



**SUBMISSION TO THE TORONTO POLICE SERVICE BOARD REGARDING THE DEVELOPMENT OF A NEW PUBLIC ORDER POLICY ON POLICE ACTION IN RESPECT OF PROTESTS, DEMONSTRATIONS AND OCCUPATIONS**

**CANADIAN CIVIL LIBERTIES ASSOCIATION**

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## A. OVERVIEW

The Canadian Civil Liberties Association (“CCLA”) is an independent, national, nongovernmental organization that was founded in 1964 with a mandate to defend and foster the civil liberties, human rights, and democratic freedoms of all people across Canada. Our work encompasses advocacy, research, and litigation related to the criminal justice system, equality rights, privacy rights, and fundamental freedoms.

CCLA is hereby answering the Toronto Police Service Board (the “Board”)’s request for public input on the overriding principles and key elements that should be a part of a new public order policy on police action in respect of protests, demonstrations and occupations (the “Policy”).

This Policy is not about any specific point in time, debate, or community group. It is about establishing key principles that will guide the Toronto Police Service (the “Service”)’s conduct towards protests<sup>1</sup> both today, tomorrow, and in the long term. This is an important undertaking, as the constitutionally protected rights to freedom of peaceful assembly, freedom of expression and freedom of association are pillars of our democracy.<sup>2</sup> These rights allow everybody in Canada to be heard by people in power and to peacefully advocate for their vision of a better world.

CCLA’s overarching submission is that these fundamental freedoms should be at the center of the Board’s considerations when developing the Policy. This requires meaningful acknowledgement that the Service, as all state actors, has a duty to *facilitate* peaceful assembly and to *protect* freedom of expression and association for everyone in Canada.<sup>3</sup> Such acknowledgement starts by presuming that every protest is peaceful – unless there is compelling evidence to the contrary – and should not be limited.

Accordingly, the Policy should require that the Service’s decision-making process around protests focus on collaboration, the prevention of tension, and the promotion of de-escalation. The use of force should be avoided as much as possible. If detention or arrest is necessary, justified and lawful, the Service should ensure the *Charter* rights of people involved will be upheld in a timely manner.

The Policy should also require that the Service be accountable to the diverse communities that inhabit the City of Toronto. This includes identifying (through consultations) and meeting the needs of marginalized groups that take part in protests.

Finally, the Policy should highlight the importance of the Service respecting protestors’ privacy rights. That includes refraining from engaging in mass surveillance in the context of protests.

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<sup>1</sup> The right to peaceful assembly encompasses various activities like meetings, sit-ins, parades, vigils, strikes, rallies, protests and occupations. CCLA will be using the generic term “protests” to refer to any and all of these activities.

<sup>2</sup> *Canadian Charter of Rights and Freedoms*, s 2, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

<sup>3</sup> The *Independent Civilian Review Into Matters Relating to the G20 Summit* issued in 2012 noted that the training received by Service’s officers did not sufficiently emphasize and explain these concepts (see pp 1 and 20)([https://tpsbc.ca/images/pdf/REPORT\\_ICR\\_Morden\\_executivesummary.pdf](https://tpsbc.ca/images/pdf/REPORT_ICR_Morden_executivesummary.pdf)).

After developing further the abovementioned guiding principles, CCLA will discuss their practical effects both before, during and after any given protest.

## **B. GUIDING PRINCIPLES**

CCLA takes note of the existence of Service Procedure No. 11-04 on Protests and Demonstrations,<sup>4</sup> which recognizes that “[c]itizens have the legal right to demonstrate peacefully” and that the general role of the police at these types of events “must be one of complete neutrality”.

In our respectful view, this procedure fails to convey to the Service’s officers the proper scope and importance of their constitutional duties in the context of protests. These duties mainly relate to people’s fundamental freedoms, protection against unnecessary or excessive force by police, rights upon arrest or detention, equality rights, and privacy rights. These rights are guaranteed to everyone in Canada – not only to citizens, as stated in the Service Procedure.

### Fundamental Freedoms

While CCLA agrees that the Service should remain neutral with respect to the issues raised through protests, the Policy should emphasize the Service’s constitutional duty to facilitate the exercise of the right to peaceful assembly and to protect freedom of expression and association.

