



## **Toronto Police Service Board**

40 College Street

Toronto, Ontario

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Dear Chair Morgan and Board members,

### ***Introduction***

I am the Chair of the Alliance of Canadians Combatting Antisemitism (ALCCA), a non-profit coalition of over 30 (and soon to be closer to 40) community organizations and many more individuals fighting antisemitism through advocacy, education and training, as well as respectful dialogue.

The ALCCA is designed to enable community groups to work collaboratively. It is also highly diverse, ensuring that voices of all description are heard in unison. You and the Board can learn more about the ALCCA by visiting [www.alcca.ca](http://www.alcca.ca).

The TPSB has invited submissions respecting the development of a public order policy that addresses police action in respect of protests, demonstrations and occupations. ALCCA's submissions are not intended to exhaustively identify all the overriding principles and key elements of such a policy but instead, focus on those that are of critical importance to its member organizations, collectively representing tens of thousands of Jews and their allies in Toronto and across the country.

### ***Source of Submissions***

As some of you know, I have been privileged to work as senior counsel, reviewer, or advisor respecting multiple public inquiries and independent systemic reviews, three pertaining directly to the Toronto Police Service and/or its Board. One of the resulting reports, Judge Epstein's Missing and Missed<sup>1</sup>, addressed the role of police service boards, their relationship to police services, the nature, scope and limits on the jurisdiction of boards to address operational matters, and the distinction between Board policies and police procedures. A number of the inquiries or reviews made recommendations respecting the content of Board policies on a variety of topics.

Several of those projects have addressed the policing of protests. I have also been privileged to assist in crafting a framework for policing Indigenous major events and served as an appointed

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<sup>1</sup> The Report of the Independent Civilian Review into Missing Person Investigations examined how missing person investigations are conducted at TPS, with a particular emphasis on such investigations involving the LGBTQ2S+ and marginalized communities.

administrator of an Ontario police service board by direction of the Ontario Civilian Police Commission.

Not surprisingly, ALCCA's submissions have been informed, in part, by my own experience relating to policing. But much more importantly, these submissions have been shaped by the impact that protests, occupations and demonstrations have had on Toronto Jews, indeed Jews across Canada, their children and grandchildren, friends and colleagues.

### ***Zero Tolerance for Hate***

**Hate activities directed against the Jewish community are taking place in Toronto that require an enhanced police enforcement response that is supported by Board policy.**

The Board's invitation for submissions states that the "policing of protests, demonstrations and occupations poses a complex and delicate challenge as the Service is required to respect the constitutional rights to freedom of expression and peaceful assembly of all people, while also ensuring community safety and preserving the peace."

The City of Toronto, the Police Service Board and the Service have emphasized that freedom of speech and assembly<sup>2</sup> must be respected, although hate and intimidation will not be tolerated. This is sometimes described as zero tolerance for hate. **Zero tolerance for hate must represent one of the overriding principles that form a part of the Board's policy on public order.** Hate and intimidation are currently being tolerated. All too frequently, the correct balance has not been struck between the exercise of freedom of speech (when applicable) and community safety. Community safety has instead been imperilled and all too often, peace has not been preserved. Too many hate crimes are committed without accountability.

As stated in Toronto Police Procedure 05-16, if unchecked, crimes motivated by hate or bias can result in escalating social tensions between different groups that can destroy communities. An appropriate police response to hate/bias crime goes beyond law enforcement and must convey a strong message of our respect for, and commitment to, a diverse society.

Please make no mistake about how the majority of Jews in Toronto feel. The Jewish community does not feel safe. The community and its many allies feel that lawlessness and hate prevail, that extremists largely operate with impunity, and the authorities do not understand when the boundaries of protected speech have been overrun. It is no coincidence that Jews represent the largest target of hate crimes. It is no coincidence that Jewish students report, in far too many instances, being marginalized and demonized on university and college campuses and at primary and secondary schools. The community believes that the rule of law has little or no application when Jews are victimized, and there are few safe spaces for them anywhere in the city. The community at times underestimates the support they have in Canadian society. But that is of little comfort to them when they witness or read about acts of overt antisemitism daily.

