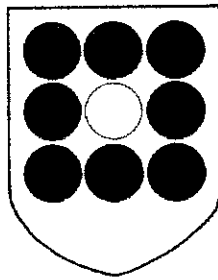


CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

A BREACH OF THE PEACE



A PRELIMINARY REPORT OF OBSERVATIONS
DURING THE 2010 **G20 SUMMIT**

JUNE 29, 2010

[I]n an open democratic society the streets, the parks, and other public places are an important facility for public discussion and political process. They are in brief a public forum that the citizen can commandeer; the generosity and empathy with which such facilities are made available is an index of freedom.

Rt. Hon. Antonio Lamer, Chief Justice of Canada

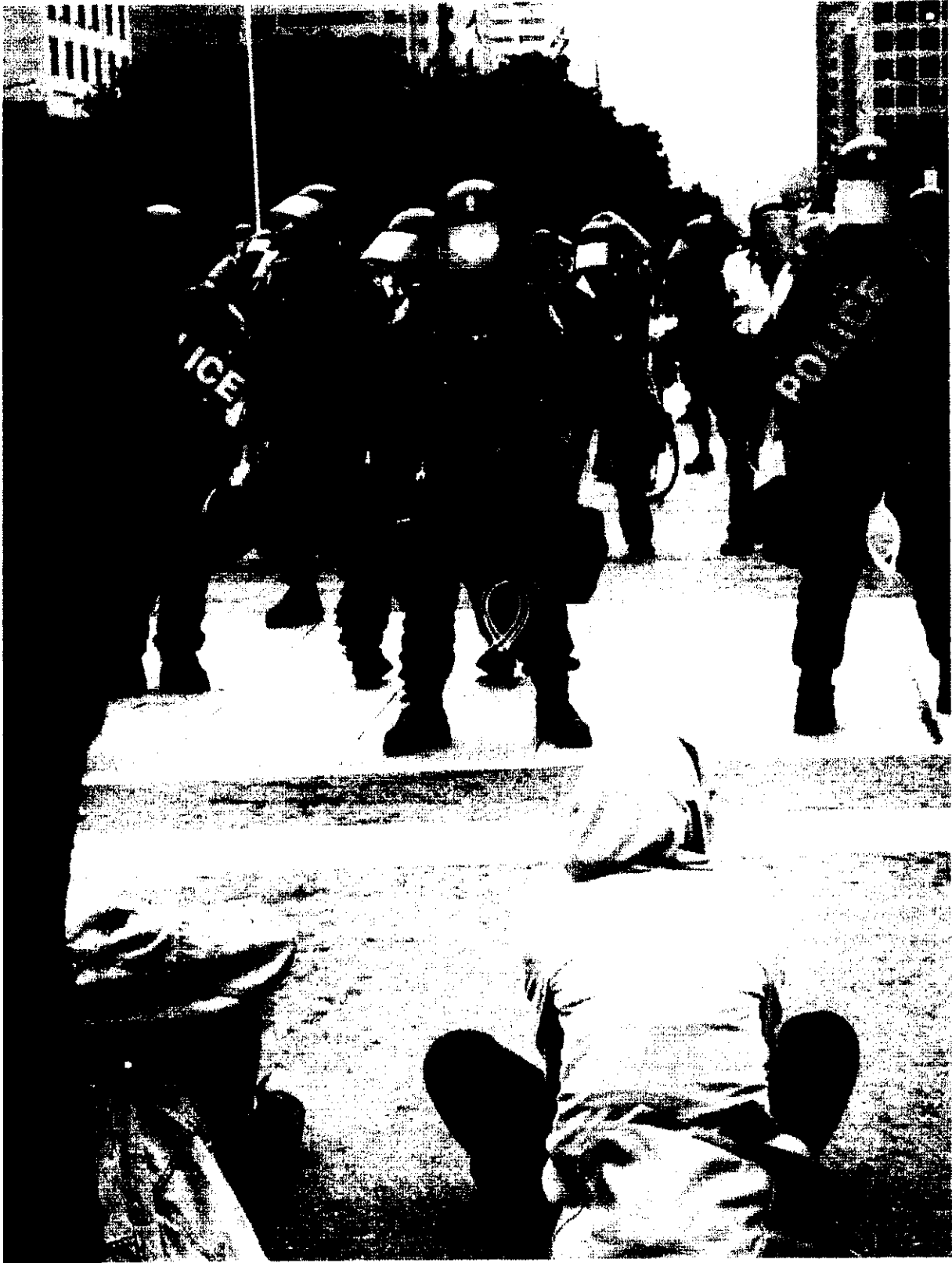
***Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139**

You do not have to choose between strong, effective policing or the human rights approach. You can marry the two.

***Demonstrating respect for rights? A human rights approach to policing protest*
UK Joint Parliamentary Committee on Human Rights, 2009**

As an independent observer for CCLA on the streets of Toronto during the G-20 summit, I was asked by a police officer what I was doing standing on the sidewalk (...). I explained that, like him, I was in the business of guarding *Charter* rights.

**CCLA Human Rights Monitor
June 28, 2010**



EXECUTIVE SUMMARY:

The *Canadian Charter of Rights and Freedoms* guarantees everyone in Canada the right to freedom of expression and the right to peaceful assembly. It also guarantees the right of all persons to be free from arbitrary detention and unreasonable search and seizure. These constitutional liberties – and the limits they place on government and police – are the foundations of our free and democratic society. The G20 Summit did not authorize or warrant their suspension. Constitutional guarantees matter because, as is often said, without them, “even the most democratic society could all too easily fall prey to the abuses and excesses of a police state.”¹

It is the opinion of the Canadian Civil Liberties Association that police conduct during the G20 Summit was, at times, disproportionate, arbitrary and excessive. In our view, despite instances of commendable and professional conduct, the policing and security efforts, especially after 5PM on June 26 and June 27, failed to demonstrate commitment to Canada’s constitutional values.

The conditions for some of the policing problems that were experienced during the summit were set during the preparatory stage. This report outlines some of the issues that undermined the security efforts. For example, the lack of transparency surrounding the designation of the security perimeter as a “public work” led to misunderstandings as to the scope of search and seizure powers and, in our view, to an inappropriate use of these powers. The large number of police officers during the week leading to the G20 generated both a suspicion of wasted resources and a sentiment of potential intimidation. June 26 represents a turning point. Widespread property damage was committed by a cohort of vandals in the downtown of Toronto on that day. We condemn this criminal activity and acknowledge that it warranted a response by police. The response which police provided, however, was unprecedented, disproportionate and, at times, unconstitutional.

Over the next 36 hours, over 900 people (possibly close to 1000) were arrested by police – the largest mass-arrest in Canadian history. Media, human rights monitors, protestors and passers-by were scooped up off the streets. Detained people were not allowed to speak to a lawyer or to their families. Arbitrary searches occurred in countless locations across the city, in many instances several kilometers from the G20 summit site. Peaceful protests were violently dispersed and force was used. In an effort to locate and disable 100-150 vandals, the police disregarded the constitutional rights of thousands.

In preparation for this report, the CCLA dispatched over 50 human rights monitors to make first-hand

¹ Justice Cory of the Supreme Court of Canada in *R. v. Storrey*, [1990] 1 S.C.R. 241, par. 14

observations of the police presence at G20-related demonstrations throughout the week. Our report chronicles the incidents that the CCLA's human rights monitors witnessed throughout the summit and, where indicated, reports we have received from members of the public and have verified and found trustworthy. There are, of course, many examples of very competent and professional conduct on the part of police officers throughout the week which were noted by our monitors. We certainly acknowledge that the police faced a difficult task. Nonetheless, Canadians are entitled to policing that does not undermine constitutional values. Unfortunately, we consider that the abuses chronicled in this report exceed the threshold of a few isolated incidents. In our view, they represent instances of inappropriate policing that cannot simply be swept away as the G20 ends. They demand accountability.

The CCLA is calling on all levels of government to take immediate action to correct some of the weaknesses in the legal framework surrounding public order policing in Canada. It also demands that independent inquiries be conducted into several aspects of the policing during the G20 Summit.

In particular, we ask for:

1. Repeal or significant amendment of the *Public Works Protection Act* to meet basic constitutional standards
2. Withdrawal of all charges laid under the *Public Works Protection Act*
3. Implementation of consultation and transparency requirements for regulatory processes
4. Apology from the Ontario government for the process used to adopt the designation pursuant to the *Public Works Protection Act*
5. Implementation of better guidelines for the establishment of security perimeters
6. Regulation of new crowd control technologies prior to their use and deployment
7. Compensation for business owners and for persons wrongfully arrested
8. Amendments to the *Criminal Code* to modernize and bring up to constitutional standards the provisions relating to breach of the peace, unlawful assemblies and riots
9. Full independent inquiry into the actions of the police during the G20, in particular:
 - a. The dispersal of protesters at the designated demonstration site in Queen's Park on Saturday June 26th
 - b. The detention and mass arrest on the Esplanade on the night of Saturday June 26th
 - c. The arrests and police actions outside the Eastern Ave. detention centre on the morning of Sunday, June 27th
 - d. The prolonged detention and mass arrest of individuals at Queen St. W. and Spadina Ave. on the evening of Sunday, June 27th
 - e. The conditions of detention at the Eastern Ave. detention centre



INTRODUCTION:

The *Canadian Charter of Rights and Freedoms* guarantees everyone in Canada the right to freedom of expression and the right to peaceful assembly. International meetings are an occasion for people to express their agreement or disagreement with their leaders. The host country has a duty to uphold the right of people to be heard and to congregate, while ensuring the safety of the host community and political leaders gathering on its territory.

