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Calgary Police Service
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RE: Withdrawal of charges against Wesam Khaled and Investigation into November 18 police conduct

The BC Civil Liberties Association (BCCLA) writes to express our concern regarding the criminal charges laid against Calgary protest organiser Wesam Khaled on November 5, 2023. We understand that Calgary police charged Mr. Khaled with disturbance of the peace for leading a political chant at a protest for Palestinian liberation on that day.

Although these charges have now been stayed, they raise matters of public interest across Canada. The BCCLA is concerned about the chilling effect that these charges have had and will continue to have on protests generally. For the reasons below, the BCCLA urges the Alberta Crown Prosecution Service to formally withdraw the charges.

Mr. Khaled's arrest and charges

As can be seen in video footage of the protest,¹ Mr. Khaled revealed to the public that police told him prior to the protest that there would be no criminal charges for protestors that day but that they were “not allowed” to chant “From the river to the sea, Palestine will be free”. Mr. Khaled also says that he was told the Alberta government was investigating designating the chant as hate speech.

Mr. Khaled proceeded to lead the chant and was charged following the protest on the alleged basis that the chant is antisemitic. It is particularly concerning that in bringing the charges against Mr. Khaled, Calgary Police Service (CPS) has recommended that the court consider as an aggravating factor for sentencing, hatred as the motivation under s. 718.2(a)(i) of the *Criminal Code*.²

¹ See 18:00-20:00. Saima Jamal, Facebook, “Live from Calgary's rally to save Palestine and Gaza!” (November 5, 2023): <<https://www.facebook.com/saima.jamal/videos/2095387754157743>>.

² Colette Derworiz, CTV News, “Debate over 'from the river to the sea' chant rages after Calgary protester charged” (November 17, 2023): <<https://calgary.ctvnews.ca/debate-over-from-the-river-to-the-sea-chant-rages-after-calgary-protester-charged-1.6649337>>.

There are many resources about the chant “From the river to the sea, Palestine will be free”. This saying calls for the realization of the rights and freedoms of the Palestinian people,³ who have experienced settler-colonialism, ethnic cleansing, apartheid, and other forms of systemic oppression and violence for almost 80 years. These facts are well documented by international human rights organisations, leaders, and scholars.⁴ We encourage you to review these resources regarding the history and meaning of this chant for the Palestinian people, and the absence of any antisemitic or violent meaning. As such, in the BCCLA’s view, any attempt by a Canadian government to criminalize the chant as hate speech is clearly an unjustified suppression of free expression.

Chilling effect on protest and expression rights

The BCCLA is concerned about the chilling effect of charges like these on protests generally. Criminal charges of this nature violate the rights all people in Canada have to freedom of assembly and to political speech. Protests inherently involve a certain level of sound or disruption in public spaces and they frequently involve political chanting, particularly by organisers. Canadians should not fear police interference or arrests when they exercise their constitutionally-protected right to freedom of expression.

The BCCLA would also specifically clarify that there is a difference between political speech and what could be legally considered and charged as hate speech under the *Criminal Code*. Police should not be circumventing hate speech provisions by misapplying other criminal offences. Absent further conduct

³ See for a few examples: Independent Jewish Voices Canada, “From the river to the sea, Palestine will be free” Is not Hate Speech” (November 14, 2023). <<https://www.ijvcanada.org/from-the-river-to-the-sea-palestine-will-be-free-is-not-hate-speech/>>; Yousef Munayyer, Jewish Currents, “What Does “From the River to the Sea” Really Mean?” (June 11, 2021). <<https://jewishcurrents.org/what-does-from-the-river-to-the-sea-really-mean>>; Maha Nassar, Forward, “From The River To The Sea’ Doesn’t Mean What You Think It Means” (December 3, 2018). <https://forward.com/opinion/415250/from-the-river-to-the-sea-doesnt-mean-what-you-think-it-means/?mc_cid=84b5599fab&mc_eid=f874fe4ad4als>; and for an analysis in the American legal context, Noah Zatz, Law and Political Economy Project, “Palestinian Freedom, Antisemitism, Antisemitism Accusations, and Civil Rights Law” (November 20, 2023) <<https://lpeproject.org/blog/palestinian-freedom-antisemitism-accusations-and-civil-rights-law/#:~:text=And%20as%20the%202020%20Jerusalem,state%2C%20unitary%20democratic%20state%2C%20federal>>.

