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# Tickets ... and More Tickets: A Case Study of the Enforcement of the Ontario Safe Streets Act

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Les réglementations visant des comportements antisociaux se multiplient dans les sociétés occidentales, mais il existe peu d'analyses statistiques, en particulier au Canada, sur les façons dont celles-ci sont appliquées. Dans cet article, nous présentons une étude que nous avons réalisée sur l'application, à Toronto, de la *Loi sur la sécurité dans les rues* de l'Ontario. Nous montrons que, de 2000 à 2010, le nombre de contraventions liées à cette loi a augmenté de 2 000 pour cent, et que la plupart de ces contraventions ont été données à des itinérants. De plus, cette augmentation n'est le résultat ni d'une augmentation des taux de criminalité, ni d'une augmentation des pratiques de sollicitation agressives, ni de plaintes généralisées de la part de commerçants ou de citoyens, ni de la réaction de la police aux agissements de gangs de rue, ni d'une volonté de générer plus de revenus. Nous avançons donc que de telles réglementations visant des comportements antisociaux sont en fait des mesures peu judicieuses et inappropriées adoptées en réaction à la présence bien visible des itinérants.

**Mots clés :** *Loi sur la sécurité dans les rues* de l'Ontario, maintien de l'ordre, mendicité, itinérance

Anti-social behaviour statutes are proliferating in western societies, yet little statistical analysis has been conducted on their enforcement patterns and trends, particularly in Canada. A study of the Ontario Safe Streets Act enforcement in Toronto shows a 2,000 percent increase in tickets from 2000 to 2010, with most being issued downtown to homeless individuals. Further research shows that this increase is not the result of increasing crime rates, increases in aggressive solicitation practices, widespread complaints from businesses or the public, or police responses to gangs, nor is it for revenue generation. We argue such anti-social behaviour statutes are a misguided public policy response to the visibility of homelessness.

**Keywords:** Ontario Safe Streets Act, anti-disorder policing, panhandling, homelessness

## INTRODUCTION

Legal responses to panhandling, squeegee cleaning, and other forms of anti-social behaviours associated with homelessness have grown considerably in many cities in the United States as well as in the United Kingdom over the past two decades (Beckett and Herbert 2008, 2010a; Crawford 2009; Ericson 2007).<sup>1</sup> In Canada, several municipalities have recently enacted bylaws to curb activities such as begging/panhandling, squeegee cleaning, loitering, and sleeping in parks. Ontario and British Columbia have taken measures one step further by invoking provincial statutes to control these sorts of behaviours (Government of British Columbia 2004; Government of Ontario 1999). These laws, according to their proponents, are necessary because of the perceived public safety risk caused by growth in urban incivility.

This paper examines the enforcement of the Ontario Safe Streets Act (Government of Ontario 1999). A substantial body of critical writing and empirical research has accumulated in the United States and elsewhere arguing that poverty and homelessness are increasingly being criminalized through legislation like this act (American Bar Association 2009; Beckett and Herbert 2010a, 2010b; Gibson 2011). The use of policing and the criminal justice system has become key in the public policy response to homelessness. In Canada, a growing body of literature has also emerged that focuses on the policing of homelessness in a number of cities including Toronto (Esmonde 2002; Hermer and Mosher 2002; Parnaby 2003), Vancouver (Kennelly 2011; Sommers et al. 2005), and Montreal (Bellot et al. 2005; Bellot et al. 2008; Bellot, Sylvestre, and St Jacques 2011; Douglas 2011; Sylvestre 2010a, 2010b, 2011). Canadian analyses have mainly examined the wording of laws and statutes (Douglas 2011; Esmonde 2002; Sylvestre 2010a, 2010b, 2011), the conditions that give rise to such laws (Hermer and Mosher 2002; Parnaby 2003), and qualitative enforcement studies showing how homeless people are often subject to negative encounters with the

police (Gordon, 2004; 2007; Huey 2007; O'Grady and Bright 2002; O'Grady, Gaetz, and Buccieri 2011). What remains undeveloped, we argue, is quantitative research exploring the application of these laws for controlling levels of disorderly/anti-social behaviour. The degree to which such measures are being enforced by the police and dealt with by the courts remains unclear.

Policing, far from being an "objective and neutral" practice, inevitably involves a degree of discretionary decision-making that is influenced in subtle and complex ways by individual perceptions of the nature of criminality, the "culture of policing," and both overt and implicit public pressure and political directions to encounter particular sub-populations perceived to be a visible nuisance and potentially more criminally involved. This pattern is perhaps most clearly established in relation to racial profiling, which the Ontario Human Rights Commission (2011) defines as "any action undertaken for reasons of safety, security or public protection, that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of origin, or a combination of these, rather than on a reasonable suspicion, to single out an individual for greater scrutiny or different treatment" (n.p.).

The literature on "police profiling" suggests that with or without explicit approval (through policy, for instance), it is not unusual for police to generalize and essentialize criminality across population groups, particularly visible minorities (Satzewich and Shaffir 2009; Wortley and Owusu-Bempah 2011). We argue that the premise behind racial profiling can be extended to broader notions of social profiling. Under social profiling, some individuals are signalled out for increased police attention based on factors such as poverty and/or homelessness (Sylvestre 2011).

Recent statements made publicly by high-ranking city officials indicate that social profiling exists in the City of Toronto. For instance, in a 2011 newspaper interview, Deputy Mayor Doug Holyday

stated in regards to the homeless: "I don't know if it's a matter of tossing them in jail but it's letting them know they're not allowed to utilize public space [in a way] that makes it their own. I know in New York City, they don't allow people to sleep on sidewalks or public benches and they move them on. We should look at what other jurisdictions are doing" (Yuen 2011, n.p.).