Our report arises from the first hand observations made by the CCLA's human rights monitors throughout Toronto during the summit, and, where indicated, from reports we have received from members of the public that have been verified and found trustworthy. The narratives provided here represent a small sample of the notes and daily reports by our monitors. The images were also taken by them during the course of their monitoring.

While there were certainly instances of very competent and professional behavior of police officers throughout the week, our monitors also observed many instances of abuse of power. We sadly conclude that the provision of security at the G20 Summit failed to demonstrate Canada's commitment to transparency, fairness, and constitutional values.

This report is divided into three parts. First, we first briefly present the human rights and constitutional law framework that must support public order policing. Second, we outline some specific observations made by our monitors and the concerns that they raise. Finally, we outline some conclusions and recommendations.

We welcome comments on this preliminary report.

I. A HUMAN RIGHTS FRAMEWORK

Canadians are entitled to demand the best public order policing possible from their government. Recent reports on managing public protests by police have noted the importance of developing a framework that clearly identifies the importance of freedom of expression and freedom of assembly in designing the policing strategy. In *Adapting to Protest* from Her Majesty's Chief Inspectorate of Constabulary, a report that was issued after an inquiry into policing of the G20 meeting in London, England in 2009, the first recommendation reads as follows:

Demonstrate explicit consideration of the facilitation of peaceful protest throughout the planning process and the execution of the operation or operations. The right to freedom of assembly places obligations on the police. The starting point for the police is the presumption in favour of facilitating peaceful assembly. However, the police may impose lawful restrictions on the exercise of the right provided such restrictions are lawful, have a legitimate aim (such as the interests of public safety or the protection of the rights and freedoms of others) and are necessary and proportionate. (p.10)

In our view, democratic public order policing must be based on the following principles:

1. Security measures must be developed with a view to efficiently ensuring the security of the general public, the dignitaries, the protestors and security personnel²;
2. Security measures must be developed in the context of respect for and protection of individuals' constitutional rights, including democratic and due process rights, the right to privacy, freedom of peaceful assembly and freedom of expression.
3. Government actions that restrict human rights must be necessary, minimally intrusive, proportionate, and use the least force possible.
4. International standards³ with respect to policing large events should be at a minimum adhered to, and ideally surpassed.

² *Foreign Missions and International Organizations Act*, S.C. 1991, c. 41.

³ *United Nations Code of Conduct for Law Enforcement Officials*, (1979) 34 U.N. GAOR Supp. (No. 46); U.N. Doc. A/34/46; *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (1990) U.N. Doc. A/CONF.144/28/Rev. 1

II - SPECIFIC CONCERNS REGARDING G20 SECURITY AND POLICING:

A. REGULATORY CONCERNS

1. Regulations Expanding Police Powers Passed in Secret

The CCLA is concerned about the Ontario government's decision to pass a Regulation under the *Public Works Protection Act*, legislation that was adopted in 1939, only a few weeks after Britain declared war on Germany. The new Regulation, made on June 2nd, filed on June 14th and published on e-Laws on June 16th, designates the streets and sidewalks inside the police-established security perimeter a "public work" between June 21 and June 28, 2010.

This Regulation expands police powers in the area in and surrounding the security fence. As a result of these expanded powers, police gained the authority to require individuals approaching the fence to show identification and subject them to searches. The public was not notified of this significant expansion of police powers until after the Regulation came into effect, offending the basic principle that laws ought not to be passed in secret and must be known by the public. The Regulation will not be published in the Gazette until after it will have been revoked.

At least one individual was detained, arrested, and charged under this *Act* because he declined to identify himself while walking outside the unsecured fence prior to the summit.

The CCLA is alarmed by the context of this law and at the manner in which the Regulation was passed. CCLA suggests that the broad police powers granted under the *Act* are inconsistent with current Charter requirements. In addition, we believe that Ontarians have the right to know and debate the scope of powers granted to law enforcement, even temporarily. People who worked and lived in the vicinity of the perimeter had the right to know that they no longer had a right to refuse to disclose their identity to the police. Secretive processes only serve to diminish the public trust in government.

We urge the government of Ontario to improve the consultation requirements applicable to the adoption of regulations affecting Ontarians, to withdraw all charges laid under the *Public Works Protection Act*, to amend or repeal the *Public Works Protection Act* and to apologize to Ontarians for the process used to adopt the Regulation.

2. Controlling Use of Space

Under the *Foreign Missions and International Organizations Act*, the RCMP has the authority to take “appropriate measures, including controlling, limiting or prohibiting access to any area to the extent and in a manner that is reasonable in the circumstances” to ensure the security for an “intergovernmental conference”. Such security measures do restrict individual civil liberties and must be reasonable and in conformity with the *Charter*.⁴ The APEC Inquiry Commission Interim Report, which followed the heavy use of police force at the Asia-Pacific Economic Conference in Vancouver in 1997, recommended that “[a]t future public order events, a generous opportunity should be afforded for peaceful protesters to see and be seen.”⁵ This is in accordance with the fundamental right of all Canadians to freedom of expression. While barriers may be erected to address legitimate security concerns, such barriers may not be misused for the purpose of insulating the government or its guests from criticism or peaceful dissent.

The CCLA has been concerned that the security protocols established for the G20 did not meet the standard established by Mr. Hughes in the APEC Interim Report, in that groups that sought approved route marches from the police – including the approximately 10,000 peaceful demonstrators who marched on Saturday, June 26 – were given routes that were blocked from approaching the vicinity of the outer fence. Such a wide and substantial security cordon effectively prevented this substantial expression of dissent from being seen or heard by Summit delegates.

We recommend that in the future the framework established by Mr. Hughes, that is, that protesters must be afforded the right to be seen and heard, be applied. We also recommend that a detailed legislative framework for the establishment of security perimeters be developed.⁶

3. Regulation of new technologies

It is essential to thoroughly and independently test, evaluate and review new technologies that have the potential to cause physical harm *before* they are deployed against the general public. CCLA is currently requesting an injunction to prevent the use of sonic cannons (long range acoustic devices or “LRADs”) until they have been properly tested and approved. The injunction must be heard before

⁴ *Tremblay v. Quebec (Attorney General)*; *R. v. Knowlton*, [1974] S.C.R. 443; *Ogden Entertainment Services v. U.S.W.A., Local 450* (1998), 159 D.L.R. (4th) 340 (Ontario), (Appeal Dismissed at C29462 June 1, 1998, 38 O.R. (3d) 448.

⁵ Commission for Public Complaints against the RCMP, APEC –Interim Commission Report, July 31, 2001

⁶ Wes Pue and Robert Diab, *The Gap in Canadian Police Powers: Canada Needs “Public Order Policing” Legislation*, 28 Windsor Review of Legal and Social Issues 87

October 1st. We hope to obtain the commitment of the Toronto Police and the Ontario Provincial Police for a better regulatory framework for the LRADs. The interlocutory injunction obtained by the CCLA just prior to the G20 protests compelled the Toronto Police Service to amend its procedure for use of the sonic cannons. CCLA is requesting all logs of the use of the sonic cannon during the G20.

B. POLICING CONCERNS

1. Search and Seizure Powers

Freedom from unreasonable search and seizure is a fundamental right enjoyed by Canadians. Unless a person is being legally detained or arrested, the police must have a warrant, or other reasonable grounds, to forcibly search individuals.

The CCLA continues to be concerned that the invocation of the *Public Works Protection Act* granted the police the authority to demand that any individual entering the G20 security perimeter submit to a search – even during the period of time when the fence was left open. No further basis was needed to execute the search and failure to permit the search was grounds for arrest.

Outside of the vicinity of the security perimeter, our monitors observed systematic and widespread searches throughout the week. Dozens of instances were observed of police stopping individuals in locations far away from the G20 security perimeter. Throughout the week, observers watched large groups of officers stationed outside the exits from subway stations or at the entrance to public parks, demanding that individuals who exited or entered submit to a search. There are unconfirmed reports that by Sunday police officers were even stopping and boarding TTC street cars systematically to conduct searches. Our monitors also observed plain clothes officers conducting searches on the G20 weekend. In the overwhelming number of observed instances, the police stated no basis for conducting the search.

There were several instances where monitors themselves, or those they were observing, clearly and unequivocally stated that they did not consent to being searched. The searches proceeded despite a clear lack of consent.