We have the deepest respect for Toronto police who have shown, in the overwhelming majority of instances, professionalism in the face of extraordinary provocations and challenges. The comments that follow should not be taken as a criticism of specific officers or the Service as a whole. On the contrary, the police have acted in the absence of a Board policy, with resource

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<sup>2</sup> For convenience freedom of expression, association and assembly are, for convenience, generally referred to collectively as freedom of expression here.

challenges, training deficits, and inconsistencies in prosecutorial decisions around their investigated cases. The police also need a much better understanding of the full range of law enforcement measures available to them, and of the limits on freedom of expression (in relation to content, activities, time and place) that apply directly to their investigations.

The Board's new policy on public order must have application to a wide range of protests, including those unrelated to the Middle East conflict and those communities affected by that conflict here. However, the policy must be informed by the most pressing of the public order issues that confront the police service daily.

Of course, the most significant public order events that Toronto police have been called upon to respond to since October 7, 2023 have been protests relating to the Israel-Hamas conflict. The overwhelming majority of those protests are variously described, depending on one's political perspective as anti-Israeli, pro-Palestinian, or pro-Hamas or are characterized by stated objectives of the protesters, whether to "free Palestine", "globalize the intifada", end Israeli "genocide", or bring about an "immediate ceasefire." (The latter objective is, of course, now shared by many Israelis and Zionist Jews). Some of the calls for global intifada, freedom for Palestine, or resistance have been accompanied by the phrases "by any means necessary", "Zionism is racism," "all Zionists are racist."

There remains a poor understanding of the difference between protected speech and hate speech, particularly as the terms are applied to anti-Israel and anti-Zionist activities. Disinformation has contributed greatly to this poor understanding. The Board must understand this difference so as to inform its policy on public disorder.

The Jewish community is under attack when anti-Israel protestors label all Zionists as racist or genocidal, without distinction, and demand that Zionism and Zionists be barred from universities and other public and private spaces. We dealt with the "Zionism is racism" movement in the 70's (captured in UN Resolution 3379) and ultimately the United Nations revoked the resolution in 1991.

The Soviet Union led the movement to describe Zionism as racism, relying in part on the notorious *Protocols of the Elders of Zion*, a fabricated text that detailed a Jewish plot for global domination. It continues to be widely circulated today.

Our community and our allies are constantly assailed for conflating antisemitism and anti-Zionism. "We are anti-Zionist, not antisemitic" is a rallying call for the uninformed and the malevolent. It sounds legitimate to those ignorant of its history. But it distorts the meaning of Zionism which simply put, is the right of Jews to self determination in our ancestral lands. We believe in a democratic Jewish state with equality rights for all minorities. Criticizing Israel's policies, its government, its military, the settler movement similar to the kinds of criticisms levelled against other countries, is protected speech and not antisemitic. However, the demonization of Zionism, and **all Zionists without distinction**, and the denial of Israel's very existence as a Jewish democratic state constitutes hatred directed against Jews ([over 90%](#) of whom are Zionists).

This distinction between protected speech and hate speech does not merely represent the Alliance's opinion but is captured in the IHRA definition of antisemitism. The IHRA definition has been adopted by the Governments of Canada and Ontario (and many other governments and institutions). As such, **the Board's policy on public order should reflect that the IHRA definition of antisemitism should be understood by, and provide guidance to, the police in its law enforcement decisions respecting protests, demonstrations and occupations.**

New York University's newly revised non-discrimination and Anti-Harassment (NDAH) Policy and Procedures for Students is instructive on the issue of Zionism. It states:

Using code words, like "Zionist" does not eliminate the possibility that your speech violates the NDAH policy. For many Jewish people, Zionism is a part of their Jewish identity. Speech and conduct that would violate the NDAH if targeting Jewish or Israeli people can also violate the NDAH if directed toward Zionists. For example, **excluding Zionists from an open event, calling for the death of Zionists, applying a "no Zionist" litmus test for participation in any NYU activity**, using or disseminating tropes, stereotypes, and conspiracies about Zionists (e.g. "Zionists control the media"), **demanding a person who is or is perceived to be Jewish or Israeli to state a position on Israel or Zionism**, minimizing or denying the Holocaust, or invoking Holocaust imagery or symbols to harass or discriminate. ([link](#))

In July 2024, many countries, including Canada, in cooperation with international bodies, developed [Global Guidelines for Countering Antisemitism](#). One of the guidelines is of particular importance to the Board:

