

File No: CI 07 01-52103

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

THE NATIONAL ANTI-POVERTY ORGANIZATION,

plaintiff,

- and -

THE CITY OF WINNIPEG,

defendant.

STATEMENT OF CLAIM

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TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Queen's Bench Rules*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN 20 DAYS after this statement of claim is served on you, if you are served in Manitoba.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May 28, 2007

Issued by

Registrar

TO: The City of Winnipeg
City Clerk's Office
Council Building
510 Main Street
Winnipeg, Manitoba
R3B 1B9

The Claim

1. The plaintiff seeks:
 - (a) A declaration that the prohibition on the solicitation of a “captive audience” under ss. 2 and 3 of *The Obstructive Solicitation By-Law No. 7700/2000* (the “By-Law”) violates s. 2(b) of the *Canadian Charter of Rights and Freedoms* (the “Charter”) both in purpose and in effect by restricting the content of, the location where, the manner in which and the persons with whom panhandlers may engage in the peaceful solicitation of donations for themselves or for others which is protected expressive activity within the meaning of s. 2(b) of the Charter;
 - (b) A declaration that the prohibition on the solicitation of a “captive audience” under ss. 2 and 3 of the By-Law violates the right to liberty and the right to security of the person protected under s. 7 of the Charter in a manner that does not accord with the principles of fundamental justice due to its overbreadth, vagueness and arbitrariness;
 - (c) A declaration that the prohibition on the solicitation of a “captive audience” under ss. 2 and 3 of the By-Law violates s. 15 of the Charter given its undue adverse effect upon panhandlers, a group comprised disproportionately of those who are poor, homeless, Aboriginal, intellectually or physically disabled, mentally ill or addicted to drugs or alcohol;
 - (d) A declaration that the violations of ss. 2(b), 7 and 15 of the Charter set out above cannot be reasonably and demonstrably justified in a free and democratic society under s. 1 of the Charter;
 - (e) A declaration that the prohibition on the solicitation of a “captive audience” under ss. 2 and 3 of the By-Law is of no force and effect in light of these unjustifiable Charter violations;

- (f) An order striking out the words “to solicit a captive audience” under the definition of “cause an obstruction” in s. 2 of the By-Law;
- (g) An order striking out the definition of “captive audience” in s. 2 of the By-Law;
- (h) Costs, including advance costs, in any event of the cause; and
- (i) Such further and other relief as counsel may advise and the Court may deem just.

The Plaintiff

2. The plaintiff, the National Anti-Poverty Organization ("NAPO"), is a national, non-profit, member-based organization, incorporated under the laws of Canada in 1973 with its head office in Ottawa, Ontario. NAPO is comprised of regular, associate and group members. Regular members must either be living in poverty or have previously lived in poverty. Of the NAPO regular members and donors living in Manitoba, most live in Winnipeg.
3. NAPO is governed by a volunteer Board of Directors comprised entirely of regular members in order to ensure that the policies and decisions of NAPO are directed by people with the shared experience of living or having lived in poverty.
4. The mandate of NAPO is to: (1) facilitate low income people being heard and having their view points reflected in federal policies and decision-making; (2) defend the human and economic rights of low income people in Canada; and (3) assist local and regional organizations to bring the voices of low income people in Canada to decision-making and policy-making processes in their communities.

5. In support of this mandate, NAPO:
 - (a) raises awareness among the public and decision-makers on topics such as:
 - i. the need for national, provincial and territorial poverty eradication plans;
 - ii. income security issues relating to minimum wages, social assistance and guaranteed income; and
 - iii. the need for other social supports such as affordable housing and child care;
 - (b) organizes meetings and workshops with and for low income people and organizations representing their interests;
 - (c) organizes national coalitions around issues of concern; and
 - (d) appears when requested before parliamentary committees to speak on issues of concern to low income people.

6. NAPO has represented the interests of low income people in a number of legal proceedings at a variety of forums including the Federal Court and the Supreme Court of Canada. Among these proceedings are matters related to *The Canada Assistance Plan*, social assistance overpayments, the equality rights of low income people and the rights of low income public utility consumers.