There was uncertainty as to the grounds to justify these searches. In some instances, monitors or those being searched asked police what the grounds were for the searches. The answers given included, “the city is burning”, “we search everyone with a backpack on the way into a protest”, and simply “look at the guy’s shirt” referring to a t-shirt that read ‘F*ck the G-20’. Considering the scale

and the systematic nature of *prima facie* illegal searches, it appeared that after 5PM on Saturday, the constitutional protection against arbitrary detention and unreasonable searches had effectively been suspended across downtown Toronto. This situation has alarming implications for civil liberties and public accountability.

The lack of clarity as to the scope of the search and seizure powers created many difficulties. It precipitated conflicts that could have been avoided. We recommend that the issue of searches and seizures be addressed in any future legislative framework dealing with public order policing.

2. Overwhelming and Intimidating Police Presence

In the UK Joint Committee Report of 2009, another independent governmental review of the 2009 London G20, the Committee commented on the ratios of police to protestors in the following terms:

We are concerned that protestors have the impression that the police are sometimes heavy-handed in their approach to protests, especially in wearing riot equipment in order to deal with peaceful demonstrations. Whilst we recognize that police officers should not be placed at risk of serious injury,

the deployment of riot police can unnecessarily raise the temperature at protests. The PSNI has shown how fewer police can be deployed at protests, in normal uniform, apparently with success. Whilst the decision as to the equipment used must be an operational one and must depend on the circumstances and geography in the particular circumstances, policing practice of this sort can help to support peaceful protest and uphold the right to peaceful assembly and we recommend that the adoption of this approach be considered by police forces in England and Wales, where appropriate.
(para 187)

I was monitoring a demonstration that was gathering at Allen Gardens, far away from the G20 summit site. In fact, it was Friday so the summit had not even begun yet. I watched as police demanded to search every person who entered the park with any type of bag. One person told that the police threatened to arrest her if she refused to submit to the search and tried to enter the public park. I continued to watch as fifteen people in a row were stopped and searched as they entered the park. Most people were both confused and upset by the incident. So was I.

CCLA Human Rights Monitor

The CCLA's human rights monitors repeatedly reported an overwhelming number of police and security officers throughout the city. Throughout the week, and particularly prior to Saturday, the sheer number of police officers compared to the

protesters was disproportionate and created an atmosphere of intimidation. Many instances were recorded where large groups of police officers – often nine or ten – surrounded individuals to search or interrogate them as they were walking along sidewalks or through parks. Interrogation or searches under such situations cannot be said to have happened with free consent. The number of police deployed in these situations appeared to be both a waste of resources and an unnecessary escalation of a confrontational atmosphere.

Particularly during the weekend, police were wearing riot gear and were seen with weapons including tasers, guns loaded with pepper spray, tear gas guns and guns that shot some form of projectile. Many observers reported seeing large groups of police officers without their names or badge numbers visible, thus impeding the rights of the public to make complaints about abuses by specific officers. One group of monitors walking along the street, far from any demonstration, was questioned by police officers, one of whom removed his name badge prior to approaching them and questioning them. Police in riot gear also engaged in intimidating tactics, including clattering their batons against their shields and pointing guns at peaceful crowds.

I was monitoring a peaceful protest at Queen's Park South late in the afternoon on Saturday. People were milling around and some people were sitting in a line across Queen's Park Crescent. Further down Queen's Park Crescent and in the intersection of College Street and University Avenue hundreds of riot police were stationed. Suddenly, a row of riot police advanced ten meters north towards the protest. One officer fired a weapon of some kind at the ground close to where a line of protesters were sitting. The weapon caused white smoke to rise in the air. The police then issued an audio warning that protesters had to disperse but I do not know if everyone in the park could hear it. The riot police line then suddenly advanced again another ten meters. Protesters began to scatter. The police continued this advance-wait-advance pattern. I was very confused as the protest seemed entirely peaceful at the time and Queen's Park was the designated demonstration zone?

CCLA Human Rights Monitor

3. Use of Force

CCLA condemns the use of violence both by members of the public and by the police. We also acknowledge that the police may at times need to exercise some force in order to ensure public safety. In cases where force is necessary, it should be exercised minimally and in a manner that is proportional to the threat.

Unfortunately, CCLA monitors witnessed many apparent instances of police using more force than was necessary while conducting searches, arresting individuals, and controlling crowds – particularly after Saturday at 5 pm. Monitors saw police riot lines charging into peaceful crowds without audible warning. There were also instances where monitors observed police shooting into peaceful crowds without warning. In two of the directly observed instances the police shot a form of white powder. In the third incident, a peaceful crowd was surrounded on all sides by riot squads when police fired three rounds of a solid projectile towards the crowd. One hit a man who had thrown an empty pop can, while the other two rounds hit monitors' bicycles, breaking the spokes of the wheels.

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"A's" Narrative Account, Saturday June 26, 2010

At around 10:00 pm I am riding my bicycle down St. George St. As I turn east onto Hoskin, I see two sets – a lot – of riot police running, chasing people west on Hoskin Ave. They are moving quite fast – I am worried they will keep coming, running towards the people and overtake them. Suddenly they stop, turn around, start marching back west towards Queen's Park. They are clattering on their shields, and looking quite scary. J and I follow them on our bikes, as we see Devonshire to the north, there is a circle of mounted police, in the middle of the street beside the stadium. We ride north up Devonshire, and cut through Philosopher's walk. There is a protest headed west on Bloor.

We ride west on Bloor, sometimes cutting down south to ride faster and catch up with the front of the protest. We get near the front, and then they turn south on Yonge. No violence by protesters on the way down, but they were variously chanting 'peaceful protest', 'they kicked us out of Queen's Park', 'join us'. Protesters were upset they had been removed from Queen's Park.

Very little police presence. We see one small set of riot police deploying on an east side street. At some point before Wellington, protest turned west, and then cut south again – going towards fence. Protesters got to southern edge of Wellington, between York and Bay – half standing on top of platform at Wellington, half down stairs at street level. Small police presence in front of fence. Protesters sang Oh Canada, chanting peaceful protest. Riot police were at Wellington and York. They moved east along Wellington street, a few moments later a set comes up stairs to the west of us, onto the upper platform. People withdrew quite quickly, not waiting for police lines to reach them.

People coalesced into group on King, between York and Bay. Group of protesters was surrounded on west, south and east by riot police. Solid building was to north. They were hemmed in.

Protesters were standing in group. Suddenly police at eastern edge of box fired some sort of large plastic-type projectile, hit guy in stomach area. Police fired two more rounds, hit my bike wheel and J's bike wheel. Broke some spokes. People ran away from that side of protest. Woman with media pass asks if I can find what hit me, I say I think it was plastic, she's saying she needs to see it. I just run. Riot police moved closer. Guy in protest with a megaphone said we should sit, show we were peaceful. Most of protesters sat down.

Eventually person on loudspeaker said that he had a message from police – we would be able to leave through west side of protest. Protesters got up and walked off. Some headed north or west, away from protest. One part, maybe half, turned and went south. J and I went north on Yonge, walked home.

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4. Mass Arrests

The CCLA is extremely concerned about the mass arrests that took place during the G20 Summit. According to the most recent media reports, over 900 people have been arrested – the largest mass arrest in Canadian history. CCLA monitors observed mass arrests occurring on the Esplanade on Saturday night, at the University of Toronto Graduate Student Union on Sunday morning and at Queen St. W. and Spadina Ave. on Sunday night. Police tactics during the G20 included boxing in large groups of protestors and other members of the public without adequate warning, followed by systematic and mass arrests of all of those in the area. This practice is a violation of civil liberties and is clearly contrary to the Canadian *Charter's* guarantee of freedom from arbitrary detention or arrest, and violates international human rights norms. The United Nations Human Rights Committee has previously criticized a Canadian police force for the mass arrest of protestors and has stated that Canada “should ensure that the right of persons to peacefully participate in social protests is respected, and ensure that only those committing criminal offences during demonstrations are arrested.”

The G20 security unit failed to adhere to this standard. Hundreds of persons were arrested for breach of the peace, including individuals who were simply walking downtown, those who were peacefully protesting, members of the media who were reporting on the G20 and human rights monitors.

Mass arrests in response to the reading of the “riot act” are infrequent, but mass arrests have been used by police to disrupt crowds. The threat of arrest is often used. No doubt, police may need tools to manage crowds that become uncontrollable. Nevertheless, amendments to the *Criminal Code* are necessary to bring the old fashioned and antiquated provisions dealing with “unlawful assemblies”

and “riots” in line with modern conceptions of freedom of assembly and the international developments on this issue.

We recommend that the Minister of Justice undertake to create a committee to recommend modernization of the *Criminal Code* provisions dealing with “unlawful assemblies” and “riots”.

The tool used by police to effect mass arrests is the charge of “breach of the peace”. Many people were threatened with a charge of “breach of the peace” as they were waiting in the rain at Queen St. and Spadina Ave. on Sunday night. The discretion of police officers in wielding the possible charge of “breach of the peace” is incompatible with current constitutional requirements of fundamental justice. Breach of the peace is too vague a provision. It should be repealed or amended.

