

Civil Liberties and the 2010 Winter Olympics

Report of the Civil Liberties Advisory Committee, December 2009

1. Background

The Civil Liberties Advisory Committee is a group of volunteers with the self-assigned mandate of seeking information and offering advice on civil liberties in the context of the 2010 Winter Olympic Games. Although the British Columbia Civil Liberties Association provided the original impetus for our creation, the committee is completely autonomous from the BCCLA. We receive no support or direction from it or any other group or body.

Our existence and mandate has been accepted by the relevant organizations, with Vancouver Police Deputy-Chief Steve Sweeney (who acts as the liaison between the VPD and Integrated Security Unit) and Vancouver City Councillor Geoff Meggs (the City's lead spokesperson on Olympic-related issues) having publicly cited meetings with us as evidence of their organizations' efforts to respect civil liberties.

We consider our meetings and communications with groups and individuals to be confidential. But with the Olympics imminent, we have decided to issue a short public report of our key findings and recommendations. We hope this report will encourage more respect for civil liberties -- and more cooperation amongst all of the relevant parties -- in the critical weeks and months ahead.

2. General Observations

The issue of civil liberties is clearly important to the City of Vancouver, Integrated Security Unit, and some of the other organizations responsible for planning for the 2010 Winter Olympics. Lessons learned from the 1997 APEC summit, where protestors were controversially pepper-sprayed by the RMCP, have undoubtedly played a role here. At a minimum, the planning organizations understand that failing to respect and accommodate citizens seeking to express their opinions, even in the context of international events requiring substantial security, can have negative consequences for the reputation of police forces, governments, and the country as a whole.

Non-governmental "watchdog" groups have played a role in raising civil liberties concerns in advance of the Olympics, and are providing at least some of the essential oversight and accountability. The BCCLA and Pivot Legal Society's joint initiative on legal observers shows considerable promise. We are pleased that the Integrated Security Unit and Vancouver Police have accepted invitations from the BCCLA and Pivot Legal Society to have several senior officers take the training provided to legal observers.

However, we have observed that the planning organizations and watchdog groups sometimes end up talking past each other -- and we believe that more carefully constructed face to face communication and dialogue among these organizations and groups could improve mutual understanding and respect.

Certain facts are obvious and undeniable: The Olympics are coming. Reasonable measures are required to provide a safe and secure environment for athletes, officials, dignitaries, spectators and local residents. At the same time, the rights and freedoms of citizens must be respected. Any restrictions on civil liberties should be discussed openly and have clearly justifiable purposes.

The 2010 Winter Olympics provide an opportunity to highlight Canada's commitment to human rights and the rule of law. The opportunity is still available. But continuing efforts at transparency, communication and cooperation are necessary if it is to be achieved.

3. Protests

The rights to free assembly and peaceful protest are fundamental. Democratic governments that fail to support these rights bring their own legitimacy into question. Peaceful protests can be expected at the 2010 Winter Olympics, and some steps have been taken to accommodate them. The security perimeters around the Olympic venues are smaller than originally indicated. This is commendable, since the right to peaceful protest entails a right to be seen and heard. That said, we are uncomfortable that a planned use of safe assembly areas can risk being treated and seen as "protest pens".

We recognize the need to coordinate activity around venues to ensure access for athletes, officials and spectators. But any measures to control safe assembly zones (fencing or other similar kinds of perimeter security) assume that protestors are a security threat and publicly identifies them as such. *We recommend that safe assembly zones be defined by paint on the sidewalks or roads and not fenced in.*

Protestors have a right to gather anywhere on public property they wish, provided they do not break the law or otherwise place fellow citizens at risk. It is important that citizens be able to make use of their traditional places of gathering and protest, within the normal constraints of the law, and we note that the Integrated Security Unit has explicitly supported this right of protest. *Consistent with this spirit, we recommend that the space between the Vancouver Art Gallery and West Georgia Street be left open to the public for the duration of the Olympics, without designating it as a protest zone.*

We recognize that reasonable measures will be required to protect the Olympic Clock from being vandalized or associated with unauthorized commercial advertising, but also that the symbolic status of the clock is derived in part from its public accessibility. *We recommend that any restrictions on access to the Olympic Clock be confined to the area immediately surrounding the monument and be kept as unobtrusive as possible.*

4. Police behaviour

We are concerned about mistrust of the RCMP in British Columbia. We are also concerned that police officers from across Canada will be brought to Vancouver to augment the capacity of local forces. Such officers will be unfamiliar with the groups and practices associated with peaceful protests here. *We recommend that the decision-making primacy and frontline responsibility of the Vancouver Police with respect to all police-citizen interactions within the City of Vancouver be publicly affirmed and stringently maintained throughout the Olympic period.*

We are also concerned about the use of plain-clothes police officers during protests. Having plain-clothes officers observe protests does not raise privacy concerns, but participation in protests by police officers is inconsistent with the trust and co-operation needed between police and protest organizers, even if the officers do not promote law-breaking. *We recommend that the Integrated Security Unit issue a public assurance that plain-clothes police officers or other plain-clothes agents will not actively participate in protests during the Olympics.*

