**Submission to the Toronto Police Service Board**

**Public Order Policy Consultation**

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**Recommendations**

1. The Board’s policy should require the Chief of Police and the TPS to report on, analyze and learn systematically from each incident of public order policing.
2. The Board’s policy should establish a framework for making discretionary decisions about how to police each public order event, which should include zero tolerance for hate as an overriding principle and reflect the IHRA definition of antisemitism.
3. The Board’s policy should mandate procedures to ensure that the exercise of police discretion at public order events includes the technique of multi-level management, which brings the judgment and expertise of senior officers to bear on complex situations in real time.
4. The Board’s policy should direct the Chief to establish structures and processes for advance intelligence on public order events to anticipate the demands on police and ensure that sufficient numbers of officers having appropriate skills and equipment are mobilized and available as events unfold.
5. The Board’s policy should identify the full range of criminal enforcement measures available to the TPS to address public order events in relation to privately owned and public spaces alike.
6. The Board’s policy should direct the Chief and the TPS to protect vulnerable or at-risk locations such as places of worship, schools and child care facilities, community centres and residential neighbourhoods from protests and demonstrations that are hateful, intimidating or threatening, which may include establishing “bubble zones,” subject to law, where protests may be prohibited.
7. The Board’s policy should direct the Chief to allocate resources for training all officers who participate in public order policing in case scenarios to ensure that officers understand: a) the distinction between protected free speech and hate speech or activities: b) the full range of law enforcement measures available: and c) the proposed framework for making discretionary decisions at public order events.
8. The Board’s policy should be to direct the Chief and TPS to favour enforcement of the law, including making arrests and laying charges, at the time offences occur at public order events rather than recording evidence and laying charges after the fact, to the extent that such exercise of discretion is consistent with public safety and avoiding injury to officers and protesters.
9. The Board’s policy should direct the Chief to ensure that the TPS has the means, staff and technology to record evidence at public order events, including foreign language speech, slogans and signs, and analyze such materials ideally in real time, or after the fact if necessary, so that it is possible to lay charges under hate crime laws.

**Discussion**

In preparing my recommendations, I referred to the submission materials of the Alliance of Canadians Combatting Antisemitism. I support the ALCCA submission to this consultation.

Rational decision-making requires a solid grounding in facts. That is why my first recommendation aims to ensure that the TPS has good information about what happens at public order events.

The Board should direct the Chief and the TPS to create a standard template and methodology for gathering and analyzing the facts. The template would facilitate capturing each public order event fully using video and still photography, records of police communications, news media reports and the results in terms of evidence gathered, statements of participants, notes of officers attending, etc.

Such thorough documentation of each public order event will serve several purposes. First, it will provide a basis for evaluating the effectiveness of the police response to the event and guide decision-making on the operational approach to future protests, demonstrations and occupations. Secondly, it will inform the preparation of case scenarios for training officers. Thirdly, it will be a source of feedback to the TSP Board on its policy framework for public order policing, leading to change as needed.

Beyond documenting incidents of public order policing for internal use, the TPS could hold forums to discuss its experience, using this material, with officers, members of the public, experts and advisory bodies. That could generate useful input and ideas “outside the box.”

My recommendations took into consideration news media reporting on public order incidents in Toronto and the GTA over the past year. Many of the reports, which included video coverage, addressed how police responded at the time and whether there were arrests and any charges laid. The incidents included:

* Occupation of the front campus, University of Toronto, May – July, 2024. The TPS refused a request from the university to remove the demonstrators. Ultimately, the demonstrators withdrew when an injunction was issued.
* Demonstration/protest at the Art Gallery of Ontario, which led to the cancellation of a dinner reception for the Prime Minister of Italy hosted by the Prime Minister of Canada, March 2024
* Demonstration/protest at Yorkdale Mall, December 2023
* Demonstration/protest at Toronto Eaton Centre, December 2023
* Demonstration/protest at Beth Avraham Yosef synagogue, Thornhill, March 2024.
* Demonstrations/protests at Avenue Road and Highway 401, December 2023 – January, 2024. After the TPS banned protests at that location on January 11, 2024, there were no more incidents there.

