

Backgrounder

Key themes and quotes in *Caught in the Act*

Use of a “war measure” that is likely unconstitutional and unauthorized

- The *Public Works Protection Act (PWWA)* is unique in Canada – no other province has a statute that confers such broad powers on police. (Paragraph 97).
- In the era of the *Charter of Rights and Freedoms*, these stunning powers appear out of place. (Para 212)
- Briefing materials for a May 20 meeting warned that the Minister of Community Safety and Correctional Services could be criticized for using “wartime legislation” to increase police powers. (Para 130)
- **“Ultimately, I have real reservations about the constitutional compatibility of Regulation 233/10 with the demands of freedom of expression.”** The problem is not that the regulation supported the security perimeter, but the “excessive police powers” that it triggered. (Para 233)
- The regulation was passed to protect persons, not infrastructure. It is probably illegal because it doesn’t support the *PWWA*, which protects infrastructure. (Para 235)
- The three added “places” were not really public works needing protection. They were added simply to stop entry to the area, to protect the people inside. (Para 236)
- The *PWWA* contains provisions for arbitrary arrest that would likely be deemed unconstitutional if challenged. (Paras 248-9)
- Arresting those who abandon their attempt to enter a secure area and turn away “serves no valid security purpose.” (Para 250)
- **“There is a real and insidious danger associated with using subordinate legislation, passed behind closed doors, to increase police authority”** that should be avoided. (Para 275)
- **“The decision to use this exceptional war measures legislation was, in my view, opportunistic and inappropriate.”** (Para 242)

Confusion on the part of the Ministry

- The Ministry of Community Safety and Correctional Services saw the new regulation (designating three areas as public works that were not already public works), as a “backstop” to reinforce the powers already in the *PWWA*. (Para 134)
- Speaking notes for the Minister for a May 31 meeting of Cabinet’s Legislation and Regulation Committee stated: “We are not taking drastic measures to curtail individuals’ rights or to give police unlimited powers to arrest and detain people.” (Para 139)

- Interviews with Ministry staff showed their understanding of what the regulation meant varied widely. (Para 143)
- After reports of people being searched and arrested by police, the Ministry continued to downplay the effect of the *PWPA* designation, saying it only applied to people trying to go into the designated zone. (Para 172)
- The Ministry seemed to believe police weren't given extra powers. **“But there is no authority in common law to arrest people who fail or refuse to answer, or who choose to walk away rather than subject themselves to a search. Regulation 233/10 changed the dynamic.”** (Para 245)

Miscommunication by Toronto Police

- The regulation under the *Public Works Protection Act* was requested by the Chief of the Toronto Police Service. (Para 29)
- Toronto Police believed they needed this to give them incontrovertible legal support to construct and control the exterior fence. (Para 119)
- It designated **three places** that weren't already public works. The three areas are in green on the map at Appendix D. They included the “moat” between Union Station and Front Street and a five-metre strip inside the fence where it runs along two places that are not streets or sidewalks, near a Rogers Centre parking lot and behind a building near the Rogers Centre. (Paras 145-147)
- Other than Toronto Police, few people knew of the regulation. The head of the Integrated Security Unit (ISU) steering committee said he was “gobsmacked” to learn of it from the Toronto Police Chief’s June 25 press conference, and City of Toronto officials said they first heard of it through the media. (Paras 154-155)
- The Toronto Chief’s comments about the “five-metre rule” led the media to mistakenly report that the security zone extended five metres out from the fence. (Para 173)
- After his comments caught the Ministry by surprise, the Chief assured the Commissioner of Public Safety he would ensure his officers were properly informed. (Para 174)
- Although he made no public announcement to correct his comment, the Chief sent an email to the Commissioner including instructions to officers that the Act “does NOT extend outside the fence.” Still, police continued to apply the act well beyond the security perimeter. (Paras 181-185)
- On June 29, the Chief conceded publicly that the “five-metre rule” had never existed, but stated that the City of Toronto had taken out ads explaining what citizens could expect. City officials and the ads themselves indicate that no information about the *PWPA* or the regulation was provided to them. (Paras 186-199)
- Little training was done on the *PWPA* or the regulation. York Regional Police learned about it from the media and received no information to disseminate to officers. (Paras 252-254)
- **“While it is beyond my mandate to conclude that excessive force was used against protesters by police authorities, or that the Act was misapplied, lack of training about Regulation 233/10 appears to have at least contributed, in part,**

to the chaos and confusion that descended upon the city with the G20 summit.”
(Para 255)

