

Excerpts from APEC – Commission Interim Report

Commissioner Ted Hughes, Q.C. – July 31, 2001

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<http://www.cpc-cpp.gc.ca/prr/rep/phr/apec/apec-intR-index-eng.aspx>

9.4. Protecting Visiting Heads of State

... In this rather narrow sense, the federal government and the RCMP may act to protect the visiting leader's dignity. Generally, however, neither the federal government nor the RCMP may curtail political criticism by protesters. The right to express political views lies at the very core of the freedom of expression provided for in the Charter. The fact that a visiting leader may be merely upset or angered by the expression of contrary political views and criticism by Canadians does not justify the suppression of such expression. ...

...

20.3.1.6. Is there a power to arrest to prevent a breach of the peace that is not imminent?

In my view, this leaves unresolved the issue of whether the police may act to prevent a breach of the peace which is not "imminent" by taking proactive steps, as the RCMP did in respect of the Tibetan flag.

...

I cannot do better than to quote Doherty J.A.'s statement of the law in this area:

The balance struck between common law police powers and individual liberties puts a premium on individual freedom and makes crime prevention and peacekeeping more difficult for the police. In some

situations, the requirement that there must be a real risk of imminent harm before the police can interfere with individual rights will leave the police powerless to prevent crime. The efficacy of laws controlling the relationship between the police and the individual is not, however, measured only from the perspective of crime control and public safety. We want to be safe, but we need to be free.

...

The flying of the flag was a lawful, constitutionally protected act of political expression ... There is no doubt that the RCMP were required to safeguard the visiting leaders and generally ensure site security. There is also no doubt that this was an extremely important and difficult task. However, I do not believe that the RCMP were entitled to simply eliminate every conceivable source of conflict, regardless of the constitutional rights of Canadians. If the RCMP were so entitled, the Charter would be rendered of no effect.

...

I agree substantially with the following submission by counsel for the B.C. Civil Liberties Association:

If the actual reason for the RCMP's removal of the Tibetan flag were the same as its claimed justification for doing so – i.e., as a response to threats by Chinese students to violently protest and remove the Tibetan flag themselves – then it would represent the most perverse approach to policing imaginable. That is, faced with the threat of a violent and unlawful act, the RCMP supposedly decided neither to restrain those who had made the threats nor to arrest them when they attempted to commit the threatened offence, but to instead take action against those law-abiding citizens who were the object of the threats.

...

28.3.2.1. Breach of the peace

...

Given counsel' s position that S/Sgt. Stewart believed the protesters were breaching the peace, [a] brief analysis of that concept will be useful, as there is a "public and, to a large degree, police misconception of what constitutes a breach of the peace giving a right to arrest at common law" [cases omitted].

A breach of the peace is an act that results in actual or threatened harm to someone, and often involves a violent disruption or disturbance of public tranquillity, peace and order: [case omitted]. It does not arise simply because a person is being belligerent, loud and uncooperative with the police: [case omitted]. Nor does the power to arrest for breach of the peace afford polic[e] officers "some sort of roving commission to arrest all those whom they think they should arrest" : [case omitted].

...

28.3.2.2. No statutory power to arrest for breach of the peace

...

After the RCMP formed their stationary line, all the protesters did was stop on the roadway, face the police and resume chanting and waving their placards. They were perfectly entitled to do that, and there was no reasonable basis for concluding that they were breaching the peace in so doing. Although there was some evidence that a few protesters had thrown some small stones and mud in the direction of the police, I do not believe that was of much significance or a real concern to the RCMP because of the minimal nature of it. Furthermore, as neither Mr. Brooks nor the other protesters had previously committed a breach of the peace, and none was then in progress, there was simply no breach of the peace for Mr. Brooks to " join in or renew" for the purposes of section 31(1).

...

31. Recommendations

31.1. Policing Public Order Events

31.1.1. Opportunity for protest

When the RCMP is called upon in future to police public order events, the leadership of the Force should ensure, that:

- generous opportunity will be afforded for peaceful protesters to see and be seen in their protest activities by guests to the event; ...

...

31.1.10. Warning to protesters

Before taking action that could result in physical confrontation, police should make all reasonable efforts to warn protesters of the duty then resting with the police (such as, to clear a roadway); the steps they intend to take to fulfil that duty; and what actions the protesters should take to allow the police to fulfil that duty and to allow the protesters to avoid arrest. Once the warning has been given, the protesters should be given a reasonable opportunity to comply before the police take further steps.

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