, few arrests were for serious, violent crimes. Of 1,346 arrests by the SCI Task Force, only 22 were for homicide (1), robbery (8), rape (0), or aggravated assault (13).¹²⁹
New York City	Stop and frisk ¹³⁰	<p>Approximately 2.4 million stops occurred between 2009 – 2012. Close to 150,000 arrests resulted from those stops (i.e. only 6% of stops resulted in arrest).</p> <p>On 12 August 2013, a federal court judge found that the stops disproportionately impacted minorities (84% of people stopped were black and Latino despite these two groups only making up 52% of the city's population) and were unconstitutional (i.e. the NYPD had violated the equal protection clause in the Fourteenth Amendment and the Fourth Amendment, which prohibits unreasonable searches and seizures).¹³¹</p> <p>The Attorney General released a report finding that:</p> <ul style="list-style-type: none"> - of the 6% of people stopped and frisked who were arrested, roughly half (i.e. 3% of total stops) led to guilty pleas or convictions at trial; - 0.3% of total stops led to jail sentences of more than 30 days; and - 0.1% of total stops led to convictions for a violent crime.¹³² <p>The Attorney General's report states: 'These findings merit consideration in the broader discussion of the efficacy of stop and frisk as a law enforcement tool'.¹³³</p>
City of London	Operation Fennel – targeted begging initiative, combining services and enforcement	As discussed in part 4.1, a number of the reported outcomes for Operation Fennel focussed on linking people suspected of begging with services and shelter. Four reported outcomes refer to improved public

¹²⁸ Blasi and Stuart, *Has the Safer Cities Initiative Reduced Serious Crime?*, above n 78.

¹²⁹ Ibid.

¹³⁰ Under stop and frisk, citizens are temporarily detained for purposes of questioning, and at times frisked or searched. Section 140.50 of the *New York Criminal Procedure Law* authorizes a police officer 'to stop a person in a public place ... when he reasonably suspects that such person is committing, has committed or is about to commit either (a) a felony or (b) a misdemeanor.' Once that stop has been made, the Criminal Procedure Law authorizes a frisk of the person only if the officer 'reasonably suspects' that he is in danger of physical injury.

¹³¹ *Floyd v City of New York* 08 Civ 1034 (SAS), 2013 US Dist (SDNY 12 August 2013).

¹³² Eric T Schnelderman (New York State Attorney General, Civil Rights Bureau), *A Report on Arrests Arising from the New York City Police Department's Stop-and-Frisk Practices* (November 2013) (available at: http://www.ag.ny.gov/pdfs/OAG_REPORT_ON_SQF_PRACTICES_NOV_2013.pdf) (Schnelderman, *Report on Arrests from Stop and Frisk Practices*) 3.

¹³³ Ibid 4.

Jurisdiction	Enforcement-based approach	Impact on public safety and order
	(see part 4.1 and part 6.4)	<p>order or the reduced presence of people begging in the City:</p> <ul style="list-style-type: none"> – relocation assistance to homeless people who want to go home to other parts of the country; – 3 prolific and problem beggars have left the City area; – the business community has praised Operation Fennel for its success in dealing with their begging issues; and – public houses having far less trouble with anti social behaviour.¹³⁴
United Kingdom	Enforcement interventions in five UK cities, including ASBOs, injunctions, arrests for begging or sleeping rough under the Vagrancy Act 1824, controlled drinking zones, dispersal orders, designing out and alternative giving schemes	'Affected members of the public, and enforcement agents, were not unsympathetic to the vulnerability of street users, but were clear that their top priority was a reduction in the negative impact of street culture on their daily lives. Most felt that the strategies adopted in their local area had been successful in bringing about a sharp decline in street activities ... "Harder" forms of enforcement – particularly ASBOs – were key to the reduction of street activities in targeted areas and clearly had a powerful (direct and indirect) deterrent effect ... "softer" forms of enforcement – especially controlled drinking zones and environmental designing out measures – were highly effective in reducing the visibility of street activities.' ¹³⁵
Hungary	Prohibition on habitually residing in a public place (see part 5.5)	'[R]egarding busy public places and transport hubs, overcrowding decreased visibly and public health conditions were improved as a consequence of the measures'. ¹³⁶
Toronto	Safe Streets Act (SSA) – prohibition on aggressive begging and 'squeegeeing' (see part 3.2)	<p>O'Grady, Gaetz and Buccieri note:</p> <ul style="list-style-type: none"> – There is evidence that panhandling and squeegeeing have declined over the past decade – in 1999 29% of the street youth sample reported panhandling and squeegeeing as their main source of income compared with less than 3% in 2009. – The 2009 City of Toronto Street Needs Assessment also shows a decline in panhandling as a source of income, from 17.4% in 2006, to 9.7% in 2009. – It is not clear whether or not the SSA is a major factor in precipitating this decline (other factors including the outreach strategy of Streets to Home also undoubtedly contributed), but 'there is little doubt that the SSA has also had an impact'.¹³⁷

¹³⁴ Operation Fennel, *City of London Policing Plan*, above n 100.

¹³⁵ Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, viii–ix .

¹³⁶ Permanent Mission of Hungary to the United Nations Office and Other International Organizations in Geneva, *Response of the Government of Hungary to the Joint Urgent Appeal dated 12 March 2013* (19 April 2013) 4 (available at: [https://spdb.ohchr.org/hrdb/23rd/Hungary_19.04.13_\(1.2013\).pdf](https://spdb.ohchr.org/hrdb/23rd/Hungary_19.04.13_(1.2013).pdf)) (*Government of Hungary Response to Joint Urgent Appeal 2013*).

¹³⁷ O'Grady, Gaetz and Buccieri, *Can I See your ID?*, above n 10, 29.

Jurisdiction	Enforcement-based approach	Impact on public safety and order
		<ul style="list-style-type: none"> – The law 'is designed to address aggressive panhandling and squeegeeing, not as a broader and more general strategy to eradicate these forms of income generation'.¹³⁸ – Despite the decrease in homeless people begging and squeegeeing, the number of tickets issued by the Toronto Police Service under the SSA increased from 710 in 2000 to 15,324 in 2010 (an increase of 2,147%).¹³⁹

From the sample above, most of the jurisdictions reported a decline in 'street activity' including begging, street drinking or squeegeeing, which was at least partly attributable to enforcement-based measures. However, evidence regarding any improvement in public safety through a reduction in serious crime is inconclusive (in New York City, only 6% of people stopped under stop and frisk were arrested and 0.1% were convicted of a violent crime).¹⁴⁰ Furthermore, there are findings of discriminatory impacts on innocent members of the community and in some cases a sense that activity is moved elsewhere rather than addressed. Essentially, the causal link between tougher enforcement and improved public safety is not clear.

In examining the impact of enforcement on improved safety and public order, we also need to consider the deterrent effect of enforcement i.e. the idea that people will modify their behaviour in response to the risk of enforcement.

Johnsen and Fitzpatrick found that:

even the threat of an ASBO could bring about substantial changes in street behaviour because of the possibility of long prison sentences for breach of ASBO conditions. Moreover, when preceded by warning stages ... and integrated with intensive support interventions, ASBOs could bring about positive benefits for some street users – causing them to desist from anti-social behaviour ... and engage with drug treatment and other services.¹⁴¹

In this example, ASBOs were used as a last resort after warning stages and accompanied by access to supports. Even then, there was a significant risk of the 'deterrent' manifesting in unpredictable, negative ways on vulnerable people, including geographical and activity displacement (i.e. isolation from services and supports and engagement in potentially higher risk activities).¹⁴²

The case study below highlights the limited deterrent effect of tickets, infringements or fines as an enforcement-based mechanism for regulating public space.

The deterrent of ticketing or fining people experiencing homelessness – Victoria

Homeless Law client Scott, whose circumstances motivated this project, initially sought legal assistance with approximately \$6000 in fines for being drunk in public. Scott battles chronic alcohol dependence, depression and

¹³⁸ Ibid 9.

¹³⁹ Ibid 10.

¹⁴⁰ Schneiderman, *Report on Arrests from Stop and Frisk Practices*, above n 132, 3.

¹⁴¹ Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, ix.

¹⁴² Ibid.

anxiety, an acquired brain injury and has cycled in and out of homelessness for much of his adult life.

When he came before the court the first time, Scott's matter was adjourned subject to an undertaking to be of 'good behaviour' and continue to engage with his psychologist and drug and alcohol counsellor.

The undertaking was for a six-month period. During this time, Scott's relationship broke down, he was forced to move back into a boarding house and he was unable to maintain sobriety. Scott relied heavily on alcohol to deal with the end of his relationship and the danger of his living environment. He received two more fines for being drunk in public during the undertaking period.

Scott had to go back before the court three more times in relation to these fines. Throughout this time, he consistently engaged with his psychologist and drug and alcohol counsellor and was dedicated to his recovery.

Scott provides a compelling example of someone who should not be caught up in the fines system in the first place. The prospect of being fined for public drunkenness did not act as a deterrent for him because his behaviour was dictated by addiction and homelessness; nor did it provide an incentive for him to recover.

Scott was making a committed effort to engage with support services to assist him with his rehabilitation and he indicated that he was motivated to do this by the needs of his children and his health rather than the stressful legal proceedings. The fact that he suffered countless barriers to overcoming his 20 year alcohol dependence was not addressed by criminalising what is a health and social issue.¹⁴³

In summary, fining people experiencing homelessness, mental illness and/or substance dependence rarely has the preventative effect that it might otherwise have for people whose conduct is not so heavily influenced by severe hardship. Furthermore, enforcement mechanisms such as anti-social behaviour orders which are powerful deterrents because of the potentially severe consequences ('[t]he ASBO is what scares people because that's the thing that's really gonna impact on their life')¹⁴⁴ present high risks in terms of the re-direction of vulnerable people's conduct (for example, toward theft or sex work).¹⁴⁵

The risks of (a) ineffectiveness; or (b) ostensible effectiveness, but with highly adverse consequences for vulnerable people, must be kept in mind when assessing the potential for enforcement-based mechanisms to address conduct related to homelessness and improve safety and public order in local areas.

Reinforcing and responding to public stereotypes about homelessness

As discussed throughout this report, enforcement-based approaches to homelessness are often motivated by public concerns about the presence and conduct of people experiencing homelessness in local areas.

Professor Stephen Gaetz discussed reactive law-making in the context of Ontario's *Safe Streets Act*. He recounted that at the time of introducing the Act, the then Attorney-General had said words to the effect of: 'when the public feels unsafe walking on the street, that's when it's time for government to act'. Professor Gaetz said: 'that's not the case at all ... legislators need to respond to criminality, not fear and prejudice'.

Reflecting on the extract of Broken Windows in part 3.5 above, which refers to law enforcement that seeks to minimise 'fear' of crime not necessarily crime itself, it is important to consider whether such unquestioning reactions to public concern are the foundation of effective law and policy. While certainly community concerns

¹⁴³ See Lucy Adams, 'A Glass Half Empty: Perspectives on Criminalising Homelessness and Alcohol Dependence' (2012) 25(2) *Parity: Policing Homelessness* 15.

¹⁴⁴ Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 30 quoting a police representative from Birmingham.

¹⁴⁵ Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 31.

must be heard and considered, they are not the only factor that should determine whether an enforcement-based approach is necessary and appropriate.

The Leeds 'zero tolerance' approach to people begging in the city is another example of reactive enforcement-based responses to community pressures.

Leeds – market research poll informs response to begging

In 2004, the police in Leeds adopted a 'zero tolerance' approach to people begging in the city, under which they arrested all people begging regardless of whether it was passive or aggressive. This decision was informed by market research poll which found that members of the public felt threatened even by those begging 'passively'.¹⁴⁶

Over three years, there were 300 arrests (of 106 individuals) for begging and 37 ASBOs were issued. Members of the community were given information leaflets, which included the individual's name, photograph and a list of activities prohibited by their ASBO so they could easily identify and report alleged breaches of the ASBO.¹⁴⁷

An 'alternative giving' scheme was also introduced, which reminded people that 'begging is a crime' and discouraged the public from giving directly to people begging but suggested that they instead donate to a local homeless agency.¹⁴⁸

'Alternative' or 'diverted' giving schemes are community education initiatives that discourage members of the public from giving money directly to people begging and instead encourage donations to identified local homeless charities. They usually entail a public awareness campaign, including posters and stalls at train stations where homeless sector workers explain to commuters why they should avoid giving money to people who are begging.

The *Killing with Kindness* 'alternative giving' scheme was on foot while I was in London.



London: Killing with Kindness campaign poster

¹⁴⁶ See Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 16.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

Killing with Kindness – alternative or diverted giving campaigns

The *Killing with Kindness* campaign has been run by Thames Reach – a large London-based homeless charity with the ultimate goal of ending street homelessness – since 2003 and is supported by a number of other agencies.¹⁴⁹

An earlier campaign poster delivered the message: 'Can you spare 20p for a cup of tea? How about £10 for a bag of heroin? Or £12 for a rock of crack? The money you give to those who beg may help keep them on the streets. It may even help to buy the drugs that kill them. Put your spare change where it counts instead. Thames Reach Bondway – Ending street homelessness'.¹⁵⁰

A newer version of the poster says: 'Are you killing with kindness? The money you give to people begging is likely to be spent on heroin, crack cocaine and alcohol. Don't line the pockets of drug dealers – support your local homelessness charity instead. If you see someone sleeping rough or begging, you can call the Lambeth SORT helpline on 0870 383 3300 so that our outreach team can help. To make a donation, volunteer your time, or for more information on how we are working to end rough sleeping, visit www.thamesreach.org.uk. Thank you'.¹⁵¹

The campaign is based on '[o]verwhelming evidence [which] shows that people who beg on the streets of London do so in order to buy hard drugs, particularly crack cocaine and heroin, and super-strength alcoholic beers and ciders'.¹⁵² The evidence cited includes evidence from outreach teams who say '80 per cent of people begging do so to support a drug habit' and drug testing of people arrested for begging done by the Metropolitan Police, which 'indicated that between 70 and 80 per cent tested positive for Class A drugs'.¹⁵³

The campaign is also based on the suggestion that 'only 40 per cent of people arrested for begging in a Metropolitan Police operation claimed to be homeless. Most people begging have accommodation of sorts, either a hostel place or a flat or bed-sit'.¹⁵⁴

Underpinning the campaign is the notion that 'people are more likely to accept help and to address their addictions when they are not receiving money from begging', which is drawn from the experience of frontline outreach workers.¹⁵⁵

The risks, desperation and health implications that substance dependence can bring are clear and efforts to support people to deal with their addictions, including through assisting the efforts of frontline outreach workers, should be welcomed. However, the following aspects of this campaign and others like it warrant further consideration:

- **Evidence-base and communication** – the evidence does not appear to be as 'overwhelming' as indicated: it is made up of anecdotal (although important) evidence from outreach teams and drug testing and questioning by the Metropolitan Police. Moreover, it refers to 70 – 80% of people arrested for begging testing positive for drugs and 'only 40%' being homeless. Phrased differently, almost half of people begging were homeless and 20 – 30% showed no signs of drug use. These are important figures.

