

Executive summary

This Inquiry was intended to shine a light on the importance of press freedom by examining the restrictions imposed by the City of Vancouver (the City, COV) and the Vancouver Police Department (VPD) during the Hastings decampment on April 5 and 6, 2023. The Human Rights Commissioner has broad powers under the *Human Rights Code* (the Code) to initiate an inquiry if she is of the view that inquiring into a matter would promote or protect human rights in the province. In this case, the matter the Commissioner decided to inquire into was the reported restrictions on media during the Downtown Eastside (DTES) decampment in order to promote and protect human rights in the province, because a free press is critical to a functioning democracy.

The Inquiry examined whether and why media and others were restricted from the Hastings Street encampment on April 5 and 6, 2023, and why public access to the traffic cameras was shut down on the morning of April 5, 2023. The Commissioner examined whether the restrictions complied with human rights law protections for freedom of the press and freedom of assembly in domestic and international law. The Inquiry also examined the process followed by the Vancouver Police Board's (VPB, the Board) and VPD's consideration of a complaint about the creation of an exclusion zone on April 5 and 6, 2023.

During this Inquiry, the Commissioner gathered extensive records from the City of Vancouver, the Vancouver Police Department and the Vancouver Police Board. The Commissioner's staff interviewed, under oath, staff from the City and the VPD who were involved in the decampment and media who were present in the Downtown Eastside during the decampment. The Commissioner held three engagement sessions with members of the media and community organizations who support people living in the Downtown Eastside.

As a preliminary point, the term exclusion zone was a point of contention in this Inquiry. In the Commissioner's view, the definitions suggested by the VPD and the City and the distinctions drawn between an "exclusion zone" and a "work zone" or a "safety zone" are overly formalistic and not based on principle or law. An exclusion zone is the closure or regulation of any form of access, including media access, to public space.¹ It might also be referred to as a no-go zone, buffer zone, temporary access control area, work zone, restriction or safety zone.² The significance of a restriction on access depends on its effect and the impact on press freedom, not on the words used to describe it or even the intent or purpose in establishing it.³ The human right to press freedom

¹ Robert Diab, *Commissioned Paper: The Policing of Large-Scale Protests in Canada: Why Canada Needs a Public Order Police Act*, (Public Order Emergency Commission, 2022), 41, <https://publicorderemergencycommission.ca/files/documents/Policy-Papers/The-Policing-of-Large-Scale-Protests-in-Canada-Diab.pdf>.

² "A History of Media Exclusion Zones – How injunctions became synonymous with police drive crackdowns on press freedom in Canada," Canada Press Freedom Project, June 15, 2023, <https://canadapressfreedom.ca/a-history-of-media-exclusion-zones/>.

³ Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd., 1985 CanLII 18 (SCC), 551, <https://canlii.ca/t/1ftx2>; Andrews v. Law Society of British Columbia, 1989 CanLII 2 (SCC), 173-174, <https://canlii.ca/t/1ft8q>.

may be affected by partial as well as total restrictions.⁴ Our reference to the term exclusion zone encompasses all the various names referred to above because of their similar effect on restricting media access to specific areas, potentially hindering the ability to gather and disseminate information to the public.

The Commissioner found:

1 Transparency was compromised during the Hastings decampment. Despite claims from the City and the VPD that media were only restricted during the first 45 minutes of the decampment, the Commissioner found that the VPD restricted media and others from accessing defined zones throughout April 5 and 6, 2023. The Commissioner found that the VPD allowed a pool camera it arranged into the exclusion zone and that all other media access had to be approved through a chain of command. Many media were denied entry into the exclusion zone for various lengths of time. Some media entered on their own, and were not asked to leave. Others were denied access and never entered the zone. The exclusion of media meant that their ability to report on the police action was impacted, and therefore transparency was compromised. The Commissioner found that, while not intentional, the traffic camera shutdown and subsequent lack of clarity contributed to the lack of transparency caused by the exclusion of the media and the public.

