

My name is Jody Berkes and I have been a criminal defence lawyer in the GTA since 1999. In the past quarter century I have seen first hand the enforcement of the criminal law in our court system. I have approached it from the perspective of someone who is a champion of individual rights to free expression and the needs to protect those rights from overenforcement of the criminal law. In the course of my career I have interacted with the Toronto Police Service thousands of times. With very few exceptions I have found the members of the Toronto Police Service to be thoughtful, professional and guided by fairness in enforcing the law.

I am a first generation Canadian, a Jew and the child of Holocaust survivors. My parents and grandparents came to Canada to escape the anti-semitism that culminated in the murder of 6 million Jews during the Holocaust. I grew up without fear of being identified as Jewish, celebrating my heritage and my love for Canada. I am sad to say that I no longer feel that way.

I have watched as anti-semitic protests took place in our city. As I mentioned before, I am an ardent supporter of a free society and the need to allow for differing points of view, even those with which I disagree, especially those with which I disagree. What is happening now is not free speech, it is intimidation and harassment. The difference between free speech and intimidation and harassment is tied to the time and place of the speech.

Speech that is conducted in a political area such as, Queens park, City Hall or Parliament is protected speech. Speech denouncing a country's policies or actions conducted in front of a government recognized representative outpost, like a consulate, embassy or government office is free speech. However, when protests target religious institutions, business or neighborhoods in Canada because Jews or Zionists live there, free speech turns into intimidation.

When hundreds of masked people flood the religious centres, streets, sidewalks, cafes and bridges in the Jewish neighborhoods of central Toronto, the goal is not to effect speech but to intimidate the Jewish population. When the Jewish community holds its annual Walk with Israel, a permitted annual event and hundreds of masked people show up wandering in ravines to come up to behind a Jewish community centre that is harassment and intimidation, not free speech. When a peaceful weekly gathering of Jews in the middle of their community at Bathurst and Sheppard is disrupted by someone driving in for the purpose of causing an incident that is not free speech.

Groups of people coming to predominantly Jewish neighborhoods without permits constitutes a protest and demonstration within the meaning of the TPS procedure 11-04 regarding protests and demonstrations. The fact that the groups come without forewarning and engage in coordinated marches, amplified cheers and aggression to parties they perceive as Jewish makes all more important for police to address the issue.

I am not asking the Toronto Police Service not to charge anyone with hate speech. That is difficult to prove and a needlessly high bar. I am asking for the Toronto Police in situations of spontaneous protests and demonstrations to consistently enforce all the following laws in Jewish neighborhoods (i.e. zero tolerance for breach by masked person. S. 351(2) makes it a separate offence to mask in order to disguise one's identity while committing an indictable offence):

1. Highway Traffic Act violations such as blocking roadways;
2. Trespass to property Act violations such as blocking businesses
3. Assaults against s. 266 of the criminal code;
4. Criminal Harassment s. 264(2)(d) which allows a single incident to constitute criminal harassment;
5. Threatening 264.1;
6. Mischief to property s. 430(1)(d) by interfering in the ability of someone to use property (i.e. blocking driveways, sidewalks and streets).