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“M’s” Narrative Account, Saturday June 26, 2010:

My partner and I followed a group of protestors to the front of the Novotel hotel on Esplanade and as the crowd assembled, we began to take notes on the police presence and their interactions with the protestors. The protest was comprised of several hundred demonstrators who were chanting slogans in front of the hotel. Police then emerged on the east side of the street, blocking off any retreat from that side. My partner and I then decided to move to the other side of the crowd, but by the time we had picked our way to the other side, another team of riot police had cordoned-off the western side of the street, effectively blocking off any way for myself, my partner, protestors or any passersby from departing. Over the next 20 minutes or so, the police periodically move forward, confining the people to a smaller space. No announcement was made to the crowd calling on them to depart, and no space was made for them to do so. In response to the police, the crowd decided to sit down, turning their protest into a peaceful sit it. Calling on the crowd to be quiet, the police made their only announcement: we were all under arrest.

Over the next two to three hours, every member of the crowd that had been caught in the cordon was arrested. I was transported to the makeshift detention centre where, after waiting on a prisoner bus for around 90 minutes, I was placed in a cell with 13 others. The next 18 hours were a case-study in police ineptitude. We were given two dixie cups of water over that period, with the second being undrinkable. There was no discernable plan for processing those who had been arrested, and even though the police were aware of this fact, they made absolutely no effort to adapt their poor planning to reflect the reality of the situation. Without any cogent procedure to speak of, the delays for water, information and even insulin were, in fact, tantamount to denial. The police alternated between either ignoring our requests, or simply deflecting them with light-hearted banter that came off as merely insulting given the gravity of the situation that the detainees found themselves in.

“P’s” Narrative Account, Sunday June 27, 2010:

At 5:41 p.m., my monitoring partner “D” and I had been walking west on Queen St. West from Osgoode Station. We arrived at the Spadina Ave. intersection, and came upon a group of roughly 300 people – some peacefully protesting, while most circled around, simply observing and taking pictures of the 20-25 line of police on bicycles who were blocking off the south side of Spadina Ave. Over the next 45 minutes to an hour, we witnessed a steadily increasing number of riot police enter the intersection and block off each side – from the west side, to north, and finally east. The actions of the police were in response to no violence that I could see from the crowd. A police helicopter was circling the intersection the entire time. The sudden and unnecessary burst of riot police, intimidation and later blanket arrests were completely reckless and indiscriminate.

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“J’s” Narrative Account, Saturday June 26, 2010:

My monitoring partner and I followed the march of about 300 protesters down Yonge Street and onto The Esplanade. A line of police officers dressed in riot gear with what appeared to be tear gas guns formed a line about 300m west of Yonge St. on The Esplanade. The protesters stopped in front of the police line and continued chanting the lines they had been chanting for as long as we had been following them that day: “This is what democracy looks like!”, “Peaceful protest!”, “Who’s streets? Our streets!”, and so on. This continued on for about twenty minutes without the police line or the protesters moving, or anything more than chanting and cheering. Then, from the east out of Scott St., a line of police officers in riot gear formed along The Esplanade and marched towards the crowd.

The officers in both police lines began marching slowly towards each other, clattering their batons and shields, and so forcing the crowd together. The police lines stopped when they were about 30m meters apart. The protesters, and anyone else who happened to be on the street or sidewalk, were now boxed in between two police lines, including my partner and I, and three people who had been standing outside of a restaurant, smoking. The protesters chants were more urgent and more often people called out or chanted with “Peaceful protest!” at the police lines. Several times then, and in the time that followed, small groups of officers would suddenly charge into the crowd, grab someone and pull them back behind their line. One protester called out to the crowd to say that everyone should sit down, which many did. The crowd was much more quiet, and we all were waiting. Calls and chants began saying, “Let us go!”, and one protester called out, “Okay, I’ve learned my lesson, I want to go home now!” After an hour or more of waiting like this, an officer announced that if we raised our hands and waited we would all be peacefully arrested. This was the first time we had heard any communications from the police. My partner and I waited for another two hours or so before it was our turns to be pulled from the crowd and arrested.

5. Conditions of confinement and legal rights upon detention

Prior to the G20, a temporary detention centre was established on Eastern Avenue in Toronto's east end to house those detained or arrested during the summit. The establishment of this *ad hoc* centre, and its significant size, suggests that police anticipated mass arrests. Police have a duty to ensure the

welfare of persons held in custody and facilitate the exercise of their constitutional rights, including the right to contact a lawyer.

Upon learning that two CCLA monitors had been arrested, I called the temporary detention centre at 6:14AM. Const. _____ answered and I explained that I was counsel to two individuals who had recently been arrested, provided their names, and said that I wanted to track them down. She told me that "your friends will call you when they can", and hung up. They never did.

At 10:27AM, I called another number I was given and spoke with Const _____. He took down the names of the CCLA monitors and my phone number, and told me that he would have them call me. They never did.

I called Const. _____ back at around 1:30PM, and he then explained to me that he had no idea if the two people I named were in the facility, and the only way of finding out was to move among the cells and yell their name. He told me that he had did not have access to a computer database documenting prisoner intakes, and that he did not know who would. He said it was very disorganized down there. I was never able to speak with either of my clients before they were released 18 hours later.

David Rose, Legal counsel for CCLA

Two CCLA human rights monitors were among those swept up in a mass arrest at the Esplanade on Saturday night, and detained for over 18 hours – the majority of which was spent at the detention centre. They have described being placed in cages with concrete floors, chain link walls and ceilings and a single portable toilet. The cells varied in size, but many were overcrowded. The arrestees were kept in plastic wrist ties throughout their detention. One CCLA monitor described seeing a fellow arrestee whose wrist ties were much too tight. He repeatedly asked that they be loosened but this was only done after many hours.

Although many individuals were detained for nearly a day, food and water were scarce. One CCLA monitor was given minimal food and only received two small cups of water over the 18 hours that he was detained. One cup of water was yellow in colour and he said it was simply not drinkable. Monitors also described seeing arrestees denied necessary medical attention for hours, including access to insulin.

Although the temporary detention centre was part of the G20 security planning for some time

before the summit, many of those detained inside described a total lack of organization and substantial backlogs in the processing and release of arrestees. Court services officers working at the centre could not answer arrestees' questions about when they would be processed or released. In some cases, a group of arrestees were told repeatedly that they would be released shortly, only to be held for several more hours before processing began.

Arrestees had no opportunity to use the phone or access legal counsel. This is a serious violation of *Charter* rights and basic principles of fundamental justice. Many of those detained in the centre, including the CCLA monitors, were not charged with criminal offences. Nonetheless, our monitors were photographed, subject to video surveillance throughout their detention, and one was interviewed by police while being videotaped. Some arrestees were asked to promise, upon being released, not to participate in any G20 protests.



CONCLUSION

In the CCLA's view, policing during the G20 Summit in Toronto appeared excessive in the days leading up to the Summit. The very high number of police officers created an atmosphere of intimidation and also a sense of wasted resources.

On Saturday, when vandalism and acts of property destruction occurred, policing turned punitive towards protesters. CCLA acknowledges the police forces' explanation that criminal elements were mixed in with larger groups of peaceful protesters. There is no doubt that this weekend presented a very difficult law enforcement scenario. Nevertheless, this does not justify a mass suspension of basic civil rights. It is possible to feel outrage about acts of vandalism and at the same time recognize the importance of maintaining a free and just society committed to freedom from arbitrary arrest and detention and the presumption of innocence. In our view, the existence in Toronto of a cohort of the 'black block' does not justify a suspension of democratic rights for people in the city.

Over 900 individuals have been arrested. Hundreds have now been released without being charged with any criminal offence. In view of the unprecedented numbers of arrests, there remain very serious questions surrounding the appropriateness of policing tactics. These questions demand answers.

It is the duty of police officers to act with fairness and equanimity toward all citizens in accordance with the law of the country. The presumption of innocence and the protection against arbitrary arrests and detention are at the core of a commitment to justice. In our view, the security for the summit was inadequate because it failed to uphold our constitutional commitments.

The CCLA is calling on all levels of government to take immediate action to correct the weaknesses in the legal framework surrounding public order policing for large scale events. It also demands that independent inquiries be conducted with respect to several aspects of the policing during the G20 Summit. In particular, we ask for:

At the end of this weekend, the prevailing feeling I have is one of loss. When Saturday's largely peaceful protest turned ugly, voices of dissent were lost. Witnessing hundreds of police officers around the city, my personal sense of security was lost. When people were being subject to random and unwarranted searches and detentions today, their civil liberties were lost. And finally, more broadly, my confidence in the police to respect and enforce our laws also suffered a loss.

