



Provincial Crown Attorney
Criminal Law Division – Ministry of the Attorney General

March 26, 2024

Chief Myron Demkiw, Chief of the Toronto Police Service
Toronto Police Services Board

RE: BCCLA urges immediate withdrawal of charges against Toronto human rights activists

The BC Civil Liberties Association (BCCLA) writes to express our concern regarding the criminal charges laid against 11 Toronto alleged activists (the “Activists”) following a coordinated effort of armed police raids of their homes on November 22, 2023 (the “Raids”).¹ We understand that officers of the Toronto Police Service (the “TPS”) charged each of the Activists with counts of “suspected hate-motivated” mischief over \$5,000, conspiracy to commit an indictable offence, and criminal harassment (the “Charges”).²

The BCCLA is deeply concerned about the chilling effect that these Charges have had and will continue to have on constitutional freedoms of expression and assembly both for these individuals and for everyone in Canada. The nature of the Raids and Charges appear, in our view, a novel and extreme advancement in charges against protest actions of this nature, posing deep concern for civil liberties nationally. The chilling impact of the Raids and Charges must be understood amongst other TPS recent actions which suppress protest rights and TPS messaging that insinuates or equates protests for Palestinian rights as antisemitic.³

¹ An alleged Activist was arrested prior to the Raids. Michael Talbot, City News, “Police Lay Additional Charges in Hate-Motivated Vandalism Probe at Toronto Indigo” (November 30, 2023). <<https://toronto.citynews.ca/2023/11/30/police-lay-additional-charges-in-hate-motivated-vandalism-probe-at-toronto-indigo/>>.

² *Ibid.*

³ The TPS statement regarding the Raids and Charges as hate-motivated offences is no longer searchable on the TPS website, however it was issued alongside the TPS “Robust Response to Hate-Motivated Crime”. More recently, the TPS has indicated ramping up enforcement of restrictions on protests in certain contexts and on overpasses. A recent National Post article also demonstrates the TPS messaging surrounding protests in support of Palestine. Sources in turn: Toronto Police Services, News Release, “Robust Response to Hate-Motivated Crime” (November 23, 2023). <<https://www.tps.ca/media-centre/stories/robust-response-to-hate-motivated-crime/>>; Toronto Police Service, News Release, Update on Demonstrations: Banners on Overpasses” (December 30, 2023). <<https://www.tps.ca/media-centre/news-releases/58392/>>; Toronto Police Service, News Release, “Encouraging Lawful Demonstrations”. <<https://www.tps.ca/media-centre/stories/encouraging-lawful-demonstrations/>>; National Post, “Toronto Police Will Crack Down on Illegal Acts at Escalating Anti-Israel Protests Chief Says” (January 11, 2023). <<https://nationalpost.com/news/toronto-police-will-crack-down-on-illegal-acts-at-escalating-anti-israel-protests-chief-says/>>.

For the reasons below, the BCCLA strongly condemns the Raids and the Charges and urges the Crown to immediately withdraw the Charges as they are not in the public interest.

The protest against Indigo CEO's support of the Israeli military

The Raids and the Charges stem from a November 10 expressive action on the front of an Indigo store in downtown Toronto (the “Protest”). During this Protest action, Activists allegedly splashed what we understand to be washable red paint on the storefront and used non-permanent glue to adhere posters with the picture of the Indigo CEO, Heather Reisman, with the text “Funding Genocide”.⁴ This was in reference to the charity run by Reisman and her husband, the HESEG Foundation for Lone Soldiers. This foundation provides scholarships to former “lone soldiers” — or those without family in Israel, to support them to serve in the Israel Defence Forces.⁵

Supporters of Palestinian rights have been protesting Indigo since 2007, on the basis that Reisman through Indigo is indirectly supporting Israel’s military efforts in its occupation of the Palestinian territories. The campaign was started by the Jewish Women Against the Occupation.⁶ By encouraging foreigners to join the Israeli army, the HESEG foundation is arguably contributing to human rights violations abroad.⁷ The Palestinian movement broadly has targeted many corporations as a part of calls to boycott Israeli companies or companies doing business with Israel.⁸

