Photograph courtesy of Cael Cook

The Law of Protest

Workshops for the Kitasoo/Xaixais Nation

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Klemtu, British Columbia

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GUIDE TO THE LAW OF
PROTESTS IN BRITISH COLUMBIA
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Introduction

The idea that justice is blind and that everyone is equal before the law reminds me of a traditional story that I have heard over the years, in which Coyote tries to convince a band of ducks that he had their best interest at heart.

Thomas King, *The Inconvenient Indian,* (Random House, Canada, 2012);

Mr. King is a Cherokee activist, teacher, and writer.

The rich people have their lobbyists and the poor people have their feet.

Nathalie Des Rosiers, General Counsel, Canadian Civil Liberties Association.

Historians offer evidence that some extra-legal activity always has had to be, and always will have to be, accepted by the legal system. Philosophers provide us with a rather uncomfortable insight that many brands of intentionally disobedient conduct may be justifiable and there is no bright line to help lawyers and Courts, who … actually have to make decisions.

Professors Judy Fudge and Harry Glasbeek, "Civil Disobedience, Civil Liberties and Civil Resistance: Law's Role and Limits*,"* (2003) 41 *Osgoode Hall Law Journal* 165 at 172.

I have written this paper to inform you of your rights when dealing with the police at public demonstrations. It is designed to help you exercise your right to engage in non-violent protests and civil disobedience, and to avoid committing any criminal offence. It is also designed to assist you in the event you are arrested.

This is a further revision of a presentation made at a conference held on December 7, 2012 at S.F.U. Harbour Center in Vancouver. The conference was entitled *Days of Dissent: Rights Under Attack in Canada.* It was sponsored by Lawyers Rights Watch Canada, Amnesty International, the Council of Canadians, and the New Media Journalism Program, S.F.U. Continuing Studies.

The original *Protesters' Guide* was written in 1968–70, to assist those demonstrating in opposition to the Vietnam War, revised for the *War Measures Act* in September of 1970, and then revised again in 1973 to address protests against U.S. sponsoring of the Chilean military coup.

It has gone through many revisions over the intervening years. A significant revision was made in 2009, and was intended to assist those who opposed the loss of many of our basic freedoms during the Olympics and who wished to express that opposition in the form of non-violent civil disobedience.

First Nations Edition

This revision, the first to address the issue of Indigenous law, was prompted in part by a conversation several years ago with Doug Neasloss, Resource Stewardship Director of the Kitasoo/Xaixais Nation in Klemtu, British Columbia, as a way of focusing on First Nations' opposition and resistance to Enbridge. This revision was also influenced by an earlier conversation in the spring of 2011 with David Eby, then Executive Director of the B.C. Civil Liberties Association, in which he raised the issue of the growing militancy of the First Nations – particularly through the CFN - the Coastal First Nations - over the manner in which the issues of pipelines on Indigenous lands, and oil tankers moving through waters in which First Nations have held ancient fishing rights were being addressed throughout British Columbia. I cannot recall a project at any time in recent B.C.'s history that has provoked as dramatic an opposition from the First Nations community as Enbridge's 7.9 billion-dollar Northern Gateway project. And finally, it was prompted by a number of conversations over the years with my son, Tim McGrady, who often expressed the view that despite almost 300 years of promises, the equality that Thomas King speaks of remains far off for many First Nations.

Repeated assurances by the government and Enbridge of 'world-class' prevention/safety measures seem fragile in the extreme in the face of the hard evidence of the value of similar assurances. One of the best illustrations of that fragility comes from the April 20, 2010 explosion of the Deepwater Horizon oil rig off the coast of Louisiana. Despite similar assurances from the various companies involved, most particularly BP Exploration and Production, Inc., reinforced by various levels of government, 20 men died and billions of dollars in property damage was caused by what is unanimously described as one of the worst environmental disasters in history. The pattern is one that we have become used to – of 'world-class' sophisticated emergency systems failing in the face of a company behind schedule rushing to catch up. For powerful video footage taken from the rescue boat see nytimes.com/interactive2010/12/26/us/20101226-deepwater-horizon-rig-video. The gross negligence or willful misconduct by BP was described in the September 9, 2014 decision of the court: *United States of America v. BP Exploration & Production, Inc., et al;* Case 2:10-md-02179-CJB-SS U.S. District Court for the Eastern District of Louisiana.

For most of our history, the accepted view of the common law, and lawyers practicing common law, was that First Nations had no real laws. The land that they happen to occupy existed in a juridical vacuum when the first Europeans arrived.

That view was best described and critiqued in a recent paper by Louise Mandell, Q.C., *A Constitution Story*, presented in Vancouver at a Continuing Legal Education Conference on the "Indigenous Legal Orders and the Common Law". The notion that there is no real Indigenous law is still found in our legislature, in our Courts, and amongst the legal profession. Change has been slow, and remains precarious.

One of the most compelling examinations of the relationship between Indigenous law and the common law is in a paper delivered at the same conference by former Chief Justice Lance Finch of the British Columbia Court of Appeal, *The Duty to Learn: Taking account of Indigenous Legal Orders in Practice*. In the paper, he reviews the cases which make it clear

that a Court has an obligation to take into account the Aboriginal legal perspective. Equal weight must be placed on the Aboriginal perspective and the common law perspective.

That applies with equal force to the civil and to the criminal law, as well as to the law of protest covered in this paper.