UNDERSTAND AND DEFINE – In order to combat antisemitism, governments need tools to understand its various manifestations. The legally non-binding "International Holocaust Remembrance Alliance (IHRA) working definition of Antisemitism" is an important internationally recognized instrument used by over 40 U.N. member states since its adoption in 2016. In addition, hundreds of sub-national public authorities, universities, sports bodies, NGOs, and corporations rely on it. "

We are not asking the Board to take sides on the controversial issues arising out of the conflict in the Middle East. We are insisting that the Board adopt a policy that recognizes when protected speech becomes hate speech. Government political leaders, including the City of Toronto's Mayor have asserted the importance of freedom of speech and assembly, unless it involves hate. But in Toronto, inadequate action is taken when speech does involve hate.

The Service and its officers make discretionary decisions as to how to police each protest, demonstration and occupation. **The Board's policy on public order must develop a framework for those discretionary decisions. At a minimum, the framework should list those considerations or elements that should guide discretionary decisions. Those considerations must be consistent with the overriding principle of zero tolerance for hate.**

**When protests, demonstrations and occupations take place in public spaces, the discretionary decisions must also be compliant with the rights guaranteed by the *Canadian Charter of Rights and Freedoms*.**

Many protesters believe that freedom of expression trumps all other considerations, and that no restrictions can be placed on where and when protests, demonstrations and occupations take place, and what can be said at such events. The law says the exact opposite, both in relation to privately owned and public spaces. The police and the city of Toronto have available to them a wide range of measures to regulate and respond to protests, demonstrations and occupations. **The Board's policy should identify the full range of criminal enforcement measures available to the police to address such public order events.** In our view, some of these measures have been underutilized.

Equally important, police discretionary decisions require an appreciation of the full range of **provincial offences** such as those under the Highway Traffic Act, as well as **City of Toronto bylaws**

available to police. This full toolkit of measures needs be considered by police in addressing lawlessness, including the obstruction of highways and roads, interference with the lawful use and enjoyment of private and public property, and/or with critical infrastructure. **Freedom of expression is critically important, but it does not mean that the city is powerless to take measures to regulate the time or place of such speech. A number of such measures need not impair freedom of expression or may minimally do so in the public interest.**

### *The Elements to be Considered in Determining How Police Respond*

**The Board's policy on public order should identify the following elements that are of importance in determining how police respond to specific protests, demonstrations or occupations:**

1. Whether any or all of the protestors are engaged in crimes motivated by hate, bias or prejudice. In this regard, greater attention should be given to the full range of criminal offences that may be applicable, such as:
  - Hate propaganda offences (four) including public incitement of hatred against any identifiable group (as statutorily defined) where such incitement is likely to lead to a breach of the peace, and wilful promotion of hatred against any identifiable group
  - Mischief to property which includes not only wilful destruction or damaging of property, but **wilful obstruction, interruption or interference with the lawful use, enjoyment or operation of property**
  - Mischief relating to religious and other property connected to an identifiable group. This offence extended to specific categories of property frequently associated with hate crimes, such as places of worship, if the mischief is motivated by bias, prejudice or hate based on enumerated categories including race, religion, national or ethnic origin. This aggravated form of mischief refers to four categories of property including places of worship, places primarily used by identifiable groups as educational institutions, or for administrative, social, cultural or sports activities or as seniors' residences. **NOTE that "motivated by bias, prejudice or hate is broader than the more restrictive elements of the hate propaganda offences**
  - Disturbing religious worship or certain meetings
  - Intimidation relating to violence or threats of violence, injury to property **or blocking or obstructing a highway**
  - Criminal harassment
  - Unlawful assembly and rioting with available enhanced penalties **if the offence is committed while wearing a mask or other disguise to conceal identity without lawful excuse**
  - Common nuisance
  - Causing a disturbance

- Breach of the peace – and the authority to intervene to prevent its continuance or renewal and to detain any person who commits or is about to join or to renew a breach of the peace
- **Disguise with intent to commit an indictable offence**
- Any offence motivated by bias, prejudice or hate

Commentary: Undue focus is often placed on the hate speech offences, rather than conventional criminal conduct that is motivated by bias, prejudice or hate based on factors including “race, national or ethnic origin, ... religion.....or on any other similar factor.” It must be remembered that such offences need not meet the criteria set for hate speech offences because (1) the motivation may be bias or prejudice, not hate and (2) the factors are not exhaustive

