



Public Order Police Consultations - Submissions of the Canadian Muslim Lawyers Association (CMLA)

Background

Since October 7, 2023, there has been an increase in legally-protected pro-Palestinian demonstrations across Toronto. Simultaneously, the CMLA and its members have assisted the community at large or have themselves reported experiencing violent police tactics by the Toronto Police Service (TPS), bias towards certain groups or demonstrators, targeting of pro-Palestinian demonstrators, and prosecutorial abuses, all meant to deter a growing movement of pro-Palestinian solidarity.

The CMLA makes the submissions herein as a response to the TPS' call for consultations on public order policing. The CMLA's submissions are based on the experiences of its members and the experience of those the CMLA has assisted over the last ten months.

About the CMLA

The CMLA is a national organization that has represented self-identifying Muslim lawyers across Canada for more than 25 years. Our membership consists of barristers and solicitors, judges and prosecutors. We practice in every field of law, and in every province and territory across Canada. Both the CMLA and our members are often sought out by federal and provincial government committees and working groups to provide input and recommendations on legislation and policies that impact our members and the broader Muslim community.

Overriding Principles & Key Elements for Consideration

Avoid One-Sided Policing

The CMLA has received regular reports that pro-Palestinian demonstrators have been targeted by the TPS both during and after participating in peaceful protests. On June 27, 2024, an article published in Breach Media^[1] highlighted incidents of police targeting protest attendees, conducting pre-dawn raids at their homes, snatching people on the street, trying to turn arrested individuals into informants, showing up unannounced at university lectures, and targeting key organizers of protests to stifle pro-Palestinian demonstrations. In some cases, the CMLA has heard directly from individuals affected.



In addition, Police Chief Demkiw and the unit's senior officials participated in a major town hall organized by the United Jewish Appeal. The TPS promised a similar event with the Muslim community, but the CMLA and the broader Muslim community are not aware that such a town hall ever took place. In fact, when the CMLA requested a meeting with the TPS Police Board in response to reports that the TPS had used aggressive police tactics at a peaceful protest, the Chief's Office responded stating "it would not be appropriate for the Chair to meet with you on this matter." Meeting with and hearing from impacted communities is critical to avoiding one-sided and over-policing of communities.

Protect Charter Rights and Apply Hate Crime Charges Correctly

On June 24, 2024 a further article was published by Breach Media revealing that a secretive committee, the Hate Crime Working Group, has been influencing legal proceedings against pro-Palestine activists in Toronto.^[2] The Hate Crime Working Group is composed of Crown prosecutors, several of whom, the Breach Media article outlines, have documented biases favouring Israel. The Hate Crime Working Group has allegedly pressed for harsh charges and trials against activists engaged in peaceful protests. Critics argue that the group politicizes prosecutions, and undermines prosecutorial discretion. Despite attempts to obtain information, the Hate Crime Working Group's operations remain largely undisclosed, raising concerns about its accountability. The article describes the Hate Crime Working Group as follows:

Known as the Hate Crime Working Group and formed in 2019, it is composed of nearly two dozen Crown prosecutors, some of whose public comments show pro-Israel and anti-Palestinian bias.

The committee's chair has said she is "committed" to the state of Israel, while another member described a pro-Palestinian activist as a "terrorist"[...]and collaborated with a group of lawyers that aggressively defend Israel's assault on Gaza, which has killed 38,000 Palestinians.

The Breach Article reveals how the Hate Crime Working Group intervenes in prosecutions to press for harsher charges in circumstances where matters would have otherwise resulted in the withdrawal of charges. We are concerned with how the TPS is acting on such policies that are anti-Palestinian, Islamophobic and



xenophobic under the pretence of combating a politically-driven definition of “hate.” The CMLA is also concerned with how the TPS has and will apply the definition of “hate” in practice. The TPS must be appropriately trained to apply the Hate Crime Working Group’s definition of hate and it must be applied uniformly without targeting pro-Palestinian protestors only.

Misapplying “hate crime” charges that eventually fizzle out is contrary to the demonstrators’ right to peacefully assemble and protest. Such tactics suppress demonstrators’ right to the freedom of expression, assembly, and protest, arguably in violation of section 2 of the Charter of Rights and Freedoms.

Investigate and Enforce Consequences for Use of Unlawful Force or Unnecessary Aggressive Police Tactics

Reports from mainstream media, social media, first-hand reports, and reports from the community at large have, independent from one another, corroborated accounts of overly-aggressive police tactics used by TPS on pro-Palestinian protestors. For example on March 30, 2024, it was reported that the TPS used “kettling”, a controversial police tactic involving large cordons of officers to contain a crowd in a limited area. Employing such a tactic, even for a brief period of time is concerning, as it results in the unlawful detention of peaceful demonstrators and infringes upon both the right to peaceful assembly and the right to freedom of expression. These rights are fundamental to a free and just society and are hallmarks of our Charter of Rights and Freedoms.

It appeared that the TPS used this kettling tactic, in conjunction with an application of physical force, onto members of the public who had congregated to demonstrate peacefully. Media reports show TPS officers using inappropriate and excessive force on peaceful protestors and many commentators alleged that officers intentionally turned off their body-worn cameras during the material times.

Community members expressed that the above-mentioned use of force was not an isolated incident. Rather, the accounts we have received reflect an escalating nature of police interactions with demonstrators in what appears to be ongoing efforts to suppress protests supporting the Palestinian cause.

To date, the TPS has simply denied the media footage that surfaced or the use of such tactics. No investigation was completed and no disciplinary measure, of which the public was made aware of were taken against the officers who engaged in such tactics. It remains unclear where the officers received their directive from and whether the Hate Crime Unit was involved in such a directive.



The abovementioned tactics restrict Canadians' fundamental right to protest, effectively, a right that is guaranteed protection even in the most hostile of political climates, irrespective of individual interests. In a March 18, 2024 address to the TPS Board, Chief Demkiw noted that "As tensions continue, [the TPS] will continue to maintain the delicate balance between public safety and freedom of expression and the right to assembly." However, while the sentiment may be intended, in practise, this delicate balance was upended by the subsequent actions of the police at pro-Palestinian demonstrations.

Accordingly, the TPS must engage in fair investigations of the community's complaints of the TPS's use of unlawful force and unnecessary aggressive police tactics. Where such tactics are used inappropriately, the TPS must enforce consequences for officers engaged in such conduct. We encourage the TPS to review and implement the recommendations from the Ontario Human Rights Commission's report related to use of force, reporting and accountability for officers' actions.

Conclusion

The CMLA calls on the TPS to consider the concerns expressed in this submission and to immediately take constructive steps to consult and engage with our communities in an equitable and fair manner, taking their recommendations into account. The CMLA remains concerned about the targeting and treatment of pro-Palestinian demonstrators and hopes that the TPS will remain astute in protecting demonstrators' fundamental rights and protections under the Canadian Charter of Rights and Freedoms.

[1]Lukacs, Martin. "Secretive Committee in Ontario Ministry Pushed Crackdown on Pro-Palestine Activism." *Breach Media*, breachmedia.ca/secretive-committee-in-ontario-ministry-pushed-crackdown-on-pro-palestine-activism/.

[2] Lukacs, Martin. "Inside the Shocking Police Operations Targeting Pro-Palestine Activists in Toronto." *Breach Media*, breachmedia.ca/inside-the-shocking-police-operations-targeting-pro-palestine-activists-in-Toronto/.