I have avoided lengthy quotes in this Guide until now. But this language is simply compelling:

> 34. ….[H]ere I come to the heart of the matter. From the outset of our education as Canadian lawyers, indeed from the outset of our education, we are immersed in a particular context and point of view. This saturation far transcends our legal training, of course: the experience of a cultural narrative in any form, or on any subject, will be informed….by our understandings of place, kinship, and ideas about personhood. This is largely an unconscious process. Whether reading a novel or perusing a judgment, our accrued experience sets off a constant series of connective sparks, or internal signals, affirmations, and disruptions, all at a level so deeply ingrained as to take place, most of the time, below the radar of awareness. And it is dangerously easy to carry our unconscious matrices of interpretation to our approach to another culture's values and laws.
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> 35. Recognizing and addressing this form of perceptual distortion is perhaps the single most important precondition to the Canadian legal community's meaningful incorporation of Indigenous legal orders. The danger in retaining and imposing our ideas of what constitutes "law," according to our training and established habits of mind, is that we may inadvertently give weight only to those elements of an Aboriginal legal system which are recognizable in Canadian law, rendering the Canadian legal framework determinative. At the same time, we may fail to perceive essential elements of these legal orders. At the very least, we must question our assumptions; at most, we must unlearn them. Not, of course, in every context. But for purposes of approaching Aboriginal legal orders, we must do our utmost to recognize and to relinquish our preconceptions of what *objectively* constitutes a "law" or a "system of laws."
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> …
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> 44. As part of this process, I suggest the current Canadian legal system must reconcile itself to coexistence with pre-existing Indigenous legal orders. This conference poses the question: How can we make space within the legal landscape for Indigenous legal orders? The answer depends, at least in part, on an inversion of the question: a crucial part of this process must be to find space for ourselves, as strangers and newcomers, within the Indigenous legal orders themselves.

The Chief Justice closes with this comment:

> 45. …For non-Indigenous lawyers, judges, and students, this awareness is not restricted to recognizing simply that there is much we don't know. It is that we don't know how much we don't know.

Before moving on, I have a further recommended reading. One of the most absolutely compelling histories of the treatment of First Nations communities in Canada is the recently published book by Professor James Daschuk, *Clearing the Plains: Disease, Politics of*

Starvation, and the Loss of Aboriginal Life (University of Regina Press, 2013). Genocide is defined as "the deliberate and systematic extermination of a national, racial, political, or cultural group". For a variety of less than honorable reasons, successive Canadian governments have carefully avoided applying the term genocide to its historical treatment of First Nations communities. But if additional evidence that genocide occurred was ever needed, this carefully researched and written text provides it.

Before proceeding, I should say a word about the title of the first edition to address the issue of Indigenous law. The language 'Cedar as Sister' is taken from the argument of Haida Counsel, Terry-Lynn Williams-Davidson's argument before the Supreme Court of Canada in *Haida Nations v. British Columbia Minister of Forest,* (2004) SCC 73, in order to explain the Haida perspective on the rights at issue. It is meant to contrast between cedar as family and sustenance in every respect on the one hand, and cedar as capital in the way that white societies traditionally view cedar as a disposable commodity on the other hand. [Quoted by Professor M. Jackson, Q.C. in "A Re-imagined and Transformed Legal Landscape, Indigenous Legal Orders and the Common Law, Paper 3.3, November 2012, page 3.3.4].

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Everyone must make his or her own individual choice about whether or not to engage in civil disobedience. It is our responsibility to become fully informed about the consequences that may follow from engaging in any form of protest.

The information that follows is of a general nature. It will not answer every question you have and may not apply in every case. I have written about the law as it applies in Canada and specifically in British Columbia as of January 1, 2014.

It is also important to note that the information in this paper should not be relied upon in any legal proceeding, as it is not a replacement for proper legal advice.

When exercised as collective action, protests and civil disobedience can be particularly effective in motivating social and political change. The long history of civil disobedience, as practiced by different peoples around the world, is mirrored here in British Columbia.

First Nations Protests

Indigenous peoples in Canada have engaged in various forms of protest since their lands were first colonized under British and then Canadian law, hundreds of years ago.

There are many sources of unrest amongst First Nations, not the least of which is the continued statistics that indicate that they have the country's lowest life expectancy, the highest child mortality, and the highest proportion of children not graduating from Grade 8 or high school. While the residential schools have now been closed for approximately six years, the issue of the physical and psychological scarring by that abuse has still not been adequately addressed.

In addition, some argue that not much has really changed with respect to schooling because Canada is now using the underfunding of Aboriginal schools as a tool of assimilation. The discrepancy in funding is not a small matter, but rather from 20% to 40% less.

First Nations have been resorting to protests on a much more dramatic scale in recent months over these conditions, and over the ever-expanding oil, gas, and coal development on their lands. Their anger has been reinforced by the "bogus economics" used by Enbridge to justify its pipeline proposal. One expert described the company's case as "not professional, not reliable, and not believable."

In earlier editions of this Guide, I have used the expression 'civil disobedience' in describing First Nations protests. That was modified after a discussion with Chief Phillip Lane during the 'Days of Dissent Conference' at Simon Fraser University on December 7, 2012. His point is that Indigenous peoples are not engaging in civil disobedience when they are protesting these issues. It is their land and their fishing rights that are being jeopardized by the illegal conduct of the governments and corporations. The only conduct that is 'disobedient' is that of the governments and corporations.