CCLA human rights monitor

1. Repeal or significant amendment to the *Public Works Protection Act* to meet basic constitutional standards
2. Withdrawal of all charges laid under the *Public Works Protection Act*
3. Implementation of consultation and transparency requirements for regulatory processes
4. Apology from the Ontario government for the process used to adopt the designation pursuant to the *Public Works Protection Act*
5. Legislative framework for the establishment of security perimeters
6. Regulation of new crowd control technologies prior to their use and deployment
7. Compensation for the business owners affected and those wrongfully arrested
8. Amendments to the *Criminal Code* to modernize and bring up to constitutional standards the provisions relating to “breach of the peace”, “unlawful assemblies” and “riots”
9. Full independent public inquiry into the actions of the police during the G20, in particular:
 - a. The dispersal of protesters at the designated demonstration site in Queen’s Park late afternoon, Saturday June 26th
 - b. The detention and mass arrest on the Esplanade on the night of Saturday June 26th
 - c. The arrests and police actions outside the Eastern Ave. detention centre on the morning of Sunday, June 27th
 - d. The prolonged detention and mass arrest of individuals at Queen St. W. and Spadina Ave. on the evening of Sunday, June 27th
 - e. The conditions of detention at the Eastern Ave. detention centre

APPENDIX

A. "Protecting Civil Liberties and Human Rights at the G-20: CCLA Statement of Concerns", May 21, 2010

B. CCLA correspondence to public officials regarding G-20 policing and security.

APPENDIX A

"Protecting Civil Liberties and Human Rights at the G-20:
CCLA Statement of Concerns", May 21, 2010

**Protecting civil liberties and human rights at the G20:
statement of concerns**

**Canadian Civil Liberties Association
May 21, 2010**

The Canadian Civil Liberties Association (CCLA) is concerned about the impact that the G20 security measures will have on individual Canadians' fundamental democratic rights, including Canadians' liberty, privacy, freedom of expression, freedom of association, and freedom of peaceful assembly.

A Human Rights Framework

In planning for the G20, CCLA suggests that two fundamental principles must be observed:

1. All security measures must be planned and executed in the context of respect for and protection of individuals' right to privacy, freedom of peaceful assembly and freedom of expression. Any government actions that restrict these basic human rights must be necessary, minimally intrusive, proportionate, and use the least force possible.
2. International and domestic constitutional standards with respect to policing large events should be at a minimum adhered to, and ideally surpassed.

Specific Concerns Regarding G20 Security and Policing

Specific concerns flowing from these principles include the existence of a 'designated protest zone', pre-summit interactions with potential protesters, surveillance cameras, security fences and control of identity and movement, anticipated police tactics and the use of force during protests.

1. Designated demonstration area

Freedom of expression is protected throughout Canada: our country, and all of Toronto is a 'free speech zone'. Protesters cannot be prevented from demonstrating outside of the "designated demonstration area", particularly when the area set aside is situated in a place that is so remote from the meetings that protesters cannot be directly seen or heard by the leaders.

Therefore, it is appropriate for the police to acknowledge publicly the right of protesters. Language suggesting that protesters are strongly encouraged to gather in the free speech zones is inappropriate.

2. Pre-summit interactions with potential protesters

International experience demonstrates that prior contact between demonstrators and law enforcement can facilitate peaceful protests, and CCLA recognizes that it is not necessarily negative for the police to reach out to protesters prior to demonstrations. The way in which this outreach is done, however, needs to be carefully planned and executed to ensure that the outcome is facilitating peaceful protest, rather than intimidating or threatening those who may want to express dissent.

Law enforcement should approach protesters in a non-confrontational manner, and it must be made clear from the outset that answering questions, or engaging in any dialogue, is entirely voluntary. Attempts to contact individuals should be made by mail or email first, as per normal business practice. If it is decided that a telephone call or personal visit may be more productive in establishing a dialogue, officers should attempt to pre-arrange a meeting, and approach individuals at a mutually agreed-upon time and place. Under no circumstances should officers approach individuals in large intimidating groups, late at night, or at people's workplaces.

3. *Surveillance cameras*

CCLA is aware that a significant number of surveillance cameras are being installed, and we welcome the Toronto Police Service's (TPS) commitment to work with the Privacy Commissioner to ensure that individual privacy is not unjustifiably intruded upon. We note that this includes a commitment that all cameras will not be turned on earlier than necessary for G20 security, and that they will be turned off and removed immediately after the G20 event.

Concerns remain, however, regarding whether agencies outside the TPS will have access to this video footage, how long it will be retained for by non-TPS agencies, and what it will be used for both during and after the demonstrations. If other law enforcement or investigative agencies are also accessing or storing this footage, there is a need for further assurances that they are also complying with best practices.

4. *Fences and control of identity and movement*

a. *Size of security perimeters*

The Integrated Security Unit (ISU) has legitimate security concerns and objectives, and CCLA supports the overall goal of ensuring that the G20 is conducted in a manner that is safe for delegates, protesters, and Toronto residents in general. We also note that the RCMP has the authority to take "appropriate measures, including controlling, limiting or prohibiting access to any area to the extent and in a manner that is reasonable in the circumstances" to ensure the security for an "intergovernmental conference".¹ Such security measures, however, often restrict individual civil liberties, and must therefore be designed and implemented in a manner that complies with basic constitutional requirements.

Cordoning off large areas of the city impairs vital democratic rights and freedoms. Section 7 of the *Charter* guarantees individual liberty, including freedom of movement.²

¹ *Foreign Missions and International Organizations Act*, S.C. 1991, c. 41, s. 10.1(2).

² *Tremblay v. Quebec (Attorney General)*; *R. v. Knowlton*, [1974] S.C.R. 443; *Ogden Entertainment Services v. U.S.W.A., Local 450* (1998), 159 D.L.R. (4th) 340 (Ontario), (Appeal Dismissed at C29462 June 1, 1998, 38 O.R. (3d) 448.

Sections 2(b), (c) and (d) of the *Charter* guarantee freedom of expression, freedom of peaceful assembly and freedom of association. In the context of restrictions around the G20, restrictions on these expressive freedoms suppress core political expression. According to police estimates, approximately 40,000 individuals will need security permits as they live and work within the ‘outer’ security ring. Although the exact boundaries have not yet been announced, it appears that individuals will have restricted access to, and curtailed rights within, a large area of downtown Toronto.

The *Charter* requires that any infringement of individual rights and liberties – including restrictions due to the establishment of security perimeters – impair rights as little as possible. The establishment of security perimeters was addressed at the APEC Inquiry.³ In the Commission’s Interim Report, Mr. Ted Hughes endorsed a guiding principle that “the security perimeter [may] be enlarged for non-security reasons to the extent necessary to ensure that the participants are able to conduct their businesses effectively...”⁴ He also noted, however, that a fence line designed to significantly distance protesters and maintain a “retreat-like atmosphere” could well violate the *Charter*. The effective conduct of business does not require that protesters be so far removed from the meeting site that they can be neither seen nor heard.

Particularly where there is a primary fence to ensure safety around conference venues and delegate hotels, any further restrictions on mobility or protest must be fully and carefully justified. Any extension beyond what is needed to ensure the safe and effective conduct of the meeting will unjustifiably infringe individuals’ freedom of movement, expression, peaceful assembly and association.

b. Screening procedures prior to summit

Workers and residents within the outer security fence, an estimated 40,000 individuals,⁵ are being asked to engage in voluntary screening to facilitate their passage through the outer security fence.

The CCLA is concerned about the privacy implications of the screening procedures currently underway. First, although there have been announcements that the pre-registration program is voluntary, we are concerned that individuals will have no real choice but to register, given the anticipated state of security during the G20. We are also concerned by the lack of information regarding what is being done with individuals’ private data prior to the issuance of the pass. For example, which agencies will have access to this information, and for what purposes? Will any agencies be screening names

³ Commission for Public Complaints Against the RCMP, *APEC – Interim Commission Report*, July 31, 2001.

⁴ *Ibid.* at s. 13.2.1.

⁵ Siri Agrell, “Pass will get locals past outer security perimeter for G20 summig” *Globe and Mail*, April 30, 2010, online: <http://www.theglobeandmail.com/news/world/g8-g20/news/pass-will-get-locals-past-outer-security-perimeter-for-g20-summit/article1551873/>.

against existing databases? What procedures are in place prior to issuing the passes, and what criteria are used to determine who will or will not get a pass? Without answers to these questions, the people who have chosen to disclose personal information have done so without fully informed consent.

There are also significant privacy concerns regarding disclosure and retention of the collected information. Toronto Police Service Board has affirmed that any data collected will be deleted immediately after the G20. The Toronto Police Service should be commended for their proactive stance on this issue. The Toronto Police Service, however, may not be the only agency with access to this data, and federal government departments are being sent lists of residents. In order to ensure privacy considerations are fully met, it is important to know the specific purpose of any information collected, whether other organizations have access to this data, exactly how the data will be used by all agencies leading up to and during the G20, and what other law enforcement agencies will do with it after the G20 has finished.

c. Screening procedures at the outer fence

There has been no clear indication of either the purpose of the outer security fence, or what criteria the police are using in order to decide which non-permit holders can enter. It is our understanding that the police will, under the normal course of events, be letting pedestrian and vehicle traffic through. If there is an incident, the fence will be closed. Given that it is not strictly a 'restricted area' close to the summit site, it appears that the fence will operate more like a 'safeguard' than a primary security measure. If this is the case, general screening or *ad hoc* searches to enter this public space are unwarranted.

