

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.*

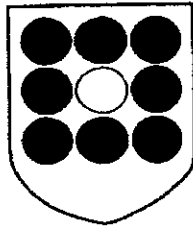
Device (LRAD, or sound cannon). We request assurances that LRAD will not be deployed at the G20. If the LRAD will be deployed, we request that the ISU follow the Vancouver Police Department's lead and disable the 'alert' function of the weapon.

APPENDIX B

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

CANADIAN CIVIL LIBERTIES ASSOCIATION

360 Bloor Street West, Suite 506
Toronto, ON M5S 1X1
Telephone (416) 363-0321
FAX (416) 861-1291
Website: www.ccla.org
E-mail: mail@ccla.org



ASSOCIATION CANADIENNE DES LIBERTES CIVILES

360 rue Bloor Ouest, Suite 506
Toronto, ON M5S 1X1
Téléphone (416) 363-0321
Télécopieur (416) 861-1291
Site Internet: www.ccla.org
Courriel: mail@ccla.org

Tuesday June 1, 2010

By Fax

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.

EXECUTIVE COMMITTEE
COMITÉ EXÉCUTIF
Past Presidents
Présidents Précédents
THE HON. J. KEHLER MACKAY
(1888-1970)
J. S. MICHANIK, Q.C.
(1920-1997)
JOHN NELLIGAN, Q.C.
HARRY W. ARTHURS
THE HON. WALTER TARNOPOLSKY
(1952-1993)
WALTER PITMAN
SYBIL SHACK
(1911-2004)
THE HON. ALLAN BLAKENBY
President
Présidente
MAHSILA HANEN
Vice-presidents
Vice-présidents
JAMIE CAMERON
SILSAN COOPER
GISELE CÔTE-HARPER, Q.C.
MICHAEL DEPENSIER
MARLYN EDWARDH
EDWARD L. GREENSPAN, Q.C.
PATRICIA JACKSON
JOHN D. McCAMUS
DELIA OPEKDEW
THE HON. HOWARD BAWLEY
KENNETH P. SWAN
DR. JOSEPH WONG
Secretary
Secrétaire
SYDNEY GOLDENBERG
Treasurer
Trésorière
ELAINE SLATER
General Counsel
Avocate Générale
NATHALIE DES ROSIERS
BOARD OF DIRECTORS
CONSEIL D'ADMINISTRATION
FRANK ADDARIO
THE HON. WARREN ALLMAND, Q.C.
BROMLEY ARMSTRONG
THE HON. RONALD ATKY, Q.C.
FRÉDÉRIC BACHAND
JOSEPH BOYDEN
THE HON. EDWARD BROADBENT
LEAH CASSELMAN
THE HON. SAUL CIERNIACK, Q.C.
DOMINIQUE CLEMENT
JANE COBURN
MICHAEL CONNER
DR. DEBBY COPEL
DAVID KRONENBERG
FERNAND GAUDET
BRYAN A. F. EDY
SUSAN ENG
MEL FINKELSTEIN
ROBERT FULFORD
VICKI GABEREAU
THE HON. CONSTANCE R. GILUBE, Q.C.
KATHERINE GOVIER
LOUIS GREENSPAN
HUSSEIN HAMDANI
SHIRLEY HEAPEY
HARISH JAIN
MAHMUD JAMAL
JANET KEEPING
JOY KOGAWA
ANNÉ La FOREST
CYRIL LEVITT
ANDREW LOKAN
A. WAYNE MACKAY
KEN MANDZUK
JON OLIVER
PENELOPE ROWE
PAUL SCHABAS
MARVIN SCHIFF
DAVID SCHNEIDERMAN
ERIC TEEB, Q.C.
WALTER THOMPSON
THE VERY REV. LOIS WILSON
Director of Education & Administration
Directrice, Éducation et administration
D. S. McLAUGHLIN
Director, Freedom of Expression Project
Directrice, Projet de la liberté d'expression
NOA MENDELSOHN AVY
Director, Public Safety Project
Directeur, Projet de sécurité publique
GRAEMR NORTON
General Counsel Emeritus
Avocat Général Émérite
A. ALAN BOROVYU



