CANADIAN CIVIL LIBERTIES ASSOCIATION ASSOCIATION CANADIENNE DES LIBERTES CIVILES

April 1st, 2025

Mayor, City Councillors and City Manager
City of Toronto
100 Queen St W,
Toronto, ON M5H 2N3

Via email: mayor_chow@toronto.ca *et al*

Dear City of Toronto's Mayor, Councillors and Manager:

Re: *Charter* Concerns Arising from Bylaws Prohibiting Some Protests Near Community Gathering Spaces

We are writing today in the context of the ongoing study by the City of Toronto's staff of the feasibility of adopting a "bubble zone" bylaw. This type of bylaw, which prohibits offensive protests near various types of community gathering spaces, raises serious *Charter* concerns which strike at the heart of our expertise. We also want to share our reservations concerning the City's current approach to consulting its residents on this important issue.

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 fundamental freedoms, the criminal justice system, equality rights, and privacy rights. Key aspects of our mission include fighting against government overreach and defending freedom of expression and freedom of peaceful assembly.

One of the reasons we defend these fundamental freedoms from overly broad restrictions is because they are often the tools that marginalized groups use to advocate for, and achieve, societal change. Alarmingly, once broad limits on expression and protest are on the books, they are often used to stifle the peaceful expression of marginalized communities.[1] These are the principled considerations that inform CCLA's approach to laws restricting peaceful assembly and expression.

A. Freedom of Expression and Freedom of Peaceful Assembly Are Vital to Our Democracy

Freedom of expression[2] protects a wide range of expressive conduct, and individuals have a presumptive constitutional right to manifest their thoughts, opinions, and beliefs, however

[1] *R v Zundel*, [1992] 2 SCR 731, at p 766.
[2] *Canadian Charter of Rights and Freedoms,* Schedule B to the Canada Act 1982 (UK), 1982, c 11 (*Charter*), at s 2(b).

unpopular or distasteful[3]. While this right is not absolute,[4] Canada's highest court has recognized that speech that is repugnant, offensive, or humiliating is still constitutionally protected expression that should not be broadly prohibited in a free and democratic society.[5] The Supreme Court of Canada has also confirmed that there is no place in a democracy for a right not to be offended.[6]

Freedom of peaceful assembly[7] protects public gatherings such as demonstrations, protests and sit-ins, as long as they are peaceful—that is, up to the point of physical violence or threats of physical violence.[8] By protecting collective expression, this fundamental freedom invigorates dialogue on issues of public interest. This right can have little meaning without broad access to public space for purposes of communicating a message. The exercise of this right is often disruptive in some way, as any gathering in public space is aimed at drawing the attention of the powerful or the broader public to a message. Disruption is one of the means of communication, and must generally be tolerated by the population to allow for a meaningful exercise of *Charter* rights.[9]

B. *Charter*-Rights Should Not Be Unreasonably and Unjustifiably Limited

We acknowledge that *Charter* rights are not absolute and that proper balancing of these rights might sometimes require carefully crafted, minimal, and proportionate limits.[10] Overly broad restrictions on *Charter* rights, however, are unconstitutional. In our view, bubble zone bylaws broadly prohibiting speech that is "lawful but awful" near community gathering spaces are not justifiable limits on freedom of expression and freedom of peaceful assembly.[11]

Peaceful protests against the actions of a foreign government, whether due to an ongoing armed conflict, reported human rights abuses, or the imposition of tariffs, could be perceived by some as intimidating or inciting intolerance or discrimination. The same could be said of protests against

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[3] *Irwin Toy Ltd. v Quebec (Attorney General)*, [1989] 1 SCR 927, at p 968.
[4] See for instance *R v Keegstra*, [1990] 3 SCR 697; *Canada (Human Rights Commission) v Taylor,* [1990] 3 SCR 892, and *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11 (*Whatcott*).
[5] *Whatcott*, supra note 4, at para 41.
[6] *Ward v Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43, at para 82.
[7] *Charter*, supra note 2, at s 2(c).
[8] See *Bracken v Fort Erie (Town)*, 2017 ONCA 668 (Bracken) at para 21, 28, 31, 49, 50, 51 and 52:

> [49] Violence is not the mere absence of civility. The application judge extended the concept of violence to include actions and words associated with a traditional form of political protest, on the basis that some town employees claimed they felt "unsafe". This goes much too far. A person's subjective feelings of disquiet, unease, and even fear, are not in themselves capable of ousting expression categorically from the protection of s. 2(*b*).
> …
> [52] A finding that a person's expression is an act of violence or a threat of violence is, as explained above, determinative that their expression is not protected by the *Charter*. Once it is determined that an act is violent or a threat of violence, deliberation is at an end and the claim of a s. 2(*b*) *Charter* violation is defeated. Courts should therefore not be quick to conclude that a person's actions are violent without clear evidence. Here, there is no evidence that Mr. Bracken's protest was violent or a threat of violence, and the finding that it was constitutes a palpable and overriding error.

[9] *Id.*, at para 81.
[10] *R v Spratt*, 2008 BCCA 340.
[11] That is even more so when these bylaws create (i) broad bubble zones around (ii) various types of communal spaces and provide for (iii) extreme and disproportionate penalties which (iv) can be enforced without any prior notice that would give protestors reasonable opportunity to leave.

certain religious beliefs—for example a counter-protest targeting religious pro-life expression. While we acknowledge how painful intolerant or discriminatory speech may be, it should not be censored in this way in a democracy. As stated by the Court of Appeal for Ontario in 2017, "[i]n a free and democratic society, citizens are not to be handcuffed and removed from public space traditionally used for the expression of dissent because of the discomfort their protest causes".[12]

C. Police Already Have Broad Powers

We also believe that there is a misconception within a part of the population about the state of the existing laws in Canada and an alleged need for additional legal tools targeting conduct that is not physically violent during protests.

Individuals and groups negatively impacted by protests have recourse to the courts, and can seek injunctions if safe access to their property is illegally hindered.

Police using their common law police powers can, when necessary, create and enforce space between two groups that are protesting against each other or allow for appropriate access to community buildings or private property.[13]

Criminal laws are also available. While the *Criminal Code* does target a wide range of physically violent conduct, it also prohibits a host of other conduct that does not involve physical violence. For instance, the *Criminal Code* prohibits uttering threats of damage to property, bodily injury, and death,[14] as well as criminal harassment[15] and intimidation.[16] Aiding, abetting, or counselling others to commit these offences is also criminal conduct.[17] In appropriate circumstances, individuals may also be charged with mischief[18] or arrested for breach of the peace.[19]

Naturally, criminal law is a blunt instrument, and law enforcement must be discerning in its use of the powers that flow from it. The fact remains that the abovementioned infractions and powers exist.

D. Ongoing Consultation Process

We are aware that the City's staff has launched a consultation process as part of its ongoing study and have taken note that an online survey forms part of this process.[20] While we commend the City for consulting with its residents, we respectfully believe that the survey sometimes presents a skewed, if not misleading, view of the rights and interests at stake.

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[12] *Bracken*, supra note 8, at para 81. See also at paras 76 and 80.
[13] *Knowlton v R*, [1974] SCR 443; *R v Fleming*, 2019 SCC 45, at para 10, 13, 44-56, 81-86.
[14] *Criminal Code*, RSC 1985, c C-46, at s 264.1.
[15] *Id.*, at s 318-319.
[16] *Id.*, at s 423.
[17] *Id.*, at s 21(1)(b), (c).
[18] *Id.*, at s 430.
[19] *Id.*, at s 31.
[20] Public Consultation for a Proposed Demonstrations Bylaw to Protect Vulnerable Institutions, online at: https://www.toronto.ca/community-people/get-involved/public-consultations/public-consultation-for-proposed-demonstration-bylaw/.