Chief Lane also emphasized that many of the assumptions that had been used to ease this illegal taking of land and rights from First Nations are now being called into question by scientific research in a range of different fields. Although there continues to be a lack of consensus, a great deal of sound scientific work has been done that suggests Indigenous populations in the Americas were much more numerous, had arrived earlier, and were culturally more sophisticated then had previously been assumed. He also argued that what was termed the New World was in fact not wilderness at all at the time of the arrival of the first Europeans but rather an environment that had been carefully managed by Indigenous people for their benefit. These propositions are best summarized by a well-known science writer Charles C. Mann in his recent book *1491*, published by Random House of Canada Ltd. [2nd edition, 2011].

Examples of First Nations protests over the centuries are too numerous to enumerate. Some of these have begun as peaceful protests, but tragically resulted in violence and/or the deaths of aboriginal people.

One such example is the death of Dudley George, a peaceful First Nations protester, during the 1995 crisis at Ipperwash, Ontario, involving the Stoney Point Ojibway. The violence that flowed from this peaceful protest, as with many others, was stereotypically and wrongly, attributed to the First Nations participants initiating the peaceful protest. These were the findings of the Ontario High Court Judge Linden, in his inquiry into the protest and death. In his report he also states:

> The experience of the Chippewas of Kettle and Stoney Point First Nations, illustrates the frustration and anger that can result from the failure of Federal and Provincial governments to take treaty obligations seriously. It also illustrates how failure to educate Ontario citizens on the treaty relationships that lie at the foundation of their Province can contribute to misunderstandings and conflict.
>
> (Vol. 2, Page 81, The Ipperwash Inquiry, May 31, 2007,
> www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/index

There are a number of summaries of the Ipperwash Inquiry available online. They are absolutely compelling. Amongst other extraordinary facts surfacing during the inquiry, was the fact that the Provincial government had known for over 50 years of the legitimacy of the Chippewas-Stoney Point claim that their burial ground was being used as a provincial park. It also emerged that one OPP Inspector had characterized the Harris government during the occupation as "red necked" and "in love with guns".

One of the best examples of what was originally a peaceful protest turning violent was the 1990 Oka crisis. Here the Mohawks finally took a stand when a golf course was to be built on Mohawk ancestral lands. The Québec police, and later the Canadian military, intervened and attacked the barricade that had been peacefully erected by the Mohawks on July 11, 1990.

A member of the S.Q., Corporal Marcel Lemay, was shot and killed in a firefight that occurred during the occupation. An excellent NFB film by Alanis Obomsawin is available at: http://archives.cbc.ca.

In November of 1981, in Vancouver, Aboriginal women entered the offices of the Department of Indian Affairs in the "Black Tower" on Georgia and Granville Streets. They refused to leave until the department agreed to an inquiry into the appalling living conditions on the Women's Reserves. Some were later arrested and charged.

One of the most dramatic protests by First Nations people was in 1985 in which Haida, with some Elders wearing ceremonial button blankets, protested on a logging road on Lyell Island in South Moresby, to which Western Forest Products owned the cutting rights. Over a two-week period some seventy-two people were arrested. They were subsequently charged and convicted of contempt of Court. This led in July of 1987 to the two levels of Government signed a memorandum of agreement creating the 1,495 square kilometers, Gwaii Haanas National Park Reserve and Haida Heritage site.

In the summer of 2012, the Kitasoo/Xaixais Nation in Klemtu British Columbia, members of the Coastal First Nations, delivered a message to hunters about to engage in the Fall Trophy Hunt for white spirit bears, that the Kitasoo/Xaixais viewed the hunt as illegal and would blockade the hunt. They readied a fleet of fishing boats to conduct the blockade and act as watchmen over the bear population.

In the summer of the previous year, they protested against the Department of Fisheries and Oceans' plan to engage in research in their territory, which they knew to be a prelude to opening their territory to fishing. When protests were initially unheard, they contacted the license holders, asking them not to enter their territory. They advised that the neighbouring First Nations, numbering approximately 15,000 members, were ready to send in dozens of boats to disrupt and obstruct the research.

The Kitasoo/Xaixais is also playing a significant role along with other First Nations in the rapidly developing opposition to the Enbridge Pipeline. They have remained out of the NEB hearing process over its failure to address their First Nations title and rights. They strongly object to NEB's refusal to treat them in the appropriate government-to-government manner,

but instead insist on treating them as one of a series of 'interested parties' making submissions.

Some of their opposition also focuses on the recent Bill C-38 revisions, such as giving the Cabinet the ability to reverse any Joint Review Panel decision, the dramatic shortening of the original timeframe for the panel to report, and the removal of key oversight features from the legislation. Bill C-38, amending various legislation, received Royal Assent on June 29, 2012 and is also referred to as the *Jobs, Growth and Long-Term Prosperity Act*.

Similar protests were held in 2003 by the Heiltsuk and Nuxalk Community, as well as other First Nations from Alaska and Washington, at Ocean Falls, protesting the building of a fish farm by a Norwegian company, Panfish.

In November 2012, members of the Wet'suweten Nation announced that surveyors for Apache Canada - Pacific Trails Pipeline were trespassing on their territory. The company had been surveying for the natural gas project. They announced that the road leading into the Wet'suweten territory was closed to all industry activities until further notice.

