

G20 officer ruling shows 'shift in courts'



A disciplinary hearing's finding that a senior Toronto Police officer is guilty of three offences related to his conduct during the G20 protests is a good outcome but doesn't go far enough to clearly recognize the rights of peaceful protesters, says Toronto civil litigator [Sarah O'Connor](#).

"The guilty finding on three counts gives a good sense of the shift in the courts and by the public that the police can't use their powers unnecessarily," she tells [AdvocateDaily.com](#). "While I don't think it goes far enough, I still think it is a very good result."

Retired Ontario judge John Hamilton presided over the matter related to the mass arrests five years ago. He found Supt. David Fenton guilty of two of three counts of unnecessary exercise of authority and one of two counts of discreditable conduct, reports the [Canadian Press](#).

Fenton pleaded not guilty to five Police Services Act charges connected to two "kettling" incidents that occurred during the 2010 summit weekend, says the wire service. More than 1,000 people were arrested and detained — most were released without charge — over the summit weekend in what is described as the largest mass arrest in Canada's peacetime history.

"This case is about the order that Supt. Fenton made and the consequences that fell from them," said Hamilton. "Legitimate protesters ... had the right not to be subject to arrest for making noise, chanting and sitting in the public street."

Fenton ordered officers to box in protesters in front of a downtown Toronto hotel, just hours after a small group of vandals smashed windows and set police cruisers on fire. More than 260 people were arrested and taken to a makeshift processing centre, which was criticized for its deplorable conditions, says the article.

The next day, Fenton ordered officers to keep people standing for hours at an intersection while a thunderstorm raged.

Hamilton explained that Fenton was charged with discreditable conduct because he had a responsibility to protect detainees from the weather, says the article.

Fenton was found not guilty of another count of discreditable conduct for detaining people at the hotel because those people "were not subject to unduly harsh conditions," Hamilton wrote in his ruling.

O'Connor, the principal of [O'Connor Richardson Professional Corporation](#), says being detained without due cause in this case was unnecessary.

"It's like saying, 'as long as they're not detained in the rain or snow, but are detained in a room, that's fine,'" she says. "It's still unlawful detention, despite the conditions of that detention."

While Hamilton noted that kettling is not illegal and at the time of the summit wasn't prohibited by the Toronto Police Service, he said the senior officer's decision to order mass arrests of the crowds in both cases was an unnecessary exercise of authority, and he had no legal or probable grounds to arrest people for breach of peace or conspiracy to commit mischief.

Fenton was found not guilty on a third count of unnecessary exercise of authority involving detained protesters. Hamilton explained his decision by saying Fenton was not responsible for the amount of time they were held or for monitoring them.

O'Connor notes to peacefully protest is a Constitutional right in Canada and she says it's obvious police didn't handle the G20 protest effectively.

"I don't think there is a clear view in this ruling on what a protester can and cannot do, nor is there a clear view on what the police can do when it comes to detaining an individual involved in a protest," she says.