- Counselling another person to commit a terrorism offence, **even without having identified a specific terrorism offence**
  - Contempt of court; disobeying a court order and other offences based on non-compliance with existing court orders;
2. The existence of hate activities (already defined in existing TPS procedures), short of criminality, should also inform which law enforcement responses are appropriate when protests are unlawful for other reasons. Simply put, the existence of hate activities may mean that the police take stronger law enforcement measures to address an otherwise unlawful protest than they might have if the protest had been unaccompanied by hate;
  3. Whether protestors are in violation of provincial offences, such as the Highway Traffic Act, or municipal bylaws, such as the restriction on discharge of fireworks. Toronto police have the powers of municipal bylaw enforcement officers and greater attention should be given to the exercise of these powers as part of a zero tolerance for hate policy;
  4. Whether a protest has obtained a permit, when required, or otherwise complied with municipal requirements for the use of public spaces
    - Commentary: Rallies by Zionist organizations must comply with applicable municipal licensing requirements that are in the public interest, and may be required to address, among other things, a range of planning/management/cost issues. Reportedly, anti-Israel protests do not even seek to comply with existing municipal requirements. **The Board’s policy should reflect that compliance with all applicable laws is a relevant consideration in deciding how the police should respond to a protest, demonstration or occupation.**
  5. Whether a protest, demonstration or occupation interferes with the lawful use and enjoyment of property, both public and private, by others, or improperly excludes others from their entitlement to use and enjoy such property, roads and highways;
  6. Whether a protest, demonstration or occupation is likely to result in damage to or interference with critical infrastructure or may bring about significant public safety, social, economic or environmental consequences to the city;

7. Whether a protest, demonstration or occupation impacts on the availability of emergency services;
8. Whether the location chosen by protestors to march or otherwise demonstrate is likely to intimidate or place others at risk, including those targeted or affected by the protests;
9. Whether the protest appears to be designed to “take over’ or “shut down” the city or significant portions of the city;
10. Whether the protest effectively prevents or excludes others from exercising their freedom of expression;
11. Whether it is appropriate to create “bubble zones” (subject to legislation) which restrict protests’ proximity to vulnerable or at-risk places, without meaningfully diminishing protected freedom of speech;
12. Whether it is appropriate to create safety zones for a protest, demonstration or occupation to take place;
13. Whether protesters, particularly those who may be engaged in hate motivated crimes, are disguised;<sup>3</sup>
14. In relation to protests or occupations on private lands, whether they are accompanied by criminal offences;
  - Commentary: Contrary to certain misconceptions, the police do not need the lawful owner’s approval to arrest criminal offenders on private property. Stated another way, there appears to be a misconception that lawful owners, such as universities, have a veto over whether law enforcement measures are taken on their property. The police are entitled, and in some instances, may be obligated to take law enforcement measures to terminate or prevent criminal offences, whether taking place on private or public property and whether the lawful owner requests that such measures are taken
15. Whether occupiers are trespassing;
  - Commentary: As reflected in the U of T injunction case, lawful owners have strong unequivocal rights they can rely upon in support of the enforcement of trespassing laws. It must also be remembered that, as a matter of law, trespass laws can be enforced by the police without the intervention of the courts. In other words, an injunction may be sought in some circumstances, but it is not a precondition to enforcement

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<sup>3</sup> The Criminal Code creates two offences that involve disguises (during an unlawful assembly or riot, and, separately, disguise with intent to commit an indictable offence. The use of disguises, particularly to avoid detection or police identification, is relevant in a variety of ways: for example, whether the disguises contribute to a finding of intimidation, or may facilitate the commission of a crime or represent an effort to immunize the disguise-wearer from criminal liability. The use of disguises may affect whether the police immediately arrest or defer an arrest or arrests. Deferral may prevent the identification of criminals. However, it may also promote officer safety.