Members of the Musqueam First Nations blocked traffic on the Arthur Lang Bridge between Vancouver and Richmond in May 2012 to protest a nearby condominium development on an ancient Musqueam burial site. They forced the closure of the bridge to Richmond and to the Vancouver International Airport in the midst of the morning commute.

In early December 2012, sixteen people were arrested for blocking access to the Wilson Creek area in the Sunshine Coast communities' forest license area in the traditional territory of the Sechelt First Nation.

Idle No More Protests

Idle No More is a grassroots First Nations movement protesting Bill C-45, with supporters of the movement across the country saying they are going to continue to focus pressure on the Harper government. Bill C-45, which received Royal Assent on December 14, 2012 and is now referred to as the Jobs and Growth Act, 2012, will generate severe environmental damage as well as remove key sections of the *Indian Act* dealing with land sovereignty and other treaty rights.

The Athabasca Chipewyan First Nation in northern Alberta blockaded the highway near Fort McMurray. Chief Alan Adam stated that the Federal government is clearing the way for development on traditional land, and that the oil sands operations have already damaged rivers and lakes in their territory. Bill C-45, he said, "gives the green light to destroy the rest." "The people are standing up and saying enough is enough," Adam said. The Athabasca Chipewyan Band has been raising concerns for years about the impact of the oil sands on the environment and on the health of people living in the area

A few months ago the Tahltan First Nation banned Fortune Minerals from entering Tahltan Nation's communities without permission. The company was planning an open pit coal mine on Mount Klappan, in the area referred to by the Tahltan as the Sacred Headwaters – the

source of the Skeena, Stikine, and Nass Rivers. Last fall, Talhtan elders had occupied the company's campsite in protest.

Gitga'at Protests

The Gitga'at have participated in a number of rallies and protests, including the one they led in Kitimat on February 4, 2012. On June 20, 2014, the women of the Gitga'at First Nation, in a protest organised by Lynne Hill, stretched a 3.3 kilometre long crochet wool yarn chain across the Douglas Channel from Hawkesbury Island to Hartley Bay, in a symbolic protest against Ottawa's approval of the Enbridge project.

It was also a protest against Enbridge's repeated minimising of the dangers of the route – exhibiting maps that deleted many of the more treacherous navigation points, while appearing to exaggerate the breadth of the passage. The protest began in Hartley Bay and spread, with supporters sending in crochet links from all over Canada.

She stated "Our way of life will be destroyed. Can you measure the worth of a clam, or a whale, against selling this dirty oil? I don't believe you can".

Tankers will have to navigate the narrow channel to a marine export terminal set to be located in Kitimat. The crocheting of the yarn chain was intended to highlight just how narrow the key passageways were.

The Heiltsuk's History of Protest

I am indebted to Jess Housty for providing me with this brief recent history of protests by her community.

The Heiltsuk community has a long history of protests, primarily against extractive industries - sports fishing, clear cut logging, fish farms, commercial fisheries, crude oil shipping - in cases where government or industry operate in a manner that threatens Heiltsuk territory, economy, and culture. The community has also held demonstrations in solidarity with other Nations or wider movements, such as rallies in support of the Elsipogtog (Fall 2013) or Idle No More.

In April 2012, when the Joint Review Panel came to Bella Bella to hear oral evidence from elders and knowledge holders during their review of the Enbridge Northern Gateway project, the community organized a nonviolent demonstration at the airport that consisted primarily of families and children. Following the demonstration, the Joint Review Panel unilaterally cancelled Heiltsuk's community hearings, citing security issues. Though negotiations by leadership eventually resulted in resumption of the hearings process, this instance made the community acutely aware of the power (and potential political consequences) of their demonstrations.

More recently, the community faced significant issues in Spring 2014 when the Department of Fisheries and Oceans opted to open a commercial herring fishery on the coast, including Heiltsuk waters. Heiltsuk was one of several Nations opposed to the commercial opening in light of the fragile herring stocks. Heiltsuk leadership attempted to negotiate with DFO

toward a closure of the fishery, to no avail. As a result, Heiltsuk fishermen and community members committed to marine blockades to protect sensitive spawning grounds, and in Bella Bella, extensive planning took place around protest protocols and organization.

Ultimately, leadership from the communities of Bella Bella and neighbouring Klemtu both approached the commercial fishing fleet directly at the docks and on the water. In the end, they excluded DFO from the conversation and negotiated directly with the fleet to fish only in areas where local knowledge indicated the stocks could sustain a fishery. As a result, a blockade was deemed unnecessary.

In the case of the herring issue, Heiltsuk leadership opted to work closely with the RCMP on a joint safety protocol in case a large-scale protest happened. In the midst of this tension many community members perceived racial politics at play, with the RCMP stationing dozens of extra officers, boats, and a helicopter in the area for several weeks.

At a bird's eye view, major conflicts that threaten or result in Heiltsuk-led protests are most often related to resource extraction and development. The party on the other side of the conflict is often government as well as industry. And while relationships with the RCMP are cautiously engaged at a leadership level, often they are more precarious at the level of individual community protestors.

Examples of Civil Disobedience

Our province also has an extensive and remarkably consistent record of conflict between lawmakers, employers and working people. In July 1918, United Mine Workers organizer and pacifist, Albert “Ginger” Goodwin, was shot by a private policeman outside Cumberland. His murder sparked Canada’s first general strike as B.C. workers walked off the job in protest.

