

May 20, 2025

Mayor Chow and Members of Council,

My name is Richard Robertson. I am B'nai Brith Canada's Director of Research and Advocacy. B'nai Brith is the country's oldest human rights organization and the voice of Canada's grassroots Jewish community. Our organization, which was established in 1875, is dedicated to eradicating racism, antisemitism, and hatred in all its forms, and championing the rights of the marginalized.

This written submission has been drafted on behalf of Toronto's mainstream Jewish community in response to the Proposed Bylaw Amendment to Provide Access to Social Infrastructure.

The city is exploring a bylaw amendment to protect those accessing vulnerable social infrastructure from the negative effects of nuisance protests at a time when Canada's Jewish community is under attack. Canada is in the midst of a crisis of antisemitism. Since 2022, antisemitic incidents have increased by over 124%. Over the past two years, a deeply concerning and intolerable new baseline for the occurrence of antisemitism has been established in Canada. This new normal is unacceptable.

This previously unimaginable rise in anti-Jewish hatred has had a profoundly negative impact on the day to day lives of Jewish Canadians. Jewish persons have increasingly become the targets of physical assault, threatening harassment, and grotesque intimidation. Jewish institutions and Jewish owned businesses, in multiple cities, including Toronto, have been repeatedly the targets of caustic protests, vandalism, arsons, shootings, and bomb threats.

Amidst the rising levels of division and incitement being witnessed at present, the right of Toronto's residents to access vulnerable infrastructure without fear of intimidation or harassment must be protected. The right of every resident to enter and make use of such infrastructure must not be treated as secondary to the rights of nefarious actors to engage in nuisance protests. The right to peaceful assembly does not include the right to intimidate, harass, or compromise the ability of others to exercise their own rights and freedoms.

As a champion of human rights, B'nai Brith Canada respects the sanctity of the fundamental rights and freedoms of all Canadians, including the right to peaceful assembly and freedom of expression. However, these rights are not absolute and must not be seen as paramount in comparison to other constitutionally entrenched and quasi-constitutional rights.

Canadian courts have determined that restricting the right to peaceful assembly within a defined proximity to vulnerable social infrastructure is a reasonable limitation under Section 1 of the *Charter*. In the case of *R. v. Spratt*, the British Columbia Court of Appeal unanimously upheld the constitutionality of British Columbia's *Access to Abortion Services Act*. The Act contains a prohibition against certain activities, including protests, within a certain distance of infrastructure associated with the provision of abortion services. The Supreme Court of Canada's denial of leave to appeal in the *Spratt* case further affirmed the constitutional validity of the Act.

It is B'nai Brith Canada's submission that this is demonstrative of the ability to enact and implement legislation to protect vulnerable social infrastructure without unreasonably limiting or infringing upon constitutional rights.

In Ontario, the Cities of Brampton and Vaughan, and most recently the Town of Oakville, have passed vulnerable infrastructure bylaws. B'nai Brith Canada engaged with elected officials and staff in these jurisdictions during their respective consultation processes and is well-positioned to provide input on the successful elements of these bylaws.

The City of Toronto's draft amendment derogates from the precedent established in other jurisdictions. B'nai Brith Canada has serious concerns about the proposed bylaw amendment being considered by Council. Bylaws in the above-mentioned jurisdictions proactively protect marginalized communities and their vulnerable social infrastructure. They apply to all qualifying protest activity and do not require action on the part of the vulnerable infrastructure.

The reactionary nature of Section 743-56 of the draft amendment is counterintuitive to the spirit and purpose of such legislation. Placing the onus on the vulnerable institutions by requiring them to request an "access area" and provide evidence of a potential future threat **after** they have already been the target of activity described in subsection 55A further victimizes communities that have been subjected to hate and vitriol. This section does not safeguard our spaces – it permits the perpetuation of nuisance activity and places an unreasonable burden on the vulnerable infrastructure. Rather, the City must amend the legislation to create a prohibition that applies to all the activity described in Section 55A, subject to the temporal and geographic confines imposed by the legislation, without forcing the victims of such to apply for and demonstrate the need for relief.

Additionally, the proposed 20-meter "access area" is insufficient to adequately insulate those who are accessing social infrastructure from the harms posed by encountering those engaged in the conduct outlined in Section 55A. For example, it would not protect congregants who walk to and from synagogue for Sabbath services. While fulfilling their religious obligation on the Jewish day of rest, a 20-meter buffer would not ensure that they would not encounter protests as they attempted to access their synagogue on foot, unduly subjecting them to the psychological harm of encountering nuisance protests targeting their synagogue.

To mitigate against this and other similar foreseeable situations, the City of Toronto should follow the precedent set by the Cities of Brampton and Vaughan and utilize a 100-metre buffer. It is the opinion of B'nai Brith Canada that a 100-metre buffer would better ensure that those accessing vulnerable social infrastructure are sufficiently insulated from the harms posed to them by nuisance protests, while not unduly infringing on the rights of protestors.

Lastly, it is B'nai Brith Canada's submission that the scope of what is defined as social infrastructure in the draft amendment must be broadened to include cultural and community centres. As the heart of our communities, our cultural and community centres have repeatedly been the targets of caustic protests and require the same protections as places of worship, childcare centres, and schools.

The persistent attacks on our community require a bold response, and as elected officials, it is your responsibility to protect the residents you represent. To continue with the status quo or to ratify the nonsensical amendment presently before Council would represent a dereliction of your duties and an affront to Canadian values.

B'nai Brith Canada cannot support the proposed bylaw amendment as it is currently drafted. It is incumbent that substantial amendments are made to rectify the shortcomings identified in our submission. We urge Council to vote against the proposed draft amendment and empower municipal staff to construct an amendment that does not place the burden of acquiring protection from the conduct enumerated in Section 55A on aggrieved parties.

Sincerely



Richard Robertson
Director, Research and Advocacy
B'nai Brith Canada