Despite anti-social behaviour legislation already instituted through the OSSA, political leaders in Toronto regularly use the media to call for newer and harsher laws to regulate the city's homeless population. These sentiments are further demonstrated by Councillor Giorgio Mammoliti's statements to local press: "We do need to take them off the streets and we need to do it forcefully ... We need to change the necessary bylaws and the Act provincially to enable us to do it" (Talbot 2011). The prevalence of these kinds of statements in the press means that the general public, as well as police officers, are regularly exposed to anti-homeless rhetoric from city officials. Unless checked by deliberate policy and training, police attitudes regarding the reputations of marginalized groups can be based on perceptions that may be biased or inaccurate, leading them to generalize ideas about criminality broadly within groups and categories of persons well beyond those who are actually engaging in criminal acts. This generalizing may result in more frequent stop and searches, and differential treatment in terms of how information is gathered from suspects, victims, and witnesses, and how justice is meted out through decisions to arrest (or not) and in court proceedings. The perception and identification of the homeless as "potential" or "actual" criminals may then mean that well-meaning homeless people who are not criminally involved nevertheless have difficulty in avoiding confrontational encounters with the police.

We define the criminalization of homelessness as the extraordinary use of laws and practices to restrict the activities, movements, and use of public space by people who are homeless. In other words it is the status of the person and the visibility of their

homelessness that is responded to rather than their criminality. The criminalization of homelessness in Toronto has been operationalized through several interconnected strategies and practices including, first, the enactment of new laws and ordinances, second, enforcement of existing laws, and third, "stop and searches" and other practices intended to get people to move on. In response to ongoing calls by provincial and municipal politicians, editorialists in the tabloid press, and organized groups of citizens and businesses who sporadically call on the police to "crack down" on "urban outcasts," several jurisdictions have passed laws restricting the economic strategies of homeless persons, such as panhandling and squeegee cleaning. The Ontario Safe Streets Act is one example of this.

Focusing on Toronto, Canada's largest city with a population of 2.6 million, this paper addresses the issue through an analysis of statistical trends, measuring the number of "urban incivilities" that have been recorded by officials in a Canadian context. Besides anecdotal accounts, there is insufficient information about who receives these tickets, in what spaces and places, and the financial implications associated with these laws for both those who receive tickets as well as for the state that issues them. Using Toronto data, this paper addresses these key issues to better understand what happens when the streets in Canada are made "safer" through anti-social behaviour legislation.

## THE ONTARIO SAFE STREETS ACT

The Ontario Safe Streets Act (OSSA) came into effect on 31 January 2000. The three main categories of offences enumerated in the act include aggressive panhandling, solicitation of a captive audience (e.g., a person in a vehicle or waiting in line for a bank machine or public transit), and unsafe disposal of used condoms, needles, and broken glass. In the OSSA, "solicitation" is defined in fairly broad terms, meaning 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" (Government of Ontario 1999).

The OSSA allows for penalties of up to \$500 for a first offence, and up to \$1,000 or imprisonment for a term of not more than six months for each subsequent offence. Once a ticket has been issued, the recipient has 15 days to plead guilty and pay the fine, plead not guilty and schedule a trial or first attendance, or plead guilty with an explanation (Justice for Children and Youth 2005). In the event that the recipient fails to enact any of these three options, s/he will be issued a default certificate with an order to pay the fine, and may be subject to penalties such as an inability to acquire or renew a driver's licence until the fine is paid, as well as the possibility of an arrest warrant being issued for repeatedly ignoring court orders to pay fines (Justice for Children and Youth 2005). Accumulated fines do not disappear, and as of 11 November 2012, the City of Toronto website states that after a period of time the municipality will retain a collection agency to recover the debt, and / or use other forms of civil enforcement.

Following from examples of similar American legislation, the framers of the OSSA avoided the use of the term "homelessness" to emphasize that the legislation was about safety and deterring dangerous behaviour rather than the status of the person engaging in the activity. Yet, we argue, while never mentioning homelessness specifically, the OSSA clearly targets homeless persons as a result of the growing visibility of homelessness in Toronto and other major cities in Canada in the 1990s. It is now generally accepted that the origins of the OSSA had much to do with the moral panic around "squeegee kids" in large cities in Ontario such as Toronto in the late 1990s (cf. Parnaby 2003). This dramatic increase in visible homelessness (Gaetz 2010) coincided with rapid gentrification of the downtown Toronto core (Hulchanski 2007). At that time it was common for motorists to encounter squeegee-toting

street youth who would wash car windshields for spare change, and more and more panhandlers became visible on city streets.

In 1999, a survey of 360 street youth aged 16–24 in Toronto revealed that some 30 percent were involved in some level of squeegee cleaning or panhandling (Gaetz and O'Grady 2002). Increasingly around this period, panhandlers and squeegee cleaners were framed by local politicians and much of the news media as highly visible symbols of street crime and urban decay, and as a public nuisance that threatened public safety and the livelihood of downtown businesses and tourism (Parnaby 2003). Mayor Mel Lastman, referring to such youth as "thugs and criminals," stated, "The moment the provincial government gives us the legislation to get rid of them, we're going to get rid of them. We are going to get them out of the City of Toronto because they are a disaster" (Honeywell 1998, n.p.).

In response to numerous calls by municipal politicians and the news media for higher levels of government to "do something," the Province of Ontario enacted the Safe Streets Act. Critics of the law, like Hermer and Mosher (2002), pointed out that there were already provisions in the Criminal Code to deal with aggressive and illegal behaviours on sidewalks and motorways.

Even though the term "homelessness" is not contained in the OSSA (nor is the term "squeegeeing"), we are confident in the following two suppositions: first, the OSSA was invoked largely as a response to the growing presence and visibility of homeless squeegeers and panhandlers in Toronto during the mid to late 1990s and not simply to deter "aggressive" acts;<sup>2</sup> and second, it was established to give the authorities the ability to tackle other forms of "disorderly conduct."

What the existing literature currently lacks is a detailed examination of the *city-level* trends in penalties given to those charged with being in violation of anti-disorder statutes. While it is important to

argue that laws such as the OSSA may ultimately result in the criminalization of homelessness, detailed information about how this unfolds *empirically* is lacking, particularly in Canada. To this end, we now turn to an analysis of the enforcement of the OSSA.