¹⁴⁹ See Thames Reach, *Killing with Kindness* (available at: <http://www.thamesreach.org.uk/news-and-views/campaigns/giving-to-beggars/>) (Thames Reach, *Killing with Kindness*); Jeremy Swain (CEO of Thames Reach), 'Do the Right Thing' *Inside Housing UK* (25 October 2013) (Swain, *Do the Right Thing*). In 2013, Thames Reach joined forces with the City of London, Tower Hamlets and Broadway to run the 'advertising campaign' in two boroughs.

¹⁵⁰ Thames Reach, *Campaign Materials: Killing with Kindness* (available at: <http://www.thamesreach.org.uk/publications/campaign-materials/>).

¹⁵¹ Thames Reach, *Killing with Kindness*, above n 149; Swain, *Do the Right Thing*, above n 149.

¹⁵² Thames Reach, *Killing with Kindness*, above n 149.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*; Swain, *Do the Right Thing*, above n 149.

- **Links with homelessness** – the links between homelessness and begging are unclear: in noting that only 40% of people arrested for begging by the Metropolitan Police were homeless, Thames Reach indicates that the other 60% had 'accommodation of sorts, either a hostel place or a flat or bed-sit'. Hostels are emergency accommodation 'for single homeless people ... where you can stay for a short time'.¹⁵⁶ By many definitions, including in the UK and Australia, people in hostels are homeless.¹⁵⁷ Furthermore, this evidence is not incontrovertible. By way of example, all of the 'street users' interviewed as part of Fitzpatrick and Johnsen's research on the impact of enforcement on street users were homeless or had a history of homelessness:

Given the controversy over this issue ... it is important to highlight that three quarters of the in-depth interview sample (27 interviewees) were homeless at the point of interview: 10 were sleeping rough, 11 were living in hostels, rolling/night shelters or Bed and Breakfast hotels, five were "sofa-surfing" round friends and relatives and one was staying in a squat. All of the 10 interviewees who had settled accommodation at the point of the interview had a history of homelessness.¹⁵⁸

An earlier study of 19 people begging in London, Luton, York and Edinburgh found that almost 50% (nine) of participants were sleeping rough, seven were staying in hostels or with friends and three had accommodation.¹⁵⁹

- **Impact on public understanding** – even if people begging are battling drug dependence and are not 'homeless', these strongly delivered messages oversimplify complex circumstances and reinforce stereotypes about poverty, homelessness and substance dependence that we've all fought hard to dispel. In its simplest form it says people whose hardship is extremely visible all have a drug problem and in this way it risks leading to broader, unhelpful changes in public attitudes to poverty (or indeed entrenching attitudes that still exist).¹⁶⁰ There is also the risk that engagement with support isn't the only alternative to begging and if a person is dealing with acute drug dependence other measures that are less safe for the community and the individual may be resorted to.¹⁶¹

While they are driven by very different motives – (a) to encourage people to engage with services and (b) to clean up the streets to avoid public discomfort with people begging – both alternative giving schemes and 'zero tolerance' approaches to begging reinforce and respond to unhelpful attitudes about people experiencing homelessness and poverty.

Instead, we should be working to improve community understanding about the complex causal factors behind homelessness, begging and substance dependence and encouraging more evidence-based, less reactive responses to these issues.

¹⁵⁶ See Shelter, *Where to stay in an emergency: Night shelters and emergency hostels* (available at: http://england.shelter.org.uk/get_advice/homelessness/emergency_accommodation_if_homeless/nightshelters_and_hostels_for_homeless_people).

¹⁵⁷ See, eg, Australian Bureau of Statistics, *Information Paper – A Statistical Definition of Homelessness* (4922.0: 4 September 2012), which explains the ABS definition: 'When a person does not have suitable accommodation alternatives they are considered homeless if their current living arrangement is in a dwelling that is inadequate; or has no tenure, or if their initial tenure is short and not extendable; or does not allow them to have control of, and access to space for social relations'.

¹⁵⁸ Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 6.

¹⁵⁹ Hartley Dean and Margaret Melrose, 'Easy Pickings or Hard Profession? Begging as an Economic Activity' in Hartley Dean, *Begging Questions: Street-Level Economic Activity and Social Policy Failure* (Policy Press, Bristol UK, 1999) 83 (Dean, *Begging Questions*), 85.

¹⁶⁰ See, eg, Joe Hermer, 'Policing compassion: "Diverted Giving" on the Winchester High Street' in Dean, *Begging Questions*, above n 159: 'retailers benefited from a moralised environment where anyone begging in the downtown area could be labelled as unworthy and subjected to being moved on'. Hermer also said that the scheme: 'generated a coherent and concrete set of circumstances which was aligned with the interests of city officials, retailers, and the police: to "target the undesirables" and configure public compassion in a way that made the "moving on" of beggars acceptable to the pedestrian conscience' (215).

¹⁶¹ See part 4.1 above. See also ibid 203, which discusses an early 'diverted giving' scheme and the unanticipated impact on homelessness services. The nominated homelessness charities reported that the 'diverted giving' money accounted for less than 2% of their operating budget, but because of the significant promotion around the scheme, people experiencing homelessness requested free or reduced cost shelter and meals. When staff indicated it wasn't possible, people would – understandably – refer to local newspaper articles stating that the service just got £2000 from the 'begging boxes'. People experiencing homelessness also resented the services for the perceived role they played in the parallel 'harsher policing regime'. One of the services requested that their name be removed from the begging boxes.

4.3. Impacts on police and relationships with communities

The reliance on enforcement-based responses to homelessness requires a heavy investment of resources from police. This role can present challenges for local police both in terms of their capacity and their skill set – police are not always equipped to play this role and in many cases it is not a role they want to play.

In addition to considering these pressures, this section discusses the impact that frequent contact with police in relation to minor offences can have on relationships between police and homeless members of the community and the increased vulnerability of people experiencing homelessness that can result from this fractured relationship.

The strain on police

The focus of enforcement-based approaches to regulating public space is often on the role of police as enforcing laws and implementing 'crackdowns' or targeted responses to people experiencing homelessness. Frequently, however, it is not police initiating these responses, rather the response comes from government decision-makers and police are directed to implement it. Sometimes it is the police who resist tougher enforcement or, as was the case with the City of London Police's Operation Fennel, propose an alternative approach.

South Carolina – ban on homeless people resisted by local police

In an effort to revitalise the city, Columbia, South Carolina proposed a plan to ban homeless people from the local downtown area.¹⁶² The operation hours of the 240-bed homeless shelter on the outskirts of the city were going to be extended and it was proposed that vans would shuttle homeless clients to daily appointments for jobs, medical services or mental health treatment.

The 1500 people experiencing homelessness would be asked to leave the city centre and existing ordinances, including prohibitions on loitering, public urination and other nuisance violations were going to be strictly enforced against homeless people in the city. The city would post more police officers on key downtown streets to enforce public space laws and at least one police officer would be posted at a key access road to the shelter to make sure homeless people were not entering the city centre on foot.¹⁶³ There was going to be a 'hotline' for community or business members to contact if homeless people were identified in the city.

Homelessness advocates expressed significant concern about the proposal, but the plan was passed by the Council. The local police chief then opposed the plan, identifying that this wasn't what he wanted to spend limited police resources on. Executive Director of the National Coalition for the Homeless, Jerry Jones, indicated that the police's resistance to the proposal was crucial to its eventual revocation.

The Columbia police chief's concern with implementing the proposed plan was the strain it would place on police resources. Police forces have not been immune to budget cuts in recent years and their limited resources must be allocated carefully. By way of example, no additional resources were available to the City of London Police to run Operation Fennel, so other police operations had to be cut back to make room for the targeted begging initiative.

¹⁶² Clif Le Blanc, 'Being homeless in Columbia could get you arrested' *The State* (10 August 2013).

¹⁶³ *Ibid* citing the Emergency Homeless Response Plan proposed by Councilor Cameron Runyan (available here: http://www.columbiasc.net/depts/city-council/docs/old_downloads/08_13_2013_Agenda_Items/Emergency_Homeless_Response_13_August_2013.pdf).

In addition to the resource pressure, a number of people I spoke with recognised that 'police are not social workers'. While on the one hand, it is critical that they are provided with comprehensive training to assist them to understand and respond appropriately to people experiencing homelessness, including through choosing options other than arrests or tickets; on the other hand, there are limits to the role police can play in addressing the complex economic, social and health-based problems that underpin homelessness.

Assistant Chief Diane Groomes of the District of Columbia Metropolitan Police Department summarised this well:

A lot of what we deal with now is not crime ... a lot of investment should go into services instead of using police to solve these problems: we're not psychologists ... At the moment it's so easy to find police, but people need services.

Police are often the automatic go-to agency for concerns about problematic conduct in public places. In addition to imposing a resource burden on the police – and potentially diverting resources from more serious crime – this role is not necessarily a role officers are best equipped to play and in these ways enforcement-based approaches to homelessness can place an unreasonable strain on local police.

Diminished trust in law enforcement and broken relationships with police

People experiencing homelessness have a disproportionate amount of contact with police and enforcement officers. This contact may be initiated because the person is:

- breaking a law that specifically prohibits homelessness (for example, laws prohibiting rough sleeping, urban camping or sitting or lying on the sidewalk);
- breaking a law which he or she would not have broken if they had a private place to conduct their private lives (for example, public drunkenness or urination);
- breaking a law that is enforced in a discretionary way and may go unpunished for other members of the community (for example, jaywalking or being drunk in a public place);
- undertaking activity that is the subject of a 'crackdown', blitz or targeted law enforcement operation (for example, an operation to target begging or rough sleeping in the local area); and/or
- not breaking any law, but the attention of law enforcement officers is heightened by the visibility of homelessness and, in some cases, the attitudes of enforcement officers to people experiencing homelessness.

The impact of repeatedly coming to the attention of enforcement officers for one or more of the above reasons can cause people experiencing homelessness to feel targeted, harassed and/or discriminated against. One of the participants in *In the Public Eye – personal stories of homelessness and fines* spoke about what it's like to feel targeted by enforcement officers. Hamish has been homeless since his mid-teens. He has battled drug dependence and mental illness and accrued \$13,000 in infringements for not having a ticket on trains and trams. He said:

It's a bit upsetting when you are on a tram or train and you find that whenever there is a ticket officer they immediately bee-line their way to you. It does something to your self esteem. The first few times it happens you think nothing of it, but then by the end you are looking for these people. I'm like a dog who has been hit. Once you've had the crap beaten out of you a few times it just becomes "yes sir", it's kind of sad in a way.¹⁶⁴

¹⁶⁴ Justice Connect Homeless Law, *In the Public Eye*, above n 121 (Hamish) (name has been changed).

In addition to causing people experiencing homelessness to be caught up in the justice system, with overwhelming debts, outstanding warrants or facing jail, frequent contact between enforcement officers and homeless people erodes trust and damages the relationship between police and homeless members of the community.¹⁶⁵

In relation to tickets issued to homeless youth in Toronto, O'Grady, Gaetz and Buccieri note that while many of the 244 homeless young people they interviewed acknowledge that they were breaking the law at the time, 'one third believe[d] the charges to be frivolous, and that they were singled out for offences that the average person would not be'.¹⁶⁶

The way in which the regularity of contact between police and people experiencing homelessness impacts on the relationship between these two groups was apparent when I spoke with the City of London Police about the attempts of Operation Fennel to link people begging in the City with support services.

Trust and policing – fear of getting nicked

A primary stated aim of Operation Fennel is to link people begging in the City of London with services to help them address the underlying causes of their begging.

The fragile relationship between police and people experiencing homelessness (for various reasons, including past interactions) initially impacted on Operation Fennel and people didn't show up to the service hubs. The service hubs brought together a range of services and attendance at the hub was the alternative to being charged for begging by the City of London Police.

Sergeant Montgomery explained: 'they thought we were trying to get them in one place and nab them; they thought it was a trick'. Gradually, through word of mouth, trust was built and more people started to show up and Sergeant Montgomery said 'it's picking up steam now'.

This is a clear example of the impact that policing practices or interactions can have on the relationship between police and people experiencing homelessness. This lack of trust affects the way in which people experiencing homelessness respond to police. The trust can be damaged by regularity of contact and it is further eroded if there is actual perceived discrimination in the policing of marginalised groups in the community.

Kelling and Wilson, creators of the broken windows theory and arguably the world's most well-known proponents of rigorous policing, were mindful of the risk of discrimination in their proposed policing method:

The concern about equity is more serious. We might agree that certain behavior makes one person more undesirable than another but how do we ensure that age or skin color or national origin or harmless mannerisms will not also become the basis for distinguishing the undesirable from the desirable? How do we ensure, in short, that the police do not become the agents of neighborhood bigotry?