The Doukhobors, a Christian group of Russian origin who settled in the Kootenays, have used a variety of civil disobedience techniques to defend their pacifist and religious beliefs over the past century.

In the late 1980’s, gay and lesbian activists adopted some wonderfully inventive and ultimately effective ACT UP tactics to bring awareness to the need for anti-discriminatory employment and spousal rights’ laws.

In 1983, in Operation Solidarity, a coalition of unions, community and church groups opposed government legislative attacks on human and labour rights. The resistance led to some of the largest demonstrations and marches in the history of the country, including one in Vancouver numbering 40,000 people.

Since 1984, the Nanoose Conversion Campaign has included a series of civil disobedience actions by protesters opposed to American underwater nuclear weapons testing in the Georgia Strait.

The "Clayquot Summer" of 1993 was a non-violent environmental protest that led to the arrests of more than 850 people. It was one of the largest acts of civil disobedience in Canadian history, and resulted in reforms to B.C.'s forest practice laws.

Over the past several decades, a wide range of B.C. citizens have joined in anti-corporate globalization actions, from the Asian-Pacific Economic Forum meetings at the University of British Columbia to the World Trade Organization in Seattle, and to the FTAA Free Trade Area of the Americas events in Québec City.

One of the most humorous acts of civil disobedience involved the distribution of 20,000 news box copies of a parody edition of *The Province* newspaper around APEC on November 19, 1997. The intent of the publishers, Guerrilla Media, was to switch attention from constant topics such as motorcade protocol to the issue of why fair trade had never made it into any debate about free trade.

Guerrilla Media even devised and published its own dictionary, which it credited tongue-in-cheek to Conrad Black, who had not yet begun his prison term, and was still a media magnate. Whenever one of Black's editors came up with a suspect word, such as 'corporate agenda' or 'child labour', the word would immediately be transformed into a corrected phrase. For example, the phrase 'corporate agenda' would become 'common sense; 'child labour' would become 'youth reliance program'; 'sweatshop' would become 'profit center', and so on.

One of the new models of civil disobedience is the monthly Critical Mass Bike Ride, protesting a range of issues from inadequate facilities for bicycles, to our society's reliance on motor vehicles. During the summer months the ride can involve as many as several thousand cyclists traveling slowly through some of Vancouver's main streets.

The protests are peaceful and respectful of others - but do slow or impede vehicles in heavily traveled parts of the city. The riders also tend to ignore stop signs and red lights at intersections. They are often dressed in humorous costumes and at times include entire families, from ages five to seventy-five.

The rides, which originated in San Francisco almost twenty years ago, have grown to regular events in many cities worldwide.

The effective use of humorous props in the course of civil disobedience was best illustrated in Québec city in April 2001 during the Free Trade Area of the Americas (FTAA) protest. A giant fence had been set up around the old city where the 34 heads of state and their entourages were meeting. Immediately inside the fence were several thousand riot police. The protesters wore pots and colanders on their heads. They had built a full sized catapult and used it to lob teddy bears over the fence and onto the riot police. The protesters were accompanied by kilt-wearing bag-pipe players. Public sympathy in the end clearly favored the position of those protesting, and the trade deal was never signed. There are photographs both of the police line and the teddy bear catapult in the reception area of my office.

The Occupy Movement

Occupy-Vancouver, a remarkable event which began in October 2012, involved approximately 5000 people taking part in protests centering at the Vancouver Art Gallery. Similar protests had been taking place throughout Canada and the United States, and as far as Hong Kong, with some measure of coordination amongst Occupy groups in various cities. Coordination of protests of this sort was unique, and far more sophisticated and extensive than, for example, was seen in the coordination by various groups throughout Canada and the United States during the Vietnam War in the late 60s and early 70s. A fascinating account of the early days of the Occupy movement in New York, San Francisco, Philadelphia, and other cities in the U.S. can be found in *Guild Notes* volume 36, number 4, pages 3 – 10, published by the National Lawyers Guild and available at http://www.nlg.org/resource/guild-notes.

Occupy's primary focus was on 2 issues – income equality, and the influence of money in politics. One of the most popular posters/placards of the thousands that surfaced from an Occupy member is, "if money is speech, then debt is censorship".

In Vancouver the protesters erected over 150 tents, and provided food, health and safety services on a volunteer basis around the clock. Although a series of injunctions sought by the City, and then by the Attorney General, ended the occupation at that location and others by late November, the protesters continue to meet, and to operate as an organizing center for ongoing protests.

The core of Occupy protest groups continue to exist and continue to be active, even after the passage of two and a half years since they first surfaced. They continue their work in the community in the U.S., helping homeowners to fight foreclosures, work with trade union organizers on ensuring successful union drives, and are close to forming their own bank. They have received a great deal of advice and assistance from community banks including Chicago's largest, as well as moonlighting financial advisors.

Other examples include the expanding protests over the proposed construction of the new and expanded coal port facilities in Metro Vancouver - which would make it the largest exporter of coal in North America. The Neptune terminal in North Vancouver would have its capacity increased by a 3rd to 18.5 million tons of metallurgical coal. A second new facility for American thermal coal would be built at Fraser Surrey Docks, for export to Asia.

In May 2012, thirteen people - members of the Stop-Coal coalition - were arrested in White Rock for standing on the rails and blocking a coal train on its way to Roberts Bank. The wide diversity in age and occupation of the members of this group are becoming the norm amongst protest groups in this country, in addition to the First Nations protests. Amongst others, the Stop-Coal group included a trade unionist, an economist, and a molecular biologist.