2 The exclusion zone was not in accordance with human rights standards. The Commissioner found that the exclusion zone was an extension of the City's practice of creating "safe work zones" and had the primary purpose of preventing safety issues, including issues associated with protests. The Commissioner found that while restricting media access was not the goal of the restrictions, the impact on the media was not adequately considered and the potential risks to staff or public safety did not justify the broad restrictions. The limited access that was provided was insufficient to meet the requirements of necessity and proportionality. The Commissioner found that the VPD did not have statutory or common law authority for the exclusion zone and that it was unlawful. The Commissioner found that the disproportionate effect on marginalized groups—especially Indigenous people and people with disabilities—that resulted from the April 5 and 6, 2023 forced eviction meant that the restrictions on media and attendant harms also disproportionately impacted the rights of the encampment residents. These disproportionate impacts perpetuated systemic discrimination contrary to the *Human Rights Code*.

⁴ UN Human Rights Committee, *General Comment no. 34, Article 19, Freedoms of opinion and expression*, CCPR/C/GC/34, 12 September 2011, paras 22-24, 26-29, 33-36, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>; UN Human Rights Committee, *General comment no. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add. 13, May 26, 2004, para 6, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.13&Lang=en; Edison Lanza, *Protest and Human Rights, Standards on the rights involved in social protest and the obligations to guide the response of the State Special Rapporteur for Freedom of Expression* (Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, 2019), para 31, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf>.

Given that many members of the media were able to access the site at some point, the extent or scope of the impact on access to information is unclear. However, it is clear that harm was done: the Commissioner heard from members of the media that the media restrictions in this case—even where journalists eventually were able to enter the restricted zone—had the effect of impairing media from reporting on the full story of the forced eviction of the residents of the Hastings encampment.

The Commissioner accepts the City and VPD's perspective that they took steps to provide for media access in a dynamic and challenging circumstance and acknowledges that the City and VPD had safety risks to manage, including protecting the physical and mental safety of City staff. What was required of the City and VPD officials was to balance managing the safety risks without unnecessarily or unreasonably restricting freedom of the press and freedom of assembly in a manner that was proportional to the risks posed. In the Commissioner's view, the VPD and City clearly prioritized safety over media access and did not give due regard to the importance of the human rights issues at stake. This was clearly confirmed by one of the deputies of the VPD in a meeting with the Commissioner when he said that physical safety always takes precedence over human rights. In prioritizing safety over freedom of the press and freedom of assembly, the City and VPD failed to ensure that the restrictions on these freedoms were proportionate to perceived or anticipated risks.

3 Oversight process followed by the Vancouver Police Board was insufficient. The process followed to investigate a complaint about the media exclusion falls within the purview of the Human Rights Commissioner because the right to freedom of the press is rendered meaningless without access to effective remedies. The Commissioner found that the investigator assigned to investigate the complaint was not sufficiently independent because the investigator was also the Gold Commander with overall operational responsibility for the decampment. The Commissioner found that the complaint was not adequately investigated and considered by the VPD and VPB due to insufficiencies in the investigative process. In sum, the process for ensuring oversight over the issues flagged above was significantly compromised.

The Commissioner makes six recommendations to the Ministry of Public Safety and Solicitor General, the Ministry of Attorney General, the City of Vancouver, the Vancouver Police Department and the Vancouver Police Board. Recommendation 1 is also directed to all municipalities and all police departments in B.C.

Recommendations

The Commissioner's following recommendations must be implemented in a manner that is consistent with domestic and international human rights laws, and promotes and protects the rights of people who are unhoused or otherwise impacted by exclusion zones.

Please note that the footnotes to the recommendations contain additional context, clarity and examples, and do not form the substance of the recommendations.