We can offer no wholly satisfactory answer to this important question. We are not confident that there is a satisfactory answer except to hope that by their selection, training, and supervision, the police will be inculcated with a clear sense of the outer limit of their discretionary authority. That limit, roughly, is this—the police exist to help regulate behavior, not to maintain the racial or ethnic purity of a neighborhood.¹⁶⁷

¹⁶⁵ See, eg, Roger Hopkins Burke, 'Tolerance or intolerance? The policing of begging in the urban context' in Dean, *Begging Questions*, above n 159, 219, 227 discussing 'zero tolerance' policing in the UK in the late 1990s and quoting Charles Pollard, Chief Constable of the Thames Valley Constabulary, who described it as a 'short-term fix and long-term liability'. Hopkins Burke notes that a 'key main concern from this viewpoint is that insensitive policing could lead to an escalation of conflict between the police and the communities they are charged with policing'.

¹⁶⁶ O'Grady, Gaetz and Buccieri, *Can I See your ID?*, above n 10, 11.

¹⁶⁷ Kelling and Wilson, *Broken Windows*, above n 52.

A US federal court has recently found that discrimination was a factor in the NYPD's use of their 'discretionary authority' and that stop and frisk practices impacted disproportionately on racial minorities and violated the Constitution.¹⁶⁸ The impact of this approach on the community's confidence in the police was apparent when I visited New York City.

Stop and frisk – the impact on relationships with the NYPD

In 2011–12 the Center for Constitutional Rights (CCR) conducted 54 interviews with people who had been stopped and frisked by the NYPD about the impact those stops had on them. Although the focus was on race-based stops, Nahal Zamani, Advocacy Program Manager, Government Misconduct and Racial Justice with CCR said: 'we couldn't divorce housing status, income and people who were, or were perceived to be, homeless from what we were hearing: people were stopped for who they were, not what they were doing and it was having a lasting effect'.

A clear message from the Talking Transition forum on policing and public safety (a community conversation in preparation for Mayor Bill de Blasio's inauguration) was: 'you should feel safe when you see the police'. When people don't have this confidence, they don't seek help when things go wrong, which makes communities or groups within communities less safe.

People at the forum called for a new era of safety and respect in their communities. They talked about wanting a change in practices and law, but also 'a change in tone'. One young person said: 'we want it to be about protecting us, not criminalising us'. The message was that it's possible to have policing that's 'lawful and just and effective'.

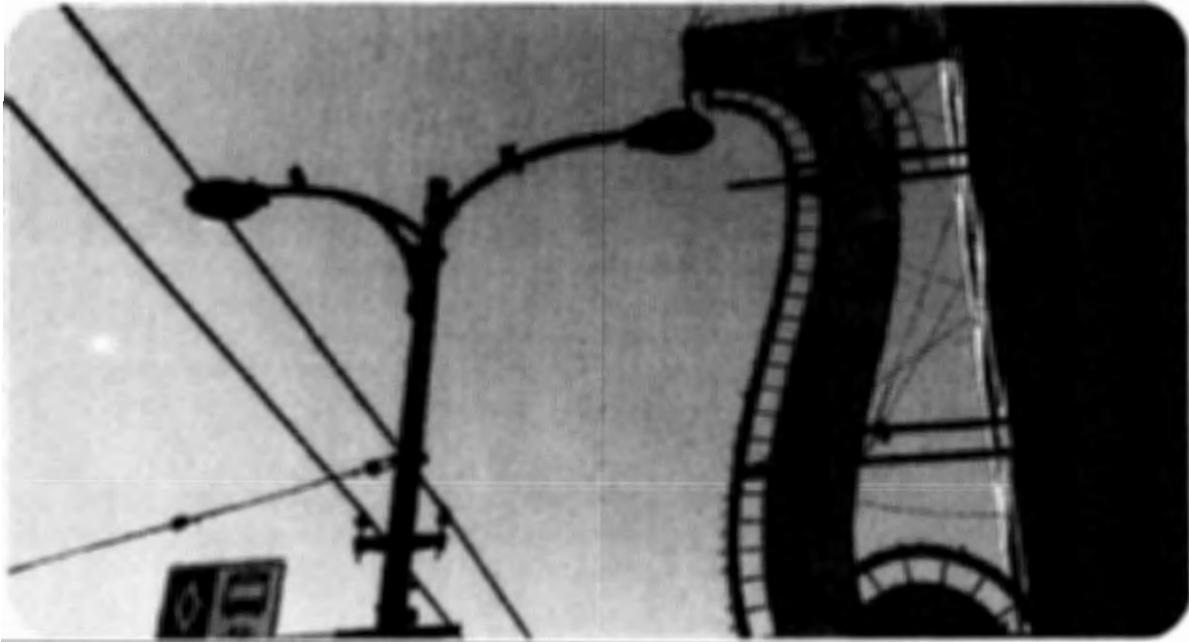
The CCR points out: 'NYPD's aggressive use of stop and frisk does significant damage to police-community relations in ways that may actually reduce public safety'.¹⁶⁹ It refers to several of the 54 people interviewed about their experience of stop and frisk as saying that they would never call the police if they needed help.¹⁷⁰

The danger of these broken police-community relationships was apparent in the Missing Women Commission of Inquiry in Vancouver, which identified that local low income women's vulnerability was amplified by their reluctance to engage with police, including because of outstanding warrants.

¹⁶⁸ *Floyd v City of New York* 08 Civ 1034 (SAS), 2013 US Dist (SDNY 12 August 2013).

¹⁶⁹ CCR, *Stop and Frisk: The Human Impact*, above n 115, 15.

¹⁷⁰ *Ibid.*



Vancouver: An infamous SRO, Hotel Balmoral

Missing Women Commission – the dangerous consequences of broken relationships with police

In September 2010 the Missing Women Commission of Inquiry was established to examine police investigations

into the murders and disappearances of numerous women from the Downtown Eastside between 1997 and 2002. The inquiry was also reconsidering the decision of the Criminal Justice Branch to stay proceedings against Robert Pickton on charges of attempted murder, assault with a weapon, forcible confinement, and aggravated assault. Pickton was later convicted of the murder of six women and sentenced to life in prison.

The final report of the Commission, *Forsaken*,¹⁷¹ was released by Commissioner Wally Oppal QC in November 2012. It is 1,448 pages, contains 63 recommendations and concludes that 'the police investigations into the missing and murdered women were blatant failures'.¹⁷²

Amongst many other things, the report talks about the way in which tickets and warrants for poverty-related offences affected women's relationships with the police and notes that, because women had outstanding warrants and were reluctant to engage with the police, their vulnerability was amplified.

Addressing the relationship between Vancouver's poorest neighbourhood and the Vancouver Police Department, Oppal recommended 'that the City of Vancouver and the Vancouver Police Department take proactive measures to reduce the number of court warrants issued for minor offences by:

- reducing the number of tickets issued and charges laid for minor offences;
- developing guidelines to facilitate greater and more consistent use of police discretion not to lay charges;
- and

¹⁷¹ The Honourable Wally T Oppal QC, Commissioner, *Forsaken: The Report of the Missing Women Commission of Inquiry* (19 November 2012) (available at: http://www.ag.gov.bc.ca/public_inquiries/docs/Forsaken-ES.pdf).

¹⁷² *Ibid* 160.

– increasing the ways in which failures to appear can be quashed early in the judicial process'.¹⁷³

Persistent contact with police in relation to day-to-day conduct in public places can diminish the trust of people experiencing homelessness in law enforcement. This can have flow-on effects in terms of further isolating already vulnerable people. The recommendations from the Canadian former Court of Appeal judge and Attorney General, the Honourable Wally Oppal QC, are insightful and compelling: reducing the number of tickets issued and charges laid for minor offences, and developing guidelines to facilitate greater and more consistent use of police discretion not to lay charges, will foster a stronger, safer relationship between homeless members of the community and local police.

4.4. Impacts on the effectiveness and efficiency of the justice system

Enforcement-based responses to homelessness invoke law enforcement and the justice system as tools for managing the presence and activities of homeless people in public places. Depending on the nature of the enforcement mechanism (for example, infringements or tickets, arrests, move-on powers, sentencing and/or court orders), different arms of the justice system will be impacted to varying degrees.

This section considers the impacts of using enforcement-based mechanisms to deal with homelessness on the following players in the justice system:

- legal and community services that assist clients to navigate the legal system; and
- courts.

The burden on legal services

Part of the motivation for this project was the recognition that, for Homeless Law's 13 year existence, fines, infringements and warrants for conduct directly related to homelessness have prevailed as the most common legal issue affecting our clients. Assisting clients with these matters comprises approximately 50% of our annual work and in FY 2012 – 2013 we opened 166 new matters for clients overwhelmed with fines, some of whom were facing prison.

As discussed above, an analysis of 13 Homeless Law public space files by an external consultant showed that cases took between 6 months and 2.5 years to resolve (the average time was 14 months) and the average cost to pro bono law firms of running a public space file was \$19,825 per matter. One matter required an investment equivalent to \$54,000 in fees to resolve.¹⁷⁴

In a recent position paper, a working group of Victorian community legal centres and financial counselling services noted: 'In addition to imposing hardship on individuals, the current system presents a significant resource burden for the legal services, financial counsellors and other support services that assist clients to deal with infringements'.¹⁷⁵

This is not unique to Victoria:

¹⁷³ Ibid 131.

¹⁷⁴ Justice Connect Homeless Law, *What's the Cost?*, above n 3.

¹⁷⁵ Infringements Working Group, *Position Paper: A simple, fair and effective infringements system for all Victorians* (July 2013).

- Pivot Legal Society does not generally provide direct legal services to individuals with tickets or warrants – the demand would be completely unmanageable. They run strategic matters and advocate for reform as part of their Accountable Police program.¹⁷⁶
- The National Law Center on Homelessness and Poverty (NLCHP) reported that a public defender in St Petersburg, Florida announced that he would no longer represent indigent people arrested for violating municipal ordinances to protest what he called excessive arrests of homeless individuals by the City of St Petersburg. The records of the public defender's office showed that the vast majority of people in the local jail on municipal ordinances were people experiencing homelessness.¹⁷⁷

In contrast, Patty Mullahy Fugere, co-founder and Executive Director of the Washington Legal Clinic for the Homeless (WLCH) said that citations, charges and warrants for public space offences do not make up a significant proportion of the WLCH's total work. It is possible that this is linked with the approach to policing taken by the District of Columbia Metropolitan Police Department (MPD), as well as the increased awareness of homelessness generated through the Homelessness 101 training that WLCH delivers to the MPD (see part 6.4). Accordingly, this serves as a good example of the way in which an informed, appropriate frontline response can reduce the burden on homeless individuals, police, services and the courts.

Judicial responses and congestion in the courts

Enforcement-based approaches to homelessness can bring people experiencing homelessness into the court system via a number of avenues, including charges, warrants for unpaid fines or tickets and applications for anti-social behaviour orders (or alleged breaches of these orders).

Douglas King, Barrister and Solicitor with Vancouver's Pivot Legal Society, highlighted the effects on the court system that flow directly from enforcement-based approaches to homelessness on the ground. He referred to the congestion in the courts that resulted from a 'ticketing blitz' by the Vancouver Police Department in the Downtown Eastside in 2008. He said, 'the court system couldn't keep up with the tickets and the prosecutors did not see it as the best use of their time to pursue these matters against homeless people, so many of the matters were dropped'.

One of the judicial responses to the proliferation of tickets and charges issued to people experiencing homelessness in the US is 'homeless courts'.

The Homeless Court Program

There are 25 specialist homeless courts (or specialist lists/dockets) in the US. The first was started in San Diego in 1989. They are special court sessions convened in homeless shelters where homeless participants can voluntarily resolve outstanding misdemeanour offences and warrants. Models vary, but at their best, US homeless courts:

- build partnerships between the court, the prosecutor, the public defender, local shelters, service agencies and homeless participants;
- are voluntary (a person signs up through a service provider and the service provider refers the person to the

¹⁷⁶ Pivot Legal Society, *Our Work: Accountable Policing* (available at: http://www.pivotlegal.org/accountable_policing). (**Pivot Legal, Accountable Policing**).

¹⁷⁷ NLCHP and NCH 2009, *Homes not Handcuffs*, above n 8, 11.

Homeless Court Program);

- can resolve people's misdemeanours in 3 - 4 months (participants complete their participation in service provider programs before appearing at the Homeless Court Program session and most cases are heard and resolved in one hearing);¹⁷⁸ and
- do not require a guilty plea and therefore do not appear on a person's criminal record (an important distinction from Victoria's system).

The foundation of the Homeless Court Program is 'a collaborative effort to promote trust and confidence in the court while addressing community safety issues and removing legal barriers to self-sufficiency'.¹⁷⁹

The Homeless Court Program addresses a wide range of misdemeanour offences including charges of being under the influence of a controlled substance, theft and driving under the influence. It is noted that in many cases the voluntary program activities required as part of the Homeless Court actually 'exceed the demands a court might order for treatment of low-term felony cases', including certain drug and theft charges.¹⁸⁰

Amy Horton-Newell, Director of the American Bar Association Commission on Homelessness and Poverty, explained that 'some homeless courts can get through 200 cases (many people have multiple cases) in an afternoon thanks to the voluntary participation of homeless clients, as opposed to the traditional court where homeless defendants often fail to appear and significant court time is wasted'. Ms Horton-Newell also summarised the guiding principles of the courts:

- participation is voluntary;
- no-one goes to jail;
- traditional court sanctions such as fines are replaced with credit for participation in appropriate treatment and services; and
- participants retain the option to be transferred to the general court if needed.