A right to protest

The law recognizes the important role civil disobedience has played in the preservation of our democratic rights.

The value of civil disobedience was the subject of comment by the then Chief Justice of the Manitoba Court of Appeal, Samuel Freedman. He stated:

> There have been instances in human history….in which disobedience to law has proved a benefit to law and to society. (*Challenges to the rule of law*, January 14, 1971, Empire Club, Toronto, Ontario; also cited in (2014) 37 *Manitoba Law Journal Special Issue – a Judge of Valour- Samuel Freedman - In His Own Words*, page 204).

Justice Freedman noted that there are three qualities to civil disobedience. First, it is always peaceful; second, those who engage in civil disobedience must be prepared to accept the penalty arising from the breach of the law; and thirdly, their purpose must be to expose the law breached to be immoral or unconstitutional, in the hope that it will be repealed or changed; or in the hopes that the law or administrative decision will be repealed or changed.

The views of the Chief Justice were adopted by Justice Ian Josephson in a case remarkably similar to some of the oil, gas and coal protests developing in Western Canada. In that case, three individual citizens from the small community of Genelle Creek, near Castlegar, blockaded a roadway to prevent access to a uranium exploration company that was about to begin drilling and blasting in the area of China Creek, the watershed that supplied Genelle's drinking water: (*R. v. McGregor et al.,* [1979] 3 W.W.R. 651 at paragraph 24). The Court stated:

> I was particularly impressed with the credibility and integrity of all three accused. All three are working family men and upstanding members of the community. All three were fully aware that their actions in blocking the roadway could amount to a criminal offence. This apparently resulted in no small battle with their consciences, as none of them had run afoul of the law before and it was clearly not their wish to do so at this time. Their decision to take this risk has obviously caused them a great deal of personal anguish. However, no one could attack their motives. They were motivated primarily by the honestly held belief that the exploration activities could endanger the health of their families and the community at large. As well, they were fearful that these activities might lead to the development of a mine operation, which would have a significant detrimental effect on both health and property values in the community (paragraph 12).

In a later case, Justice Stuart stated in this fashion (*R.* v. *Mayer,* [1994] Y.J. No. 142 at paras. 7-9):

> A healthy democracy demands an active, informed citizenry willing, nay, eager, to engage in constructive public debate. Our laws must sustain and promote free public discussion. To interfere unduly with this freedom threatens the survival of our democratic existence. Any laws limiting freedom of speech must be

> designed to protect other fundamental freedoms and be enforced with utmost sensitivity to avoid unnecessarily daunting the desire of any citizen to engage in public debate. Our laws, institutions and society as a whole must develop and abide by a healthy tolerance for the commitment some exercise in pursuing their beliefs.
>
> In the diversity of views and values within our society and in the freedom enshrined to express our differences, we, as a democracy, find the source of our enduring ability to survive. Through constructive resolution of our differences and conflicts, through an open invitation for all to participate in our processes of decision making, our society finds the creativity and energy to develop innovations that overcome the challenges threatening our survival as a democratic society. In this spirit of democracy and in keeping with the fundamental importance of free public discussion, the laws applicable to the actions of the accused must be interpreted and applied.
>
> The accused, with pride, acknowledge that in passionately embracing their beliefs they will be civilly disobedient when necessary to promote the changes they pursue. Civil disobedience lies at the heart of many democratic changes. If acts of civil disobedience do not endanger anyone, or damage property, or significantly restrict essential services and processes within society, and interfere in a minor fashion with the rights of others, the State response must be clear but need not be harsh.

Even the policy of the Vancouver Police Department on crowd control distributed during the 2009 Olympics in Vancouver began with an acknowledgement of the police responsibility "to provide an environment for lawful democratic protests" (B.C. Civil Liberties Association website, www.bccla.org/policeissue/policeissue.htm; accessed November 2009).

In a decision arising out of the protests by the Falun Gong in front of the Chinese Consulate on Granville Street in Vancouver, striking down a City of Vancouver bylaw, the British Columbia Court of Appeal stated:

> Public streets are, as they have been historically, spaces in which political expression takes place and where structures are maintained. A multiplicity of free-standing objects exists on city streets, suggesting that the presence of a structure on a street does not undermine the values of s. 2(b): Huddart J.A. in *Vancouver v Zhang* 2010 BCCA 450 paragraph 41.

This Guide takes into account the post–9/11 legislation which impacts the civil liberties of Canadians. Much of the post–9/11 legislation is aimed at terrorists and organized crime, but some of its provisions can be used against protesters.

The *Criminal Code* referred to in this Guide, as well as some of the post–9/11 legislation, are accessible through the Department of Justice website, at laws.justice.gc.ca; accessed September 2011.

I want to thank a dear friend and colleague, Claude Melancon, for providing me with a draft copy of a handbook he was working on as a young lawyer in Montréal, at the same time I was producing my first Guide in Vancouver. His was *Les Militants et La Police,*

published by the Association des Juristes Québécois, in April of 1976. It was one of the first and best of the civil disobedience handbooks widely available. It was prepared and distributed by a group of activist lawyers from Claude's law firm, Mergler, Melancon in Montréal. One of the main writers was Professor George Le Bel, who successfully fought disciplinary measures taken against him for his work on *Les Militants* by the Québec bar.