## METHODS AND DATA

This study used a mixed methodology. We began with a review of official police statistical data on the number of OSSA tickets issued by the Toronto Police Service (TPS) from 2000 to 2010. These statistics were obtained from public documents published by the Toronto Police Service, in addition to data acquired through three Freedom of Information Requests issued to the TPS. These data cover a broad time span and have been broken down according to Toronto Police divisions. Although we did not attempt to interview police officers or municipal politicians as part of this study, we did analyse local newspaper reports and documents from the City of Toronto relating to the OSSA to better understand

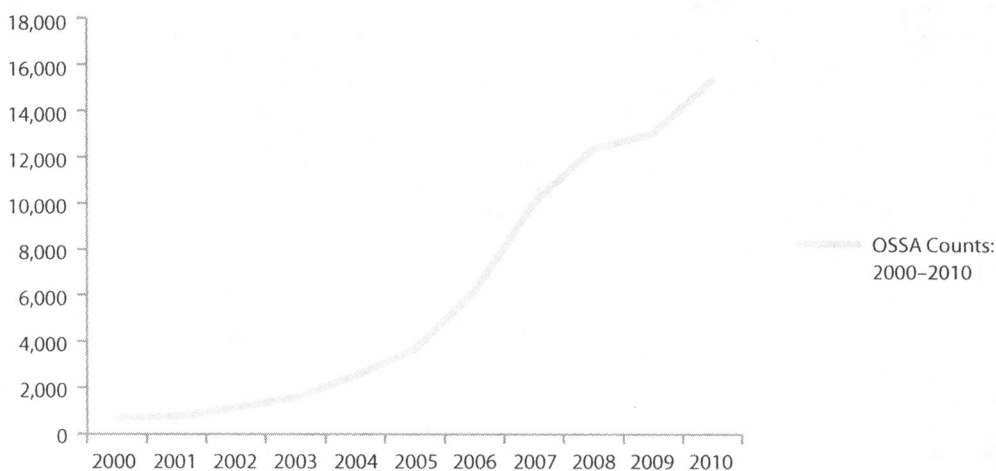
the positions of these officials. We also used statistical data obtained from the Ontario Ministry of Community Safety and the Corrections Offender Tracking Information System in order to determine how many custody orders were issued in Ontario for violations related to the OSSA. Data from Statistics Canada's Uniform Crime Reporting (UCR) system were also used in the analysis.

## FINDINGS

Our analysis begins by presenting data obtained from the TPS which were taken from an April 2008 Toronto Police Services Board meeting report, in addition to data obtained through a Freedom of Information request issued to the TPS. We begin by examining trends in the volume of OSSA tickets issued by members of the Toronto Police Service from 2000 to 2010.

Figure 1 displays the number of OSSA tickets issued by the TPS between 2000 and 2010. Over this

FIGURE 1  
OSSA Counts in Toronto, 2000–10



Source: Data were obtained through Access to Information requests issued to the Toronto Police Service in 2010 and 2011.

period there was an overall increase of over 2000 percent in the number of tickets issued by members of the TPS, peaking in 2010 at 15,551.

As shown in Table 1, there is little doubt that OSSA tickets issued by the TPS between 2005 and 2009 were given more often to adults (25 and over) than to youth.<sup>3</sup> In fact, the modal age of those who were ticketed over this period was 43 years. This fact is likely attributable to the higher number of adults than youth in Toronto's homeless population. Adults may also have acquired more tickets as a result of extended time spent on the street. In one such example, a local newspaper reported that court records showed a 66-year-old man who died in 2012 owed \$34,833 in unpaid tickets, primarily for OSSA panhandling violations (Donkin 2012).

Despite the press coverage of the man's outstanding fines, the overall increase in the number of OSSA tickets issued has received only marginal media attention. One notable exception was in 2007, when the Canadian Broadcasting Corporation

reported a sharp rise in panhandling tickets issued in Toronto (CBC 2007). Police who were interviewed for the story estimated that over 90 percent of tickets were issued to panhandlers with no fixed address. Similar results were found in a study that explored ticketing practices in Ottawa and Montreal (Sylvestre 2010a). The CBC report added that the police believed very few violators paid the fines or showed up for court dates.

Much of the media coverage on the OSSA (admittedly scarce) provided mixed accounts, with some politicians calling for more legislative controls for dealing with panhandlers and police suggesting that the non-payment of fines indicated that legislation was an ineffective way to deal with the problem. Given these inconsistencies and the rise in OSSA-issued tickets, we proposed and explored five possible explanations for the increase: (1) a general increase in the level of crime; (2) an increase in the homeless population and/or aggressive solicitation practices; (3) widespread complaints from businesses and/or the general public; (4) relation to

TABLE 1  
OSSA Tickets Issued by Toronto Police Service by Age, 2005–09

Year	2009	2008	2007	2006	2005
	<i>N</i>	<i>N</i>	<i>N</i>	<i>N</i>	<i>N</i>
	%	%	%	%	%
Ages 16–24	525 4.8	578 5.0	484 4.8	315 5.0	226 6.3
Ages 25+	10,822 95.2	11,486 95	10,027 95.2	6,144 95	3,589 94.7
Missing cases	(58)	(61)	(73)	(38)	(9)
Total	11,405	12,125	10,584	6,497	3,824

Note: There was a significant difference in the number of tickets for the 16–24 age group ( $M=425.6$ ,  $SD=148.82$ ) and the 25+ group ( $M=8413.60$ ,  $SD=3401.37$ ).  $t=-5.247$   $p<.001$ .

Source: Data were provided by the Toronto Police Service through an Access to Information request in 2010.

gang-related crime initiatives; and (5) efforts at revenue generation. What our analysis revealed was that none of these explanations accounted for the rise in OSSA ticketing in Toronto.