Ninety per cent of the cases in the Homeless Court Program are dismissed.¹⁸¹

I also spoke with Lucy Fitzpatrick, Supervising Senior Staff Attorney with the Homelessness Prevention Law Project at Public Counsel, who is responsible for Los Angeles' Homeless Court.¹⁸²

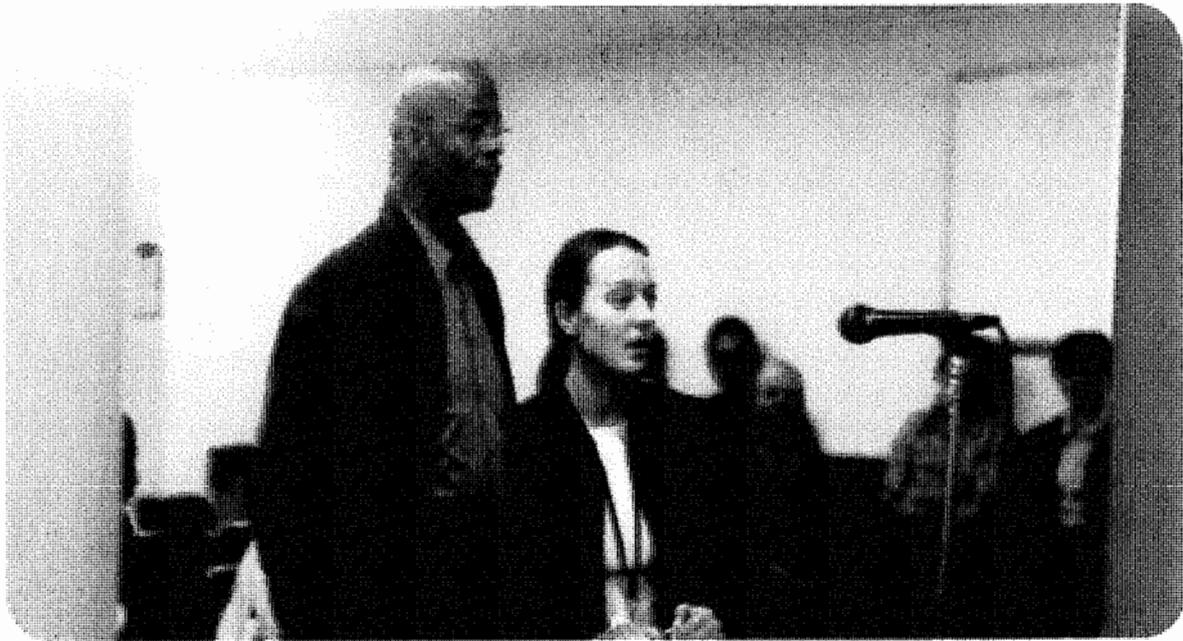
¹⁷⁸ See Steve Binder and Steve Merriam, *Homeless Court: The San Diego Service Provider Toolkit* (2009) (available at: http://www.americanbar.org/content/dam/aba/migrated/homeless/aba_homeless_court_sandiego_book.authcheckdam.pdf) (Binder and Merriam, *San Diego Service Provider Toolkit*) 3.

¹⁷⁹ *Ibid* x referring to the American Bar Association Homeless Court Program Guidelines (2006).

¹⁸⁰ *Ibid* 5.

¹⁸¹ *Ibid* 7.

¹⁸² See photographs of the Los Angeles Homeless Court: Public Counsel, *Homeless Court 2013: Homeless Court helps people with minor tickets and warrants get a second chance* (2013) (available at: http://www.flickr.com/photos/public_counsel/sets/72157633532038089/).



Los Angeles: A photo of Homeless Court displayed in the Public Counsel office

Homeless Court in Los Angeles

One of the service-based accompaniments to the tough enforcement-based approach of the Safer Cities Initiative in Los Angeles is the Homeless Court,¹⁸³ which was created by the Los Angeles County Superior Court, Los Angeles City Attorney, the Los Angeles County Public Defender and advocates including Public Counsel and the LA Homeless Service Authority.

The LA Homeless Court operates differently to the Homeless Court Program. In the LA Homeless Court, if a person with a history of homelessness has undertaken 90 days of rehabilitation, has not offended in 6 months and can obtain a satisfactory report from a service provider, they can apply to have certain tickets and warrants dismissed (the program does not apply to offences involving a victim, a weapon or possession of drugs).

Many of the challenges the court faces are similar to Victoria's special circumstances process: it is administratively burdensome for social services required to provide documentation, as well as legal services assisting clients to navigate the system and enforcement agencies assessing the applications; and the process takes a minimum of six months, which presents problems for client engagement.

These burdens have weighed down the court and required it at times to put a temporary hold on new applications.

That said, the benefits delivered to people who are able to have their warrants addressed and 'begin fresh' are significant and an essential (if inadequate) feature of a system in which homelessness is so harshly penalised.

Homeless Courts represent the judiciary's response to the 'criminalisation' of homelessness. They recognise that the scale of ticketing or charging and the vulnerability of the respondents present challenges for courts' efficiency

¹⁸³ See Department of Public Social Services, *Homeless Court* (available at: http://www.ladpss.org/dpss/grow/homeless_court.cfm).

and effectiveness. In commenting on the Homeless Court Program, San Diego County Judge, Hon David Ryan, said:

The Homeless Court Program tries to get away from the criminalization of substance abuse. And it's incredibly cost effective. Taxpayers pay about \$25 a minute to hear one case in one traditional court. In Homeless Court, we do 200 cases in three hours. That's efficiency.¹⁸⁴

Professor Blasi, however, expressed concern about the impact of the Homeless Court 'in a city where homelessness has been so intensely criminalised'. He has also written on this point:

We observed one session of "Homeless Court" and understand how valuable it can be for those who are able to access it. Given the number of citations and low grade misdemeanor arrests taking place as part of [the Safer Cities Initiative], however, it is clear that "Homeless Court" offers scant amelioration for the effects of 1,000 citations per month.¹⁸⁵

Even with the innovative development of Homeless Courts around the US, the inundation of courts with homeless people who have been given tickets or charges for conduct directly related to homelessness imposes a burden on the justice system and presents questions about whether the courts are the best mechanism for addressing some of the complex health and social problems that bring homeless defendants before them.

4.5. The financial costs

The development and implementation of enforcement-based approaches to homelessness has budgetary implications for government, including police and the courts.

This section identifies three studies that analyse the costs of enforcement-based approaches to homelessness, including by calculating the:

- prevalence of homelessness amongst a city's 'chronic offenders' (41% of those who were arrested at least five times in the prior year were homeless);
- average annual number of arrests and nights in jail for 33 people experiencing homelessness (and the annual cost of this of \$9,266.20 per offender or approximately \$306,000 in total);
- interactions with the justice system of 37 people experiencing homelessness over a three year period (they were arrested 1,271 times) and the cost of this (the total jail cost was \$278,000); and
- police time spent issuing tickets for begging and squeegeeing and the associated financial cost of this over an 11 year period (67,388 tickets were issued at a cost of \$936,019 and 16,847 hours of police time).

The examples below set out interesting, practical ways of monitoring the impact of enforcement-based approaches to homelessness on homeless individuals and the financial implications of these approaches.

Review of North Carolina city's 81 'chronic offenders'

The Sheriff's Department in North Carolina city, Charlotte-Mecklenburg, reviewed data on 81 'chronic offenders' (arrested at least five times in the prior year) and found:

- 33 (41%) were experiencing homelessness;
- the average number of arrests for the 33 homeless chronic offenders was 11.1 per year;

¹⁸⁴ See Blinder and Merriam, *San Diego Service Provider Toolkit*, above n 178, 52.

¹⁸⁵ Blasi et al, *Policing Our Way out of Homelessness?*, above n 42, 31.

- the average length of stay in jail over the course of a year was 86.6 days; and
- this translated into an annual cost to the County of \$9,266.20 per offender or a total of nearly \$306,000 annually.

The report noted: 'Petty larceny, trespassing, drug and alcohol and public disturbance charges were the most common for this group. Most are not hard-core criminals'.

It also identified that 'housing' a person in the county jail costs approximately \$107 per night. In contrast, the cost of housing a person in a shelter for an entire year in Charlotte ranged from \$16.50 to \$38 per night, which is 15 - 35 % the cost of detaining an individual in jail.¹⁸⁶

Three year review of 37 rough sleepers' contact with police, jail and hospital

Buncombe County in North Carolina followed 37 people experiencing chronic homelessness over a three year period and recorded that:

- they were arrested 1,271 times over three years;
- the total jail cost was \$278,000;
- when police costs, prosecution and court costs were added, the total cost, according to the Asheville Police Department, climbed to about \$10,000 per person per year;
- the same 37 people used ambulance services 280 times over the same three year period, costing \$120,000; and
- hospitalisation costs for the same time period were \$425,000.¹⁸⁷

The financial costs of ticketing homeless young people

The research of O'Grady, Gaetz and Buccieri, *Can I See your ID? The Policing of Youth Homelessness in Toronto*¹⁸⁸ analyses the financial costs of issuing tickets to homeless young people. The report considers tickets issued under Ontario's *Safe Streets Act* (for aggressive panhandling and 'squeegeeing') over an 11 year period (2000 - 2010). The authors obtained the relevant data through two freedom of information requests from the Toronto Police Service, and the Ontario Ministry of the Attorney General.

A total of 67,388 tickets were issued throughout 2000 - 2010, with a total value of \$4,043,280.¹⁸⁹

The research identifies that over an 11 year period, it has:

- cost \$936,019 to issue tickets under the *Safe Streets Act* (based on 15 minutes of time (\$13.89) for a

¹⁸⁶ NLCHP 2011, *Criminalizing Crisis*, above n 32, 40 citing Charlotte-Mecklenburg County, *More Than Shelter! Charlotte-Mecklenburg's Ten-Year Implementation Plan to End and Prevent Homelessness - One Person /One Family at a Time* (October 2006) 5 (available at: <http://charmeck.org/city/charlotte/nbs/housing/documents/10yearplantoendandprevenhomelessness.pdf>).

¹⁸⁷ NLCHP 2011, *Criminalizing Crisis*, above n 32, 40 citing Asheville and Buncombe County, North Carolina, *Looking Homeward: The 10-Year Plan to End Homelessness* (2005) 8 (available at: <http://www.ashevilenc.gov/Portals/0/city-documents/CommunityDevelopment/Homeless/10yearplan.pdf>).

¹⁸⁸ O'Grady, Gaetz and Buccieri, *Can I See your ID?*, above n 10.

¹⁸⁹ *ibid* 10.

Toronto Police Services First Class Constable); and

- used 16,847 hours of police time (calculated based on the number of tickets and an estimate that each ticket takes approximately 15 minutes to issue).¹⁹⁰

This doesn't include the cost of processing the tickets, follow-up, court and warrants, so shows only a fraction of the overall expenditure of time and money.

The report notes that only \$8,086.56 of the fines has been paid over the 11 year period and questions: 'Is this a reasonable use of resources, and may there be other crimes deserving of more attention?'¹⁹¹

These studies show that in addition to having a heavy impact on vulnerable people, delivering questionable improvements to levels of public safety and imposing a resource burden on police, services and courts, enforcement-based approaches to homelessness are also extremely expensive. As the US Interagency Council on Homelessness identifies: 'In today's economic climate, it is important for state, county, and local entities to invest in programs that work rather than spend money on activities that are unlikely to achieve the desired result.'¹⁹²

The financial costs of alternatives to enforcement-based approaches to homelessness are often identified as a barrier to their adoption or implementation. However, as these case studies show, transparent assessments of the costs of enforcement must be a feature of conversations and decisions about effective and efficient approaches to addressing homelessness and regulating public space in our communities.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² US Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* (2012) 2 (US Interagency Council on Homelessness, *Searching Out Solutions*).

5. CHANGING THE CONVERSATION – INCREASING UNDERSTANDING AND ADVOCATING EFFECTIVELY

The regulation of public space and homelessness is often framed as an issue of law and order, safe streets and getting tough on crime. It is important that laws, policies and practices designed to respond to visible homelessness are informed by evidence about the nature and extent of 'public space offending' (including begging, public drinking, travelling without a ticket and rough sleeping) and its causes. In contributing to conversations about homelessness and public space, I wanted to learn about how we can reframe these issues so that there is room for evidence, planning, evaluation and new ideas, which do not automatically turn to law enforcement to regulate conduct related to homelessness.

This section deals with interesting, effective ways of communicating about these issues. It discusses methods we can use to talk about the work we do in a way that cuts through stereotypes. It is about building awareness both within decision-makers and within the general public. As it stands, these are not issues that attract the attention or the empathy of the general population. There is little understanding about the impact of these laws, practices and policies on people experiencing homelessness.

This section identifies a range of different strategies, approaches and methods for increasing awareness about the impact of these laws, policies and practices and presents new ideas for changing laws and how they are enforced. It is about changing the conversation to make room for informed, evidence-based approaches to dealing with people experiencing homelessness and regulation of public space.

The strategies, approaches and methods discussed are:

- reporting – collating and using evidence effectively;
- community organising – member-based initiatives;
- building understanding and challenging stereotypes through personal stories;
- litigation – challenging 'criminalisation' in the courts; and
- human rights based work.

5.1. Reporting – collating and using evidence effectively

In Canada, I spoke with Professor Stephen Gaetz about the way public perceptions of people experiencing homelessness inform laws and policies designed to regulate public space. I asked about the most effective ways to break through some of these perceptions, which are often based on stereotypes or lack of understanding. Professor Gaetz said: 'changing public opinion is really difficult ... Personal stories will resonate with different people who'll say, "I never thought about that", but you also need the quantitative evidence ... we need to come at it from different angles'.

The National Law Center on Homelessness and Poverty (NLCHP) are experts at collating and documenting evidence about laws 'criminalising' homelessness throughout the United States. They describe this work and its purpose:

The Law Center creates reports on homelessness and poverty and leverages these as outreach tools for policymakers, advocates, and the public. These reports analyze emerging trends and discuss their legal and policy implications while offering recommendations. The Law Center's reports are widely covered in the media, ensuring the public and policymakers remain abreast of growing trends and giving advocates concrete tools with which to create change.¹⁹³

Documenting the 'criminalisation' of homelessness in the US and equipping advocates

The NLCHP has produced 10 reports on criminalisation and homelessness since 1991. The reports document 'cities with the worst record related to criminalizing homelessness and trends in the criminalization of homelessness, as well as initiatives in some cities that constituted more constructive approaches to street homelessness'.¹⁹⁴

A snap shot of the two most recent reports on criminalisation of homelessness in the US is below.