The fulfillment of this constitutional duty by the Service includes not limiting the exercise of people’s *Charter* rights unless absolutely necessary, for instance, in case of physical violence or imminent physical violence. If such circumstances arise, the limits on people’s fundamental freedoms should be targeted and carefully crafted on a case-by-case basis (as opposed to blanket prohibitions, or police actions that would penalize the entire protest). The Service’s involvement should be limited to the management of actual protests and of specific incidents, should they arise. Larger policy decisions with the potential to undermine the fundamental freedoms of many should be left to democratically elected representatives, subject to judicial scrutiny.

### Protection Against Police Unnecessary or Excessive Force

Protests should be presumed to be peaceful, unless there is compelling evidence to the contrary. Consequently, the Policy should focus the Service’s decision-making process around protests on collaborating, preventing tension, and promoting de-escalation. Force should not be used, unless unavoidable (and if such a situation arises, damage and injury should be minimized).

The Policy should also emphasize a zero-tolerance policy for abuse by law enforcement, and ensure this directive is enforced.

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<sup>4</sup> Toronto Police Service, *Service Procedures and Directives*, (Toronto: Toronto Police Services, 2024) ch 11-04.

## Prevention of Arbitrary Detention, Rights on Arrest or Detention

The operational plan for the policing of any protest should contain specific consideration and planning of how, should arrest or detention be necessary, justified and lawful, police officers will ensure the *Charter* rights of individuals will be upheld in a timely manner. This relates in particular to the s. 9 – right not to be arbitrarily detained imprisoned, the s. 10(a) – right to be informed of reasons for arrest or detention, and the s. (10)(b) – right to counsel.

Where a protest is reasonably anticipated to involve a significant number of people, the operational plan must ensure that proper procedures and resources are in place. This includes, if arrests or detentions take place, prohibiting prolonged mass detention, ensuring safe conditions while in custody, and facilitating timely access to counsel.<sup>5</sup>

## Equality Rights

The Policy should ensure that the Service will be accountable to the diverse communities that inhabit or visit the City of Toronto. All police officers should undergo human rights training, and officers deployed to major protests should ensure that their training is up to date.

The Policy should also provide for a duty to identify and meet particular needs of marginalized groups that take part in protests, as further discussed below.

## Privacy Rights

The Policy should acknowledge the right of individuals to a degree of anonymity when engaging in lawful acts such as peaceful protesting. This requires, among other things, a ban on mass surveillance in the context of protests, including through digital technologies. Surveillance technologies and digital tools which profile and remotely identify people, such as facial recognition technology, raise serious privacy rights issues and are often discriminatory.<sup>6</sup>

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<sup>5</sup> The Board should give consideration to the recommendations outlined in the *Independent Civilian Review into Matters Relating to the G20 Summit* ([https://tpsb.ca/images/pdf/REPORT\\_ICR\\_Morden\\_executivesummary.pdf](https://tpsb.ca/images/pdf/REPORT_ICR_Morden_executivesummary.pdf)).

<sup>6</sup> CCLA is aware of the existence of a Board policy on the Use of Artificial Intelligence Technology (<https://tpsb.ca/policies-by-laws/board-policies/195-use-of-artificial-intelligence-technology>). This policy establishes Board governance for the consideration of the use of technologies using AI, and for assessment and accountability on the use of these technologies. CCLA will not comment here on the content of this policy, as this would go far beyond the parameters of the present consultation. However, we wish to reiterate our longstanding position on highly intrusive digital tools such as facial recognition technology, which is that they should not be used by law enforcement agencies, unless and until several crucial concerns surrounding it have been addressed through specific legislation and regulation. Such legislative and regulatory framework does not exist today in Canada.

## C. PRACTICAL IMPLICATIONS

CCLA believes that the guiding principles mentioned above should inform the Service's approach at every stage of a protest. The Policy should therefore seek to give practical effects to these principles both before, during and after any given protest.

### Prior to Protests

When informed of an upcoming protest, the Service should reach out to the organizers to discuss how to facilitate the event. The Service should refrain from imposing onerous, burdensome, or unnecessary requirements, and should also avoid surprises for organizers as much as possible by maintaining open communications. If organizers do not wish to engage with the police, the Service should respect their decision and refrain from punishing them for it, be it officially or otherwise.

