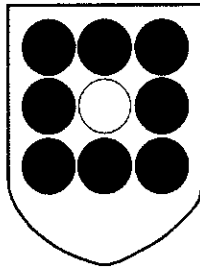


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August 4, 2010

By fax and mail

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RE: Access to G-20 related judicial proceedings in the Ontario Court of Justice.

Dear Chief Justice Bonkalo and Associate Chief Justice Payne,

I am writing to express the concern of the Canadian Civil Liberties Association (CCLA) over public access to the G-20 related judicial proceedings being heard before the Ontario Court of Justice. In particular, the CCLA is concerned with several decisions that have had the effect of limiting the ability of the public to observe these important cases. Left undisturbed, these measures threaten to undermine public confidence in the administration of justice in these cases and in the Ontario Court of Justice more generally. The CCLA believes they deserve your prompt and careful attention.

Justice of the Peace Mark Conacher (JP) presided over all of the show cause

hearings arising from arrests made during the G20 Summit in Toronto on June 26-27, 2010. These show cause hearings were heard at the 2201 Finch Avenue Courthouse in Etobicoke. As you are aware, the G20 Summit resulted in the largest mass arrests of individuals in Canadian history; over 1105 individuals were arrested in Toronto within 48 hours. Not surprisingly, subsequent judicial proceedings arising from these arrests – of which show cause hearings were the most immediate – have rightly attracted considerable public attention and scrutiny. Within the limits established by s.517(1) of the *Criminal Code*, the public has a strong interest in observing, noting and commenting on the judicial treatment of charges resulting from G20-related arrests. Transparent and open access to these proceedings are essential for Canadians to form opinions not only on the proper administration of justice but also on related issues of G20 policing and security.

It is with this purpose in mind that the CCLA is concerned with the barriers to access that have arisen around G20-related hearings. For instance, despite the probability that G20-related hearings would attract considerable attendance from members of the public and the media, some hearings were heard in small courtrooms that were woefully unable to handle the capacity. This occurred despite larger courtrooms being available at the 2201 Finch Avenue Courthouse. Other barriers more directly connected to the jurisdiction of the JP have also emerged. At some G20-related show cause hearings, the public and media were excluded from the courtroom and required to watch the proceedings via small CCTV monitors in an adjacent room. Several journalists have complained over the adequacy and quality of the audio and video transmission. This occurred despite seating still being available in the courtroom.

The CCLA is especially concerned by the order issued by JP Conacher on July 13, 2010, during the show cause hearing for Peter Hopperton. In the course of that proceeding, JP Conacher ordered that members of the public were forbidden from taking notes of what was transpiring in the courtroom. When two journalists who were present objected, JP Conacher exempted them from the order but otherwise upheld its application to other members of the public. A CCLA legal monitor who was observing G20-related show cause hearings was compelled to discontinue taking notes of the proceeding as a result of the order. By the conclusion of subsequent G20-related show cause hearings, it did appear that JP Conacher was no longer enforcing his order. Nonetheless, to the best of our knowledge, it was never formally rescinded.

The above restrictions are inconsistent with the “open courts” principle that has been recognized as part of this country’s constitutional order. This principle establishes transparency and access by the public as the presumptive norms in court procedures. Indeed, the Supreme Court has noted that “particularly the criminal courts ... must be open to public scrutiny and to public criticism of their operations”: *Canadian Broadcasting Corp. v. New Brunswick (Attorney General) (Re R. v. Carson)*, [1996] 3 S.C.R. 480, at para. 20. The open courts principle is also closely connected to the s.2(b)

Charter rights of individuals: *Named Person v. Vancouver Sun*, [2007] 3 S.C.R. 253 at paras. 31-33. Individuals cannot form opinions on the cases before the justice system if they cannot gain access to the courthouses in which they are heard. The law in Canada provides that the open courts principle should prevail unless there are “circumstances that would render the proper administration of justice unworkable”: *Canadian Broadcasting Corp., supra*, at para. 9.

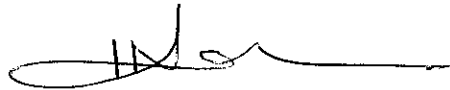
Many individuals who have appeared before Justice of the Peace Conacher last week are scheduled to appear before him again on August 23, 2010. In CCLA’s submissions, efforts to improve transparency and public access to G-20 related judicial proceedings should be in place by this date. The proceedings should be heard in facilities appropriate to the expected attendance, individuals should not be excluded from the courtroom except in strict conformity with s.486(1) of the *Criminal Code*, and members of the public should be informed that they are entitled to take notes.

Thank you for your attention to these matters.

Yours Sincerely,



Nathalie Des Rosiers
General Counsel



Anthony Navaneelan
Acting Project Director
Fundamental Freedoms Project