Homes Not Handcuffs: The Criminalisation of Homelessness in U.S. Cities – prepared by the NLCHP and the National Coalition for the Homeless in 2009, the report discusses the costs of criminalisation (including studies done in five cities) and constructive alternatives to criminalisation. It also identifies the '10 meanest cities'. The report is 191 pages long, almost 100 of which are a 'prohibited conduct chart' listing laws and practices of 235 surveyed US cities and case summaries of approximately 130 State and Federal lawsuits challenging laws criminalising homelessness.¹⁹⁵

Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities – prepared by the NLCHP in 2011, the report documents the results of a survey of 154 homeless advocates (43%), service providers (51%) and people who were experiencing or had experienced homelessness (6%). The reported results include the percentage of respondents who noted arrests, citations or both in their city for the following offences:

- public urination/defecation – 73%;
- camping/sleeping in public – 55%;
- loitering – 55%;
- panhandling – 53%;
- public storage of belongings – 20%; and
- sidewalk-sitting – 19%.¹⁹⁶

The 2011 report updates information on the laws, policies or practices of the 235 cities surveyed in 2009 and notes changes, including a trend of increased criminalisation of homelessness, showing that between the 2009 – 2011 results, there had been a 7% increase in prohibitions on panhandling and camping in public places and a 10% increase in prohibitions on loitering in certain public places.¹⁹⁷

¹⁹³ National Law Center on Homelessness and Poverty, *Reports* (available at: <http://www.nlchp.org/reports>).

¹⁹⁴ NLCHP and NCH 2009, *Homes not Handcuffs*, above n 8, 15.

¹⁹⁵ NLCHP and NCH 2009, *Homes not Handcuffs*, above n 8.

¹⁹⁶ NLCHP 2011, *Criminalizing Crisis*, above n 32, 17.

¹⁹⁷ *Ibid* 8.

The 2011 report also considers the costs and other impacts of criminalisation, including the impact on homeless people, service providers, the criminal justice system and the broader community.¹⁹⁸ The report attaches an Advocacy Manual, which provides guidance and tools for advocates, including in relation to dispelling myths, calculating costs, 'grading your city' and bringing litigation. The Advocacy Manual also contains a *Model General Police Order* to guide police interactions with people experiencing homelessness, including use of move-on orders, arrests, referrals to services and treatment of personal property. The 2011 report includes the prohibited conduct chart and case summaries as annexures to the Advocacy Manual.

The reports contain quotes and stories from individuals impacted by these laws and collate research and evidence collected throughout the country. Together with the Advocacy Manual, these documents 'help advocates, service providers, attorneys, and homeless people combat such counterproductive laws and policies. [They provide] information on legal and non-legal strategies they can use in their own communities'.¹⁹⁹

The comprehensive evidence gathering and reporting on criminalisation of homelessness by the NLCHP is an effective tool for raising awareness of the scale of criminalisation in the US, as well as providing comparative information so cities can assess what other jurisdictions are doing in a national context. It is a powerful instrument for equipping both advocates and policy-makers with the evidence they need to make informed arguments and decisions about the criminalisation of homelessness. By way of example, the NLCHP's report is cited extensively throughout the report by the US Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* and, in this way, the NLCHP's work informed an unprecedentedly balanced, constructive federal policy contribution on the criminalisation of homelessness in the US.

No similar evidence gathering and reporting had previously existed in Europe. In fact, when I spoke with Professor Gaetz, he said that 10 years ago when he had discussed the 'criminalisation' of homelessness in Canada and the US, a European counterpart had indicated: 'that would never happen in Europe'. It is now recognised, however, that in Europe:

Laws, regulations and administrative measures penalising homelessness are being introduced during an economic crisis that has resulted in record levels of unemployment and poverty, driving entire families to live on the streets. Such measures are often motivated by the desire to reduce the visibility of homelessness and poverty and hide them as social issues.²⁰⁰

In light of this, the European Federation of National Organisations working with the Homeless (FEANTSA) and Housing Rights Watch produced a report on the nature and extent of the penalisation of homelessness in Europe in 2013.

Mean Streets

– Europe's first analysis of laws 'criminalising' homelessness

The challenges of a European report include diverse and numerous local and national legal frameworks and

¹⁹⁸ Ibid.

¹⁹⁹ Ibid 16.

²⁰⁰ Nils Muiznieks, Council of Europe Commissioner for Human Rights, 'Preface to the FEANTSA Report: Penalisation of Homelessness and Human Rights in Europe' in Evangelista and Jones, above n 65, 9.

associated language barriers, which makes it a formidable task to liaise with local agencies and document 'criminalisation' measures in the same way as the NLCHP. Instead, the report includes articles from academics, activists, lawyers and NGOs, which discuss the historical context of penalisation of homelessness in Europe and highlight examples (including case studies from Belgium, Poland and Hungary). *Mean Streets* also makes recommendations for reform in the European Union and at national and local government levels.

The report strongly positions penalisation of homelessness in a human rights context and, in their joint foreword, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, and Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, state that the work 'will contribute significantly toward scholarship, advocacy and public debate on this issue'.²⁰¹

In addition to advocacy organisations, universities and academics play a valuable role in the contributing to the evidence base that informs homelessness law and policy. The Canadian Homelessness Research Network is a strong example of this.

Mobilising homelessness research and knowledge

The work of the Canadian Homelessness Research Network (CHRN)²⁰² and the Homeless Hub²⁰³ is an impressive example of research presented in a way that is accessible outside its immediate academic context.

The CHRN is 'dedicated to helping end homelessness by improving the impact of homelessness research on policy and practice' and the Homeless Hub was created to address the need for a single place to find homelessness information from across Canada: '[It] is a web-based research library and information center representing an innovative step forward in the use of technology to enhance knowledge mobilization and networking. The Homeless Hub has emerged as a place where community services providers, researchers, government representatives, and the general public can access and share research, stories, and best practices'.

It is a pleasure to look at CHRN's clear, concise reports, as well as the infographics, videos, blogs, media and social media that generally accompany their research publications. By presenting their research in this way, the network aims to equip advocates with the material they need to advocate for change through their work on the ground. Put simply: 'the CHRN is committed to enhancing the impact of research on the homelessness crisis'.

Bridging the gap between research and evidence on one hand and homelessness policy and practice on the other is critical to making sure we develop well-informed programs and initiatives for addressing homelessness in our communities. For as long as our policies and practices continue to be based on sentiment and anecdote rather than evidence and research, they will continue to be flawed and present risks of being ineffective, costly and potentially harmful.

²⁰¹ Rolnik and Sepúlveda, *Foreword to Mean Streets*, above n 65, 12.

²⁰² See Canadian Homelessness Research Network (available at: <http://homelessresearch.net/>).

²⁰³ Homeless Hub, *About Us* (available at: <http://www.homelesshub.ca/about-us>).

5.2. Community organising – member-based initiatives

Too often decisions about homelessness and public space are made behind closed doors, with little or no input from the people directly affected by the proposed laws, policies or practices.

The insights, experience and expertise that can be brought to the table by people who are or have been homeless should not be understated. This input is crucial in the development of effective strategies and the evaluation of existing strategies. It also plays a critical role in increasing awareness about the realities of homelessness, including its causes and its impacts on a person's life.

Eric Post, Staff Attorney at Public Counsel's Homelessness Prevention Law Project in Los Angeles said:

[m]ore and more homeless folks are starting to organise and that's an important effort. Empowering folks to make a change both in terms of policy and in their own lives makes people realise "hey these are people" and we need to create space for these voices to be heard.

This section contains a snap shot of the member-based campaigns or initiatives I came across during my fellowship.

Nothing about us, without us – community action in and around Vancouver

I had the privilege of travelling with the Pivot Legal Society team to Abbotsford about 40 minutes outside Vancouver to observe their work with a group of local people experiencing homelessness who had been sleeping in tents in Jubilee Park for about 30 days at that time.

Previously all the camp members slept rough separately, but in recent times a sense of community had grown amongst the group and they had merged both their location and their voices to call for more affordable housing and better homelessness services in Abbotsford.²⁰⁴ When I visited, the City had successfully applied for an injunction requiring the camp members to leave Jubilee Park and the community had relocated to the neighbouring parking lot pending further legal proceedings.

The call of the group was 'nothing about us, without us!' Unsurprisingly, the group wanted a say in the City's decision about how to tackle Abbotsford's growing homelessness problem.

During my brief visit, I got a sense that this kind of powerful community organising isn't unusual in and around Vancouver. In addition to the Jubilee Park community, the member run campaigns of the Vancouver Area Network of Drug Users (**VANDU**) make sure the voices of the people directly affected by legal and policy decisions are heard in what can otherwise become highly bureaucratic debates.

²⁰⁴ Pivot Legal, *Abbotsford homeless file human rights complaint as City prepares to clear out encampment* (27 November 2013) (available at: http://www.pivotlegal.org/abbotsford_homeless_file_human_rights_complaint_as_city_prepares_to_clear_out_encampment); Peter Wrinch, 'Abbotsford's Homeless ask court to recognize their right to exist as equal citizens' *Pivot Legal Society Blog* (7 March 2014) (available at: http://www.pivotlegal.org/abbotsford_s_homeless_ask_court_to_recognize_their_right_to_exist_as_equal_citizens).

Don't talk about us, talk with us – Picture the Homeless, New York City

My visit to New York City coincided with the 'dancegiving' event of Picture the Homeless (PTH): 'celebrating our struggles [and] our victories and getting ready for the work that lies ahead'. PTH is 'a grassroots organization, founded and led by homeless people'. PTH's work includes 'know your rights' training and information sessions for people experiencing homelessness as well as community organising around housing and homelessness issues, including policing.

In PTH's own words: 'It's about homeless leaders being their own advocates for police reform legislation ... [and] it means challenging stereotypes that dehumanise homeless New Yorkers by highlighting the valuable contributions that PTH members make everyday towards building a more just and respectful New York City for all'.

In addition to ensuring better informed policies Aiyanas Ormond, VANDU Community Organiser, said:

Participating in a broader social justice project is a public health intervention ... there's recognition that playing a role of leadership in their community is beneficial for people's health ... [Further] any number of good arguments, based on good evidence won't change things – the affected communities have to stand up and demand change.

In short, the input of people with a direct experience of homelessness is critical to the development of well-informed laws and policies regulating public space and their insights should be included in decision-making processes.

5.3. Building understanding and challenging stereotypes through personal stories

Eric Post, Staff Attorney with Public Counsel's Homelessness Prevention Law Project in Los Angeles, identified that there is a problem with the 'imagery' or perception of people who are homeless. He explained that 'we need to combat this with personal stories that humanise these issues and build understanding ... We need to make space for more first person accounts; they're powerful and compelling and have potential to gradually change attitudes and break down stereotypes'.

I spoke with Katharine Sacks-Jones, Head of Policy and Campaigns at Crisis about the use of personal stories in campaign and advocacy work. She said: 'it's about understanding what resonates. Practicalities and costs might resonate with government, but then there's the question of how you win over the public. It's not enough just to talk about facts and figures; we need to tell a human story'.

When I was in Washington DC, Nan Roman, President and CEO of the National Alliance to End Homelessness (NAEH), said that the NAEH is cautious about using people's stories in their advocacy. She said individual stories 'can backfire' because they can encourage community members and decision-makers to think: 'is this a good person? I'm happy for them to be helped if they're a good person' and can feed problematic notions about the deserving and undeserving poor. She also said that using personal stories risks perpetuating the suggestion that individuals cause homelessness, and distracting from the fact that the main causes of homelessness – poverty and an acute shortage of affordable housing – are structural and have little to do with individuals. Ms Roman said: 'Homelessness is a macroeconomic problem. There are solutions to it. It costs us money to let it happen. We can do better and smarter'.

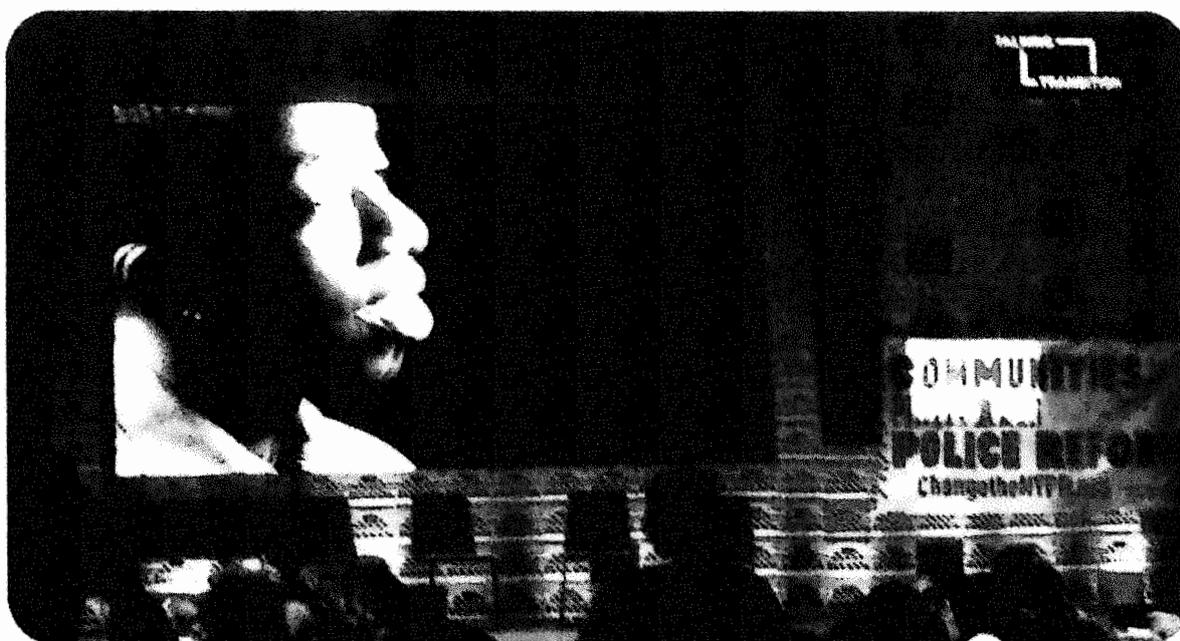
On the question of where this caution leaves the use of personal stories in advocacy and campaigns about homelessness, Ms Sacks-Jones said: 'It depends how you tell the story and what the story is. Often it is very clear

where the systemic issues are. The overwhelming evidence is that facts and figures don't work'. She referred to focus groups and polling, which showed that 'people just don't hear facts and figures'. She said:

If a person holds a belief and you try to challenge it with a fact, they will try to challenge the fact. People just don't think in that way ... political parties are a good example, they don't rely just on facts but find ways to try and talk to people's values. Images and stories are incredibly powerful. We kid ourselves if we think we can challenge that emotion and that imagery with facts.