Lack of co-operation by Toronto police with Ombudsman investigation

- While the Ontario Provincial Police co-operated with this investigation and York Regional Police provided a written response to questions, the Toronto Police Service declined to speak with Ombudsman investigators. (Paras 72-73)

Lack of public notice about the regulation

- Briefing materials for a May 20 Ministry meeting recommend that if the *PWPA* designation is granted to Toronto Police, “the communications strategy should be wholly reactive” and “the support of all ISU partners and the federal government should be secured.” (Para 130)
- The Ministry’s prime contact was Toronto Police, not the Integrated Security Unit. There is no record of consultation with others. (Para 152)
- The ISU communications team knew nothing about the regulation. A June 29 email from the team to the Ministry said “[Toronto Police] kept it very tight and nobody from Ministry told us.” (Para 153)
- A June 7 Ministry email discussed “drawing out” the release of any public information, noting: “this should be kept under wraps until we are ready for it to be known by the public....” (Para 158)
- The regulation was technically available to the public on e-Laws as of June 16, but no one could have reasonably known about it. A Ministry counsel email of June 28 stated posting on e-Laws “would not have resulted in practical notice to the public at large.” (Paras 161-3)
- The Ministry considered issuing a press release clarifying the regulation and police powers late on June 25, but decided against it. (Paras 175-176)
- Ministry officials suggested in letters to newspapers that ads placed by the City of Toronto advised citizens of what to expect, but nowhere was the public advised of the regulation or the extraordinary powers given to police. (Para 261)
- After the summit, some Ministry emails reveal discussion about shifting the blame to the Toronto Police Chief and “inattentive media” who didn’t find the regulation on e-Laws and reported inaccurately on the five-metre rule. (Para 210)
- **“Regulation 233/10 represented an unprecedented use of a largely unknown Act conveying exceptional powers. It therefore called for proactive public outreach to ensure that individuals were fully informed, not a low-key reactive communications strategy.”** (Para 267)
- **“The risks presented by the G20 meetings for tension and distrust should have been obvious. The Ontario government should have reduced those risks by ensuring the effective dissemination of complete and accurate information.”**
(Para 271)

Lack of notice to other stakeholders

- The Ministry relied on Toronto Police to relay information about the regulation to others and didn't consult with the ISU, leaving the ISU no opportunity to assess it or determine if it should be publicized. **“This situation was not only embarrassing, it created the potential for summit security interests to be compromised.”** (Para 259)
- Ministry officials didn't appear concerned that the City of Toronto was not advised: **“The regulation would impose virtual martial law on its streets – one would think that the city would have had a significant interest in knowing about it.”** (Para 260)

Breaches of civil rights

- Protest groups organized meetings on how to protest and counselled people on their civil rights, even asking Toronto Police in writing what to expect. (Paras 99-105)
- There should have been an opportunity to test the new regulation in court. **“If a government is going to enact special temporary legislation for pending protest situations that skirts the periphery of constitutional validity, it should do everything possible to facilitate challenges to it, including ensuring that the legislation is widely known.”** (Para 268)
- The Ministry was well aware that demonstrators were being given rights advice which, if followed, could land unsuspecting protesters in jail. **“For the Ministry to have remained silent... was unconscionable.”** (Para 262)
- **“The failure to publicize these implications of Regulation 233/10 created a trap for protesters who attempted to insist on their legal rights.”** (Para 270)

Role of social media

- For the first time, the Ombudsman's Office used social media as an investigative tool. Via Twitter and Facebook, the Ombudsman invited members of the public to contact the Office with information, and investigators also searched social media sites to monitor G20 traffic and to reach people of potential interest. This is also the Ombudsman's first report to include photos, and links to several YouTube videos of relevance are attached in Appendix A, all to provide further context. (Paras 76-83)
- **“Social media have transformed the way we conduct investigations and communicate with the public.”** (Para 83)