

**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 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 Sections 2(b), (c) and (d) of the *Charter* guarantee freedom of expression, freedom of

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.

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. 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 against existing databases? What procedures are in place prior to issuing the passes, and

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 summit” *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/>.

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 large-scale arrests may be used as a tool for crowd control and disruption of peaceful

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

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 arriving at a protest with protective equipment such as bandannas or gas masks in their

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.

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 Device (LRAD, or sound cannon). We request assurances that LRAD will not be

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.*

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.