The UN Special Rapporteur on Extreme Poverty and Human Rights (2010 - 2014), Magdalena Sepúlveda Carmona, also spoke about the importance of communicating people's personal stories to change attitudes and increase awareness. She said: 'these things are very difficult for the middle classes to understand ... they don't see the impact'. She encouraged us to work to show the personal impact of these laws on people: 'changing culture and educating people about this impact ... this is where we currently fail. How we cut through the stigma is the million dollar question, and my guess is it's with education'.

This section sets out examples of personal stories that help raise awareness, challenge stereotypes, humanise issues that are otherwise abstract (in particular questions of law enforcement) and generally build awareness and understanding of homelessness, its causes and its impacts.



New York City: Talking Transition event, Communities United for Police Reform #Wherelamgoing campaign

The human impact of stop and frisk in New York City

'The stories behind the numbers, the effects on our communities' is the sub-title for the 2012 report of the Center for Constitutional Rights (CCR), *Stop and Frisk: The Human Impact*. The report 'documents some of the human

stories behind the staggering statistics and sheds new light on the breadth of impact this policy is having on individuals and groups, in neighborhoods, and citywide'.²⁰⁵ It recognises that the numbers alone do not tell the whole story.

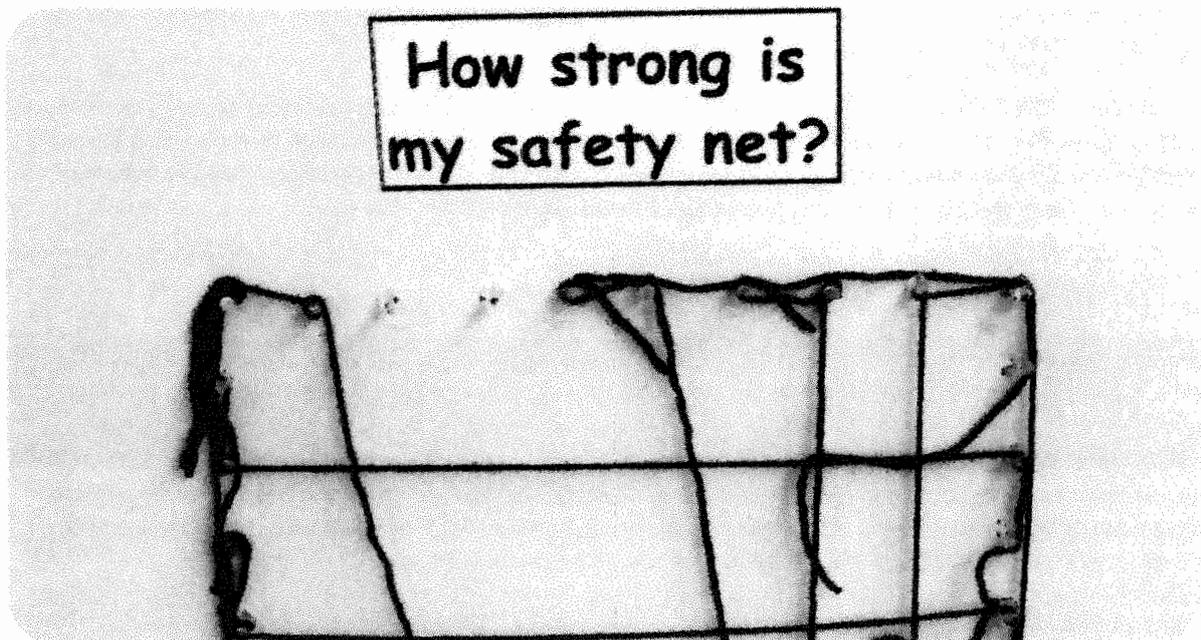
The report captures quotes from 54 people who had been the subject of stop and frisk that draw attention to the lasting effects the practices has on people:

If you have violations or you have [been] convicted of crimes, you can't get into public housing. So that's one of the ways that it really crushes people that are homeless. It closes off that gate into New York City housing right away. Just by being arrested and coming out. And here's the thing about it: Nobody informs you of this. [They] never tell you, "You know what? If you plead guilty today, you're never going to be able to get New York City housing."²⁰⁶

The CCR is also a member of Communities United for Police Reform (CUPR), which is 'an unprecedented campaign to end discriminatory policing practices in New York, bringing together a movement of community members, lawyers, researchers and activists to work for change'.²⁰⁷ CUPR has made three short films about stop and frisk practices and their impact from three different perspectives: a young person; a pastor; and a police officer.

The 'docuseries' is called *Where I am Going* and states: 'We all have places to go. Stop-and-frisk shouldn't stop us'.²⁰⁸ Police officer, Adhyl Polanco, talks about growing up with the constant crime and shootings in Washington Heights and always dreaming of becoming one of the 'good guys'. He explains that after the '1 arrest / 20 summons / 5 stop and frisks' monthly policy was mandated by the NYPD in 2009, he reached a turning point that compelled him to choose between his career and his morals.

Mr Polanco's story has been viewed online approximately 168,400 times.



Washington Legal Clinic for the Homeless: the safety net exercise

²⁰⁵ CCR, *Stop and Frisk: The Human Impact*, above n 115, 1.

²⁰⁶ *Ibid* 9 citing the interview with Michael P (pseudonym), New York (24 January 2012).

²⁰⁷ See Communities United for Police Reform (available at: <http://changethenypd.org/>).

²⁰⁸ See *Where I am Going* (available at: www.wheriamgoing.org).

What's your safety net? Increasing awareness of the causes of homelessness

When I visited the Washington Legal Clinic for the Homeless (WLCH), co-founder and Executive Director, Patty Mullahy Fugere, told me about the safety net training WLCH runs. The straightforward, powerful exercise steps people through a series of questions to work out what their personal safety net is.

Horizontal strings in the net represent factors that you have little or no control over, including whether you grew up knowing both parents, any physical illnesses, whether you've experienced abuse and whether or not you've ever been discriminated against on the basis of your race, gender or ethnicity. Vertical strings represent factors that you have some control over, but which are 'rooted in what horizontal threads we have'. These include whether you have a college degree, a job, access to a car, a good credit record, substance use problems or involvement with the justice system.

Often the people participating in the exercise will realise that their safety net is reasonably robust. Ms Mullahy Fugere then steps through the same questions for a person experiencing or at risk of homelessness. The example she shared was a 20 year-old single mother of two children with health problems who has been the victim of family violence and whose mother passed away when she was two. This woman's safety net is threadbare. Her situation is perpetually fragile and there is no room for anything to go wrong.

An hi-tech version of this exercise is Spent (www.playspent.org),²⁰⁹ which is a confronting choose-your-own-adventure that prompts participants to navigate their way through poverty on their screens. It opens with: 'Urban Ministries of Durham serves over 6000 people per year. But you'd never need help right?' It then explains that you have lost your job and your home, you're a single parent and you have \$1000 left. It presents the challenge – can you get through the month? It then steps you through the impossible decisions you have to make each day between housing that is cheaper but 50 miles from work, health insurance, paying for kids' excursions and which bills to pay. I made it nine days in before the \$1000 was gone.

These kinds of tools have a role to play in building community understanding about how little people on very low incomes have to survive on, the kinds of decisions they have to make about how to spend their extremely limited money and the debilitating consequences of not being able to stretch your income far enough. Ultimately, they help people understand how people can end up homeless through no fault of their own.

Sugar – 'Life on the street isn't exciting ... Life on the streets is mundane, and lonely'

Into the mix of an indie film with a young, talented cast, a good soundtrack and a Venice Beach backdrop, writer and director Rotimi Rainwater puts the more unexpected ingredient of youth homelessness. The authenticity of the film is undeniably assisted by Rotimi's own experience of teen homelessness:

[I] hope to give people a realistic view of what it's like on the streets, to humanize the youth who've ended up homeless; because no child on the streets is there by choice. No 13-year old watching Disney with his or her parents wakes up one day and decides to leave home and go eat out of a garbage can.²¹⁰

The film is the anchor for a campaign to end youth homelessness and in mid-2013 it was screened to Congress on

²⁰⁹ Urban Ministries of Durham, *Spent* (available at: <http://www.playspent.org>).

²¹⁰ *Ibid.*

Capitol Hill. Its Washington DC premiere was supported by the US Interagency Council on Homelessness, the National Coalition for the Homeless, the National Law Center on Homelessness and Poverty, the National Alliance to End Homelessness, the National Network for Youth and the Sasha Bruce Youthwork.

Films like this have the potential to appeal to a mainstream, outside-the-homelessness-sector audience. In doing this, it has a role to play in building community awareness of the 10,000 young people who are homeless in the US and generating momentum for change.

Many enforcement-based approaches to homelessness (including new laws, disproportionate enforcement of existing laws and 'crackdowns' or 'blitzes' on conduct in public places), are a response to pressure from local communities and businesses who are concerned about the presence and activities of people experiencing homelessness in their local area. While it is essential that steps are taken to address homelessness, increasing community understanding of homelessness, including who it affects and why, will lead to better-informed conversations about appropriate responses to homelessness.

Importantly, we are not trying to generate a situation where visible homelessness and poverty are accepted or tolerated by the community, but rather a situation where community attitudes leave room for non-punitive responses to people experiencing these problems.

5.4. Litigation – challenging 'criminalisation' in the courts

In some cases, often where communication has broken down and other alternatives have been exhausted, individuals turn to the courts to resolve questions about their rights and the limitation of laws regulating public space.

In addition to being of benefit to the individual, litigation can also have a wide reaching strategic impact, in some cases leading to significant reform of laws or practices that affect people experiencing homelessness in a disproportionate or discriminatory way.

Litigation is by its nature adversarial. The process is protracted and potentially expensive and, for clients experiencing homelessness and any of the hardships that may accompany it, it will not always be a desirable or feasible option. Where alternative mechanisms, including training, negotiation and protocols (see part 6.4 below) are an option, it is questionable whether the courts are the most effective avenue for achieving reform. When litigation is successful, however, it can be a highly effective catalyst for change, particularly when it is accompanied by broad awareness raising, educative, advocacy activities.

The context of litigation in relation to regulation of public space and homelessness in the US is markedly different from Australia because of the Constitutional protection of rights. The National Law Center on Homelessness and Poverty summarises the 'constitutional questions' raised by 'criminalization measures' in the US:

- 'Laws that restrict or penalize begging may raise free speech concerns, as courts have found begging to be protected speech under the First Amendment.
- When a city destroys a homeless person's belongings, such actions may violate the Fourth Amendment right to be free from unreasonable searches and seizures.
- When a city enforces a law that imposes criminal penalties on a homeless person for engaging in necessary life activities such as sleeping in public, such a law could violate that person's Eighth Amendment right to be free from cruel and unusual punishment if the person has nowhere else to perform the activity.

- When a city passes a loitering or vagrancy law that provides insufficient notice of what types of conduct it prohibits, or allows for arbitrary enforcement by law enforcement officials, such a law may be overly vague, in violation of the Constitution.²¹¹

Two examples of the use of litigation to reduce the negative impact of laws regulating public space on people experiencing homelessness and minority members of the community are set out below. They highlight the benefits and challenges of litigation and the need to push for change both inside and outside the court room.

Taking the Safer Cities Initiative to the Courts in Los Angeles

In 2003, the American Civil Liberties Union (ACLU) of Southern California the National Lawyers Guild filed proceedings seeking to limit the enforcement of s 41.18 (d) of Los Angeles Municipal Code, which provides that '[n]o person shall sit, lie or sleep in or upon any street, sidewalk or other public way'.²¹²

The ACLU identified that 'in Los Angeles County at least 88,000 men, women and children – 8,000 to 10,000 in Downtown Los Angeles alone – are without homes. There are beds for less than half of the homeless in Los Angeles county, comprehensive services are available to far fewer than half, and the county jails are routinely used as a substitution for mental health facilities'.²¹³

The plaintiffs were six people experiencing homelessness and living on the streets of Skid Row: Edward Jones, Patricia Vinson, George Vinson, Thomas Cash, Stanley Barger, and Robert Lee Purrie.²¹⁴

They alleged that the City was criminalising the status of homelessness in contravention of the Eighth Amendment protection against cruel and unusual punishment and the Fourteenth Amendment's equal protection clause. The district court dismissed the application, finding that the ordinance criminalised conduct rather than status.²¹⁵

On appeal in *Jones v City of Los Angeles (Jones)*²¹⁶ a panel of Ninth Circuit judges held 2 to 1 to reverse the district court's decision. The appeals court found that, for as long as there are insufficient places to sleep, it was unconstitutional to criminalise sitting, lying or sleeping on the street. The court found that: 'Section 41.18(d) is one of the most restrictive municipal laws regulating public spaces in the United States'.²¹⁷ Judge Wardlaw stated: 'The Eighth Amendment prohibits the City from punishing involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless without shelter in the City of Los Angeles'.²¹⁸

Key to the court's finding was that what was being prohibited was an involuntary status (rather than conduct): homelessness is 'a chronic state that may have been acquired "innocently or involuntarily"' and sleeping or lying on the streets of Skid Row is an inevitable consequence of this status'.²¹⁹

The City filed a motion for rehearing and the court ordered mediation. The matter was settled by agreement that the Los Angeles Police Department would not enforce this law between 9:00pm – 6:00am until an additional

²¹¹ NLCHP 2011, *Criminalizing Crisis*, above n 32, 10. See also NLCHP and NCH 2009, *Homes not Handcuffs*, above n 8, 85–165 for case summaries of cases where people experiencing homelessness or advocates have sought to challenge laws and policies that criminalise homelessness in the courts, including: challenges to restrictions on sleeping, camping, sitting, or storing property in public places; challenges to anti-begging, anti-soliciting and anti-peddling laws; challenges to vagrancy, loitering and curfew laws; and challenges to restrictions on food sharing in state and federal courts.

²¹² See Gerry, *Jones v City of Los Angeles*, above n 28.

