



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

Caught in the Act – Ombudsman’s Remarks ***André Marin***

Almost six months have passed since Canadians and people all around the world witnessed the stunning events of the G20 protests and arrests here in Toronto. But the repercussions from those few days in June are still being felt.

The investigation I’m reporting on today is the first of several public attempts to get to the bottom of exactly what happened here during the week of the summit, why it happened, and what can be done to ensure it doesn’t happen again.

My investigation focused on the province’s role in promoting what came to be known as the “secret” security regulation – a little-known and widely misunderstood legal measure that was supposed to help the police keep the peace but, in my view, wound up contributing to massive violations of civil rights.

The Ministry of Community Safety and Correctional Services and the Toronto Police Service knew that the summit would pose major security challenges. When the police asked the Ministry to sponsor a special designation under the *Public Works Protection Act* of 1939, it was ostensibly to help them in their job, which was to protect the security fence. There were really only three small parts of the security perimeter that weren’t already considered “public works” – the idea was that this new regulation would help police close the gaps.

Some people in the Ministry were concerned about the optics of using “wartime legislation.” But others saw the regulation as a minor technicality. So the decision was made not to publicize it. Instead, they quietly handed the police extravagant, sweeping powers under a 71-year-old law – powers that would almost certainly be illegal and unconstitutional under the *Charter of Rights and Freedoms*. Little did they realize that once this powerful weapon was unleashed, it would be almost impossible to control.

Reviving this dormant piece of legislation, coupled with the adoption of the regulation, created a legal landscape where people were detained by police and compelled to identify themselves, answer questions and submit to warrantless searches – even if they simply wanted to walk away. Responsible protesters and civil rights groups who took the trouble to educate themselves about their rights prior to the G20 had no way of knowing they were walking into a trap – they were literally caught in the Act; the *Public Works Protection Act* and its pernicious regulatory offspring.

Many of you will remember the added confusion when the Toronto Police Chief and some of his officers described the regulation as a “five-metre rule” – some of you reported about it. But there was no five-metre rule, and even when this was corrected, police continued to arrest and search people well beyond the security zone.

Our report is full of stories from people who encountered this treatment, as well as photos that capture the unforgettable scenes of those two days. For the first time, we used social media in our investigation to ask members of the public to come forward, and to track events as they happened. People responded in droves with their stories, their photos and their videos, including some that have never been made public before today. To my knowledge, this is the first time that any ombudsman investigation has used social media, and I can attest that it has been a very useful tool. I also want to thank all those who came to us with information.

Our investigation revealed some very troubling facts about the Ministry’s conduct in sponsoring this regulation and failing to publicize it. It was unreasonable and grossly unfair. I am convinced that the regulation was unnecessary and probably illegal. I have also raised serious questions about the *Public Works Protection Act* itself – a law that no other province has. This is why my main recommendations to the Ministry are that it revise and consider replacing the Act, particularly in terms of the powers it confers on police, and that it ensure that such regulations are always clearly communicated to the public in future.

I’m very pleased that the Ministry has agreed to all of my recommendations, and I look forward to seeing the results of Hon. Roy McMurtry’s review of the Act. As always, I’ll be watching closely as the Ministry reports back to me on its progress.

While the aim of hosting the G20 was to showcase Canada to the world, the passage and administration of Regulation 233/10 left ugly images and a sad legacy that we are still working to repair. I am hopeful that this report and the Ministry’s commitment to implement my recommendations will help to set things right and serve as a blueprint for how to handle such events in future.