I would also like to thank my brother and colleague, John McGrady, who did invaluable work for this version with his research at Ryerson University in Toronto during the 2012 Social Justice Week.

Issues of civil disobedience and our right to engage in lawful protest are perhaps more important than they have been in at least the last half-century. The passage of Bill 78 by the Québec National Assembly in May 2012 marked the most extreme use of legislation to crush the exercise of basic rights since the 1970 *War Measures Act.* It has been described in those terms and also as an "act of mass repression". Bill 78 imposed fines for anyone blocking access to a school – up to $5,000 for an individual; $35,000 for a student leader, and $125,000 for a student union. Its regulation of demonstrations was unprecedented. It required demonstrators to provide 8 hours' notice to the police, along with a detailed itinerary. In addition to these dramatic fines, it limits assemblies of 50 or more people, permits the government to defund student associations, and forces employees back to work.

Many expressed the view that the legislation violated freedoms of expression, association and conscience. Its passage prompted even larger and more sustained demonstrations including a protest of over 100,000 people in Montréal on May 22, 2013.

Readings

If you are interested in reading or seeing more about the history and practice of non-violent civil disobedience, I recommend the following:

Saul Alinsky, *Rules for Radicals* (Toronto: Random House, 1971).

> One of the first and best – essential reading.

Andrew Boyd, *Beautiful Trouble: a Toolbox for Revolution* (OR Books, 2012, New York).

> A fascinating invaluable collection assembled by Andrew Boyd of writings by many of the most creative activists in the U.S. today. Each one describes and examines examples of successful peaceful civil disobedience events. My favorite is a two-page article on a housing eviction blockade in Rochester, New York in 2011.

Gene Sharp, *The Politics of Non-Violent Action,* Volumes 1, 2 and 3 (Boston, Massachusetts: Porter Sergeant, 1973).

> The 'basics' for those interested in the history and practice of civil disobedience.

Professors Judy Fudge & Harry Glasbeek, "Civil Disobedience, Civil Liberties and Civil Resistance: Law's Role and Limits" (2003) 41 Osgoode Hall Law Journal, No. 2 and 3 at 165–173.

> A source of thought-provoking material on civil disobedience, with authors from a range of academic disciplines, including historians, philosophers, activists, political scientists, social scientists, lawyers and judges.

Mark Kurlansky, *Nonviolence: The History of a Dangerous Idea*, Modern Library, 2008.

> A more recent and excellent primer in the history of civil disobedience. One of the most remarkable examples of civil disobedience practiced on a national scale comes from Denmark during the German occupation in the Second World War. It was a point of national honour for virtually the entire population to engage in work slowdowns and frequent illegal strike activity. One of their most notable acts was the refusal by the government to enact any of the anti-Semitic measures ordered by the Nazis. On October 1, 1943, when the Nazis announced their decision to deport Jews from Denmark, almost the entire Jewish population in the country was hidden by the Danes and then taken by boat to neutral Sweden. [Pages 133 – 134].

For other readings, you may want to consider these:

G.O. Oliver, *A Criminal Mess: New York City's Response to Critical Mass Bicycle Rides 2004 to 2010,* (New York: National Lawyers Guild Review, Spring 2010, Volume 67, page 37).

> A critical examination of mass arrests during the critical mass bike ride in New York City. Like Vancouver, critical mass rides had been a feature of Manhattan life for almost a decade. The police response had generally been to acquiesce, escort or facilitate the ride. That changed with the Republican National Convention in 2004. On August 27, 2004, almost 300 cyclists were arrested and charged. By the time the Convention was over, that number had grown to almost 2000. The article catalogs and analyses the extraordinary resistance mounted by the criminal defence bar during the following years.

R. Rodd, *Mass Disorder,* (Canadian Lawyer Magazine, March 2011, page 1).

> A valuable perspective from a number of defence and civil liberties lawyers who were observers/participants in the G20 Summit Protests in Toronto in June 2010. One counsel referred to it as, "My weekend in Argentina" and compared it to the oppression of October 1970 when the Trudeau Liberal Government enacted the *War Measures Act* and arrested almost 500 people.

Becker et al v. District of Columbia et al (Case No. 01-CV-0811)

> A $13.7 million settlement was paid in the fall of 2010 in a class action lawsuit brought by protestors arrested during a demonstration in Washington, D.C., in 2000. The protest was designed to overlap with an IMF/World Bank meeting. Approximately 700 were arrested and some were tied up and detained for significant periods of time.

Details and further readings are available on a number of websites: www.beckersettlement.com or www.justiceonline.org. (both accessed September 2011).

Cultures of Resistance, Caipirinha Productions, an extraordinary 2003 film, has been called a travelogue of non-violent civil disobedience. It highlights, for example, the resistance of the non-violent monks actively opposing the military dictatorship in Burma - ultimately successful, some 9 years later: info@culturesofresistance.org.

On the issue of inequality and its relationship to social instability, see some of the research of the Institute for New Economic Thinking, including: *Chartbook of Economic Inequality: 25 Countries 1911-2010*, by Tony Atkinson, Salvatore Morelli; October 2012, Note #15. You may also wish to read a blog by two economists associated with the Institute, Hans-Joachim Voth and Jacapo Ponticelli at http://blogs.lse.ac.uk/politicsandpolicy/2011/08/16/austerity-and–social-unrest/ in which they argue that budget cuts in excess of 2% of the GDP are followed by a surge in social instability.