**Increasing Levels of Crime**

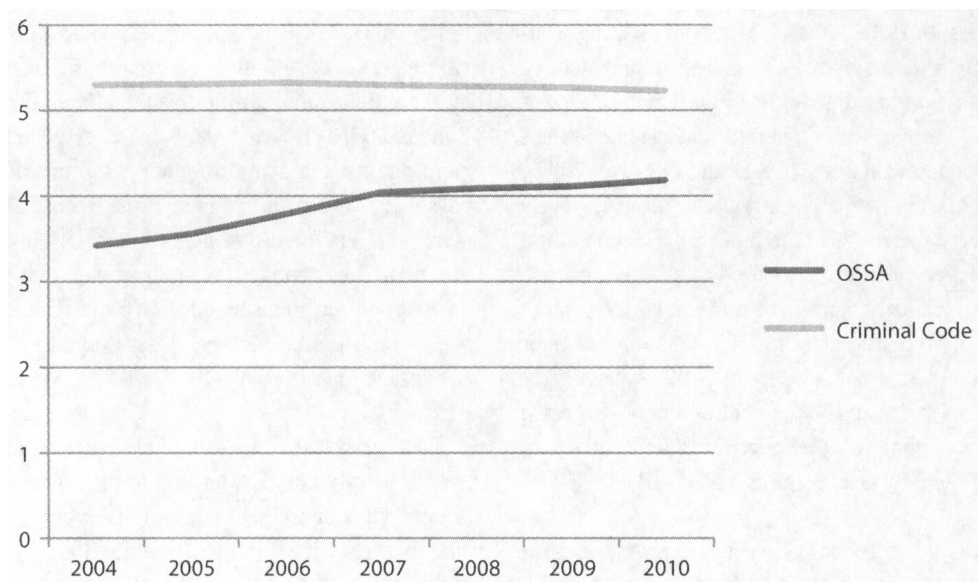
It should be noted that while OSSA tickets grew exponentially from 2000 to 2010, levels of police-reported Criminal Code violations were falling at both the municipal and provincial levels. According to the Statistics Canada Uniform Crime Reporting Survey, the crime rate in 2000 for Ontario was 6,421 per 100,000 (Statistics Canada 2001) compared to 4,458 per 100,000 in 2010 (Statistics Canada 2011)—a clear decline in the provincial crime rate for the period since the OSSA has been in effect. A similar decline has been noted in Toronto. Consider the information displayed in Figure 2:

From Figure 2 it is clear there is a strong inverse relationship between OSSA infractions and criminal code violations in Toronto from 2004 to 2010, refuting the idea that the increase in OSSA tickets resulted from an upsurge in crime rates.<sup>4</sup>

**Increased Homeless Population and/or Aggressive Solicitation**

In April 2008, the minutes of the Toronto Police Services Board revealed a 288 percent increase in OSSA tickets issued from 2004 to 2007. The police services report was unable to come to any firm conclusions that would account for this rise. It did, however, offer two potential explanations: first, that there had been an increase in the number of panhandlers on the street, and second, that there had been an increase in the number of complaints received. Both are important to consider because

FIGURE 2  
 Logged Criminal Code and OSSA Counts for Toronto, 2004–10



Note:  $r = -.681$ ;  $p < .05$  (one tailed).

Source: Data were obtained from the Canadian Uniform Crime Reporting system and from an Access to Information request issued to the Toronto Police Service in 2011.



they reveal that the Toronto Police Services Board was interested, for undisclosed reasons, in knowing why there had been such a rise in OSSA tickets.

The first explanation of more tickets issued simply because there had been an increase in the number of unlawful panhandlers on the streets was accredited to “an increased readiness on the part of officers to use the Act” (Toronto Police Services Board 2008, 34). A problem with this explanation is that there is no evidence to support this contention. It should also be noted that the outdoor homeless population declined in Toronto from 818 in 2006 to 400 in 2009, while numbers using emergency shelters declined by 1.7 percent from 2006 and 2009 (City of Toronto 2009, 3). There is good reason to believe that the number of people panhandling on the streets of Toronto had actually *decreased* at the end of this time period, for at least two reasons.

First, enforcement of the OSSA has had a significant impact on panhandling and squeegeeing in the city. Research suggests a significant decline in these forms of income-generation strategies among the homeless. In 1999, research on money-making strategies of 365 homeless youth (under 25) found that 12 percent reported panhandling as their main source of income, and 17 percent reported squeegeeing as their main economic activity (Gaetz and O'Grady 2002). In 2009, there had been an extreme drop in levels of income generation that came from panhandling or squeegee cleaning, compared to the 1999 cohort. More specifically, zero males and only 1.7 percent of females reported that squeegee cleaning was their main money-making activity in 2009. Relatedly, .9 percent of males and 3.4 percent of females reported that panhandling was their *main* economic activity in 2009 (O'Grady, Gaetz, and Buccieri 2011).<sup>5</sup>

The City of Toronto Street Needs Assessment Report also showed a decline in panhandling (youth and adults) as a source of income, from 17.4 percent in 2006 down to 9.7 percent in 2009 (City of Toronto 2009).<sup>6</sup> Hence, the proposition made by the Toronto Police Services Board that there had

been an increase in panhandlers over this period is unsupported by statistical evidence.

The increased rates of ticketing also were not related to more aggressive practices by those who still squeegee or panhandle. Though designed to target “aggressive” behaviours, very few tickets issued under the OSSA from 2004 to 2010 were for aggressive solicitation, as shown in Figure 3.

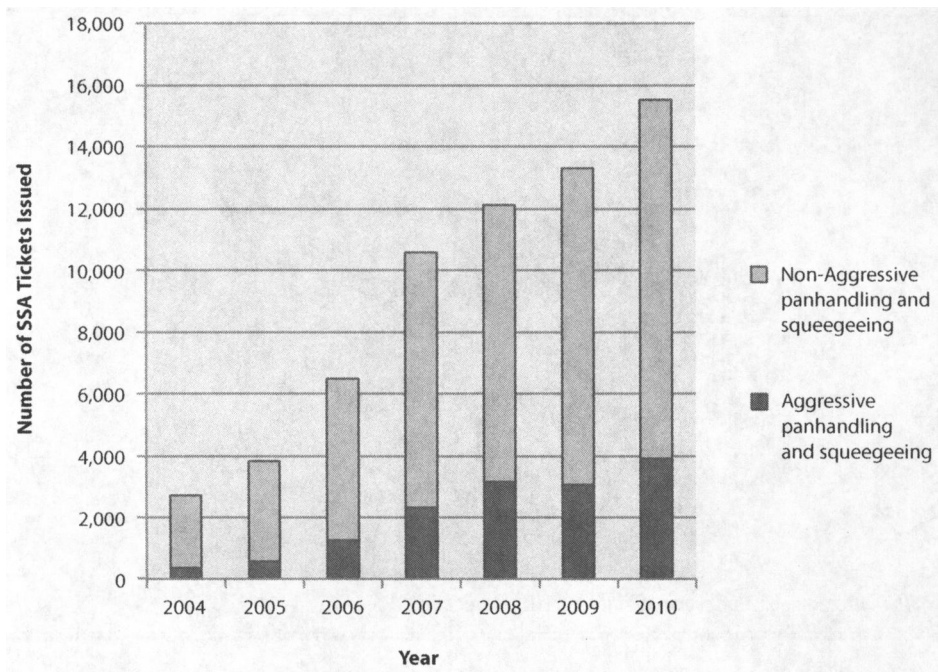
Rather than being used as a tool to curb aggressive acts, the OSSA has far more commonly been used to deter individuals from working beside roadways and/or in busy consumer areas. Thus, this research shows that the rise in OSSA tickets is not the result of an increased homeless population in Toronto or due to aggressive practices on the part of those who are fined, challenging the Toronto Police Services Board contention that police were simply enforcing the act and doing their job.