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:

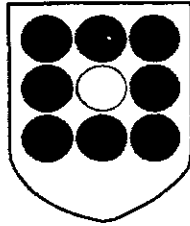
Alok Mukherjee, Chair, Toronto Police Services Board; fax: 416-808-8082

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

CANADIAN CIVIL LIBERTIES ASSOCIATION

360 Bloor Street West, Suite 506
Toronto, ON M5S 1X1
Telephone (416) 363-0321
FAX (416) 861-1291
Website: www.ccla.org
E-mail: mail@ccla.org



ASSOCIATION CANADIENNE DES LIBERTES CIVILES

360 rue Bloor Ouest, Suite 506
Toronto, ON M5S 1X1
Téléphone (416) 363-0321
Télécopieur (416) 861-1291
Site Internet: www.ccla.org
Courriel: mail@ccla.org

June 4, 2010

By Fax

William J.S. Elliott, Commissioner
RCMP National Headquarters
Headquarters Building
1200 Vanier Parkway
Ottawa ON K1A 0R2
Fax: 613-993-0260

Chief William Blair
Toronto Police Service
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

EXECUTIVE COMMITTEE COMITE EXECUTIF

Past Presidents Présidents Précédents

THE HON. J. KEILLER MACKAY
(1888-1970)
J. S. MIDANEK, Q.C.
(1920-1997)
JOHN NEILIGAN, Q.C.
HARRY W. ARTHURS
THE HON. WALTER TARNOPOLSKY
(1932-1993)
WALTER PITMAN
SYBIL SHACK
(1911-2004)
THE HON. ALLAN BLAKENEY

President Présidente

MARSHA HANEN

Vice-presidents Vice-présidents

JAMIE CAMERON
SUSAN COOPER
GISÉLE CÔTE-HARPER, Q.C.
MICHAEL S. FENCHEK
MARIYS EDWARDH
EDWARD L. GREENSPAN, Q.C.
PATRICIA JACKSON
JOHN D. MCCAMUS
DELIA OPEKOKEW
THE HON. HOWARD PAWLEY
KENNETH P. SWAN
DR. JOSEPH WONG

Secretary Secrétaire

SYDNEY GOLDENBERG

Treasurer Trésorière

ELAINE SLATHH

General Counsel Avocate Générale

NATHALIE DES ROSIERS

BOARD OF DIRECTORS CONSEIL D'ADMINISTRATION

FRANK AIDARIO
THE HON. WARREN ALLMAND, Q.C.
BROMLEY ARMSTRONG
THE HON. RONALD ATKY, Q.C.
FRÉDÉRIC BACHAND
JOSEPH BOYDHN
THE HON. EDWARD BROADBENT
LEAH CASSELMAN
THE HON. SAUL CHERNIACK, Q.C.
DOMINIQUE CLÉMENT
JANE COBBEN
MICHAEL COVNER
DR. DEBBY COPE
DAVID CRONENBERG
FERNAND DAORIST
BRIAN A. F. EDY
SUSAN ENG
MEL FINKELSTEIN
ROBERT FULFORD
VICKI GABEREAU
THE HON. CONSTANCE R. GILJE, Q.C.
KATHERINE GOWIE
LOUIS GREENSPAN
HUSSEIN HAMDANI
SHIRLEY HEAPEY
HARISH JAIN
MAHMUD JAMAL
JANET KEEPING
JOY KOGAWA
ANNE LA FOREST
CYRIL LEVITT
ANDREW LOKAN
A. WAYNE MAGRAY
KEN MANDELIK
JON OLIVER
PENELOPE ROWE
PAUL SCHARAS
MARKIN SCHIEF
DAVID SCHNEIDERMAN
ERIC TEED, Q.C.
WALTER THOMPSON
THE VERY REV. LOIS WILSON

Director of Education & Administration
Directrice, Éducation et administration
D. S. McLAUGHLIN

Director, Freedom of Expression Project
Directrice, Projet de la liberté d'expression
NOA MENDELSON AVIV

Director, Public Safety Project
Directeur, Projet de sécurité publique
GRAEME NORTON

General Counsel Emeritus
Avocat Général Émérite
A. ALAN BOROVY



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

40 College Street, Toronto, Ontario, Canada. M5G 2J3

(416) 808-2222 FAX (416) 808-8202

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.