The 2024 conference of chiefs of police in Halifax brought to public attention the increased demand on police resources caused by rising numbers of protest events across Canada. CTV News reported on August 14, 2024:

Many chiefs agreed that the growing amount of protests have created an “unsustainable demand” for policing services, and they’re asking Ottawa for help.

“The chiefs right across Canada face unprecedented numbers of protests, some departments [who] maybe never had one ever have had them over recent years and many like Ottawa, Toronto, and some larger municipalities are facing hundreds and hundreds of them which is often new work for them and often very resource-intensive,” said CTV News public safety analyst, Chris Lewis [a former Commissioner of the OPP] in an interview with CTV’s Bruce Frisko on Wednesday.

“When they take those resources to answer those protests, they’re taking them from the front line so something’s not getting done elsewhere in policing.”

In this connection, I suggest there is an inverse relationship between law enforcement and criminal behaviour. In simple terms, more and better enforcement, less crime. Many observers have commented that tolerance of hate speech and the exercise of discretion to avoid violence at protests by not arresting offenders have had the effect of emboldening protesters. Arguably, that may have led to more protests and more extreme behaviour, increasing the demand on policing resources.

My experience on the policy staff of the Ipperwash Inquiry led me to recommend strengthening TPS intelligence on public order events. The Inquiry made the case for intelligence-guided policing this way:

This concept emerged in the 1990s as a strategy for how intelligence-gathering should inform and guide police decision-making. It reflects the crucial relationship between intelligence-gathering, public order policing, and the measured response philosophy. “Intelligence-led policing” directs police decision-makers to seek accurate intelligence, at every stage, to give them the information they need to identify options, establish priorities, and make decisions. (*Report of the Ipperwash Inquiry,* *Volume 2: Policy Analysis*, p. 185, available at [https://wayback.archive-it.org/16312/20211208205948/https://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/report/vol\_2/index.html](https://wayback.archive-it.org/16312/20211208205948/https%3A//www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/report/vol_2/index.html))

Similarly, the Ipperwash Inquiry advocated for multi-level management of public order events:

The “Gold-Silver-Bronze” model of incident command is a final significant operational change in the policing of public order events, which many Canadian police services have adopted. In this approach, the single incident commander is replaced by up to three, as necessary. The benefit of the Gold-Silver-Bronze approach is said to be that it allows the front-line incident commander to be on site in order to observe the incident directly. Other commanders, at the command post or at a further remove, supply resources or establish the overall policing strategy. The Gold-Silver-Bronze structure thus allows senior officers to establish strategy and provide perspective while not interfering with the role of the front-line commander. (*Report of the Ipperwash Inquiry, Volume 2: Policy Analysis*, pp. 185-186)

Finally, the Ipperwash Inquiry commented on the OPP framework for policing Aboriginal protests and occupations. While the context of Aboriginal public order incidents is unique, the Inquiry’s comments would seem to be relevant and transferable to any policy framework that the TSP Board may adopt. The focus of the Inquiry in this area was on the sustainability and effectiveness of the policing framework.

According to the Inquiry, sustainability depends on embedding a framework in the culture and operations of a police force.

The Inquiry report also states that, “The sustainability of the Framework depends on financial resources.” (*Report of the Ipperwash Inquiry, Volume 2: Policy Analysis*, pp. 202-204)

The Inquiry suggested that, “The relationship between the sustainability of a program and its effectiveness is crucial. The best reason to sustain any policy or program is that it is effective.” The Inquiry stated that there were four strategies that the OPP should undertake to test the effectiveness of its framework. They were:

* Enhanced evaluation strategies
* Improved transparency and accountability
* Improved community consultations
* Sustained efforts to maintain and restore relationships after an Aboriginal occupation.

The Inquiry report elaborated on how to implement such strategies in detail. (*Report of the Ipperwash Inquiry, Volume 2: Policy Analysis*, pp. 204-212). With appropriate adjustments, the TPS Board should adopt such strategies to test and enhance the effectiveness of its policy framework for public order policing.