²¹³ See American Civil Liberties Union of Southern California, *ACLU of Southern California Wins Historic Victory in Homeless Rights Case: Appeals Court Ruling Ends the Criminalization of Homelessness* (14 April 2006) (available at: https://www.aclu.org/racial-justice_prisoners-rights_drug-law-reform_immigrants-rights/aclu-southern-california-wins-hist).

²¹⁴ See *Jones v City of Los Angeles*, 444 F.3d 1118, 1124–5 (9th Cir 2006) for an account of the plaintiffs' circumstances and the situations in which they were cited or arrested under s 41.18(d).

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ *Ibid* 1123.

²¹⁸ *Ibid* 1138.

²¹⁹ *Ibid.*

1250 units of permanent supportive housing were constructed within the City of Los Angeles, at least 50% of which are in Skid Row or greater downtown Los Angeles.²²⁰

Professor Gary Blasi indicated that this housing target is close to being met and – despite levels of homelessness remaining at crisis level – the return of 24 hour policing in Skid Row could be on the immediate horizon.

Professor Blasi discussed the limitations of litigation and the potential unanticipated consequences. He mentioned the case of *Lavan v City of Los Angeles*,²²¹ which limited the way in which police can dispose of a person's goods in the absence of procedural fairness (arising out of the situation where the possessions – often the only possessions – of people experiencing homelessness were being destroyed if temporarily left on the streets of Skid Row). Professor Blasi explained that the impact of this decision has been constrained by the increase in the number of private security officers – the 'red shirts' – taking part in law enforcement in LA who aren't bound by the authority and who can therefore carry out the problematic disposals.

An even stronger example of the limitations of litigation is an alleged comment Professor Blasi became aware of made by an LA law enforcement officer in response to *Jones*: 'it doesn't change anything, we've still got 50 more things we can do to them'. Gerry acknowledges this reaction and articulates an explanation for it in her article on *Jones*: 'Localities ... have rebelled against exertions of judicial authority that officials view as robbing them of valuable tools in the fight against social unrest'.²²²

Contrasted with more collaborative, negotiated approaches to reducing the impact of enforcement on people experiencing homelessness, there are barriers to the effectiveness of litigation as a tool for generating change. That said, when the door is not open to discussions, litigation can be a necessary (and effective) avenue. I asked Robert Gangi, Director of the Police Reform Organizing Project (PROP) at the Urban Justice Center in New York City, about whether PROP has a contact person or liaison within the NYPD that they can work effectively with or whether the relationship has broken down. He said 'Kelly and Bloomberg [former New York City Police Commissioner and Mayor] made it very clear, very early on that there was no room for discussion about stop and frisk'. From that point PROP and other community and advocacy organisations focussed on building coalitions, community organising, reporting, activism and, in some cases, litigation.²²³

Stop and Frisk in the courts and on the streets – New York City

The recent case of *Floyd et al v City of New York et al (Floyd)*²²⁴ challenged New York City's stop and frisk program as discriminatory and unconstitutional. The plaintiffs submitted that searches were carried out without reasonable suspicion, that 84% of people stopped were black and latino (despite these two groups only making up 52% of the city's population), that 88% of the people stopped were neither arrested nor received summonses and, despite the stated purpose of the policy, weapons and contraband were recovered less than 2% of the time.²²⁵

The plaintiffs in the case – David Floyd, David Ourlicht, Lalit Clarkson, and Deon Dennis – are men of colour who,

²²⁰ See NLCHP and NCH 2009, *Homes not Handcuffs*, above n 8, 103–4.

²²¹ *Lavan v City of Los Angeles* 797 F.Supp. 2d 1005, 1020 CCD Cal. 2011; Jonah, 'Protecting Property Left by the Homeless on the Sidewalk' (11 September 2012) *Harvard Journal of Law and Public Policy* (available at: <http://www.harvard-jlpp.com/2012/09/534/>).

²²² Gerry, *Jones v City of Los Angeles*, above n 28, 239.

²²³ Note that in my most recent correspondence with Robert Gangi on 25 March 2014 he noted: 'the situation has changed with the new administration in the city – we've already had two meetings with high-level police officials to discuss our concerns, the kinds of meetings that would have never taken place during the Bloomberg/Kelly years'.

²²⁴ 813 F.Supp.2d 457 (2011).

²²⁵ Center for Constitutional Rights, *Floyd, et al. v. City of New York, et al – Synopsis* (available at: <http://ccrjustice.org/floyd>).

it was argued, were stopped by NYPD officers 'without any cause on the way to work, in front of their house, or just walking down the street'.²²⁶ Law firms Beldock, Levine and Hoffman, and Covington & Burling LLP were co-counsel in the matter.

The background to the trial was proceedings that the Center for Constitutional Rights (CCR) commenced in 1999, *Daniels v City of New York*.²²⁷ Daniels settled in 2003 and the terms required the NYPD to provide quarterly stop and frisk data to CCR. When this data showed an increase in stop and frisks (the NYPD reported a record 685,724 stops in 2011) and a continuing race-based pattern in the stops, CCR commenced the *Floyd* case.

Following a 10-week trial, on 12 August 2013, a federal court judge found that the NYPD had violated the equal protection clause in the Fourteenth Amendment and the Fourth Amendment, which prohibits unreasonable searches and seizures. The court issued two rulings: an Order on Liability and an Order on Remedy. The City appealed and filed a Motion to Stay the court's Remedial Order pending appeal with the US Second Circuit Court of Appeals.

On 1 January 2014, Mayor de Blasio took office, replacing Bloomberg and becoming New York City's first new mayor in 12 years. Mayor de Blasio had campaigned on a platform of police reform and, on 30 January 2014, the City of New York agreed to withdraw its appeal.²²⁸ The agreed remedies include: a court-appointed monitor with a term of three years, conditional on the City substantially complying with the remedies, and a joint reform process involving all the stakeholders to ensure accountability to directly affected communities.

The process of bringing meaningful change to the NYPD and the communities they police will now begin.

Because of the long road to the court room and the significant community organising work surrounding stop and frisk (for example, Communities United for Police Reform),²²⁹ *Floyd* was unlike typical litigation – the court room was packed every day and the case received significant local, national and international media attention. It is a relatively rare example of litigation joining community organising in a way that extends awareness of discriminatory policing beyond the court room and, in doing so, significantly amplifies the potential for social change.²³⁰

There are a number of factors to consider when determining whether litigation is an appropriate mechanism to challenge the negative impact of laws regulating public space on people experiencing homelessness, including: the grounds for challenging the law (i.e. the legislative or Constitutional protections in the relevant jurisdiction); the resources of the legal services assisting the client; and, of course, the client themselves and their wishes and instructions in light of the protracted, stressful nature of the proceedings and the potential cost consequences.

Furthermore, as Professor Blasi reminded me: 'litigation will address isolated aspects of criminalisation, but without leadership or political will it doesn't necessarily deliver a solution'.

In light of this, we need to keep litigation in mind as one option for generating change, but we also need to be aware that litigation alone will not deliver effective, sustainable solutions to the negative impact of laws regulating

²²⁶ Ibid.

²²⁷ Center for Constitutional Rights, *Daniels, et al. v. the City of New York – Synopsis* (available at: <http://ccrjustice.org/ourcases/past-cases/daniels-et-al.-v.-city-new-york>).

²²⁸ See Center for Constitutional Rights, *City of New York and Center for Constitutional Rights Announce Agreement in Landmark Stop and Frisk Case* (30 January 2014) (available at: <http://www.ccrjustice.org/newsroom/press-releases/city-of-new-york-and-center-constitutional-rights-announce-agreement-landmark-stop-and-frisk-case>).

²²⁹ See: <http://changethenypd.org/>.

²³⁰ For an Australian example of the effective combination of strategic litigation and community organising see the impressive work of Flemington Kensington Community Legal Centre, *Victoria Police Response to Racial Profiling* (available at: http://www.communitylaw.org.au/flemingtonkensington/cb_pages/victoria_police_inquiry_2013.php).

public space on minorities, including people experiencing homelessness. It needs to be accompanied by a range of activities that generate momentum for reform in the community and amongst decision-makers.

5.5. Human rights based work

Much of the discussion regarding appropriate approaches to addressing homelessness and regulating public space turns on pragmatic positions based on evidence and cost effectiveness. In addition to these undeniably compelling arguments, it is important not to forget the human rights implications of enforcement-based approaches to homelessness. We need to balance pragmatic arguments based on the inefficiency of criminalisation with the position that the criminalisation of homelessness is, in many cases, also a contravention of governments' human rights obligations under the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.

The international human rights framework can often seem impenetrable and removed when doing the day-to-day work on the ground. However, it is incumbent on us, as members of the homelessness sector, to give human rights – and the legal frameworks set up to protect them – a place in our strategies to improve outcomes for people experiencing homelessness in our communities.

This section highlights campaigns, actions and mechanisms that have drawn on human rights protections to reduce the negative impact of laws regulating public space on people experiencing homelessness.

Framing 'criminalisation' as a human rights issue nationally and internationally

The National Law Center on Homelessness and Poverty (NLCHP) has been instrumental in framing the 'criminalisation' of homelessness as a human rights issue both at the US federal level and internationally.

Eric Tars, Director of Human Rights and Children's Rights Programs at the NLCHP, explained the NLCHP's human rights work:

the human rights work is really trying to bring international human rights standards and mechanisms into our litigation and our policy and advocacy. For example, right now we're really active in trying to get the issue of criminalisation of homelessness reframed as cruel, inhuman and degrading treatment because that's very similar to our own Eighth Amendment cruel and unusual standards and it could be a good entry point for using some of the international standards in litigation.

Through their sophisticated advocacy, which contextualises on the ground evidence of criminalisation within international human rights frameworks, the NLCHP has highlighted that enforcement-based approaches to homelessness cannot be considered purely as a local issue – in many cases, these practices contravene international human rights standards and warrant international attention and federal government action.

Federal agency recognition of criminalisation as a human rights issue

In its 2012 report, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness*, the US Interagency Council on Homelessness recognised that: 'in addition to violating domestic law, criminalization measures may also violate international human rights law, specifically the Convention Against Torture and the [ICCPR]'.²³¹ This was the first time a US federal government agency had 'recognized domestic practices toward

²³¹ US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 8.

homeless people as potential sources of a treaty violation'²³² and was a significant breakthrough for homelessness advocates.

This recognition has been useful both in terms of raising awareness and as a tool for advocates. Barbara Poppe, Executive Director of the US Interagency Council on Homelessness, said that the report has 'created a level of awareness' and been a 'public governmental statement' about criminalisation. She said it 'it is one of the tools of persuasion that advocates have when presenting constructive alternatives to enforcement'.

Ms Poppe said that 'the train of enforcement can be difficult to stop if local political forces mobilise around criminalisation as a solution and this national report supports advocates in local areas to weigh in on the debate'.

The NLCHP has used this federal government recognition as part of its ongoing work 'to integrate international human rights standards into the domestic policy discourse on issues of homelessness'.²³³

Despite this powerful acknowledgement of the human rights impact of criminalisation, 'the federal government's recognition that criminalization of homelessness is poor public policy and contrary to its legal obligations has not translated to improved treatment of homeless people in many communities'.²³⁴ The US has continued to see a growing number of laws prohibiting conduct directly related to homelessness (including urban camping, sitting or lying in public places, loitering and begging), as well as the disparate enforcement of laws against people experiencing homelessness.²³⁵

The NLCHP extended its advocacy to the international arena via the fourth periodic review of the US's compliance with the ICCPR by the UN Human Rights Committee. In its report to the Committee in preparation for the review, the NLCHP identified that: 'Explicit recognition that criminalization of homelessness is discriminatory and constitutes cruel, inhuman, and degrading treatment would be a powerful affirmation for advocates working to safeguard the fundamental rights of homeless people in the United States'.²³⁶

²³² NLCHP, Human Rights Committee Report, above n 120, 9.

²³³ National Law Center on Homelessness and Poverty, *UN to Sacramento: You're Violating Human Rights of Homeless People* (available at: <http://homelessnesslaw.org/2012/02/un-to-sacramento-youre-violating-human-rights-of-homeless-people/>).

²³⁴ NLCHP Human Rights Committee Report, above n 120, 6.

²³⁵ *Ibid* 7.

²³⁶ *Ibid* 5.



Geneva: UN Human Rights and Alliance of Civilisations Chamber, Palais des Nations

Cruel, inhuman and degrading – UN Human Rights Committee reports on US criminalisation

The NLCHP has done ground-breaking, persistent and compelling work identifying the ways in which criminalisation of homelessness is inconsistent with obligations under the ICCPR. US NGOs have focussed their attention on the ICCPR because the US remains one of the few countries that have not ratified the ICESCR. That said, it also provides an opportunity to remind the US and international community that the two sets of rights are indivisible.

The NLCHP submitted a detailed report on the criminalisation of homelessness in the US to the UN Human Rights Committee in advance of the fourth review of the US's compliance with the ICCPR. In *Cruel, Inhuman, and Degrading: Homelessness in the United States Under the International Covenant on Civil and Political Rights*, the NLCHP identifies that laws that penalise people for their involuntary homeless status contravene the following obligations under the ICCPR:

- The right to non-discrimination (Articles 2 and 26) – '[c]riminalization measures discriminate against homeless people on the basis of their status or property. Discrimination also affects homeless subpopulations, such as racial minorities, women and transgender people, in unique ways'.²³⁷
- The right to be free from cruel, inhuman and degrading treatment (Article 7) – 'criminalization of homelessness and its associated activities in public space, when people have nowhere else to go, deprives individuals of safe, legal, and dignified opportunities to perform necessary human functions, such as sleeping, eating, urinating, and defecating. This deprivation constitutes a violation of the Article 7 rights of homeless people'.²³⁸
- The right to liberty and security of the person (Article 9) – '[r]egulations and practices that criminalize behavior that homeless people cannot avoid routinely result in unjustified arrests under Article 9 ... These

²³⁷ Ibid 15.