7. NAPO has also represented the interests of persons who panhandle in cases challenging panhandling by-laws in British Columbia and Manitoba. Beginning in 1999, NAPO participated as part of the coalition of plaintiffs before the British Columbia Supreme Court in a challenge to Vancouver's panhandling By-Law No. 8309.

8. In October of 1999, NAPO was recognized as having public interest standing during a challenge to the validity of the City of Winnipeg's panhandling By-Law No. 6555/95. That by-law was subsequently repealed and replaced by *The Obstructive Solicitation By-Law No. 7700/2000* pursuant to an agreement reached between NAPO and the City of Winnipeg.

The Defendant

9. The defendant, the City of Winnipeg, is a body corporate under *The City of Winnipeg Charter*. It exercises its powers through the Council elected in accordance with *The City of Winnipeg Charter*.

The By-Law

10. The By-Law was passed by Council on September 20, 2000. Section 3 provided that "no person shall solicit in a manner which causes an obstruction." The term "solicit" was defined as "to ask whether by spoken, written or printed word, for donations of money or other things of value for one's self or for any other person".
11. The definition of "cause an obstruction" was originally restricted to certain behaviours which were considered to be aggressive, obstructive, harassing, or intimidating such as:
 - (a) verbally threatening or insulting a pedestrian;
 - (b) impeding the convenient passage of pedestrian traffic;
 - (c) continuing to solicit after an original negative response; and
 - (d) physically approaching a pedestrian as a member of a group of three or more persons.

12. On June 29, 2005, the By-Law was amended by Council. In addition to prohibiting what were previously considered to be aggressive, obstructive, harassing, or intimidating behaviours, the amended By-Law prohibited the peaceful solicitation of donations in certain locations from certain people. The definition of "cause an obstruction" was broadened to include "to solicit a captive audience". A "captive audience" was defined to include a person:
- (a) waiting at a transit stop or a taxi stand;
 - (b) in a parking lot;
 - (c) in a public transit vehicle;
 - (d) in an elevator, skywalk, parking lot or outdoor patio;
 - (e) using, waiting to use or departing from a public pay telephone, an automated teller machine, a bank or a credit union; or
 - (f) getting into or out of a parked vehicle.
13. The definition of "solicit" was also broadened to include gestures as well as spoken, written or printed words.
14. Under s. 178(1) of *The City of Winnipeg Charter*, a person found guilty of a by-law offence is subject to a maximum fine of \$1000 or a maximum prison term of six months, or both.

The Effect of the By-Law

Panhandlers

15. Panhandlers are citizens living in poverty who ask for donations for themselves or for others, in places generally accessible to the public, by

gesture or by spoken or written communication with passers-by.

16. As a group, panhandlers exist on the economic and social margins of society. The group is comprised virtually exclusively of low income people. Most of these citizens are Aboriginal, homeless and indigent. Many panhandlers have some kind of significant mental or physical disability or suffer from mental illness. Others are addicted to alcohol or drugs. Some of these individuals are street youth who have no family or guardian or who have been estranged from their families and are living beyond the control and protection of any responsible adult.

The Purpose and Effects of the “Captive Audience” Provision

17. The true purpose of the “captive audience” provision of the the By-Law is to distance and separate panhandlers from the rest of the population and to avoid the discomfort of proximity to indigents in public places. This is not an acceptable purpose in the Canadian justice system.
18. The “captive audience” provision of the the By-Law affects panhandlers by prohibiting the peaceful solicitation of donations in many different locations from many different people. It sanctions peaceful communications by imprisonment or by fine.
19. The effect of the “captive audience” provision is to prohibit or to severely restrict the peaceful solicitation of donations by low income persons in large swaths of the urban core of the city of Winnipeg as well as elsewhere in the city where panhandlers tend to panhandle and where citizens tend to congregate, visit, do business and travel.
20. The By-law exacerbates the pre-existing social and economic disadvantage of panhandlers. It violates their right to freedom of expression and places an especially heavy burden on those with severely limited resources with which to express their views. By imposing a fine or imprisonment as

penalties for peaceful activities, the By-Law wrongly sanctions conduct that is not morally blameworthy.