### **Widespread Complaints from Businesses and/or General Public**

The second consideration offered by the Toronto Police Services Board was the possibility of an “increase in the number of complaints received by the police about chronic panhandlers” (Toronto Police Services Board 2008, 34). Repeated enforcement against the same offender was considered a possibility as a result of complaints from business merchants and/or urban home owners.<sup>7</sup> However, the report was unable to reveal any data that would have supported this second viewpoint. In the end, the Toronto Police Services Board could not offer an explanation as to why OSSA ticketing was rising.

The areas in the city where OSSA ticketing has been most prevalent is an important aspect of the issue to consider. OSSA ticketing is a form of policing that falls clearly under the umbrella of “broken windows” policing, as outlined by Wilson and Kelling (1982) and Kelling and Coles (1997). The idea is that if signs of disorder (like “aggressive” panhandling and solicitations on roadways) are not targeted and quelled, they will lead to more serious

FIGURE 3  
Number of Non-Aggressive versus Aggressive OSSA Tickets Issued, 2004–10



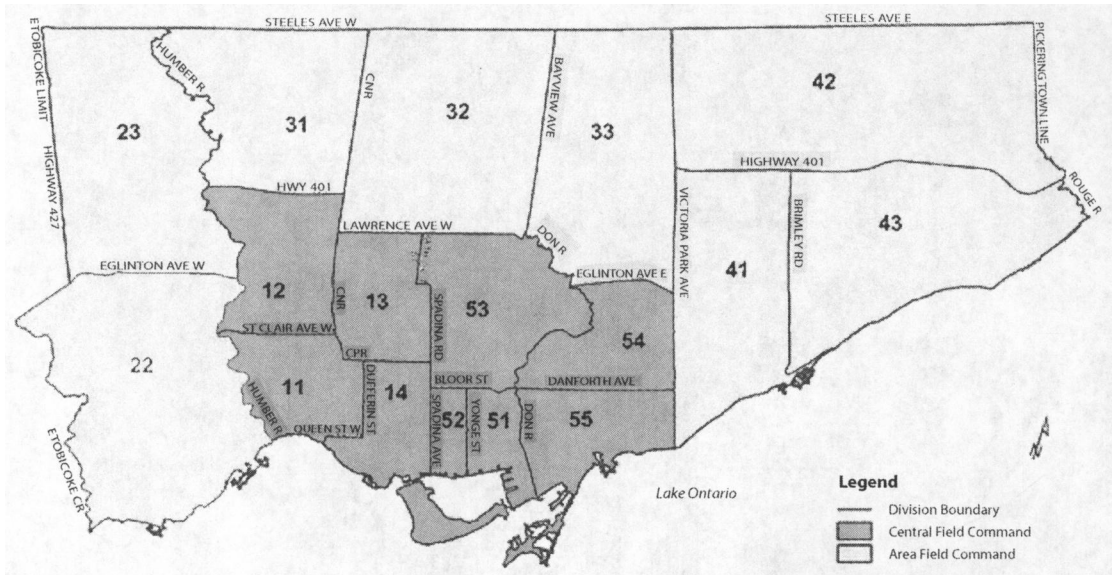
Source: Data were obtained from an Access to Information requests issued to the Toronto Police Service in 2010 and 2011.

anti-social behaviours and potentially even violence in the future. There is evidence that this model of policing has been practised in Toronto since the late 1990s, even before the OSSA was created. For instance, in 1999 the city spent \$1.8 million to place 680 additional officers on the streets in so-called “crime hot spots” to take part in what was called “community action policing” (Gordon 2007, 15). According to research by O’Grady and Greene (2003), much of this policing targeted “squeegee kids” who worked at intersections in the downtown core, within Central Command Division of the Toronto Police Service like Divisions 14, 51, and 52.

These findings are reconfirmed by a recent study showing that 54 percent of homeless youth in Toronto had received at least one ticket (for OSSA

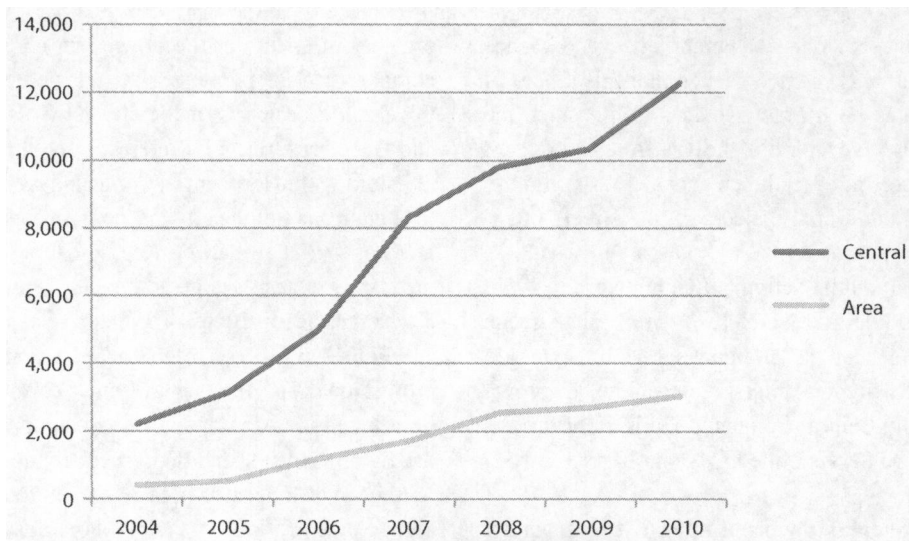
or other offences) in the downtown core. This is compared to 23 percent who reported receiving tickets in other parts of the city (O’Grady, Gaetz, and Buccieri 2011, 51). Interestingly, most of the divisions within the Central Command boundary are located in parts of the city that contain concentrated areas of tourist attractions (e.g., the CN Tower and the Harbour Front), large hotels, the Toronto Stock Exchange, head offices of Canada’s major banks, corporate law offices, high-end restaurants, large professional sporting venues such as the Rogers Centre and the Air Canada Centre, shopping (e.g., the Eaton Centre), and many new condominiums. At the same time, this area of the city also has a high concentration of visibly homeless people, in part because of the proximity of the majority of homelessness services in the city (there are 60

