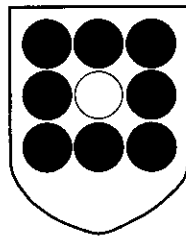


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A. ALAN BOROVY

Friday June 25, 2010

Hon. Rick Bartolucci
Ministry of Community Safety and Correctional Services
18th Floor
25 Grosvenor Street
Toronto ON M7A 1Y6
Fax : 416 325-6067

Dear Minister Bartolucci:

I am writing on behalf of the Canadian Civil Liberties Association to express our deep concern over the passage and effect of Ontario Regulation 233/10, which designates portions of downtown Toronto as a public work. We are dismayed at the lack of transparency and public consultation surrounding the drafting and enactment of this new regulation. We are also very alarmed about the implications of this regulation and the use of the *Public Works Protection Act* to significantly curtail democratic freedoms during the G20 Summit.

We are seeking clarification as to what your intentions were in the present context. This *Act* was passed on September 22, 1939 – a few weeks after the British Empire declared war on Germany. To the best of our knowledge, there has not been one reported case of prosecution under this *Act* in the last thirty years. It has the potential to grant extraordinary powers to peace officers and other ‘guards’, and its archaic wording raises interpretation concerns that ought not to be borne by citizens at a time such as the G20.

One interpretation of the *Act* could be that the powers granted must be interpreted in light of current constitutional guarantees, and therefore that the designation would seem unnecessary and superfluous to the already full legal arsenal that the police have to enforce public order under the *Criminal Code*, the *Foreign Missions and International Organization Act* and common law powers.

It could also be the position of the government that the police needed additional powers during the G20. In that case, it appears highly inappropriate to enact regulations to an obsolete legal instrument without public consultation or announcement. By doing so, residents of Ontario have been misled about their rights and have been unwittingly subject to sanctions that have been enforced pursuant to the *Act*. Individuals have the right to know what their rights and

BY FAX



obligations are. To expect them to consult E-Laws every night to understand the extent of new police powers is unreasonable and undermines respect for human dignity.

The practical implications of the powers granted under the *Public Works Protection Act* – power to search without warrant and demand individuals’ names, identification and purpose – are stark. It gives the police the power to arrest those who refuse to identify themselves or subject themselves to search, even if they decide not to enter the secured area. Police have also asserted that anyone within five metres of the fence must present identification and purpose upon demand. If they do not, they are subject to detention and arrest.

We have known for some time that the police intended to interact with individuals if they wanted to enter the designated area after the outer fence was secured. Those individuals who wished to enter, we were told, would be asked for identification, the purpose of their visit, and some would be subject to search. They could be also refused entry. As Chief Blair wrote in a recent letter to the us, “[o]nce the perimeter has been secured, Toronto Police Service members will begin to control access into the perimeter by engaging with members of the public.”

This regulation, however, came into effect well before the fence was secured, and individuals have had greatly reduced rights in this area since June 22nd. As a result, even though there are presumably no security concerns that would justify closing the fence early, we are already seeing a significant erosion of individuals’ civil liberties in this area. We have heard credible accounts of individuals who are simply walking along downtown streets being threatened with prosecution under the *Public Works Protection Act* even while they are outside what will eventually become the secured area. At least one person has already been arrested and charged. All of this has occurred before the fence was secured, while the downtown core was still supposedly open to normal public traffic.

The impact that this regulation will have on persons living and working within the fenced area is also highly troubling. Forty thousand people live and work in this space. It was initially made clear that individuals would be asked for identification, questioned and searched at the fence. This regulation, however, appears to allow the police to go farther than that, as it could subject anyone entering a public space within the controlled area to random search and interrogation – even if they have already been allowed past the fence.

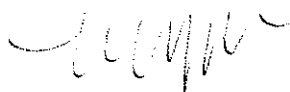
Finally, we are alarmed that the public was not in any way put on notice that the *Public Works Protection Act* would be used as legal authority to detain, question, search and arrest individuals on public streets and sidewalks.

As you know, this is an extremely novel, and controversial, use of this *Act*. Indeed, it appears that any prosecution under this *Act* is extremely rare. The powers granted by the legislation significantly depart from common understandings of what individuals’ constitutionally guaranteed rights are on a public street or sidewalk. It is clear that the government has intended to use this *Act* as legal authority to control access to public property since at least June 2nd, when the regulations were drafted. Secretly drafting and passing regulations that substantially erode democratic rights, and then enforcing these new laws without giving the public or legal

community any warning, circumvents democratic accountability and puts innocent individuals at risk of criminal arrest and conviction.

It is quite clear that the government has taken steps to significantly decrease individuals' legal rights on public property in a manner that is quite divergent from common understandings of civil liberties. The failure to cite this novel and highly controversial legal authority, or clarify the government's position regarding legal limits on individuals' constitutional rights is unprecedented. We urge you to investigate this matter. In our view, Torontonians have been misled.

Sincerely,



Nathalie Des Rosiers
General Counsel



Abby Deshman
Project Director

Cc:

Chief Commissioner Elliott
Chief of Police William Blair
Toronto City Councillor Paula Fletcher
Toronto City Councillor Kyle Rae
Toronto City Councillor Adam Vaughan
Toronto City Councillor Pam McConnell