It is essential that the Protest be contextualized within the greater Palestinian liberation movement and within the events currently happening in Palestine and Israel. Many people in Canada are outraged by the violence they are seeing in what continues to be called a potential genocide by international law

⁴ Mike Hagar and Sean Fine, “Toronto police charge 11 in Indigo store vandalism, report spike in hate incidents,” (November 23, 2023). <https://www.theglobeandmail.com/canada/article-toronto-police-charge-11-in-indigo-store-vandalism-report-spike-in/?utm_source=dvr.it&utm_medium=twitter>; Martin Lukacs, The Breach, “In stunning pre-dawn raids, Toronto police ‘terrorize’ Palestine activists,” (November 24, 2023). <<https://breachmedia.ca/toronto-police-pre-dawn-raids-palestine-activists-indigo/>>.

⁵ Ben Cohen, Toronto Star, “11 Protesters Charged with Mischief After Toronto Indigo Vandalized,” (November 23, 2023). <https://www.thestar.com/news/gta/11-protesters-charged-with-mischief-after-toronto-indigo-vandalized/article_db4ec017-3c60-5a4a-8d89-af58847a3739.html>.

⁶ Naomi Klein, The Breach, “Naomi Klein to Heather Reisman: Charges Must be Dropped Against Indigo 11,” (November 30, 2023). <<https://breachmedia.ca/naomi-klein-calls-on-heather-reisman-drop-charges-indigo-11/>>.

⁷ Martin Lukacs, The Breach, “In Stunning Pre-Dawn Raids, Toronto Police ‘Terrorize’ Palestine Activists,” (November 24, 2023). <<https://breachmedia.ca/toronto-police-pre-dawn-raids-palestine-activists-indigo/>>; Canadians for Justice and Peace in the Middle East (CJPME), Press Release, “Toronto Police Action Against Anti-War Activists is Unjustified: CJPME, (November 24, 2023). <https://www.cjpme.org/2023_11_24_activists_arrested>.

⁸ See generally: BDS Movement, <<https://bdsmovement.net/>>.

experts⁹ and recognized as plausibly such by the International Court of Justice,¹⁰ and are engaging in non-violent expression against said genocide.

The Palestinian liberation movement in Canada includes many different individuals and organisations, including Palestinians, other Arabs and Muslims, Jews, Indigenous people, and many other diverse people in Canada. The Palestinian liberation movement generally calls for the realization of the rights and freedoms of the Palestinian people, who have experienced settler-colonialism, ethnic cleansing, apartheid, and other forms of systemic oppression and violence for almost 80 years, namely since the United Nations General Assembly Partition Plan for Palestine in 1947. These facts are well documented by international human rights organizations, leaders, and scholars.¹¹ Further, state action to specifically oppress Palestinian voices or calls for Palestinian human rights is itself a form of discrimination and oppression against Palestinians.¹²

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/>>.

¹⁰ Order: Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel) (24 January 2024), see para 54. <<https://www.ici-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>>.

¹¹ 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/>>; Riyadh 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/>>.

¹² See: Dania Majid, Arab Canadian Lawyers Association, “Anti-Palestinian Racism: Naming, Framing and Manifestations” (April 2022). <<https://static1.squarespace.com/static/61db30d12e169a5c45950345/t/627dcf83fa17ad41ff217964/1652412292220/Anti-Palestinian+Racism+Naming%2C+Framing+and+Manifestations.pdf>>; Lucy El-Sherif, The Conversation, “The high cost of advocating for Palestine,” (May 30, 2021). <<https://theconversation.com/the-high-cost-of-advocating-for-palestine-161160>>; Canadians for Justice and Peace in the Middle East (CJPME), “Anti-Palestinian Racism in Canada: CJPME’s 2022 Report,” (December 2023). <https://assets.nationbuilder.com/cjpme/pages/7820/attachments/original/1701964321/EN_-_APR_in_Canada_2022_-_FINAL.pdf?1701964321>.

