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## Editorial

### Learning from the G20 Reports

A little more than two years after the largest mass arrests in Canadian history, the reports on the June 2010 G20 summit in Toronto are piling up. They make interesting, albeit depressing reading. They cast light on the many problems behind the massive overreaction that resulted in over 1,100 arrests and the challenges for public ordering policing and accountability for integrated policing going forward.

The early reports focused on the *Public Works Protection Act*, R.S.O. 1990, c.P-55, under which Regulation 233/10 was enacted giving police powers to make warrantless searches and arrests of anyone who tried to breach the security perimeter. In many ways, the focus on this old law, enacted in 1939 in response to war-time concerns about sabotage of hydro and other public works, was misplaced. The 20,000 strong police and military presence at the summit meant that protesters could not even get close to the Convention Centre where the meetings were taking place.

The Ontario Ombudsperson strongly criticized the law as a nefarious secret regulation. Former Chief Justice McMurtry was also critical, but his criticisms were tempered by the fact that the law as applied to courthouse searches had been upheld under the Charter by the Ontario Court of Appeal in *R. v. Campanella* (2005), 195 C.C.C. (3d) 353, 252 D.L.R. (4th) 490, 75 O.R. (3d) 342 (Ont. C.A.). He called for the law to be repealed, but also stressed the need for a similar law to protect courthouses and nuclear facilities.

The Ontario legislature has followed his advice and Bill C-34 now in third reading is remarkably similar to the old law in providing wide powers of warrantless searches, requiring people to identify themselves and making refusal to do so an offence punishable by a \$500 fine and/or two months imprisonment. It even allows a person to be denied access to a court on the vague and undefined basis that “there is reason to believe that the person poses a security risk”. (Schedule 2 amending s. 138(4) of the *Police Services*

*Act*, R.S.O. 1990, c. P.15). The only real changes are that these powers will be restricted to the protection of courthouses and electric and nuclear facilities. The law is less open-ended than the old one, but it will not prevent another G20. It will not even change the legal environment around public order policing.

As former Chief Justice McMurtry noted in his report, the police have plenty of legal powers under the common law and under the *Foreign Missions and International Organizations Act*, S.C. 1991, c. 41, with respect to the next G20. The Charter alone is not going to be answer. Indeed, some review bodies have suggested that kettling or the confinement of protesters by the police may even in appropriate circumstances be justified under the Charter.

The House of Commons' Public Safety and National Security Committee called for a full public inquiry. Such an inquiry would have focused accountability measures, but it would not have been a panacea. It would likely have encountered problems with examining police at both the federal and provincial levels. Federally, however, it could have examined the actions of the military, CSIS and the Privy Council — all federal officials involved in the G20 — who so far appear to have escaped review. The Conservative minority on the Committee, however, rejected calls for an inquiry. It declared the summit a success and criticized the majority for criticizing the police.

The recent report of the federal Commission for Public Complaints Against the RCMP (CPC) found no serious fault with the RCMP's conduct despite the fact that it was the lead policing agency at G20. This finding may in part reflect that the RCMP was not involved in some of the most notorious zones of conflict and misconduct such as the arrests in the protest area at Queens Park, the arrests at the University of Toronto, the detention centre and the kettling at the Esplanade. Even when the RCMP was involved in kettling at Spadina and Queen, the CPC found that they were only following orders given by the Toronto Police Service. It thus declared that the RCMP had acted properly even though kettling is contrary to RCMP policy.

Public order (as well as national security) policing in Canada is increasingly multi-jurisdictional and there are real worries that review will be unable to keep up with such jurisdictional complexities. To their credit, the federal CPC and Ontario's Office of the Independent Police Review Director (OIPRD) co-operated to enable the Ontario reviewer to have disclosure of some federal material.

The federal CPC examined and found the intelligence used at G20 generally to be appropriate. It noted, but did not elaborate on the fact that senior approval for intelligence gathering among unions and academe was not obtained. Despite not having powers to compel the production of secret information, it did not report any problems in gaining access to secret

material in contrast to the Military Police Complaints Commission in its recent Afghan detainee report. In national security contexts, accountability is not possible without access to secret documents.

The OIPRD report is much more critical than the CPC report in part because it devotes extensive and separate chapters to the arrests at Queens Park, University of Toronto, Queen and Spadina and on the Esplanade. It also devotes a chapter to the shocking conditions at the Prisoner Processing Centre. It finds the Toronto police planning was inadequate. It revealed a disturbing equation of protesters and terrorists by an Incident Commander and relates this to the decision to arrest 1,100 most of whom were peaceful protesters.

It also finds misunderstandings of Charter rights both with respect to searches of all backpacks and a failure to provide for counsel or prompt bail hearings. At the same time as the police underestimated the demands of Charter, they overestimated the new powers they were given by the *Public Works Protection Act*.

Former Associate Chief Justice John Morden's recent report for the Toronto Police Services Board criticizes the board for not providing enough policy guidance to the police. His report is another reminder of the danger of exaggerated notions of police independence and the need for democratic guidance to the police. The Board was not even informed before Chief Blair asked the Ontario government for more powers under the *Public Works Protection Act*. The Board also failed to ensure the public was informed about these legislative changes or the Toronto Police Force's erroneous interpretation of them. He also calls on the board to investigate the high level of strip searches used at the temporary detention centre.

Mr. Morden notes that 109 breaches of the rule requiring identification to be worn were substantiated among Toronto police officers. He rightly notes that such violations are extremely serious and undermine public confidence in the police but then depressingly reports that the Toronto police officers involved only had one or two days pay docked. In some cases, however, promotions have been denied and it is hoped that this sends a strong message that it is simply not acceptable for the police to remove their badge number in any free and democratic society.

The reports issued so far are daunting but they deserve careful reading. More work needs to be done. For example, the frequent dismissal of cases stemming from the arrests should be examined. More generally, more study needs to be done about how co-ordinated review should follow co-ordinated policing. Hopefully, governments and the police will learn lessons from these reports. What happened in Toronto in June 2010 should never be repeated.

K.R.