Ad hoc searches, absent reasonable and objective security grounds, are unacceptable. Furthermore, under no circumstances should individuals be denied entry to a public area simply because they refuse to be searched, or the government believes they will engage in non-violent protest and dissent. To the extent that there is evidence of specific individuals posing serious threats to the safety of persons and property, CCLA accepts that some form of non-intrusive screening could take place. However, it is imperative that the criteria for exclusion be publicized in advance.

5. Arrests, undertakings and bail restrictions

The history of public order policing in Canada suggests that a high number of arrests usually take place. There are many arrests that are both lawful and appropriate. Mass arrests, however, are not.

Canada's use of mass arrests during demonstrations has been criticized by the United Nations, which in response called on Canada to "ensure that the right of persons to peacefully participate in social protests is respected".⁶ CCLA is concerned that such

⁶ United Nations General Assembly, "Report of the Human Rights Committee" (2005) A/61/40 (Vol. I) at pg. 24.

large-scale arrests may be used as a tool for crowd control and disruption of peaceful protests, rather than individualized apprehension for illegal conduct. Indeed, according to one academic who has studied public order policing in Canada, “Arresting people – and often dropping charges after the event – is one of the most important tools in the countering of protests.”⁷ Any exercise of discretion to arrest should be employed in light of *Charter* rights, including the right to peaceful assembly. The fact that a protest is disruptive, inconvenient, or noisy is not sufficient grounds to arrest individuals participating in a peaceful assembly. Individuals who do engage in violent conduct should be individually targeted for arrest; those participating in peaceful activities should not be arrested because some in the crowd are not protesting peacefully.

Second, activists and protest organizers at prior protests have been subject to bail conditions designed to prevent them from participating in *Charter*-protected activity.⁸ In the past, bail restrictions have been set broadly to prohibit participation in peaceful demonstrations, association with certain groups or individuals, or attendance at locations where demonstrations are likely to take place. Such restrictions are overbroad and courts have ruled that they are unjustifiable violations of *Charter* rights.⁹ They should not be employed. Similarly, any undertakings that protesters are ‘offered’ to sign in return for their release should not include such conditions.

Third, all protesters who are arrested must have timely access to bail hearings. This means that the government has a duty to ensure that there will be sufficient justices of the peace, Crown counsel, and duty counsel available to speedily process large numbers of bail hearings. We note also that at past protests bail hearings have been intentionally delayed to prevent the release of demonstrators. During the Quebec City demonstrations, one of eight special prosecutors who had been hired to prosecute demonstrators resigned after the provincial Justice Minister Paul Begin directed the lawyers to delay all bail hearings for up to three days as a way of “keeping them [protesters] off the street for the duration of the Summit.”¹⁰ Such political interference, and intentional violation of *Charter* rights, is entirely unacceptable.

Finally, all discretion to arrest and charge must be exercised in accordance with the *Charter*’s protection of the right to peaceful protest. This means that significant restraint must be used in detention and arrest during peaceful assemblies. Among the common offences that individuals can be arrested for at protests, we have particular concerns about police power to arrest for breach of the peace. Because there is no applicable criminal offence, these arrests are rarely examined by courts. In the past, however, police have used their powers to arrest for breach of the peace to detain and arrest protesters who are

⁷ Willem de Lint, “Policing Public Order in Canada: An Analysis of Recent Events” Ipperwash Inquiry, Hon. Sydney Linden, Commissioner (2007) at 41.

⁸ See Jackie Esmonde, “Bail, Global Justice, and the limits of dissent” *Osgoode Hall Law Journal* (2003) 41: 323.

⁹ *Ibid.*

¹⁰ *Ibid.* at 352; William Marsden, “Prosecutors Say They Are Being Used to Control Protestors” *The (Montreal) Gazette* (5 April 2001) A6.

arriving at a protest with protective equipment such as bandannas or gas masks in their bags. Arrests such as these are unacceptable and are a fundamental interference with freedom of peaceful assembly and expression. Police officers should be instructed that the possession of objects such as bandannas and gas masks is not grounds for arrest.

6. *Police tactics during protests and use of force*

a. *Use of force*

International law directs that “law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty” and “shall, as far as possible, apply non-violent means before resorting to the use of force,” using force “only if other means remain ineffective.”¹¹ When the use of force is necessary, law enforcement officials must “exercise restraint in such use and act in proportion to the seriousness of the offense.”¹²

The use of force against those engaging in peaceful assembly is highly problematic. In such situations, individuals are engaging in non-violent behaviour that is constitutionally protected. Prior to any use of force, non-violent means should be exhausted to the greatest extent possible, and decisions regarding deployment of force during demonstrations must take into account the unique protections for this democratic activity, as well as basic principles of necessity and proportionality.

Specifically, these principles dictate that particularly careful planning and training is necessary when responding to peaceful, but disruptive, protest. Protesters should be given clear orders and explicit warnings, and time to voluntarily respond, before force used. Police should employ techniques that diffuse, rather than escalate, tension. Finally, given the incident involving undercover officers at the Summit of the Americas, clear guidelines should be issued to any undercover officers to ensure that officers’ primary duty is to monitor the protest, and that they take no action that would escalate, provoke or incite violence on the part of the crowd.

b. *Sonic cannon and crowd control weapons*

There are a number of newer crowd control weapons that have not yet been employed in Canada. In general, these weapons target groups of people, rather than individuals. In many cases the health effects are not well known and give rise to serious concerns. CCLA is particularly concerned about the possible use of the Long Range Acoustic

¹¹ United Nations Code of Conduct for Law Enforcement Officials, adopted December 17, 1979, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979); Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).

¹² *Ibid.*

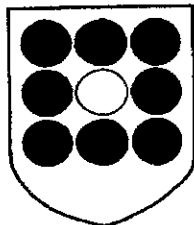
Device (LRAD, or sound cannon). We request assurances that LRAD will not be deployed at the G20. If the LRAD will be deployed, we request that the ISU follow the Vancouver Police Department's lead and disable the 'alert' function of the weapon.

APPENDIX B

CCLA correspondence to public officials regarding G-20 policing and security.

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By Fax

Tuesday June 1, 2010

Chief of Police William Blair
Toronto Police Service
40 College Street
Toronto, Ontario
Canada
M5G 2J3
Fax: 416-808-8002

Dear Chief Blair:

I am writing to you to express the Canadian Civil Liberties Association's (CCLA) concerns regarding the Toronto Police Service's (TPS) purchase, and planned use of, Long Range Acoustic Devices (LRAD). We understand that the TPS has purchased four LRAD models – three hand-held units and one larger model that can be mounted on a vehicle. These devices are capable of emitting very loud sounds – 135 dB for the handheld units, and 143 dB for the mounted unit. According to the manufacturer, the LRAD “effectively disperses crowds and protects infrastructure” by enhancing communication and “[transmitting] powerful deterrent tones to influence behavior in hostile situations.”¹

The CCLA has two concerns. First, we are concerned about the manner in which this weapon was purchased, as it appears to have circumvented the legislated approval and vetting process for the purchase and use of new weapons. Second, we are concerned about the safety implications of deploying an untested, unapproved weapon that can cause permanent physical damage.

The legislated approval process for new weapons exists to ensure that new weapons conform to and are used in accordance with technical standards established by the Solicitor General,² and that the Ministry of Community Safety and Correctional Services has had the opportunity to conduct field and technical testing.³

¹ LRAD Corporation, <http://www.lradx.com/site/content/view/293/110>.

² *Equipment and Use of Force*, R.R.O. 1990, Reg. 926, s. 14(1).

³ Conversation with representative of the Policing Standards Section, Ministry of Community Safety and Correctional Services, May 27, 2010.

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General Counsel Emeritus
Avocat Général Émérite
A. ALAN BOROVY



We understand that the LRAD, however, was purchased without any approval from the Ministry because the TPS defines the LRAD as a “communication tool” rather than a “weapon”. In our view, this is incorrect. It is undeniable that the LRAD has the ability to function as a communication tool. The device, however, is designed not only to communicate, but also to disperse crowds by “[transmitting] powerful deterrent tones”. The level of sound produced by these devices exceeds both the threshold for human discomfort (between 85 and 95 dB) and the normal human pain threshold (between 120 and 140 dB).⁴ New technology that is designed to induce individual compliance through human discomfort and pain cannot be defined solely as a “communication tool”.

The CCLA is also extremely concerned about the health and safety impacts of this novel technology. Past experience with Conducted Electricity Weapons (CEWs, aka “Tasers”) has underscored the need for independent and objective scientific research into the effects of new weapons technologies *prior* to their use on the public. To our knowledge, however, there has been no independent Canadian scientific testing of the short- or long-term health impacts of the LRAD. The introduction of any new weapon into police arsenals requires a process of objective scientific research into the short-term and long-term physical effects of the weapon’s use, consultation with the public who are the potential targets of such weapons, and policy debates. Reliance on research by the manufacturer is insufficient.