We encourage you to review these resources regarding the history of the Palestinian liberation movement and Israel's past and present violations of international law.¹³

The Raids

The statement of Jews Against Genocide Toronto/World Beyond War explains that eight or more officers participated in each of the 10 Raids, which occurred between 4:30 and 6:00am.¹⁴ Police knocked and then burst through doors, often without properly identifying themselves. All residents in the houses were handcuffed, including some elderly family members and parents in view of their children and neighbours. Doors were broken and the police confiscated laptops and cellphones, including some provided by employers. Some of those charged were kept handcuffed in the back of police cars for hours.

Serious overreach: the distinction between antisemitism and political expression; criticism of the state of Israel, Israeli military, criticism of a charity or corporations, or calls for Palestinian human rights

The BCCLA is extremely concerned with the nature of the Raids and the Charges used against the alleged Activists for calling for an end to genocide and those who support it. In our experience, this massive and expensive "bust" style operation is usually reserved for larger scale coordinated crime operations, such as drug or gun busts. The Raids were extremely intrusive to the privacy of alleged Activists and their families. Such violent and invasive tactics have no place being used against human rights protestors exercising their freedom of expression, and freedom of assembly.

Human rights activists are not criminals and should not be treated as such. The Raids and the heavy collection of indictable Charges are outrageously disproportionate to the actual events of the Protest, which caused no actual harm or threat to people or property. The TPS actions were completely unnecessary when the Activists posed no risk of physical harm to anyone and presented no flight risk, and normal methods of police investigation and reporting were available.

It is particularly concerning to see police statements that the Charges are being treated as hate-motivated offences, the basis for which being that the Protest, with its red paint and posters saying, "Funding Genocide", were allegedly antisemitic. Indeed, the underlying police rationale for the Charges appears to be the allegation of antisemitism.

¹³ See, for example, 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>; 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>>; Michael Lynk, "Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967", 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/>>; Riyadh 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/>>.

¹⁴ Jews Say No to Genocide, World Beyond War, "In Toronto: Jews Say No to Genocide Coalition Condemns Arrests In Regards to Indigo Postering, Calls for All Charges to be Dropped," (November 23, 2023). <<https://worldbeyondwar.org/in-toronto-jews-say-no-to-genocide-condemn-arrests-in-regards-to-indigo-postering-call-for-all-charges-to-be-dropped/>>.

The BCCLA stresses that there is a difference between political speech and what could be legally considered and charged as hate speech or a hate motivated offence under the *Criminal Code*. Hate crimes are serious and as such should be taken incredibly seriously by police. Hate charges as well as criminal charges like conspiracy carry significant stigma to individuals charged and if found guilty, mean heavier sentences. Under s. 718.2(a)(i) of the *Criminal Code*, hate-motivated designation is an aggravated factor for sentencing and carries a higher sentencing range.

As such, it is extremely dangerous and suppressive to freedom of speech to misuse the hate designation and charges to target civilian expression or conduct that is not hateful. Wielding the power of the state with respect to hate charges requires significant responsibility to ensure that there is an adequate factual and legal basis on which to make such charges. In the BCCLA's view, neither is remotely present in this case.

Simply stating that any person or corporation is funding a foreign military's genocidal actions—particularly when there are international legal scholars in concurrence, as above—is legitimate political expression and is absent of any hateful meaning, stereotypes, prejudice, dehumanization, or incitement of violence against any group. Denouncing a foreign military or a charity that funds it is not antisemitic simply because the dominant religion of that country is Judaism or the CEO of the company or charity is Jewish or of Jewish ancestry.

