VIA FAX AND MAIL

April 24, 2013

Mayor Michael Applebaum
Hôtel de Ville
275, rue Notre-Dame Est
Montréal, Québec H2Y 1C6

Dear Mayor Applebaum,

RE: Bylaw P-6 and Montréal's mass arrests

The BC Civil Liberties Association is deeply concerned by the recent mass arrests occurring in Montréal, justified by Montréal Bylaw P-6. As the oldest and one of the most active civil liberties associations in the country, the BC Civil Liberties Association exists to preserve and defend the fundamental freedoms that healthy democracies demand. Montréal's Bylaw P-6 has been repeatedly used to trample these fundamental freedoms, and we urge you and your council to repeal this undemocratic legislation.

Over the past three weeks the Service de Police de la Ville de Montréal (SPVM) has engaged in cracking down on expressions of dissent in shocking and deeply troubling ways. Almost 500 peaceful protesters in Montréal have been arrested and handed $637 fines over the course of three protests, which took place on March 15, 20, and 22, respectively. This legislation, and the attitudes that support these actions, have no place in a free and democratic Canada.

Contrary to SPVM spokesperson Sergeant Latour's proclamation that "there is no right to protest"[1], protest is clearly protected by both the Canadian Charter of Rights and Freedoms and the Québec Charter of Human Rights and Freedoms under both the freedom of expression and freedom of peaceful assembly clauses. These rights are protected in our most fundamental law because they are the bedrocks of healthy democracies. Public protest, demonstration and dissent advance critical conversations about public policy

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[1] Hugo Pilon-Larose, "Intervention policière rapide à la manifestation du 22", La Presse, 22 mars, 2013. http://www.lapresse.ca/actualites/dossiers/conflit-etudiant/201303/22/01-4633847-intervention-policiere-rapide-a-la-manifestation-du-22.php

and government accountability. Montréal's crackdown on this kind of demonstration is certain to chill expression and restrict fundamental freedoms. Our democracy will be weaker for it.

While it is certainly true that rights are not absolute, limitations on constitutional rights must be proportional, and no greater than necessary to achieve a pressing and compelling objective. We believe Bylaw P-6 overreaches significantly, and in ways that would not survive constitutional scrutiny. Montréal's Municipal Bylaw P-6 requires, among other things, that masks not be worn during protests, and that protest organizers file advanced notice of the intended route of any demonstration. It contains similar provisions to the now repealed Bill 78, which was heavily criticized across Canada. We join the Barreau du Québec (Quebec Bar Association) and so many others in condemning this legislation.

In May 2012 and again in April 2013, the BCCLA presented before House of Commons and Senate committees on Bill C-309, which would proscribe the wearing of face masks during public demonstrations. At the time we presented very real concerns about freedom of expression, privacy, and the presumption of innocence. Masks can be a powerful aid to unpopular speech. For those who wish to convey messages that are likely to offend governments or others, the anonymity that masks provide may encourage the uninhibited expression of views by offering security against reprisal from government, employers, family or others. Bylaw P-6 throws out these concerns, along with any possibility of anonymity in peaceful protest; a possibility that is of great importance to vulnerable individuals, and those who hold opinions deemed unpopular either here or abroad. The BCCLA continues to oppose legislation that bans the wearing of masks in peaceful protests, and we call on legislators to understand the value of anonymity in public dissent.

Reports from these demonstrations suggest that crowd kettling began before the demonstrations had even begun. On each occasion individuals were detained for a number of hours and fined $637. The March 19th and 22nd protests were peaceful. There was no violence and no criminal act. The reason cited for the arrests in question is the bylaw's requirement to file advanced notice of the intended route of any demonstration.

The enforcement of this unbending restriction precludes impromptu responses to unforeseeable or recent events, and imposes significant restrictions on peaceful gatherings in an unjustified way. No sufficiently compelling or pressing objective has been identified that would justify these restrictions. American courts have repeatedly ruled that First Amendment

protections prohibit advance notice regulations from being used to prevent rallies or demonstrations if they are unnecessary for public safety. People in Montréal and throughout Canada deserve the same robust protection of their rights.

In Speech Out of Doors: Preserving First Amendment Liberties in Public Spaces, U.S. legal scholar Timothy Zick describes how controlling access to space is used to silence and distort dissenting voices. In 2012, BCCLA Policy Director Micheal Vonn wrote that the location of a protest matters, saying that "[d]isplacement is often used to silence". By rounding up Canadian citizens in the streets and slapping them with massive fines, the actions of Montreal's police force are very evidently being used to silence dissent; whatever the purported rationale for this law may be.

Moreover, the use of crowd kettling, widely discredited and formally abandoned by Toronto's police force in the wake of the G20 incidents, is gravely worrying. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has recently criticized this practice in the United Kingdom for being "indiscriminate and disproportionate [in] nature". These actions are meant not only to silence but to intimidate.

These tactics have no place in a free and democratic Canada. We urge you and City Council to repeal Bylaw P-6 and to reinvigorate your commitment to protecting constitutional rights.

Kind regards,

Mtre. Josh Paterson,
Executive Director