First, the survey's preamble states that the potential bubble zone bylaw "is not intended to prohibit peaceful and lawful demonstrations".[21] This statement could be seen as misleading. As mentioned earlier, under the *Charter,* protests are peaceful up to the point of physical violence or threats of physical violence.[22] Protests which do not present these characteristics qualify as peaceful, even if they are disturbing, offensive or conveying intolerant or discriminatory expression. A bubble zone bylaw limiting this type of expression would thus prohibit peaceful demonstrations within a given perimeter, contrary to what is stated in the survey's preamble.

Second, the survey's seventh question states, "Other municipalities in Canada have adopted bylaws that prohibit certain activities within specific distances of city facilities and institutions, including some of those listed above", and then asks, "How supportive would you be of Toronto adopting a bylaw with a similar approach?".[23]

Unfortunately, the survey does not list which activities are prohibited in other municipalities. As a result, the survey fails to explicitly specify to Toronto residents that other bylaws recently enacted in Canada are prohibiting non-violent speech deemed intimidating for inciting intolerance or discrimination,[24] as well as non-violent speech expressing objection or disapproval of an idea or action related to a prohibited ground of discrimination.[25] This clarification would have been crucial in enabling respondents to make an informed decision about whether they support Toronto "adopting a bylaw with a similar approach".

Third, the survey fails to inform the public that the constitutionality of these other municipal bylaws has not been confirmed by any final judgment, and that at least one is the subject of an ongoing *Charter* challenge.[26] This omission gives the impression that these bylaws are commonplace and non-contentious, which is not accurate.

We urge you to address the issues identified above in order to promote a fair, transparent and unbiased consultation.

Finally, we have noted that the survey is an anonymous process that does not even require respondents to attest that they are Toronto residents. While we acknowledge the importance of privacy, we would like to know what measures the City has implemented to ensure that results are not skewed by non-residents' input or by multiple survey submissions made by the same individuals.

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[21] Public Consultation for a Proposed Demonstrations Bylaw to Protect Vulnerable Institutions, "Where could a City bylaw apply?", online at: https://ca.mar.medallia.com/?e=435469&d=e&h=A073C636BB9C49B&l=en.

[22] *Bracken*, supra note 8, at para 21, 28, 31, 49, 50, 51 and 52.

[23] Public Consultation for a Proposed Demonstrations Bylaw to Protect Vulnerable Institutions, 7th question, online at: https://ca.mar.medallia.com/surveys/take/?e=435469&p=3&l=en&h=A073C636BB9C49B&d=e

[24] See for instance the *Protecting Vulnerable Social Infrastructure By-Law*, City of Vaughan, By-Law No. 143-2024, at s 4, "Nuisance Demonstration", online at: https://www.vaughan.ca/sites/default/files/2024-06/143-2024.pdf?file-verison=1743176412881.

[25] See the *Safe and Inclusive Access Bylaw*, City of Calgary, By-Law No. 17M2023, at s 2(1)(g), "Specified Protest", online at https://publicaccess.calgary.ca/lldm01/exccpa?func=ccpa.general&msgID=QTKTAeegAcB&msgAction=Download:

[26] The recent decision in *R v Heather*, 2024 ABCJ 229, is currently under appeal.

E. Conclusion

Reconciling and balancing multiple rights, freedoms and interests lies at the core of our mission. Regulatory regimes broadly prohibiting intolerant—yet constitutionally protected—speech near community gathering spaces, are not reasonable and justifiable frameworks. CCLA is deeply concerned that these punitive provisions will be used, and abused, if they are adopted and remain unchallenged.

CCLA will continue to advocate for a safe, inclusive, and vibrant democracy that allows people to speak up freely about the issues they care about, and to peacefully protest for their vision of a better world. In a democracy, there will be speech that makes individuals and communities feel offended and unwelcome. CCLA denounces hateful speech and intolerance, and is committed to working towards a more inclusive, equal society. In our view, however, passing punitive laws that give municipalities and the police the discretion to broadly restrict peaceful expression is not a rights-respecting way of achieving this goal.

We thank you for your attention to this letter. We would welcome the opportunity to meet with City councillors and staff to discuss this important issue further.

Sincerely,

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