FIGURE 4  
Command and Divisional Boundaries



Source: <http://www.torontopolice.on.ca/divisions/map.php> (11 December 2010).

FIGURE 5  
OSSA Tickets Issued, 2004–10: Central Field and Area Field



Source: Data were obtained from an Access to Information request issued to the Toronto Police Service in 2011.

shelters and 60 day programs in Toronto, including Seaton House, which has over 400 beds). Alternatively, rises in OSSA tickets in the Area Command Divisions were considerably more modest during this period, suggesting that proximity to tourists and consumer industries may have played a significant role in increased ticketing in certain divisions.

**Policing Gang-Related Crime**

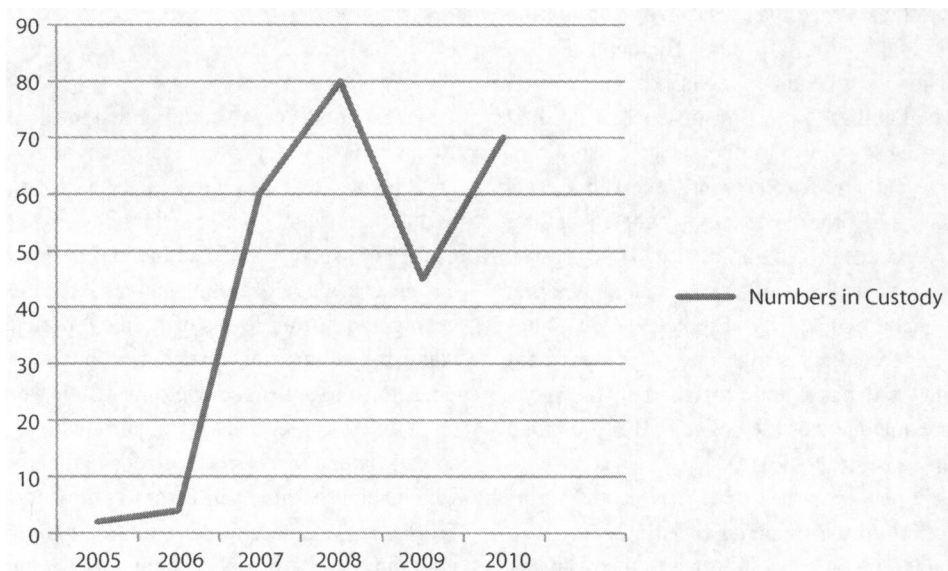
It is further worth adding to this discussion that the number of OSSA tickets issued in Toronto Police Service Division 31, responsible for the notorious Jane and Finch Corridor, a neighbourhood that has for years been associated with gangs, drugs, and gun violence, had relatively few OSSA tickets. More specifically, 31 Division had a total of 1,074 OSSA tickets from 2004 to 2009, while downtown 51 Division had more than ten times that number—a total of 11,522 tickets in the same period. Clearly, an area of the city that is well recognized for the presence

of anti-social behaviours like gang involvement, gun violence, and drug dealing is not being dealt with by the issuing of OSSA tickets. And while there is no evidence that a significant number of people who are homeless are gang involved, this disparity suggests that the enforcement of the OSSA is targeting the homeless and disenfranchised (and not just youth) in the urban core and largely not being used to deter anti-social behaviours more generally throughout the city.

**Revenue Generation**

Finally, our research shows that the rising rate of OSSA ticketing is proving to be much more costly than revenue generating. Data obtained from the Ministry of Community and Correctional Services (2011) reveal that between 2005 and 2010 a total of 253 custody orders were issued by Ontario courts for violations of Section 2 (f) of the OSSA: Soliciting a Person in a Vehicle on a Roadway.<sup>8</sup> As shown in Figure 6, numbers of admissions to custody for

**FIGURE 6**  
Custody Orders for Soliciting a Person in a Vehicle on a Roadway in Ontario, 2005–10



Source: Data were obtained from the Ontario Ministry of Safety and Corrections, Offender Tracking Information System, in 2011.

being in violation of this section of the OSSA have been rising over this six-year period. Information was also gathered from the ministry that suggests that the average length of sentence was 16.9 days for OSSA custody orders issued in 2010, and none of the sentences were fine defaults. While ministry data were not available to confirm this at an aggregate level, it is reasonable to conclude that offenders are being incarcerated due to multiple offences. For instance, ministry data were able to show that one offender who was involved in 19 OSSA offences had an 18-month probation order to follow his sentence to incarceration. It should also be noted that the daily cost of incarcerating an inmate in an Ontario correctional facility is \$161.80 (Statistics Canada 2010).

Not only is the OSSA becoming increasingly costly in terms of incarceration but the enforcement of the law is also becoming a mounting financial burden for the public. While the OSSA calls for potential fines of up to \$500 for a first offence, the fine for tickets issued under OSSA is generally \$60. Between 2004 and 2010, the number of OSSA tickets issued by the Toronto Police Service totalled 63,173. A *conservative* estimate would put a total value of tickets issued over this seven-year period at \$3,790,380.<sup>9</sup> This is a large financial burden thrust on homeless people living in extreme poverty, with limited ability to pay. For instance, according to a recent study, only 30 percent of a sample of homeless youth in Toronto who received tickets (for OSSA and other offences) reported paying the fine (O'Grady, Gaetz, and Buccieri 2011: 51). Moreover, our analysis of OSSA data shows that the overwhelming majority of tickets issued go unpaid (99.8 percent). This high rate of non-payment is known—and has been expressed in the news media—by members of the police (CBC 2007) and city politicians (Talbot 2011).