There is reason to be concerned regarding the health impacts of the LRAD. The devices purchased by the TPS produce sounds at levels of up to 143 dB. Exposure to noise at 125 dB for even a fraction of a second exceeds Ontario’s allowable workplace health and safety guidelines,⁵ and the World Health Organization’s guidelines state that “[t]o avoid acute mechanical damage to the inner ear, adults should never be exposed to more than 140 dB peak sound pressure” and children should not be exposed to more than 120 dB.⁶ Canada Health guidelines also reflect these standards, stating that exposure to intense sounds such as a cap gun or firecracker “can cause immediate and severe hearing loss that may be permanent.”⁷ At lower levels of sound exposure, there is a cumulative effect that can cause permanent damage; listening to noises of 110 dB for thirty seconds a day places an individual at significant risk of hearing loss.⁸ Finally, LRAD’s manufacturer

⁴ National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, John R. Franks, Mark R. Stephenson, and Carol J. Merry Eds., *Preventing Occupational Hearing Loss – A Practical Guide* (1996) online: <http://www.cdc.gov/niosh/docs/96-110/pdfs/96-110.pdf> at 88;

⁵ *Industrial Establishments*, R.R.O. 1990, Reg. 851 at s. 139.; calculations performed in accordance with O. Reg. 565/06, s. 2. with the assistance of the Occupational Health Clinics for Ontario Workers Inc. *Noise Exposure Calculator*, available online: http://www.labour.gov.on.ca/english/hs/pubs/noise/gl_noise_3.php.

⁶ World Health Organization, *Guidelines for Community Noise*, 1999, online: www.who.int/hq/1999/a68672.pdf at pg. 45.

⁷ Health Canada, “Hearing Loss and Leisure Noise”, January 2005, online: <http://www.hc-sc.gc.ca/hl-vs/iyh-vsv/environ/leisure-loisirs-eng.php>.

⁸ *Ibid.*

has acknowledged that the device can cause permanent hearing damage if individuals are exposed for longer periods.⁹

The possible health risks are magnified due to the fact that the LRAD is a large-scale device, targeting a large population rather than specific individuals. Pain tolerance varies among the population, and certain groups – including children – are more vulnerable to hearing loss. Moreover, individuals within large crowds may be unable to move out of the LRAD's range due to physical disability or the sheer volume of people in a given area. The indiscriminate nature of this device does not allow the police to accommodate and respond to individuals' differing reactions, increasing the possibility that at-risk populations will be hurt.

Simply put, new weapons such as the LRAD should not be employed without prior independent assessment and study. Protocols regarding deployment and use should be developed with reference to independent science, not on the basis of manufacturer's claims, and should incorporate public consultation and participation. Finally, comprehensive reporting, monitoring and oversight mechanisms must be established to account for how any approved weapons are actually used in the field.

The CCLA accordingly requests that the TPS refrain from using the LRAD until it has gone through a thorough and independent testing and approval process, including obtaining Ministry approval as required by law.

If the TPS intends to maintain that the LRAD is simply a 'communication tool', CCLA requests that, at a minimum, the TPS commit to disabling the 'alert' function – as was done by the Vancouver Police Service. Even if used as a "communication tool", the LRAD should be subject to independent expert study to ensure that the maximum allowable volume is limited to a safe level, and that the weapon can continually operate according to – and not above – the manufacturer's specified standards. Finally, the guidelines for use, including impacts on vulnerable populations, should be made public so that individuals can determine when they are at risk of negative health effects.

We look forward to your response, and would appreciate a reply by Friday June 4th, 2010.

Regards,



Nathalie Des Rosiers
CCLA General Counsel



Abby Deshman
Project Director, Fundamental Freedoms

⁹ Michael P. Regan, "Troops in Iraq get high-tech noisemaker to keep enemies away", *USA Today*, March 3, 2004, online: http://www.usatoday.com/tech/news/2004-03-03-hullabaloo_x.htm.

Cc:

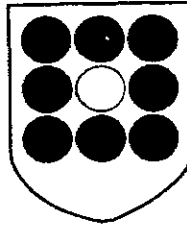
Alok Mukherjee, Chair, Toronto Police Services Board; fax: 416-808-8082

The Honourable Rick Bartolucci, Minister of Community Safety and Correctional Services; fax: 416-325-6067

William J.S. Elliott, Chief Commissioner RCMP; fax: 613-993-0260

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June 4, 2010

By Fax

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Chief William Blair
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40 College Street
Toronto, ON M5G 2J1

Fax: 416-808-8002

Dear Commissioner Elliott and Chief Blair:

I am writing on behalf of the Canadian Civil Liberties Association to request further information regarding the outer security fence that was announced last week.

From the information released to the media, we understand that there are two security fences being constructed: an inner fence that will surround the Convention Centre and delegates' hotels (the "Red Zone"), and an outer fence that will cover a larger portion of the downtown core (the "Yellow Zone"). Individuals who live and work within the Yellow Zone have been given the opportunity to apply for a Registration Card. Beginning on June 25th, and possibly earlier if security requirements dictate, members of the public who have not received a Registration Card or who do not live or work in the area but require access into the security perimeter will have to present a piece of photo identification and clearly articulate a specific purpose and destination to be allowed through.

From our inquiries to the Integrated Security Unit's media line, we also understand that individuals' names will be searched against an unknown number of databases, and there will likely be a list of specified individuals that are to be denied entry. If individuals decline to articulate the purpose of their desire to enter the area, they will be denied entry. The articulated purpose for entry must be necessary for "normal" life such as work or residence. The desire to peacefully protest closer to the convention centre will not be a sufficient purpose to allow an individual to gain access. There will also be

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search protocols upon entry, but the nature, extent and purpose of the searches was not elaborated upon, other than stating that the searches would be as minimally intrusive as possible given all the circumstances.

We would appreciate confirmation of the above information, and also have a number of outstanding questions. Although we understand that this is a sensitive area, we are very concerned about the implications of operation like this for individuals who are now required to agree to significant intrusions into their personal privacy in order to access public space. Any more information or detail that you can provide on any of the following points would be greatly appreciated.

1. Requirement to show photo identification

- What databases are individuals being screened against?
- If there is a specific list of individuals who will be automatically denied entry, will this list be made public, what are the criteria being used to place individuals on this list, and are there any oversight and/or review mechanisms in place?
- Who will be denied entry based on their identity? For example, will individuals with a non-violent criminal record be denied entry? Could non-conviction disposition records, such as arrests or withdrawn charges, result in a denial of entry?
- Is there different protocol regarding individuals who are not able to present Canadian identification?

2. Requirement to state specific purpose

- We have been informed that the 'purpose' must be related to 'normal' activities, such as individuals who live and work in the specified area. Individuals with other purposes, including those who wish to engage in peaceful expression, will be denied entry. Is this accurate?
- If an individual who lives and/or works within the secured area wishes to peacefully express dissent within the Yellow Zone, will this person be permitted entry, and will this be a permitted activity in this area?

3. Search powers

- Is it correct to state that the sole purpose of any search upon entry to the outer security perimeter is a search for safety purposes? If this is not accurate, what are the other purposes of this search?
- What items will be prohibited and/or confiscated upon entry?
- Will the public be made aware of prohibited items prior to the search?
- Will individuals be given the option of leaving without being searched if they refuse consent?
- Once within the Yellow Zone, will normal *Charter* protections against unreasonable search and seizure be respected, or are the police of the view that there is a diminished expectation of privacy within the Yellow Zone?

4. Information sharing and data retention concerns
 - Who will have access to the information provided upon entry to the Yellow Zone?
 - Will the information provided be shared with other governmental agencies not involved in summit security, such as Citizenship and Immigration Canada, or CBSA?
 - Is the information individuals provide upon entry to the Yellow Zone being retained, and if so for how long, who will have access, and for what purpose?

5. Other
 - Will individuals be screened and/or searched upon exit from the Yellow Zone?
 - Is there any written protocol regarding who will be refused access to the Yellow Zone?
 - Do police officers retain discretion to refuse a person access to the Yellow Zone, even if the searches and questioning do not give any objective cause for concern?

Thank you in advance for any help you can provide in addressing these concerns. Because of the short time frame involved, we respectfully request a response by Wednesday, June 9, 2010.

Regards,



Abby Deshman
Project Director

Cc:
Meaghan Gray, Public Affairs, Communications & Community Relations G8-G20
Planning Team Toronto Police Service (Meaghan.Gray@torontopolice.on.ca)
Sgt. Cathy McCrory, RCMP, G20 Integrated Security Unit Community Relations Group
(Cathy.McCrory@rcmp-grc.gc.ca)



Toronto Police Service

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Website: www.TorontoPolice.on.ca



William Blair
Chief of Police

File Number:

June 13, 2010

Ms. Abby Dushman
Project Director
Canadian Civil Liberties Association
360 Bloor Street West, Suite 506
Toronto, Ontario M5S 1X1

Dear Ms Dushman:

Re: Request for Additional Information Pertaining to the G20 Summit

Thank you for your letter. You have asked a number of questions. I hope this overview of the Toronto Police Service security perimeter and the registration card process will address your concerns. I would like to mention this process varies considerably from the one applied by the Royal Canadian Mounted Police (RCMP) for the purposes of their security perimeter and accreditation process. I am sure that you would agree, those questions are best answered by Commissioner Elliott.

