



November 18, 2024

Mayor and City Councillors
City of Brampton
2 Wellington Street West
Brampton, ON L6Y 4R2

Via email: Patrick.Brown@brampton.ca *et al*

Dear City of Brampton's Mayor and City Councillors:

Re: Upcoming Vote on a By-Law Prohibiting Some Protests Near Places of Worship

We are writing today about the importance of freedom of expression and of people's right to use their civic space to protest peacefully. We acknowledge that everyone in Canada, including people of Brampton, are entitled to physical safety. This is why, in case of violent or otherwise criminal behavior during a protest, law enforcement can and should intervene with the individuals concerned.

Prohibiting protests near community gathering spaces raises serious *Charter* issues. While some limitations on peaceful protests near places of worship might be found by courts to be acceptable to balance free speech and the right to protest peacefully with other important rights, such as freedom of religion, any such limit should be carefully crafted, as minimal as possible, and proportionate. As detailed below, the proposed by-law fails to meet these requirements.

The Canadian Civil Liberties Association ("CCLA") is an independent, national, nongovernmental organization that was founded in 1964 with a mandate to defend and foster the civil liberties, human rights, and democratic freedoms of all people across Canada. Our work encompasses advocacy, research, and litigation related to the criminal justice system, equality rights, privacy rights, and fundamental freedoms. Key aspects of our mission include fighting against government overreach and defending freedom of speech and freedom of peaceful assembly.

Freedom of expression is the very lifeblood of our democracy. It is critically necessary to allow for engagement in public debates. History shows that persecuted and marginalized groups have needed expressive freedom to communicate their concerns and bring awareness to their cause. Supporting expressive freedom should not imply support for—or criticism of—the underlying cause or opinion being expressed. By protecting collective expression, freedom of peaceful assembly invigorates dialogue on issues of public interest. This right can have little meaning without broad access to public space for purposes of communicating a message. One should also not forget that this fundamental freedom is often disruptive in some way, as any gathering in public space is aimed at compelling the public to hear a message.

We are aware that, on November 20, 2024, the Brampton City Council will vote on a proposed by-law prohibiting “Nuisance Demonstrations” near places of worship. The proposed by-law specifies that the prohibition “is not intended to prohibit peaceful gatherings, protests or demonstrations”,¹ and “does not prevent persons from peacefully protesting against foreign governments at a Place of Worship”.² This seems to indicate that the by-law would only prohibit *violent* gatherings, protests or demonstrations. Violent acts endangering human physical safety are already prohibited by various *Criminal Code* offences—regardless of where they take place in Canada. Enacting a by-law prohibiting violent protests near places of worship would add nothing to existing police powers—besides the alarming power to charge *peaceful protestors* with the offence of having participated in a protest in which *other protestors* acted violently.

There is more. Despite the intention expressed above to limit the prohibition to protests that are not peaceful, we are concerned that the proposed by-law’s vague, subjective, and overly broad wording might lead the Brampton City Council to prohibit *peaceful and otherwise lawful* protests.

The proposed by-law’s definition of “Nuisance Demonstration” includes, among other things, a protest in which an individual utters speech that incites “intolerance or discrimination”. While the CCLA does not endorse this type of speech and acknowledges that it might be deeply painful, it is neither violent nor criminal in nature.³ To the contrary, this speech falls under the “awful but lawful” category of expression—speech that, as the Supreme Court of Canada has held, might be repugnant, offensive, or humiliating, but which should not be prohibited in a free and democratic society.⁴ One must not lose sight of the fact that freedom of expression is guaranteed “so as to ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream”.⁵ Prohibiting peaceful and otherwise lawful protests near specific locations because of their content would severely infringe freedom of expression and the right to protest peacefully.

Naturally, in certain circumstances, limits on freedom of expression and freedom of peaceful assembly may be demonstrably justified. Some courts have found that limits on protests around abortion clinics were justified because of the history of aggressive protests outside these sites, and women’s rights to access health care without losing their security, dignity and privacy. Hence, some limitations on peaceful protests near very specific types of locations—such as places of worship—might be found by courts to be acceptable to balance free speech and the right to protest peacefully with other important *Charter* rights—such as freedom of religion. However, any such impairment on freedom of speech and protest rights should be carefully crafted, as minimal as possible, and proportionate.