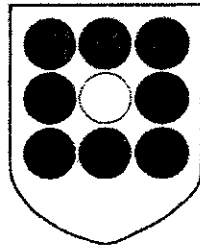
Yours truly,

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

CANADIAN
CIVIL LIBERTIES
ASSOCIATION

360 Bloor Street West, Suite 506
Toronto, ON M5S 1X1
Telephone (416) 363-0321
Fax (416) 861-1291
E-mail: mail@ccla.org



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

360 rue Bloor Ouest, Suite 506
Toronto, ON M5S 1X1
Téléphone (416) 363-0321
Télécopieur (416) 861-1291
Courriel: mail@ccla.org

EXECUTIVE COMMITTEE
COMITE EXECUTIF

Past Presidents

Présidentes Précédentes

THE HON. J. KEILLER MACKAY
(1888-1970)
J.S. MIDANIK, Q.C.
(1920-1997)
JOHN NELLIGAN, Q.C.
HARRY W. ARTHURS
THE HON. WALTER TARNOPOLSKY
(1932-1993)
WALTER PITMAN
SYBIL SHACK
(1911-2004)
THE HON. ALLAN BLAKENEY

President

Présidente
MARSHA HANEN

Vice-presidents

Vice-présidentes

JAMIE CAMERON
SUSAN COOPER
GISELE CÔTE-HARPER, Q.C.
MARLYS EDWARDH
EDWARD L. GREENSPAN, Q.C.
PATRICIA JACKSON
JOHN D. McCAMUS
DELIA OPEKOKEW
THE HON. HOWARD PAWLEY
KENNETH P. SWAN
DR. JOSEPH WONG

Secretary

Secrétaire
SYDNEY GOLDENBERG

Treasurer

Trésorière
ELAINE SLATER

General Counsel

Avocat Général
NATHALIE DES ROSIERS

BOARD OF DIRECTORS

CONSEIL D'ADMINISTRATION

FRANK ADDARIO
THE HON. WARREN ALLMAND, Q.C.
BROMLEY ARMSTRONG
THE HON. RONALD ATKEY, Q.C.
FRÉDÉRIC BACHAND
JOSEPH BOYDEN
THE HON. EDWARD BROADBENT
LEAH CASSELMAN
THE HON. SAUL CHERNIAK, Q.C.
DOMINIQUE CLÉMENT
JANE COBDEN
MICHAEL CONNER
DR. DEBBY COPES
DAVID CRONENBERG
FERNAND DAoust
PETER DESBARATS
BRIAN A. F. EDY
SUSAN ENG
MEL FINKELSTEIN
ROBERT FULFORD
VICKI GABEREAU
THE HON. CONSTANCE R. GLUBE, Q.C.
KATHERINE GOVIER
LOUIS GREENSPAN
HUSSAIN HANDANI
SHIRLEY HEAFY
HARISH JAIN
MUHMUD JAMAL
JANET KEEPING
JOY KOGAWA
ANNE La FOREST
CYRIL LEVITT
ANDREW LOKAN
A. WAYNE MACKAY
KEN MANDZUIK
JON OLIVER
PENELOPE ROWE
PAUL SCHABAS
MARVIN SCHIFF
DAVID SCHNEIDERMAN
ERIC FEED, Q.C.
WALTER THOMPSON
THE VERY REV. LOIS WILSON

Director of Education & Administration
Directrice, Éducation et administration
D. S. McLAUGHLIN

Director, Freedom of Expression Project
Directrice, Projet de la liberté d'expression
NOA MENDELSONH AVIV

Director, Public Safety Project
Directeur, Projet de sécurité publique
GRAEME HORTON

General Counsel Emeritus
Avocat Général Émérite
A. ALAN BOROVY

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

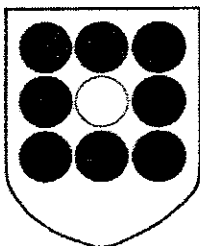
Cc: Meaghan Gray , Public Affairs, Communications and Community Relations,
G8-G20 Planning Team, Toronto Police Service
(meaghan.gray@torontopolice.on.ca).