16. Whether the protest, demonstration or occupation is likely short in duration or expected to extend indefinitely;
17. Whether non-enforcement or minimal enforcement respecting illegality is likely to embolden participants or like-minded others to engage in similar unlawful conduct;
18. Whether protest leaders have cooperated with police liaison officers employing de-escalation techniques;
19. Whether delayed enforcement is likely to contribute to officer safety or the safety of others; and whether delayed enforcement will prevent the identification of alleged offenders wearing a disguise;
20. Whether the protest is likely to result in violence, destruction of property or place the protestors or others at risk or in fear of physical safety; and
21. The extent to which the protests or occupations are [antithetical to the desired use of traditional lands by the applicable Indigenous government](#) or authority

### ***Support for a Province-wide Strategy on Hate crimes***

In addition to developing a Board public order policy, the Board should support a province-wide new strategy for getting tough on hate crimes. Regardless of the group targeted, this strategy should include:

1. Additional human and financial resources provided to hate crime police units in Toronto and across the province;
2. Mandatory training for dedicated hate crime police officers and related officers that addresses prevalent forms of hate, the full range of criminal offences available to address hate, and case scenario exercises to ensure that officers understand the distinction between protected and hate speech or activities;
3. A dedicated unit of prosecutors, properly resourced and trained, to advise on, and where appropriate, prosecute alleged hate crimes. Their training may take place in conjunction with the police training identified above;
4. As a feature of greater public accountability and transparency, the Service should regularly release, as aggregated data, the number and nature of hate motivated crimes that are the subject of charges. Greater attention to such charges should also serve as a deterrent to lawlessness;
5. Bubble legislation should be introduced at the provincial level as soon as possible. This legislation will protect vulnerable or at risk institutions, community centres and places of worship through Charter-compliant limits on protests, demonstrations and occupations;



6. In accordance with the adoption by Canada and by Ontario of the [IHRA definition of antisemitism](#), the police are to be guided by that definition in determining whether hate related charges should be laid.
7. Additional police resources should be directed to extremist money laundering and financing and Ontario should also advocate for the immediate creation of a national task force on extremist financing and money laundering that includes relevant Ministries, law enforcement, national security, intelligence and counter-terrorism agencies, including but not limited to CSIS, Global Affairs Canada, FINTRAC, and CRA to coordinate and prioritize investigations into extremist financing and money laundering. Consideration should also be given to the role to be played by the Foreign Investment Review Board and other bodies mandated to examine foreign investment in Canada.

The Board's support for these initiatives would represent its commitment to zero tolerance for hate and contribute to community safety and the preservation of peace.

### ***Human and Financial Resources***

If zero tolerance for hate is treated, as it should be, as a priority of the Board, the Board must ensure that the Service has the resources necessary to implement this priority. This means, for example, that discretionary decisions on enforcement measures are not preordained by the unavailability of adequate sources. This also means that adequate resources should be available to preserve evidence pertaining to protests, demonstrations and occupations, with contemporaneous translation services available where it is anticipated that a language other than English will likely be used.

### ***Respectful dialogue***

Sadly, antisemitic (and for that matter, anti-Muslim) hate crimes always increase during conflict in the Middle East. However, as you know, we are now experiencing unprecedented numbers of hate crimes directed against the Jewish community. Even these unprecedented numbers do not begin to tell the whole story. They cannot be viewed in isolation. The Alliance's members (and our allies) have documented antisemitism that all too often poisons our schools and campuses, institutions and professions. It is often explained by ignorance and misinformation; sometimes, by extremism and malevolence.

The focus of today's submissions is, of course, on law enforcement, having regard to the Board's mandate and the hate crimes already described. But the Alliance members recognize that law enforcement is only one component – albeit critically important – in stemming the tide of antisemitism that affects us all.

Education. Critical thinking. Open-mindedness to opposing views. Respectful dialogue. These, too, can complement the fight against antisemitism and indeed, all forms of unacceptable hatred.

We submit that the Board and the Service can play a meaningful role in supporting respectful dialogue. We are under no illusions. Extremists have no interest in respectful dialogue. They demonize their opponents. They celebrate barbarity and terror. They do not seek to persuade, but to intimidate, harass, indoctrinate. But there remain those of good will who, regardless of their

political views, are prepared to talk with each other. They can play an important role in assisting the Board and the police in identifying what our communities share in common, and in isolating extremism.

As noted earlier, an appropriate police response to hate/bias crime goes beyond law enforcement and must convey a strong message of our respect for, and commitment to, a diverse society. We would be pleased to discuss with the Board and the Service how they can each provide tangible support for the existing [Respectful Dialogue Initiative](#).

Thank you for the opportunity to provide these submissions to the Board.

Yours truly,

*Mark Sandler*

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