⁴ See for example, Human Rights Watch, “A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution” (April 2021). <https://www.hrw.org/sites/default/files/media_2021/04/israel_palestine0421_web_0.pdf>; Human Rights Watch, “Israel: 50 Years of Occupation Abuses” (June 4, 2017). <<https://www.hrw.org/news/2017/06/04/israel-50-years-occupation-abuses>>; John Reynolds, “Apartheid and International Law in Palestine,” in *Prolonged Occupation and International Law*, 2023. <https://www.academia.edu/77788362/Apartheid_and_International_Law_in_Palestine>; B’Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, “A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid” (January 2021). <https://www.btselem.org/publications/fulltext/202101_this_is_apartheid>; The Centre for Constitutional Rights, “The Genocide of the Palestinian People: An International Law and Human Rights Perspective” 2016. <<https://ccrjustice.org/sites/default/files/attach/2016/10/Background%20on%20the%20term%20genocide%20in%20Israel%20Palestine%20Context.pdf>>; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, UN General Assembly (August 12, 2022). <<https://www.un.org/unispal/document/report-of-the-special-rapporteur-on-the-situation-of-human-rights-in-the-palestinian-territories-occupied-since-1967-report-a-hrc-49-87-advance-unedited-version/>>; Riyad Mansour, Permanent Observer of Palestine to the United Nations, General Assembly Security Council, “Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory” (June 6, 2022). <<https://www.un.org/unispal/document/palestinian-people-continue-to-be-deprived-of-their-freedom-dignity-and-rights-by-israel-letter-from-state-of-palestine-a-es-10-903-s-2022-452/>>.

rising to constitute a legal offence, such as risk to public safety or property, police must not interfere in the right to protest by trying to control the specific political speech of protestors via the charge of causing a disturbance. On the contrary, in Canada, police have a duty to facilitate peaceful protest, and ensure that protesters have the space and freedom to express their views publicly.

This equally applies to the use of force by police. The BCCLA is also concerned by reports of excessive use of force by Calgary police officers during the protest this past Saturday, November 18, 2023.⁵ Reports include video footage that shows officers harshly grabbing protesters, throwing them to the ground, and kicking or holding them down. In one case, this included a minor,⁶ and in another, an pregnant woman.⁷ Given the mischaracterization of Mr. Khaled's case, the BCCLA is skeptical of the account provided by CPS to justify the use of force of this nature. The BCCLA reminds CPS that such actions also have a chilling effect on protest rights broadly and accountability must be taken to address them, as will be discussed below.

Withdrawal of the charges

It is the role of the Prosecution Service to bring forward charges that are in the public interest. The public interest lies always in open political debate, as this is a fundamental part of our Canadian democracy. The public interest is not served in shutting down that debate through criminal charges based solely on political speech that a police officer or service does not approve of or personally considers offensive. This is particularly true in the context of times like the present, where there is violence occurring in Palestine and Israel, and where there is a heightened need for open political debate.

Nor should the Prosecution Service be swayed by political opinion or a desire to court media approval. The public confidence in the proper administration of justice requires Crown attorneys to act impartially, fairly, transparently, and without discrimination.⁸

As such, the BCCLA was glad to see the Prosecution Service stay the charges against Mr. Khaled. However, criminal charges of this nature not only serve to chill the political speech of the individuals charged, but have a chilling effect on protest and freedom of expression generally. The BCCLA is concerned regarding the chilling impact that the high-profile laying of charges has had already on people seeking to exercise their rights to freedom of assembly and their freedom of expression in Canada. The fact that the charges have been stayed but not withdrawn continues to imply that charges like this could be laid against other protestors in the future.

