May 20, 2025

Email: (c/o clerk@toronto.ca)

Mayor Olivia Chow and Council
City of Toronto
100 Queen St W
Toronto, ON M5H 2N3

BY EMAIL

Dear Mayor Chow and Members of Council:

Re: CC30.5 Proposed Bylaw Amendment to Provide Access to Social Infrastructure (Addendum to BCCLA's May 15, 2025, letter)

In addition to our May 15, 2025, letter (the "Letter"), the BC Civil Liberties Association (BCCLA) asks you to further consider the following feedback regarding the Proposed Bylaw Amendment (the "Amendment"), which, because of the study results, has been tailored to instead focus on providing "impeded access to Social Infrastructure its programs and services" rather than explicitly curtailing demonstrations.

After reviewing the Amendment, we remain concerned that this effort, albeit toned-down, will still have an unjustified impact on freedom of expression and the right to peaceful protest in Toronto. In particular, the necessary criteria for approving a request for an "Access Area" is insufficiently vague and does not justify a need for the establishment of an "Access Area". And as the Canadian Civil Liberties Association and the Centre for Free Expression referenced in their joint submission, there are other existing legal mechanisms that can be relied on to address access related safety concerns.

An "Access Area" as defined in the Amendment is essentially a 20-metre radius bubble zone around the boundaries of a property on which "Social Infrastructure" is located. Within the bubble zone, no one is allowed to express disapproval of a person's use of that space among other things. Under 743-56(A) the Amendment permits an "Owner of Social Infrastructure" to request an "Access Area" for a period of 180 days (with the possibility of extension) if they can provide clear evidence that any of the following activities have occurred within the previous 90 days:

1. A person has performed or attempted to perform an act of disapproval concerning a person's attendance at, use of, or attempts to attend or use Social Infrastructure;

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2. A person persistently requests that a person refrain from accessing Social Infrastructure;

3. A person obstructs, hinders or interferes with another person's access of or attempt to access Social Infrastructure; **or**

4. A person expresses an objection or disapproval towards and person based on race, ancestry, place of origin, colour, ethnic origin, citizenship, age, marital status, family status, disability or the receipt of public assistance by any means, including graphic, verbal, or written means.

As we mentioned in our Letter, places of worship, schools, or childcare centres, are unfortunately not immune from engaging in behaviour that may spark legitimate political protest. There may be a plethora of reasons why individuals choose to assemble near a "Social Infrastructure" to convey a specific message of disapproval. The actual context, content, and conduct at a specific protest are essential for a legal analysis of whether any offences have occurred warranting state intervention. Moreover, subjective intent should inform any analysis that contemplates restrictions on freedom of expression and assembly.

In our view, the enumerated activities do not give rise to the precision that is required to justify limitations on freedom of expression and assembly.[1] As we stated in our Letter, protest is not to be regulated as a mere social nuisance—fundamental freedoms such as freedom of expression and freedom of assembly are crucial to our democracy. They are enshrined under ss. 2(b) and 2(c) of the *Charter*. The Supreme Court of Canada has long recognized that:

> … Freedom of expression was entrenched in our Constitution and is guaranteed in the Quebec *Charter* 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. Such protection is, in the words of both the Canadian and Quebec Charters, "fundamental" because in a free, pluralistic and democratic society we prize a diversity of ideas and opinions for their inherent value both to the community and to the individual. Free expression was for Cardozo J. of the United States Supreme Court "the matrix, the indispensable condition of nearly every other form of freedom"…[2] [Emphasis added.]

Bubble zones restricting access to public space, freedom of expression and assembly, must meet the legal requirements of the *Oakes* test: rational connection, minimal impairment and proportionality. This means a very high threshold of evidence and tailored proportionality. The burden lies on governments to provide this evidence if challenged, and to refrain from passing laws where this evidence does not exist.

We submit that permitting "Owners" to request an "Access Area" without giving due consideration of the subjective intent of the person who is alleged to have committed any of the enumerated activities offends the jurisprudence that clearly states opinions and political expression that are uncomfortable or

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[1] *Bracken v Fort Erie (Town)*, 2017 ONCA 668 (Bracken) at paras 21, 28, 31, 49-52.
[2] *Irwin Toy Ltd v Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 SCR 927 at 968 – 971.

bothersome fall well before the standard for justification. As a result, we urge you to reject the Amendment.

We thank you for the opportunity to further articulate our concerns on this matter.

Sincerely,

Veronica Martisius
Litigation Staff Counsel
BC Civil Liberties Association