The Service should also consider which marginalized groups will likely be present at the protest and ensure that their particular needs are met. To that end, the Service should maintain communication with stakeholder groups from marginalized communities to understand the specific needs of these communities. For instance, in order to respect participants with physical disabilities, the Service should ensure that accessible exits are not blocked by law enforcement.

As mentioned above, all police officers should undergo human rights training, with a particular emphasis on racial discrimination, colonialism, and gender discrimination, including towards transgender communities. Officers deployed to major protests should ensure that their training is up to date.

Keeping in mind how histories of police violence may impact the public's perception of police presence at a protest, particularly by marginalized communities, the Service should make sure that all information on how it will conduct itself at protests, including its protocols and procedures, are easily accessible to the public. Any communication by the police should be accessible in multiple ways, including through various languages, disability-inclusive methods, and easy to understand language.

### During Protests

The Service should presume that any protest is and remains peaceful, unless it has compelling proof that this is no longer the case. The Service's definitions of "peaceful" and "physical violence" should emphasize human physical safety (as opposed to personal property) and be applied neutrally regardless of the protest's political message or the protestors' background. This means that groups that have been historically overpoliced should not be subject to more restrictions on their protest rights than others.

Participants are allowed to exercise their freedom of expression through various non-violent expressive activities such as chants, speeches, signs, etc. This includes the right to engage in speech that can be seen by some as being offensive, humiliating or even repugnant.<sup>7</sup> That being said, free speech is not absolute. For instance, incitement to

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<sup>7</sup> *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, at paras 41, 49-52, 57 and 90.

imminent violence against an identifiable group or threats of bodily injury or death both engage human physical safety and should not be tolerated by the Service.

Blanket restrictions on protests should be avoided, as they are hardly reasonable and demonstrably justified in a free and democratic society. Instead, whenever engaging with a protest, the Service should treat protestors on a case-by-case basis. For instance, if the Service has compelling evidence that a handful of individuals are engaging in physical violence, or that physical violence is imminent, it should focus on intervening in respect of these protestors rather than penalizing the entire protest. This course of action respects the rights of the majority of the protestors while protecting the physical safety of community members and other protestors.

The Service should refrain from using force at a protest, unless unavoidable. The Service should instead focus on collaboration, prevention of tensions and de-escalation.

The Service should not use stops, detentions, and arrests to intimidate or deter individuals from organizing or participating to further protests. If charges are brought against people for actions reportedly taken during a protest, they should be proportionate to the alleged offence, consistent with Canadian law and the human rights of the person charged, and with awareness to the potential chilling effect such charges may have.

The Service should respect independent observers and media present at protests, and must not limit their ability to do their work, even if a protest is declared unlawful.

Finally, protestors should not be treated with suspicion for choosing to remain anonymous or masked. All individuals have the right to a degree of anonymity when engaging in lawful acts such as peaceful protesting, and many people still fear the harmful impacts of COVID-19.

#### After Protests

All officers who participated in protest actions should be involved in debriefs, recommending future actions so that the Service can continue to improve how it facilitates and supports the exercise of everyone's fundamental rights and freedoms. These recommendations should be made publicly available.

To ensure accountability, the Service should maintain publicly available information on any stops, detentions and arrests at protests, all in compliance with individuals' privacy rights.

## D. CONCLUSION

CCLA welcomes the Board's initiative to seek the public's input in the development of a new Policy on police action in respect of protests. We hope that our submission will prove to be useful and remain available for further discussions.

Please note that our submission draws partially from the United Nations' *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests* published in January 2024<sup>8</sup> and from the International Network of Civil Liberties Organizations' report titled *Defending Dissent: Towards State Practices that Protect and Promote the Rights to Protest* published in June 2018.<sup>9</sup> These resources can be consulted by the Board for additional guidance.

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<sup>8</sup> *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, UNGA, 55th Sess, UN Doc A/HRC/55/60, online (pdf): <documents.un.org> [<https://documents.un.org/doc/undoc/gen/g24/006/57/pdf/g2400657.pdf?token=RosclqmrUCU7xIJZal&fe=true>].

<sup>9</sup> International Network of Civil Liberties Organizations and the International Human Rights Clinic of the University of Chicago Law School, "Defending Dissent: Towards State Practices that Protect and Promote the Rights to Protest" (June 2018), online (pdf): <inclo.net> [<https://bit.ly/3SuIDtf>].