²³⁸ Ibid 6.

deprivations of homeless people's liberty are disproportionate, unfair, and irregular, violating Article 9's protection against arbitrary arrest and detention'.²³⁹

- The right to privacy (Article 17) - '[s]ince the United States fails to provide homeless people with adequate shelter, they have no choice but to live on the streets ... the harsh repercussions that sweeps impose on homeless people are disproportionate to the ends of cleaning up public spaces and are a violation of the homeless population's right to privacy'.²⁴⁰
- The right to family (Articles 17 and 23) - shelters that impose regulations based on sex or familial status, for example by excluding fathers or adolescent males, threaten family integrity. Homeless families (in 2009, 535,000 families sought shelter in the US) are also at increased risk of separation from state removal of children for 'neglect' related to homelessness and poverty. 'When the United States follows laws and practices that obstruct the integrity of homeless families, it violates the children's and parents' rights under Article 17 and Article 23'.²⁴¹
- The right to freedom of assembly (Article 21) - '[a]ssembly by people in homelessness serves many purposes, including safety, community formation, expression, and access to services. Unjustified restrictions on the use of public space by homeless people undercuts their ability to enjoy these basic human goods'.²⁴²
- Voting rights (Article 25) - 'US laws increasingly disenfranchise homeless people by making voting contingent upon proof of identification, citizenship, or residency'.²⁴³

On 13 March 2014, the UN Human Rights Committee reviewed US compliance with ICCPR. This is the first time that issues of criminalisation have been brought before the Committee and, accordingly, is a ground-breaking achievement in terms of promoting recognition that punitive approaches to homelessness are, in addition to being ineffective and expensive, often a violation of the human rights of homeless members of the community; rights which governments have a legal obligation to uphold.

Chair of the UN Human Rights Committee, Sir Nigel Rodley, concluded the review of the US by saying:

In terms of victims victimised ... I'm simply baffled by the idea that people can be without shelter in a country and then be treated as criminals for being without shelter ... the idea of criminalising people who don't have shelter is something that I think many of my colleagues would find as difficult as I do to even begin to comprehend.²⁴⁴

On 26 March 2014, the UN Human Rights Committee handed down its Concluding Observations, which specifically identify the 'criminalization of homelessness' as raising concerns of cruel, inhuman, or degrading treatment and call on the US government to take corrective action:

While appreciating the steps taken by federal and some state and local authorities to address homelessness, the Committee is concerned about reports of criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas etc. The Committee notes that such criminalization raises concerns of discrimination and cruel, inhuman, or degrading treatment (arts. 2, 7, 9, 17, and 26).

The State party should engage with state and local authorities to: (a) abolish criminalization of homelessness laws and policies at state and local levels; (b) ensure close cooperation between all relevant stakeholders including social, health, law enforcement and justice professionals at all levels to intensify efforts to find solutions for the homeless in accordance with human rights standards; and (c) offer incentives for decriminalization and implementation of such

²³⁹ Ibid 10.

²⁴⁰ Ibid 12.

²⁴¹ Ibid 14.

²⁴² Ibid 9.

²⁴³ Ibid 14.

²⁴⁴ Sir Nigel Rodley, Chair of the UN Human Rights Committee, *Concluding Comments* (13 March 2014); see *US ICCPR Review 2014: Cruel, Inhuman, and Degrading* (available at: <https://www.youtube.com/watch?v=IM6eXpJVuIA&feature=youtu.be>).

solutions, including by providing continued financial support to local authorities implementing alternatives to criminalization and withdrawing funding for local authorities criminalizing the homeless.²⁴⁵

This advocacy by the NLCHP is a compelling reminder of the importance of using international human rights mechanisms to draw attention to local laws and policies that impact disproportionately on people experiencing homelessness. Recognising that human rights mechanisms deal directly with federal governments, rather than the local authorities that often introduce enforcement-based approaches to homelessness, the NLCHP proposed ways in which the federal government could influence local governments to reverse the trend of criminalisation. They sought recommendations from the Human Rights Committee (which were largely reflected in the Committee's Concluding Observations) that federal agencies should:

- promulgate guidance for communities emphasising the negative consequences of criminalisation;
- provide incentives for decriminalisation and constructive alternative approaches;
- discontinue their funding of local law enforcement practices that criminalise homelessness; and
- investigate and prosecute criminalisation policies or enforcement whenever they occur.²⁴⁶

The goal is for international advocacy to have a local impact and the NLCHP has run its international work alongside its ongoing relationships with federal agencies, the Department of Housing and Urban Development, which has 'indicated a willingness to use its influence to reverse this inhumane, costly and senseless trend', and that the US Interagency Council on Homelessness, which 'is working with [the NLCHP] to encourage its members to forgo criminalization in favor of constructive alternatives that respect human rights'.²⁴⁷

Reframing local enforcement-based approaches to homelessness in an international human rights context is an important way in which we can generate new perspectives and insights, as well as questions or challenges, about how we are dealing with homelessness in our communities and whether these approaches are justified and proportionate. Contextualising these issues in a human rights framework also shifts the conversation from one of charity or welfare to one of rights and obligations. It provides a mechanism for balancing competing rights and obligations and it comes with international systems of reporting, accountability and scrutiny.

²⁴⁵ UN Human Rights Committee, *Concluding observations on the fourth report of the United States of America* (advance unedited version) (26 March 2014) [19].

²⁴⁶ NLCHP Human Rights Committee Report, above n 120, 17.

²⁴⁷ Maria Foscarinis, Executive Director, National Law Center on Homelessness and Poverty, *In Just Times* (March 2014).

United Nations mechanisms in practice



In addition to making use of the periodic reviews of countries' human rights compliance, we should keep in mind the complaints-based mechanisms, which UN Special Rapporteur on Extreme Poverty and Human Rights (2010 – 2014), Ms Magdalena Sepúlveda Carmona, described as an 'amazing tool' for placing pressure on states and encouraging accountability.

By way of background, 'special procedures' are the mechanisms (either individual experts such as special rapporteurs or working groups) set up to address specific country situations and 'thematic issues' throughout the world: 'They are prominent, independent experts working on a voluntary basis, appointed by the Human Rights Council'.²⁴⁸ The two most relevant experts in relation to enforcement-based approaches to homelessness are the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and the Special Rapporteur on Extreme Poverty and Human Rights.

The Special Rapporteur on Extreme Poverty and Human Rights is the global expert on 'the relationship between the enjoyment of human rights and extreme poverty' and 'is required by the Human Rights Council to examine and report back to member States on initiatives taken to promote and protect the rights of those living in extreme poverty'.²⁴⁹ The Special Rapporteur's activities include:

- country visits;
- responding to information provided about the human rights of people living in extreme poverty (including individual complaints about alleged violations);
- developing constructive dialogue with governments, international organisations, civil society and other relevant actors with a view to identifying ways to remove all obstacles to the full enjoyment of human rights for people living in extreme poverty; and
- submitting annual reports to the Human Rights Council and the General Assembly.²⁵⁰

²⁴⁸ Office of the High Commissioner for Human Rights, *Human Rights Bodies* (available at: <http://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx>).

²⁴⁹ Office of the High Commissioner for Human Rights, *Special Rapporteur on extreme poverty and human rights* (available at: <http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx>).

²⁵⁰ *Ibid.*

Where individuals or advocates are concerned about the impact of laws or policies on people experiencing homelessness, the Special Rapporteur encourages individual complaints.

An example of what this complaints process looks like in practice – including the complaint, the letter of allegation (which includes targeted questions and requests for evidence), the country response and associated media releases and local advocacy – are discussed below in relation to laws prohibiting rough sleeping in Hungary.

Complaints to the Special Rapporteur – the case of Hungary

Background

In April 2011, the Budapest City Council issued a decree that made sleeping on the street an offence and subjected people sleeping rough to fines of €200 and detention. Based on these amendments, during October 2011, Budapest police allegedly evicted homeless persons from 13 underpasses in the inner city and demolished multiple self-made shelters in various parts of the city. The evicted persons were reportedly not provided with alternative shelter options and some were arrested.

In November 2011, the Hungarian Parliament introduced a law which allowed for the imprisonment (up to 60 days) or a €600 fine for people found guilty of rough sleeping twice in a six month period.²⁵¹ The law refers to 'habitual residing' in public places.²⁵²

Individual complaint mechanism

An individual or agency can make an individual complaint to a Special Rapporteur about human rights concerns in their country. Unlike treaty body mechanisms, domestic avenues do not have to be exhausted before making an individual complaint, which makes it easier to incorporate this step into an organisation's advocacy strategy. The source of the individual complaint can also remain anonymous.

In response to an individual complaint, the Special Rapporteur, either herself or together with another Special Rapporteur can send a 'letter of allegation' to the head of a country identifying human rights concerns and presenting a series of questions. The country has 60 days to respond.

Letter of allegation, targeted questions and government response

On 21 December 2011, a letter of allegation was sent to the Hungarian Government by the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. The letter outlined the Special Rapporteurs' concerns about the human rights impact of the alleged laws and practices criminalising rough sleeping in Hungary. They presented a series of questions, including requests for:

- details of the shelter available to people experiencing homelessness in Hungary, particularly Budapest;
- details of a National Housing Strategy;
- information about any consultation that occurred in relation to the legislative amendments;
- information about any human rights impact assessment that was carried out in relation to the new laws;
- an estimate of the costs of enforcing the new laws; and

²⁵¹ See FEANTSA, *Monitoring Report*, above n 9, 76.

²⁵² See Ballint Missetics, 'The Criminalisation of Homelessness in Hungary' in Evangelista and Jones, above n 65, 103, 104.

- information about the legal resources available to people affected by the new legislation, including the provision of legal aid.²⁵³

The Hungarian Government provided a detailed response on 21 February 2012,²⁵⁴ but before it had done so (it was outside the 60 day period), the Special Rapporteurs issued a press release: *Hungary's homeless need roofs, not handcuffs* calling on Hungary to reconsider the legislation.²⁵⁵

Successful constitutional challenge

The City is for All, an organisation of 'homeless and formerly homeless people, those struggling with housing problems and their allies',²⁵⁶ initiated a constitutional challenge of the legislation prohibiting rough sleeping.

In 2012, the Hungarian Constitutional Court (decision II/1477/2012) annulled the legislation as contravening the constitutional requirements for legal certainty and the protection of the right to human dignity and the right to property.²⁵⁷

The Special Rapporteurs issued another press release: *UN experts urge Hungary to uphold Constitutional Court decision to decriminalize homelessness*,²⁵⁸ which called on the Hungarian Government: 'to uphold the recent Constitutional Court decision decriminalizing homelessness, to amend the anti-homeless legislation and to adopt a national housing strategy, which will take into account the needs and views of the homeless and those inadequately housed, in conformity with international human rights obligations'.²⁵⁹

Outcome – the impact of grassroots advocacy and human rights accountability

Ordinarily, this would have been a successful outcome and a strong positive example of the role grassroots advocacy, litigation and international human rights mechanisms can play in reforming laws that criminalise homelessness.

However, the Hungarian Government was determined to have legislative power to prohibit rough sleeping and amended the Constitution to reflect this. On 11 March 2013 the Hungarian Parliament adopted the Fourth Amendment to Hungary's *Fundamental Law*. Article 8(3) of the amendment states: 'an Act of Parliament or local government decree may outlaw the use of certain public spaces for habitation in order to preserve the public order, public safety, public health and cultural values'.²⁶⁰

The Special Rapporteurs issued a second letter of allegation on 12 March 2013 presenting a number of questions, including in relation to consultation about the constitutional changes, consideration of the human rights impact of the changes, current housing and homelessness strategies and whether any assessment was conducted about the impact of the previous legislation and relevant details (including the number of people arrested or detained under the legislation, the number of people fined and whether or not the legislation had any impact on the extent of homelessness and rough sleeping in Budapest or other municipalities).²⁶¹

²⁵³ See Hungary 2013 Letter of Allegation, above n 31.

²⁵⁴ Government of Hungary Response to Joint Urgent Appeal 2013, above n 136.

²⁵⁵ Press release: Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on extreme poverty and human rights, *Hungary's homeless need roofs, not handcuffs – UN experts on poverty and housing* (15 February 2012) (available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11829&LangID=E>).

²⁵⁶ The City is For All, *Who are we?* (available at: http://avarosminderkie.blog.hu/2011/12/04/who_are_we_3).

²⁵⁷ See Hungary 2013 Letter of Allegation, above n 31, 2.

²⁵⁸ Press release: Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on extreme poverty and human rights, *UN experts urge Hungary to uphold Constitutional Court decision to decriminalize homelessness* (11 December 2012) (available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12881&LangID=E>).

²⁵⁹ Ibid.

²⁶⁰ See Hungary 2013 Letter of Allegation, above n 31.

²⁶¹ Ibid.

The Hungarian Government responded on 19 April 2013 indicating that:

The Amendment, in accordance with the international obligations of Hungary, neither aims at criminalizing homeless people nor does it contain a general prohibition regarding homelessness. The Amendment provides the State and local governments with a constitutional possibility of regulation: the Amendment entitles them to prohibit permanent living in specific areas (but only in certain and not all areas) of public spaces, when necessary in the interest of protecting public order, public safety, public health and cultural values.²⁶²

While not successful in bringing about the repeal of the problematic laws, there is an indication from local advocates that the spotlight of international human rights mechanisms and local community organisers has led to increased accountability of law enforcement officers and potentially to more restrained enforcement of the laws than was feared. Missetics states:

As far as the criminalisation of street homelessness ... there seems to be an apparent inconsistency between government rhetoric and the actual practice of law enforcement. Besides the operational and financial constraints of law enforcement agencies, this may also be due to the widespread public criticism of punitive measures in general and, in particular, to powerful grassroots mobilisation of homeless people and their allies.²⁶³

The spotlight and scrutiny of international human rights experts, combined with the attention of local advocates, can be powerful tools for increasing government accountability in relation to the enforcement of laws regulating public space. We need to keep these mechanisms in mind as part of our advocacy strategies for reducing the existence and impact of enforcement-based approaches to homelessness in our communities.

²⁶² Government of Hungary Response to Joint Urgent Appeal 2013, above n 136.

²⁶³ Balint Missetics, 'The Criminalisation of Homelessness in Hungary' in Evangelista and Jones, above n 65, 109.