⁵ Adam Toy, Global News, "Calgary police tactics questioned after social media videos show arrests of youth, woman" (November 20, 2023). <<https://globalnews.ca/news/10104908/calgary-police-protest-tactics-questioned-social-media-videos/>>.

⁶ *Ibid*; Alejandro Melgar, November 19, 2023, "Pro-Palestine protest takes turn, arrests made for 'unlawful conduct': Calgary" (November 19, 2023). <<https://calgary.citynews.ca/2023/11/19/calgary-pro-palestine-protest-arrests-police/>>

⁷ Adam Toy, *supra* note 5.

⁸ Alberta Crown Prosecution Service, "Code of Conduct for Crown Prosecutors" (May 4, 2022). <<https://open.alberta.ca/dataset/8fa0bd3b-2bbe-400d-85d2-3ba8101d83e2/resource/59ef448a-904b-4268-bd84-28fb92371ebb/download/jsg-cpm-attorney-general-code-conduct-crown-prosecutor-2023-03.pdf>>.

For Mr. Khaled specifically, the ability for the stay to be lifted and the proceedings resumed in the future means that these charges will continue to hang over his head, with the potential chilling effect that entails. It also means a lack of accountability to him for the charges having been laid in the first place.

For these reasons, we urge the Alberta Prosecution Service to immediately withdraw the charges against Wesam Khaled. A stay of proceedings is not sufficient; only a withdrawal of the charges can fully restore police accountability and the public confidence to exercise their *Charter* rights.


Ensure policing that is respectful, proportionate, and without discrimination

It is always important that police respect the community in order for the community to respect and have trust in the police. Many people in Canada are outraged by the violence they are seeing in what continues to be called a potential genocide by international law experts,⁹ and are peacefully taking to protest to call for peace and ceasefire. The Palestinian liberation movement in Canada includes Palestinians, Jews, Indigenous people, and members of other diverse groups, including in particular other Arabs, Muslims, and racialized people. Palestinians in Canada are in mourning as many have lost family, friends, and community from the violence on their land. At the same time, racism against Palestinians, Arabs, and Muslims is at a peak. Police violence against protestors must be understood in this context.

To ensure that the public has confidence to exercise their freedoms of expression and assembly, it is imperative that the CPS ensure prompt and fulsome investigation and accountability regarding the incidents on Saturday, November 18, and to ensure that policing will be exclusively respectful, proportionate, and in accordance with legal parameters moving forward, including the rule of law.

Thank you for your consideration in your role as public servants.

Sincerely,



Ga Grant (she/her)
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⁹ Office of the United Nations High Commissioner for Human Rights, Press Release, “Gaza: UN human rights experts call on international community to prevent genocide against the Palestinian people” (November 16, 2023). <https://www.un.org/unispal/document/gaza-un-human-rights-experts-call-on-international-community-to-prevent-genocide-against-the-palestinian-people-ohchr-press-release/>; International Commission of Jurists, “Gaza/Palestine: States have a Duty to Prevent Genocide” (November 17, 2023); <https://www.ici.org/gaza-occupied-palestinian-territory-states-have-a-duty-to-prevent-genocide/>; Office of the United Nations High Commissioner for Human Rights, Press Release, “UN expert warns of new instance of mass ethnic cleansing of Palestinians, calls for immediate ceasefire” (October 14, 2023). <https://www.ohchr.org/en/press-releases/2023/10/un-expert-warns-new-instance-mass-ethnic-cleansing-palestinians-calls>; “Amnesty International, Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza” (October 20, 2023). <https://www.amnesty.org/en/latest/news/2023/10/damning-evidence-of-war-crimes-as-israeli-attacks-wipe-out-entire-families-in-gaza/>.