In addition to the financial costs to people who are homeless, there is also the cost to the residents of Ontario. Our estimate of the actual cost of issuing the OSSA tickets to Toronto Police Services

was \$877,472 over the past seven years.<sup>10</sup> Note that this does not include the cost of processing tickets or any follow-up overhead (for instance, if a ticket is challenged in court, or if a bench warrant is issued for non-payment of tickets). This is arguably an expensive investment of public resources to issue tickets for a non-criminal offence. Further, it stands alone as a policy practice in which there is little or no likelihood that the person receiving it can or will pay it.

In sum, our findings reveal that even though levels of panhandling and squeegee cleaning have declined in Toronto since the OSSA came into effect, the number of tickets has dramatically increased. We have shown that those who are the most likely to be the targets of OSSA enforcement efforts are middle-aged homeless people who reside in or around the downtown core, and that growing numbers of OSSA offenders are receiving custodial sentences. Our analysis also points out the financial costs associated with the TPS issuing over 60,000 OSSA tickets in over a ten-year period. We now turn to a discussion of the implications of these findings and suggestions for future research.

## DISCUSSION

We began this paper by arguing that the use of anti-social behaviour legislation is tantamount to social profiling and that the effect of the OSSA is the criminalization of those who are homeless. The number of OSSA issued tickets has increased dramatically during a period of declining panhandling and squeegeeing and falling levels of police reported crime, which raises important questions. What initially was a response to squeegee-wielding youth working at inner city intersections has transformed into a widespread clampdown on middle-aged homeless people who inhabit the streets in Toronto's downtown core. From what was uncovered in this analysis, the TPS is issuing OSSA tickets to homeless persons more frequently, and on an ongoing basis, for reasons that have *very little do with*: (1) a general increase in

the level of crime; (2) an increase in the homeless population and/or aggressive solicitation practices; (3) widespread complaints from businesses and/or the general public; (4) relation to gang-related crime initiatives; and (5) efforts at revenue generation.

In light of these observations, we have to rely upon other explanations to understand the way in which the OSSA has been enforced in Toronto. In so doing, we argue that using the criminal justice system to control homelessness is a flawed public policy and a waste of public resources. After discounting other possible explanations, we can now discuss social profiling and the criminalization of homelessness in more detail, as they relate to the increased rates of OSSA tickets. Our discussion is divided into two key sections: first, the role of gentrification and NIMBYism in constructing the homeless as disorderly persons whose actions need regulating; and second, zero-tolerance / broken-windows styles of policing that are enacted to carry out this regulation. It is within the context of these broader socio-political issues that social profiling and the criminalization of homelessness occurs.

To begin, one cannot rule out the role that gentrification has played in Toronto over the past quarter-century. Research by Hulchanski (2007) has demonstrated the rapid and changing nature of Toronto, which has become, as he describes it, a “city of disparities.” Analyzing census data from 1970 to 2000, he argues the city has become increasingly polarized between the central core (characterized by great wealth) and the surrounding suburbs (defined by growing poverty). As the downtown area of Toronto has been transformed by growing condominium construction, we have seen the gentrification of older neighbourhoods. Rooming houses disappear, business and shopping expand, and greater pressure is placed on low-income individuals such as the homeless and those who provide services for them.

At the same time, the majority of people who are homeless still live in the downtown core, because

this is where homeless services continue to be concentrated and where economic opportunities are most prevalent. Despite some expansion of homeless services to the suburbs, resistance of the residents (through NIMBYism), combined with the challenges of being homeless in a low density area with few transportation and service supports, means that the downtown core remains the primary location where those who are homeless reside.

The clash between the interests of middle-income and wealthy dwellers, people who work in the city, business owners—especially those who cater to high-end shoppers and tourists—and the politicians who represent all these groups, on the one hand, and the people who are homeless and under-housed, as well as their advocates, on the other, may well go some ways towards explaining why there is a political and public appetite for the criminalization of homelessness. The very existence of a broad range of supportive services for people who are homeless may in fact bolster the support of criminalization, as it may underline a perception that some homeless people are “deserving” (those who use services and do not cause trouble) while others are not (those who beg or sleep in public places). This is the broader socio-political context in which policing operates.

Second, police can make use of existing laws in order to deal with the homeless population. In this case, it is not the implementation of new laws but rather the application of policy and practice to address what are deemed to be problematic issues. Where there is popular support for a “law and order” agenda, when conservative politicians regularly remark on the need to control populations such as “dangerous panhandlers” (Talbot 2011), and when the public and media appear to support a law enforcement response to homelessness (Bates 2011), police command may initially put into place practices that help to fulfill this agenda. Some of these are likely the result of formal policy shifts (it is, for instance, unlikely that the increased application of the OSSA—from 710 to over 15,000 tickets in ten years—was simply the outcome of the actions

of individual officers), whereas in other cases it may simply be a reflection of shifts and changes in police practices. Below we turn to the literature on policing practices and outline some factors that may influence the decisions that police make at all levels within police services, and how these decisions may directly or indirectly show how policing and laws are applied to those who experience homelessness.

Even though the TPS has not publicly stated that it supports and partakes in broken-windows policing, there is evidence that elements of the practice have been taking place for some time in Toronto. There is good reason to believe that contemporary police culture in Toronto is not any different from that in other major North American cities, which have been characterized by an emphasis on adventure/machismo on the one hand and a pronounced sense of moral purpose on the other (Herbert 2001). In his study of the Los Angeles Police Department, Herbert argues that this morality leads officers to “constantly invoke the term ‘bad guy’ to describe the ‘evil’ that pollutes the streets. The police are simultaneously constructed as the good guys who cleanse the streets” (Herbert 2001, 453).<sup>11</sup> It is this sensibility amongst police that gets produced and reproduced daily, and leads police towards approaches to their work that emphasize “aggressive patrolling and frequent arrests” rather than community policing approaches that are seen as social work.