¹ Proposed by-law, s. 6(a).

² Proposed by-law, s. 6(b).

³ Speech-related criminal offences include death threats, threats of bodily injury, criminal harassment and hate propaganda.

⁴ *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, at para 41.

⁵ *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 SCR 927, at p 968.

Should Brampton's city councillors wish to go ahead with the adoption of the proposed by-law, a handful of amendments could help partly mitigate some of the key concerns arising from this initiative:

1. Definition: The "Nuisance Demonstration" definition is vague and open-ended, and leaves it to police officers to make subjective and unpredictable determinations. Not only does this issue severely infringe on the right to protest peacefully, it is also likely to chill free speech. Because of the uncertainty about the meaning of the definition, people will refrain from participating in peaceful and lawful protests for fear that they *might* be found in violation of the by-law.

The list of types of conduct leading to a violation should be limited and properly defined. Types of conduct that do not directly endanger or threaten human physical safety (such as speech inciting intolerance or discrimination) should not be included in the definition.

2. Organizer: The proposed by-law makes it an offence to *organize* a "Nuisance Demonstration".⁶ However, a protest only qualifies as a "Nuisance Demonstration" once an officer finds that one or many protestors have engaged in intimidating conduct (as that conduct is loosely defined in the proposed by-law) during the protest. Organizers cannot predict how one or more protestors will act during a protest, and whether an officer will qualify such protest as a "Nuisance Demonstration".

Organizers should not be in violation of the by-law simply because they organized a protest that turned out to be a "Nuisance Demonstration".

3. Perimeter: The access zone's suggested perimeter (100 metres of places of worship's property line) exceeds what is necessary to allow people to exercise their freedom of religion, which includes a right to access their places of worship without fear for their physical safety.

The City Council should consider narrowing this perimeter down.

4. Notice and opportunity to leave: The proposed by-law currently grants police the authority to charge protestors with an offence even if (i) they did not personally engage in any kind of intimidating conduct, or (ii) they engaged in such conduct without having the intent to do so.⁷ Police could also charge with an offence protestors who (iii) did not know that they were protesting within a prescribed perimeter, or (iv) did not know that the protest they were participating in had subjectively been deemed by the police to be a "Nuisance Demonstration".

Considering the difficulty for protestors to know in real time whether they are within the prescribed perimeter, and the impossibility to predict other protestors' actions as well as police's determinations, this regime is unacceptable.

The police should be required to give protestors notice of the access zone's location and of the fact that the protest has been deemed to be a "Nuisance Demonstration".⁸

⁶ Proposed by-law, s. 5.

⁷ Proposed by-law, definition of « Nuisance Demonstration» and s. 5.

⁸ While s. 11 and 12 of the proposed by-law allow an "Officer" who believes that a contravention of the by-law has occurred to issue an order discontinuing the contravening activity, these sections do not provide for a clear, mandatory notice process.

Protestors should then be given reasonable opportunity to leave the protest before they may be found in contravention of the by-law.

5. Penalty: Any person guilty of an offence under the proposed by-law is subject to a maximum fine of \$100,000.⁹ In case of a continuing offence, the maximum daily fine is \$10,000.¹⁰ These maximum penalties of extreme severity are irrational and disproportionate. They are likely to chill free speech and lawful, peaceful protests, as people will have to choose between their financial stability and participating in a protest that *might* end up within a prohibited access zone and *might* end up being labeled a “Nuisance Demonstration”.

The City Council should reduce these maximum fines significantly.

Our civic space is where people come together to exercise their rights to associate, assemble and express themselves peacefully. It enables people and groups to participate meaningfully in the political, economic, social and cultural life of their societies. This space is the bedrock of any open and democratic society. We urge you to refrain from shrinking our civic space unduly and unfairly.

We would welcome the opportunity to meet with you to discuss this issue further.

Sincerely,



Anaïs Bussières McNicoll
Director, Fundamental Freedoms Program
Canadian Civil Liberties Association

⁹ Proposed by-law, s. 16 (a).

¹⁰ Proposed by-law, s. 16(b).