Recommendation 1

The Vancouver Police Department and the City of Vancouver, as well as all other police departments and municipal governing bodies in British Columbia, immediately cease excluding or restricting media areas around police action¹ without explicit judicial authorization, unless required by immediate and unforeseeable circumstances limited to a credible and substantial threat to public safety (in accordance with the law) or for the integrity of a criminal investigation. If an exclusion zone (as defined in this report) is required in these circumstances, every reasonable effort to mitigate the impact on freedom of press must be taken.

ⁱ Including (but not limited to) where police are involved in "keeping the peace."

Recommendation 2

By June 2027, the Ministry of Public Safety and Solicitor General introduce legislation, legislative amendments or regulations to enshrine the directive established in Recommendation 1.

This must be done in collaboration with municipal police departments and RCMP e-division, and in consultation with Indigenous Peoples, media organizations, subject matter experts and advocacy organizations.

In compliance with the *Charter of Rights and Freedoms* (the Charter) and domestic and international human rights standards including *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), the legislation (and attendant regulations as necessary) should include:

- direction on how to determine whether someone is a journalist, taking into account that journalism is a function shared by a wide range of actors. People engaged in a good faith news-gathering activity of a journalistic nature on matters of public interest should be captured by this direction, in accordance with both international and domestic law. For the sake of clarity, the Commissioner recommends that the Ministry not engage in credentialling journalists for this purpose;
- time limits and size constraints for exclusion zones, to ensure as minimal intrusion on freedom of the press as possible;
- rules around managing admission, access control points and pool cameras, including ensuring that pool cameras are established by media rather than police and are only used when strictly necessary;ⁱⁱ
- requirements for when notice of media restrictions is to be given to the media and the content of such notice;
- training requirements for all involved front-line officers and commanders to ensure familiarity with the legislative changes;
- training requirements for all front-line officers and commanders on press freedom and freedom of assembly, as discussed in more detail below.

ⁱⁱ For example, pool cameras should be limited to only those circumstances where only one camera shot is possible (for example, a person speaking at a podium), where it is only physically possible for one camera to fit in the filming space or where expense of filming is extraordinary and therefore outweighs benefits of diverse views.

Recommendation 3

The Ministry of Public Safety and Solicitor General provide funding for rights-based training for all front-line police officers and commanders, including:

- to the Canadian Association of Journalists or other experts to develop training on press freedom, which should include the role of the press in a functional democracy, legal protections of freedom of the press, when and in what way media access may be restricted and police obligations when interacting with or making operational decisions in regard to the media; and
- to a legal organization or expert to develop training on freedom of association, which should include the importance of the right to assemble in a functional democracy, legal protections of the right, when and in what way protests may be restricted, regulated or monitored and police obligations when interacting with or making operational decisions in regard to protests.

The Ministry should direct the Justice Institute and the RCMP to work with these organizations to deliver this ongoing training or should otherwise incorporate this recommendation into their ongoing development of standardized training curriculum, starting in February 2027.

Recommendation 4

By February 2027, the Ministry of Attorney General provide annual funding (either independently or in collaboration with another legal funder) to an independent organization tasked with providing systemic advocacy and individual legal support to media and media organizations who encounter legal and policy issues concerning freedom of the press.

Recommendation 5

By June 2026, the Vancouver Police Board amend its policy regarding handling of service and policy complaints to require that all complaints are handled in a procedurally fair manner and with rigour, including by ensuring that members involved in a matter under investigation are not tasked with investigating their own actions or those of their superiors and that all handling of complaints is addressed in a manner that is free from conflicts of interest, either real or perceived, and transparent.

Recommendation 6

By June 2027, the Ministry of Public Safety and Solicitor General introduce amendments to the *Police Act* to:

- amend s. 171(1) to make explicit that where investigations of Service and Policy complaints are conducted, they can be done by an independent third party
- amend s. 171(2) to make compliance with the Office of the Police Complaint Commissioner's recommendations mandatory
- amend s. 173(1)(b) to change non-binding recommendations on investigation, study or procedural courses of action to binding directions