## CONCLUSION

Our findings on how homeless persons are being policed under the enforcement of OSSA support the view that zero tolerance policing is in fact being used in efforts to rid Toronto’s downtown core of “urban outcasts.” For this reason the OSSA, like similar laws and ordinances in other jurisdictions (Foscarinis 1996; Sossin 1996), has been widely criticized as an attempt to use law enforcement to paper over the problematic social and economic issue of homelessness. That is, the “symptoms”

of homelessness are focused on, rather than the underlying causes such as inadequate housing, unemployment, and health challenges. Even though our findings do suggest that using the criminal justice system to control homelessness is misguided public policy, several questions remain unanswered that need to be addressed in future research in order to more fully comprehend *how* and *why* homelessness has become subject to legal regulation.

First, more empirical work is required to better understand whether or not there are incentives for police to issue OSSA tickets. Are officers who are handing out the most OSSA tickets in their divisions being rewarded? Relatedly, is there a small group of officers who are issuing a disproportionately large number of OSSA tickets, or is their dispersal equally distributed among primary response officers? Our data were unable to address these questions, and it is possible that institutional mechanisms and interests are at play that could account for the rises in OSSA tickets.

Second, what proportion of OSSA tickets are given to “repeat” offenders? From our research we have anecdotal evidence that some homeless persons have accumulated over 200 OSSA tickets. Moreover, we have shown that some people are being incarcerated for being repeat OSSA offenders. More systematic research needs to be undertaken to better understand the extent of “repeat offending,” in addition to knowing the number of officers who are involved in these cases. It is possible that, rather than a more general police sweep of the homeless population, a small group of officers are targeting a small number of “chronic offenders.” The data we had access to were unable to address the issue of how many *separate individuals* received OSSA tickets over this period.

Third, we still do not understand how to interpret the fact that Criminal Code violations are decreasing in Toronto and Ontario while OSSA tickets are increasing. Are these diverse trends merely coincidental and unrelated? Perhaps they are, but it is noteworthy to remind ourselves that most

Criminal Code violations that come to the attention of the police are reported by the public (reactive policing). On the other hand, the findings of this study indicate that enforcing the OSSA is illustrative of a proactive style of policing. That is to say, most OSSA ticketing involves the police who are on patrol, finding people who are allegedly in violation of this provincial statute. That proactive policing is up, and reactive policing is down, may be indicative of a police force that is shifting its resources due to declines in crimes such as armed robberies, sexual assaults, and homicides—crimes that take up considerable investigative resources. Added to this, police growth in Toronto has outstripped population growth at a time when Criminal Code violations have been dropping. Understanding exactly what is happening with policing in Toronto is another example of where further research is required.

A fourth area for future research stems from our finding that relatively few OSSA tickets were being distributed in areas of the city that have reputations for guns, gangs, and drugs. For example, why were the number of OSSA tickets issued in 31 Division—responsible for policing the notorious Jane-Finch corridor—so much lower than numbers reported in divisions that were located in the downtown core, such as 14, 51, and 52? By logical extension, why, then, is the broken-windows model of policing *not* strongly evident in an area of the city where rates of violent crime are high? Perhaps a version of broken-windows policing is taking place, but rather than using the OSSA, the police are using the Criminal Code (by making arrests for cannabis possession, for example). Incidentally, in the Jane-Finch corridor, as in other Toronto suburban neighbourhoods that are home to low-income people, there is *not* a large presence of visibly homeless people, and as noted above, these are areas where there are few services for those who are homeless.

A final area meriting attention is a more in-depth analysis of the financial implications of the OSSA. While we have provided an elementary estimate

of costs—policing and incarceration—associated with enforcing the OSSA in Toronto, it would be interesting to know what the costs of this initiative would be if they were to be measured on a provincial or even national level. During a period when the costs involved in supporting the social safety net in Canada are under intense scrutiny by Conservative governments at all levels, it would be worthwhile to know the amount of public resources being invested in laws that cost so much yet appear to yield so little.

Tarasuk and Dachner (2009) have argued in the pages of this journal that, in order to meet the nutritional needs of the homeless, the current fragmented system of food relief in Canada needs a complete overhaul. In its place, a more adequate and comprehensive system of income assistance is needed. Within the context of the findings revealed in this paper, the attempt to control the homeless problem with the enactment and enforcement of anti-disorder bylaws is a similarly misguided public policy. Punitive responses do not deal with the origins of homelessness and are an ineffective, wasteful use of public resources. Public funds would be put to much better use if governments were to cease relying upon the criminal justice system and focus instead on the prevention of homelessness in addition to providing affordable housing and other necessary supports to those who are currently homeless.

## NOTES

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<sup>1</sup> It should be noted that during this period most police-reported crime has declined in Canada and the United States.

<sup>2</sup> Hermer and Mosher (2002) make a convincing argument that supports this contention.

<sup>3</sup> Data were not available for these measures in 2010 or prior to 2005.



<sup>4</sup> Transforming data using a logarithmic function is used when the values of interest range over several orders of magnitude, as in the case here when the Criminal Code data average approximately 200,000 incidents per year, whereas OSSA data are much lower, at fewer than 16,000 per year. Logging these data induces symmetry so that comparisons between the two trends can be made.

<sup>5</sup> Admittedly, young people might be more reluctant to admit to panhandling and squeegeeing in the later survey, due to the OSSA being in effect. However, we believe these figures to be reliable because any violation of the OSSA is a "finds committing" offence, meaning the police officer must witness the act first hand. Admitting to researchers that one engages in this behaviour might alert police to the behaviour but will not result in immediate legal sanctions.

<sup>6</sup> The report also noted that 80 percent of those who were housed in a streets-to-homes initiative remained housed 12 months after they left the street.

<sup>7</sup> Anecdotally, police officers in Toronto report that many panhandlers ignore the charges and penalties and do not leave the streets.

<sup>8</sup> Data for Toronto was unavailable, and data for Ontario are reported in Figure 6.

<sup>9</sup> 63, 173 X \$60

<sup>10</sup> Based on the cost of 15 minutes time (\$13.89) for a Toronto Police Services First Class Constable (\$81,046 + 24.8 percent benefits = \$101,145)

<sup>11</sup> Recent research by Buffone (2011) has demonstrated that police in the Greater Toronto Area (GTA) also embrace this identity, even though much of their time spent on the job is occupied doing paperwork and responding to "mundane" calls.

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