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].

CANADIAN
CIVIL LIBERTIES
ASSOCIATION

360 Bloor Street West, Suite 506
Toronto, ON M5S 1X1
Telephone (416) 363-0321
Fax (416) 861-1291
E-mail: mail@ccla.org



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

360 rue Bloor Ouest, Suite 506
Toronto, ON M5S 1X1
Téléphone (416) 363-0321
Télécopieur (416) 861-1291
Courriel: mail@ccla.org

EXECUTIVE COMMITTEE
COMITE EXECUTIF

Part Presidents
Présidentes Prévidentes

THE HON. J. KEILLER MACKAY
(1888-1970)
J.S. MIDANK, Q.C.
(1920-1997)
JOHN NELLIGAN, Q.C.
HARRY W. ARTHURS
THE HON. WALTER TARNOPOLSKY
(1932-1993)
WALTER PITMAN
SYBIL SHACK
(1911-2004)
THE HON. ALLAN BLAKENEY

President
Présidente

MARSHA HANEN

Vice-presidents
Vice-présidentes

JAMIE CAMERON
SUSAN COOPER
GISELE CÔTÉ-HARPER, Q.C.
MARLYS EDWARDH
EDWARD L. GREENSPAN, Q.C.
PATRICIA JACKSON
JOHN D. MCCAMUS
DELLA OPEKOKEW
THE HON. HOWARD FAWLEY
KENNETH P. SWAN
DR. JOSEPH WONG

Secretary
Secrétaire

SYDNEY GOLDENBERG

Treasurer
Trésorière

ELAINE SLATER

General Counsel
Avocat Général

NATHALIE DES ROSIERS

BOARD OF DIRECTORS
CONSEIL D'ADMINISTRATION

FRANK ADDARIO
THE HON. WARREN ALLMAND, Q.C.
BROMLEY ARMSTRONG
THE HON. RONALD ATKY, Q.C.
FRÉDÉRIC BACHAND
JOSEPH BOYDEN
THE HON. EDWARD BROADBENT
LEAH CASSELMAN
THE HON. SAUL CHERNIAK, Q.C.
DOMINIQUE CLÉMENT
JANE COBDEN
MICHAEL CONNER
DR. DEBBY COPES
DAVID CROMBERG
FERNAND DAoust
PETER DESBARATS
BRIAN A. F. EDY
SUSAN ENG
MEL FINKELSTEIN
ROBERT FULFORD
VICKI GABEREAU
THE HON. CONSTANCE R. GLUBE, Q.C.
KATHERINE GOVIER
LOUIS GREENSPAN
HUSSEIN HAMDANI
SHIRLEY HEAFEY
HARISH JAIN
MUHMUD JAMAL
JANET KEEPING
JOY KOGAWA
ANNE La FOREST
CYRIL LEVITT
ANDREW LOKAN
A. WAYNE MACKAY
KEN MANDZUIK
JON OLIVER
PENELOPE ROWE
PAUL SCHABAS
MARVIN SCHIFF
DAVID SCHNEIDERMAN
ERIC TEED, Q.C.
WALTER THOMPSON
THE VERY REV. LOIS WILSON

Director of Education & Administration
Directrice, Éducation et administration
D. S. McLAUGHLIN

Director, Freedom of Expression Project
Directrice, Project de la Liberté
d'expression
NOA MENDELSON AVIV

Director, Public Safety Project
Directeur, Project de sécurité publique
GRAEME NORTON

General Counsel Emeritus
Avocat Général Émérite
A. ALAN BOROVY

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.