The Violation of Freedom of Expression

21. A central element of the peaceful solicitation of donations for one's self or for others is a plea for help. Peaceful panhandling involves both a communication of a personal plight and a reminder to the public of the existence of poverty. It is protected expression within the meaning of s. 2 (b) of the Charter.
22. Peaceful panhandling serves as a vehicle for political expression and a means of personal fulfilment. For some low income people, panhandling is the only accessible means by which they can readily communicate their daily reality.
23. The public spaces of Winnipeg are contemporary crossroads where people tend to gather, speak with each other, shop, and travel. Sidewalks and other public areas are traditional forums for expression. By restricting the content of, location where, manner in which and persons with whom panhandlers may engage in the peaceful solicitation of donations for themselves or for others in many public spaces within the city of Winnipeg, the “captive audience” provision of the By-Law violates s. 2(b) of the Charter.

The Deprivation of Liberty and Security of the Person

24. The “captive audience” provision of the By-Law penalizes peaceful expressive activities. It violates the right to liberty by creating an offence punishable by imprisonment. It deprives panhandlers of their right to security of the person by restricting their personal autonomy and by impinging upon their psychological integrity.
25. These deprivations of liberty and of security of the person are not in

accordance with the principles of fundamental justice. The offence of soliciting a captive audience is defined so broadly as to encompass conduct incapable of causing any blameworthy harm. Due to its vagueness, the By-Law provides an unintelligible standard both for the citizens it governs and the officials who must enforce it.

26. The deprivation imposed by the “captive audience” provision is also arbitrary in that it is inconsistent with or bears no relationship to the defendant's stated objectives in passing the By-Law.

Discrimination

27. The By-Law sends a message that panhandlers are less worthy of dignity and respect than other Manitoban citizens. It denies panhandlers the equal protection and benefit of the law and equality before and under the law based on personal characteristics which are prohibited grounds of discrimination including poverty, homelessness, disability, race and addiction to drugs or alcohol.
28. The By-Law has a disproportionate adverse effect upon panhandlers by restricting their ability to peacefully use and enjoy public spaces, to express themselves and to meet their basic needs. It exacerbates the pre-existing stigmatization of panhandlers by penalizing behaviours that are peaceful, benign and lacking in moral blameworthiness.

Public Interest Standing

29. In preparing this statement of claim, NAPO considered a survey of 75 panhandlers within the city of Winnipeg in order to better understand their personal circumstances and the impact of the “captive audience” provision upon panhandlers in Winnipeg.
30. NAPO has an interest in the By-Law based on its interest in defending the human and economic rights of low income people in Canada. The By-Law

punishes the victims of economic and social policy failures of government. It is vital to NAPO and to the disadvantaged constituency represented by NAPO that, where appropriate, such laws be declared to be beyond the power of governments in order to prevent further victimization of the poor.

31. Panhandlers themselves are unlikely to be able to challenge the By-Law in an effective manner. The transient lifestyle of most panhandlers means they cannot sustain a Court case which may extend over several years and several levels of appeal. In addition, the disabilities and disadvantages suffered by many panhandlers make it difficult or impossible to provide ongoing instructions and strategic advice to counsel in the context of protracted civil litigation.
32. On the other hand, NAPO is willing to mount and direct the kind of challenge which ensures that the Court has before it all the available arguments and evidence on behalf of panhandlers in order that it can render a just decision.

Section 1 of the Charter

33. In relation to the Charter issues raised in this claim, NAPO further states that the prohibition is not saved as a reasonable limit under s. 1 of the Charter. NAPO reserves the right to plea in reply to any argument by the defendant seeking to justify the prohibition under s. 1.
34. Based on the foregoing, NAPO prays for the relief as set out in this claim.
35. NAPO pleads and relies upon:
 - (a) *The Obstructive Solicitation By-Law No. 7700/2000;*
 - (b) *The Canadian Charter of Rights and Freedoms, Part I of the Constitution*

Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11;

(c) *The City of Winnipeg Charter, S.M. 2002, c. 39;*

(d) *The Court of Queen's Bench Act, C.C.S.M., c. C280.*

Date: May 28, 2007

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