Security Perimeter

The Toronto Police Service is working with the RCMP to provide a safe and secure environment for the G20 Summit. Providing this security means creating a number of different security zones around the Metro Toronto Convention Centre.

The Toronto Police Service's security perimeter is often referred to as the "interdiction zone" or the "yellow zone". The fence for the security perimeter is represented by the orange line on the map I have appended to this letter. Construction of this fence started on Monday, June 7, 2010 and will continue 24 hours a day until it is complete. Deconstruction of the fence will begin on Monday, June 28, 2010.

It is our hope this perimeter will not be secured until Friday, June 25, 2010. However, if security reasons dictate, we will be in position to secure it before that date. Once 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 engagement will take many forms and is intended to ensure the security of the perimeter is not compromised.

There are various legal authorities for the police to take reasonable measures to control access to areas of the city in order to ensure the security of those participating in the Summit. The *Police Services Act* and common law impose duties on provincial and municipal police officers including preserving the peace; protecting life and property; and preventing crimes and other offences.

As well, under the *Foreign Missions and International Organizations Act*, police are responsible to ensure security for the proper functioning of conferences such as the G20. This includes taking appropriate measures including controlling, limiting or prohibiting access to any area to the extent and in a manner that it is reasonable.

Every case will be dealt with on an individual basis and police will balance the need to protect life and property with the constitutional rights of every citizen.

Registration Card Process

Individuals who live or work within the security perimeter have been offered an identification card.

This process was voluntary. They were asked to provide their name and location address in order to be provided with a card. No security checks were done on their information and no security checks are being done at the security perimeter. The Toronto Police Service made a request to the Toronto Police Services Board to have this information destroyed immediately following the summit instead of retaining it for 12 months as listed in the current Toronto Police Service policy. This request was approved by the Toronto Police Services Board at its meeting of May 20, 2010 (Board Minute No. P135/2010 refers).

The registration cards, along with photo identification, will have to be presented at any of the identified checkpoints to gain expedited access to the security perimeter, whether on foot or by vehicle. Generally speaking, access will not be denied to those with photo identification and a specific destination within the security perimeter.

Those who do not have registration cards and are unable to present photo identification, or are unable to present photo identification and appropriately identify a destination within the security perimeter, may be denied entry at the discretion of a police officer.

Searches

Based on the discretion of the officer and the circumstances presented, anyone requesting access into the security perimeter may be subject to search. Trunks will be searched and vehicles will be subject to an external search using a mirror to access the undercarriage.

These searches are being done for security purposes to assist police with providing a safe environment for the summit.

I trust that this information has addressed your questions. Thank you for writing and sharing your concerns with us.

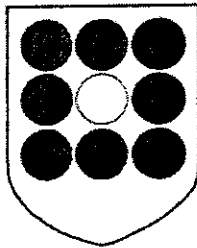
Yours truly,

A handwritten signature in black ink, appearing to read 'W. Blair', written in a cursive style.

William Blair, O.O.M.
Chief of Police
Toronto Police Service

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June 22, 2010

SENT BY FAX: 613-993-0260

Chief William Blair
Toronto Police Service
40 College Street
Toronto, ON M5G 2J1

RE: Duty of Toronto Police Service officers to wear individualized name and badge number identification on their uniforms

Dear Chief Blair,

On am writing on behalf of the Canadian Civil Liberties Association (CCLA) to clarify the Toronto Police Service's (TPS) policy on the duty of all uniformed police officers to wear individualized identification on their uniforms during G-20 related policing activities.

It is the understanding of the CCLA that all TPS officers are required to display their name, the name of their police force and their individualized badge number in a prominent location on their uniform. It is our understanding that this policy will remain in force throughout all G-20 security operations. Both of these understandings were confirmed in an email dated June 7, 2010, from Officer Meaghan Gray of the TPS' G8-G20 Planning Team, to CCLA. In it, Officer Gray stated that:

[A]ll Toronto Police Service officers have visible name tags and shoulder epaulettes listing badge numbers including our Public Order Unit officers in tactical uniforms. For security reasons, I am unable to disclose the other police services that will make up our deployment for the G20 summit. However, I can tell you that all police services require their officers to show either their badge number or name, sometimes both, whenever they are in uniform.

I would also like to confirm that this proactive identification policy exists independent from the duty of a TPS officer to "provide his or her name and badge number upon request" when stopping an individual.¹

The purpose of this letter is to advise you that the CCLA has observed violations of the abovementioned policy by TPS officers in the course of routine G-20 related policing. The CCLA has human rights monitors serving as neutral and independent observers at G-20 related demonstrations, including those which took place on June

21 and 22. Our observers have reported that while many officers were wearing protective vests while on patrol, their name tags were sometimes absent from the Velcro name strip on the breastplate of the vest. In other instances, protective vests had completely obscured the officer's badge number on her or his shoulder cuff. We were also advised by TPS officers that we spoke to while on patrol that there are no name or badge identification tags visible when police officers don their rain jackets. As the current forecast calls for rain on the weekend of June 26-27, this may be a cause for concern.

A second concern that CCLA has is the possibility that name tags and badge numbers will be absent or obscured should police don tactical or riot gear. We understand that the TPS cannot rule out the possibility that police officers will have to equip themselves in this manner for their own protection in the course of their G-20 policing activities. Our only concern is that the use of such gear not compromise the duty of officers to have their name, police force and badge numbers clearly visible to the public.

As you are well aware, the police complaints commissions and internal disciplinary processes cannot function properly where the public is unable to identify individual officers and report potential misconduct. Indeed, the UK government report into the policing of demonstrations at the 2009 G-20 Summit in London, concluded that police forces must "ensure officers wear numerals or other clear identification at all times during public order operations and deal with individual officer non-compliance swiftly and robustly [... T]here can be no excuse for police officers failing to display identification."ⁱⁱ

We urge you to take steps to ensure that the policy on officer identification is being properly enforced in the course of its G-20 related policing activities..

Thank you in advance for your assistance in this matter.

Regards,



Nathalie Des Rosiers
General Counsel



Anthony Navaneelan
Acting Project Director

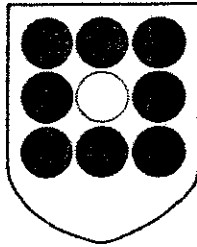
Cc: Meaghan Gray , Public Affairs, Communications and Community Relations,
G8-G20 Planning Team, Toronto Police Service
(meaghan.gray@torontopolice.on.ca).

ⁱ *What to expect when stopped by police*, Toronto Police Service, 2010
[<http://www.torontopolice.on.ca/whenstopped/>].

ⁱⁱ *Adapting to Protest*, Her Majesty's Chief Inspector of Constabulary (London) 2009
[http://www.met.police.uk/news/docs/g20_final_report.pdf].

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June 25, 2010

SENT BY FAX: (416) 808-8002

Chief William Blair
Toronto Police Service
40 College Street
Toronto, ON M5G 2J1

RE: On-going unlawful detentions and searches at Allen Gardens park

Dear Chief Blair,

I am writing on behalf of the Canadian Civil Liberties Association (CCLA) to express our concern about ongoing detentions and unlawful searches that are being conducted by TPS officers in Allen Gardens. According to CCLA's human rights monitors who are currently in Allen Gardens, the TPS are detaining any person seeking to enter the park with a bag and are demanding they submit to a search. Several members of the public report that TPS officers have threatened them with arrest should they decline to consent to the search and attempt to enter Allen Gardens. Allen Gardens is located more than two kilometers from the G20 security perimeter and is a publicly accessible park. It is the opinion of the CCLA that, in these circumstances, there is no lawful basis for such conduct by the TPS.

We urge you to refrain from detaining and searching every person with a bag who attempts to enter Allen Gardens. Arbitrary detentions and searches on this basis, without any further grounds or suspicion and far from the G20 security perimeter, are not authorized under the *Criminal Code* or the common-law police power. Such conduct represents an affront to the constitutional rights of Torontonians.

Considering the serious nature of the conduct at issue in this letter, I would appreciate a reply forthwith.

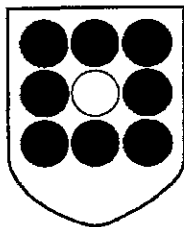
Regards,

Nathalie Des Rosiers
General Counsel

Cc: Meaghan Gray, Public Affairs, Communications and Community Relations,
G8-G20 Planning Team, Toronto Police Service
(meaghan.gray@torontopolice.on.ca).

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A. ALAN BORVOY

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.

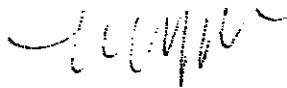
Finally, we are alarmed that the public was not in any way put on notice that the *Public Works Protection Act* would be used as legal authority to detain, question, search and arrest individuals on public streets and sidewalks.

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

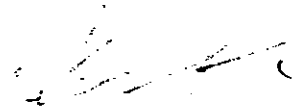
community any warning, circumvents democratic accountability and puts innocent individuals at risk of criminal arrest and conviction.

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