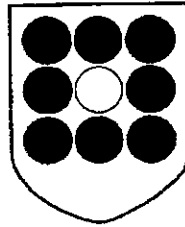
Regards,

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).

CANADIAN CIVIL LIBERTIES ASSOCIATION

360 Bloor Street West, Suite 506
Toronto, ON M5S 1X1
Telephone (416) 363-0321
FAX (416) 861-1291
Website: www.ccla.org
E-mail: mail@ccla.org



ASSOCIATION CANADIENNE DES LIBERTES CIVILES

360 rue Bloor Ouest, Suite 506
Toronto, ON M5S 1X1
Téléphone (416) 363-0321
Télécopieur (416) 861-1291
Site Internet: www.ccla.org
Courriel: mail@ccla.org

EXECUTIVE COMMITTEE COMITE EXECUTIF

Past Presidents Présidents Précédents

THE HON. J. KEILLER MACKAY
(1888-1970)

J. S. MIDANIK, Q.C.
(1920-1997)

JOHN NELLIGAN, Q.C.
HARRY W. ARTHURS

THE HON. WALTER TARNOPOLSKY
(1932-1995)

WALTER PITMAN
SYBIL SHACK

(1911-2004)

THE HON. ALLAN BLAKENEY

President Présidente

MARSHA LIANEN

Vice-presidents Vice-présidents

JAMIE CAMERON

SUSAN COOPER

GISELE CÔTÉ-HARPER, Q.C.

MICHAEL DEFENCIER

MARLYS EDWARDH

EDWARD L. GREENSPAN, Q.C.

PATRICIA JACKSON

JOHN D. McCAMUS

DELLA OPEKOKEW

THE HON. HOWARD PAWLEY

KENNETH E SWAN

DR. JOSEPH WONG

Secretary Secrétaire

SYDNEY GOLDENBERG

Treasurer Trésorière

ELAINE SLATER

General Counsel Avocate Générale

NATHALIE DES ROSIERS

BOARD OF DIRECTORS CONSEIL D'ADMINISTRATION

FRANK ADDARIO

THE HON. WARREN ALLMAND, Q.C.

BROMLEY ARMSTRONG

THE HON. RONALD ATKY, Q.C.

FREDÉRIC BACHAND

JOSEPH BOYDEN

THE HON. EDWARD BROADBENT

LEAH CASSELMAN

THE HON. SAUL CHERNIACK, Q.C.

DOMINIQUE CLEMENS

JANE COBEN

MICHAEL CONNER

DR. DEBBY COPEL

DAVID CRONENBERG

FERNAND DAUJST

BRIAN A. E. EDY

SUSAN ENG

MEL FINKELSTEIN

ROBERT FULFORD

VICKI GABEREAU

THE HON. CONSTANCE R. GLUBE, Q.C.

KATHERINE GOVIER

LOUIS GREENSPAN

HUSSEIN HAMDANI

SHIRLEY HEAFEY

HARISH JAIN

MAHMUD JAMAL

JANET KEEPING

JOY KOGAWA

ANNE La FOREST

CYRIL LEVITT

ANDREW LOKAN

A. WAYNE MACKAY

KEN MARIZIUK

JOHN OLIVER

PHÉLOPHE ROWE

PAUL SCHAAS

MARVIN SCHIFF

DAVID SCHNEIDERMAN

ERIC TEEB, Q.C.

WALTER THOMPSON

THE VERY REV. LOIS WILSON

Director of Education & Administration Directrice, Éducation et administration

D. S. McLAUGHLIN

Director, Freedom of Expression Project Directrice, Project de la liberté d'expression

NOA MENDELSON AVIV

Director, Public Safety Project Directeur, Project de sécurité publique

GRAEME NORTON

General Counsel Emeritus Avocat Général Émérite

A. ALAN BOROWOY

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.

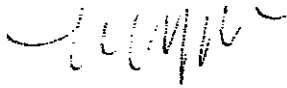
Finally, we are alarmed that the public was not in any way put on notice that the *Public Works Protection Act* would be used as legal authority to detain, question, search and arrest individuals on public streets and sidewalks.

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