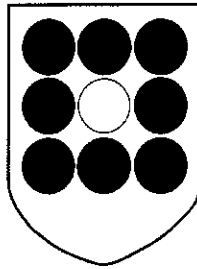


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July 12, 2010

Alok Mukherjee, Chairperson
Toronto Police Services Board
40 College Street
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board@tpsb.ca

Dear Mr. Mukherjee

The Canadian Civil Liberties Association (CCLA) is encouraged by the recent decision of the Toronto Police Services Board (TPSB) to establish an Independent Civilian Review (ICR) of policing during the 2010 G20 Summit in Toronto. Like many members of the public, the CCLA was deeply concerned by several aspects of the Toronto Police Service's (TPS) governance and policy during the Summit. Our concerns were elaborated upon more fully in our interim report, *A Breach of the Peace: Preliminary Observations during the 2010 G20 Summit*, which was forwarded to the TPSB on July 5, 2010. It is our opinion that an ICR process that is prompt, credible, comprehensive and transparent is essential to restoring public confidence in the TPS – and, at same time, public accountability over it.

It is our understanding, based on the TPSB's press releases, that the ICR will "identify and study issues raised by the public and Board members regarding oversight, governance, accountability, transparency and the communications and supervision issues arising" from G20-related policing. It is also our understanding that the ICR "has as its focus, matters of governance and policy, rather than operational policing issues or public complaints about personal experiences with police". These latter issues, according to the TPSB, are the purview of the Office of the Independent Police Review Director (OIPRD) and the Special Investigations Unit (SIU).

At the July 6, 2010 meeting of the TPSB, the Board stated that it would welcome written submissions from the public regarding the Terms of Reference for the ICR and any potential nominee to serve in that role. Please find below the submissions of the CCLA on these points. We hope you afford them the attention and consideration we believe they deserve.

By fax and mail

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A. NOMINATION OF THE ICR:

If the ICR is to restore public confidence in the TPS, it is essential that the public have confidence in the person serving in that role. Accordingly, the CCLA recommends that the Independent Civilian Reviewer be someone of the highest public repute. She/he must be someone who, as matter of profession and reputation, has been independent from police services and, ideally, from the current federal and provincial governments. Overall, the qualifications and experience of the nominee for ICR must be such as to assure the public that she/he will act impartially, expeditiously and fairly in meeting the terms of the ICR mandate.

B. MANDATE OF THE ICR:

The TPSB has indicated that the ICR “has as its focus, matters of governance and policy, rather than operational policing issues or public complaints about personal experiences with police”. The line between ‘policy’ and ‘operational issues’, however, can often be difficult to discern. Whatever the scope the TSPB affords to the term “governance and policy”, the CCLA recommends that the Terms of Reference direct the ICR to investigate:

- (i) Whether the TPS exhibited sufficient candor and honesty in informing the public of the scope of their police powers during the G20 Summit?
- (ii) Whether there was sufficient public transparency and advanced disclosure as to the chain of command and accountability between: (a) the TPS and the RCMP operating inside the G20 security-zone; and between (b) the TPS and out-of-city/out-of-province police officers operating outside the G20 security-zone?
- (iii) Whether there was sufficient public transparency and advanced disclosure of the mechanisms for civilian oversight of out-of-city/out-of-province police officers, including whether bodies such as the TPSB, OIPRD and SIU would have jurisdiction over those officers for the purposes of G20 policing?
- (iv) What is the TPS policy on public safety and crowd control during mass-demonstration event and whether it is in conformity with international policing standards, domestic laws and respect for domestic *Charter* rights, including the right to be free from arbitrary detention, freedom of expression and assembly and due process rights?
- (v) What is the TPS policy for the dispersal of public assemblies through force and whether it is in conformity with international policing standards, domestic laws and respect for domestic *Charter* rights, including the right to freedom of expression and assembly and due process rights?
- (vi) What is the TPS policy for the ‘containment’ or ‘kettling’ of protesters and the subsequent mass arrests of all persons present, and whether it is in conformity

with international policing standards, domestic laws and respect for domestic *Charter* rights, including the right to freedom of expression and assembly and due process rights?

C. INVESTIGATORY POWERS OF THE ICR:

The CCLA recommends that the Terms of Reference provide the ICR with:

- Security clearance to view all documents, papers or records that would otherwise be available to the TPSB directly.
- The authority to send for and examine all documents, papers or records in relation to G20 policing that are in the possession or control of the TPS and would otherwise be available to the TPSB directly.
- The authority to examine any member or employee of the TPS in relation to G20 policing, including the authority to examine senior TPS officials in a public forum.
- The authority to contact and to seek the input of any other persons, agencies, organizations or associations who have information that will assist in the review.
- Sufficient budget and resources, including the retention of staff, necessary to meet the terms of the ICR mandate in an expeditious and comprehensive manner.

The CCLA also recommends that the Terms of Reference impose a duty on TPS officers to provide the ICR with full cooperation and candour in her/his review.

D. PUBLIC CONSULTATION DUTIES OF THE ICR:

The public cannot have confidence in the ICR process if they cannot participate in it. Accordingly, the CCLA recommends that the Terms of Reference require the ICR to provide members of the public with a reasonable and meaningful opportunity to make written or oral submissions with respect to their opinion and experience with G20-related police.

E. REPORTING POWERS AND DUTIES OF THE ICR:

The CCLA recommends that the Terms of Reference provide the ICR with the authority to make recommendations as to how the TPS can improve its policies and protocols to ensure:

- (i) Greater candour and honesty with the public regarding the scope of police powers;
- (ii) Greater transparency and public accountability in multijurisdictional policing, including advanced determination and disclosure of the chain-of-command and the jurisdiction of civilian oversight bodies;

- (iii) The development of a human-rights framework for public safety and crowd control during mass-demonstration event, including the duty of police to protect and facilitate the right to freedom of expression and assembly;
- (iv) Clear guidelines for when and in what manner the police may disperse a public assembly through force;
- (v) Clear guidelines for the use of 'containment' or 'kettling' tactics during mass-demonstration events.
- (vi) Clear prohibitions against the use of mass arrests or mass searches falling short of reasonable grounds.

The CCLA recommends that the Terms of Reference for the ICR include an explicit commitment from the TPSB to make all parts of the ICR's final report available to the public without delay.

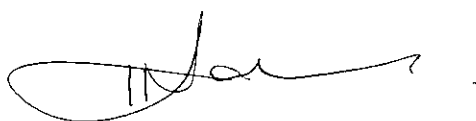
The CCLA supports an Independent Civilian Review that is prompt, credible, comprehensive and transparent. We are confident that the above recommendations for the ICR's Terms of Reference will help to advance these goals.

If you have any questions or concerns, please feel free to contact us at your convenience.

Yours Sincerely,



Nathalie Des Rosiers
General Counsel



Anthony Navaneelan
Acting Programme Director
Fundamental Freedoms Programme