5. Private security personnel

Thousands of private security personnel will be deployed during the Olympics, for example, to operate the security checkpoints at the entrances to venues. Private security personnel do not have the training in civil liberties expected of police officers. *We recommend that private security personnel be closely supervised at all times by trained police officers and that they not be permitted to conduct arrests or otherwise use force in any circumstances related to public protest.*

6. Homeless persons

There is, of course, no such entity as that of a second-class citizen. Homeless persons have the same civil liberties as anyone else, including rights to privacy, autonomy, and mobility. We regard the Assistance to Shelter Act, provincial legislation that came into force on November 17, 2009, as inimical to these fundamental rights because it could be used to force homeless people into shelters. If governments and planning organizations are concerned about the presence of homeless persons on the streets during the Olympic period, they should step up efforts to increase the number of available shelter and social housing spaces as well as the quality and accessibility of health and social services. *We recommend that the Assistance to Shelter Act be revoked immediately; section 28 of the Mental Health Act provides sufficient protections, both for the individual, and for society more generally.*

7. Advertising

We recognize that the Vancouver Olympic Committee (VANOC) has taken on contractual obligations to protect the so-called “Olympic Brand”. But no contract with the International Olympic Committee can override the civil liberties of Canadians, which are fundamental and inalienable.

We regarded the buying, by VANOC, of all billboard advertising space in Vancouver during the Olympics as inimical to civil liberties. Freedom of expression assumes the possibility of an audience, which was being denied in this instance through VANOC's financial dominance. Fortunately, VANOC has recently indicated a willingness to release a portion of the advertising space it acquired for the Olympic period and make it generally available at market prices.

We found City of Vancouver By-law 9908 (the "2010 Olympic and Paralympic Winter Games By-law") of concern on two counts: (1) it placed excessive and unjustifiable limitations on freedom of expression on City land; and (2) it accorded undefined and apparently unlimited discretion to the City Manager with respect to rules governing use of City property during the Olympics. Fortunately, the City of Vancouver has recently indicated that it intends to amend By-law 9908, clearly limiting its extent to commercial advertising and eliminating the provision granting discretionary rule-making power to the City Manager.

8. CCTV Cameras

We understand that close circuit television cameras can be a useful tool for providing security in Olympic venues and for the large crowds expected at street level in the downtown core. At the same time, we believe that CCTV cameras can present a real threat to fundamental privacy rights. We are pleased that the City of Vancouver is renting most of the CCTV cameras that will be used, and that there are no plans to deploy any cameras on a permanent basis. *We recommend strict controls on access and storage of CCTV imagery collected during the Olympics, and the prompt destruction of all imagery not required for the purposes of criminal prosecutions.*

9. Role of the Military

Thousands of Canadian Forces personnel will be involved in Olympic security. We understand that their role will probably be confined to the air and maritime domains, and the backcountry near Whistler, and they will probably not come into contact with citizens in ways that raise civil liberties concerns. However, we can envisage emergency circumstances where the role of the military might be expanded considerably. *We recommend that all military personnel deployed in support of the Olympics be provided with civil liberties training and that every effort be made, including during emergencies, to have police officers fulfill all law-enforcement roles.*

10. Foreign Agents and Agencies

We are concerned that foreign agents and bodyguards accompanying international protected persons will be allowed to carry weapons in Canada. Such individuals may not be aware of Canadian laws and traditions, nor will they be bound by the Canadian Charter of Rights and Freedoms. *We recommend that all foreign agents and bodyguards be made aware of Canadian laws and traditions, including the Canadian Charter of Rights and Freedoms, and that permission for them to carry weapons be revoked.*

We are concerned that foreign security services may request last-minute changes to security measures, such as the size of venue perimeters, and that these measures could impact negatively on civil liberties

such as the right to peaceful protest. Last-minute changes could also undermine cooperation between planning organizations and watchdog groups, creating a climate of mistrust during the most critical of periods. *We recommend that any requests for last-minute changes aimed at tightening security only be accommodated if there is a new and clearly identifiable threat to public safety.*

11. Assumptions and Attitudes

There are those who regard the planning organizations as somehow intent on violating civil liberties. We do not share this view. Most of the individuals involved in security preparations seem genuinely committed to respecting civil liberties. For this reason, there are still opportunities for consultation and cooperation among the planning organizations, watchdog groups, and individuals planning peaceful protests and other exercises of civil liberties. *We recommend that all opportunities for consultation and cooperation be acted upon, and that the planning organizations and civil liberties groups remain genuinely open to constructive criticism and the possibility of changing their plans.*

We are concerned that there are still some individuals in our society who seem to regard civil liberties as constraints that are to be interpreted as narrowly as possible. We disagree fundamentally with this approach. At a legal level, the interpretive presumption should be in favour of the rights and freedoms of citizens and not the police powers of the state. At a policy level, the 2010 Winter Olympics provide an opportunity to highlight Canada as a democracy that respects and values civil liberties. *We recommend that the planning organizations publicly make the promotion of civil liberties one of their central goals, above and beyond the strict requirements of the law.*

We hope this report is helpful and look forward to an Olympic Games where civil liberties are protected, celebrated and advanced.

Civil Liberties Advisory Committee

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