The BCCLA stresses that there is an important distinction between criticism of the state of Israel and expression that is actually antisemitic or hateful towards Jewish people. On the contrary, the conflation of Jewish people as a whole with the state of Israel is itself antisemitic.¹⁵ Suppression of criticism of the state of Israel also suppresses such criticism by Jewish and Israeli people. We refer you to the statement of Jews Say No to Genocide, for example, which represents Jewish people from organizations across Toronto including IfNotNow Toronto, Independent Jewish Voices, United Jewish Peoples Order (UJPO), Showing up for Racial Justice (SURJ) Toronto, and World Beyond War:

“[T]hese arrests are aggressive, unjustified, abusive – and are all specifically designed to silence all who oppose genocide and support a Free Palestine... We reiterate our call for a permanent ceasefire, and end to the occupation and siege of Gaza, and an end to Canada's government and corporate complicity in Israeli apartheid.”¹⁶

It is essential to democracy that freedom of expression for everyone in Canada includes the right to criticize the activities of all foreign states, foreign militaries, as well as charities and corporations. No state or military should be exempted from democratic rights to freedom of expression.

When human rights activists are not engaged in conduct that demonstrates hatred or actual risk to harm people or even property, it raises the alarm that this police response was purposely done to intimidate and silence this group of activists. It also seriously raises questions as to political pressures on the TPS leading to this response and/or the lack of the TPS education on important subjects, including the history of Palestine, the creation of the state of Israel, and Palestinian human rights.

¹⁵ Jewish Voice for Peace, *On Anti-Semitism: Solidarity and the Struggle for Justice*, April 2017, pp. 8, 36-7.

¹⁶ *Supra*, note 13.

Given that it is known that the TPS have had relationships or trainings with Israeli state officials or bodies in the past,¹⁷ it is of the utmost importance that police act impartially and do not protect or act under the influence of any foreign state, or its lobbying bodies here in Canada.

The BCCLA strongly opposes the Raids and the Charges as this overreach strongly chills both individual and collective Charter rights. The attempt to pervert anti-hate laws and criminalize critique of a foreign state or military alleged to be committing a genocide is an unjustified suppression of free expression and an extremely dangerous precedent to set. The real injustice in this case is that we are continuing to see expressions of solidarity with Palestinians or calls for the human rights of Palestinians be criminalized and vilified by Canadian police or different state actors.

Chilling effect on protest and expression rights

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 for everyone. The BCCLA is concerned regarding the chilling impact that the high-profile laying of these charges has had already on people seeking to exercise their rights to freedom of assembly and freedom of expression in Canada.

Canadians should not fear police interference, raids, or arrests when they exercise their constitutionally-protected right to freedom of expression. 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.

Similarly, it is the role of the Crown 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 on political speech that TPS, corporations, or certain community voices do not agree with. This is particularly true in the context of times like the present, where there is unprecedented violence occurring in Gaza and the West Bank, and where there is a heightened need for open political debate.

Nor should the Crown Attorney be swayed by political opinion or a desire to court media approval. The public confidence in the proper administration of justice requires the Crown Attorney to act impartially, fairly, transparently, and without discrimination. Given the serious overreach of the Charges and Raids, which appear to be politically motivated with significant chilling impact, it is not in the public interest to pursue these charges.

Urgent withdrawal of the charges necessary

While the BCCLA was glad to see the Alberta Crown Prosecution Service recently stay charges against a Calgary protestor, Mr. Khaled, who was charged with a “hate-motivated” count of disturbance for calling for Palestinian liberation, **a stay of charges does not go far enough to provide public accountability for the fact that charges like this should not have been laid in the first place.** Only a withdrawal of the charges can fully restore police accountability and the public confidence to exercise their *Charter* rights.

¹⁷ See for example, Solicitor General, “Visit to Israel Will Enhance Security,” (February 2005).
<<https://news.ontario.ca/en/release/90731/visit-to-israel-will-enhance-security>>.

The fact that charges may be stayed but not withdrawn continues to imply that charges like this could be laid against other protestors in the future. The ability for a stay to be lifted and the proceedings resumed in the future means that these charges will continue to hang over the heads of these individuals, with the logically chilling effect that entails, dissuading further political activism.

For these reasons, we urge the Crown Attorney to immediately withdraw the charges. Thank you for your consideration in your role as public servants.

Sincerely,

A handwritten signature in black ink, appearing to be 'GG' with a flourish extending to the right.

Ga Grant (she/her)
Litigation Staff Counsel
BC Civil Liberties Association