Some of the latest and most reliable figures on the issue of income inequality are available from an excellent study by David MacDonald published on April 3, 2014 by the Canadian Center for Policy Alternatives.

One recent text merits special mention. Erica Chenoweth and Maria Stephan, *Why Civil Resistance Works: The Strategic Logic Of Nonviolent Conflict*, (Columbia University, New York, 2013). This is strongly recommended. The authors studied both nonviolent and violent regime-change campaigns as diverse as the campaign in Zambia against British rule from 1961 to 1963, and the Iranian revolution in Iran from 1977 to 1979. Here is one of their many remarkable conclusions:

> The most striking finding is that between 1900 and 2006, nonviolent resistance campaigns were nearly twice as likely to achieve full or partial success as their violent counterparts.

In an article published by Professor Chenoweth in the August 11, 2013 edition of *Foreign Affairs,* she concludes with reference to the above study that no popular movement that relied on a single method alone worked.

> Effective civil resistance involves a number of skillfully sequenced moves that increase broad-based, diverse participation, allow participants to avoid

repression, and lead regime loyalists to defect. Without a broader strategy based around these steps, sit-ins can end in catastrophe.

While her study focused on regime changes, many of their findings can usefully be adapted to domestic protests. The keys seem to be:

i. a carefully worked out long-term, imaginative strategy.

ii. a variety or range of tactics, some proven to have worked in similar situations in the past. Reliance on a single tactic is to be avoided. If public demonstrations become too risky, then stay-at-homes, flash-mobs, boycotts, and general strikes may be considered options depending on the circumstances.

iii. the tactics are carefully sequenced over a period of time.

iv. an ever expanding, broad-based, diverse group of participant-supporters. Not surprisingly, her study demonstrated this to be the single most important factor.

v. tactics involving people gathering and staying in concentrated spaces for a long period of time – occupations, sit-ins, and announced demonstrations are amongst the riskiest.

vi. widely publicized abuse or misconduct by the police often results in crackdowns and repression backfiring.

Finally, we welcome your questions, comments and criticisms. The e-mail address is lmcgrady@mcgradylaw.ca.

Photograph of a poster at the Foggy Bottom subway stop, Washington DC. The Foggy Bottom District is home to the US State Department, the President's executive offices, and Watergate. It was taken for the *Guide to the Law of Protests* by Patricia O'Hagan on April 7, 2014.

Demonstrations

Protecting your identity

You can choose to wear a mask or other headgear to protect your identity. However, there are some drawbacks if you do. First, it is a crime to be masked or disguised with the intention of committing a crime. This may give police an excuse to target you even though you are not intending to commit a crime.

A new offence was added to the *Criminal Code* on October 31, 2012 – that of taking part in a riot while wearing a mask to conceal one's identity, without lawful excuse. It has been widely criticized in the media and by civil libertarians as unnecessary. This new offence received Royal Assent on June 19, 2013 and can be found in subsections 65(2) and 66(2) of the *Criminal Code*.

Not to be outdone by the suppression of basic liberties by the Québec government with Bill 78 in the spring of 2012, the Montréal municipal government banned, through bylaw P-6, the wearing of masks during demonstrations. It also requires protestors to provide the city with an itinerary prior to their rally. The constitutionality of the bylaw is currently being challenged at Quebec's Superior Court.

Second, wearing a mask may frighten other demonstrators.

Undercover police officers also often mingle with demonstrating crowds, and often go unnoticed. Their main objective is to identify demonstrators, activists, organizers and speakers. On occasion, they also may be masked, and may even seem to be the most aggressive of the demonstrators.

One of the most dramatic illustrations of this occurred in August 2007, during a demonstration which included many trade unionists protesting at the Security and Prosperity Partnership of North America conference in Montebello, Québec.

Three masked demonstrators, later exposed to be members of Québec's Provincial Police Force, were caught on video doing what they could to incite violence. The video, later posted on YouTube, showed three men with bandanas across their faces and large rocks in their hands taunting union members, attempting to provoke violence within the demonstrating group.

One union leader, David Coles from the Communications, Energy and Paperworkers Union of Canada, emerged from the group of demonstrators and urged the three to calm down and leave the area, after first putting their rocks down. The men refused and began to swear at him and shoved him. A few moments later, Coles realized they were police *agents provocateurs* and began to alert the demonstrators of their presence. The fact that the men were police officers was subsequently acknowledged. They were summoned to appear before Québec's Independent Police Ethics Committee.

The footage is available on YouTube and remains a model of how to react when you believe you are dealing with police *agents provocateurs*. It can be accessed by searching for "stop spp protests" (accessed September 2011).

Agents provocateurs may be either police officers in disguise or paid agents hired to infiltrate legitimate peaceful demonstrations. They attempt to provoke violence in order to justify arrests and discredit the protest.

In any event, the choice to protect your identity is yours to make.

What to bring

Items that are always useful to bring to a demonstration include:

Pen and paper: These are handy for taking detailed notes of any incident that might occur during the demonstration. For example, if there are arrests, it is worth recording the names of people arrested, their telephone numbers, contacts, details of the arrest, and so on.

Photographic cameras and video cameras: Police have a monopoly on state sanctioned violence that they may use to protect us. But recent experience has demonstrated that some police officers readily violate that law, and then lie about it, at times under oath. One of the most compelling examples of course is the Robert Dziekanski tasering death at the hands of four RCMP officers at the Vancouver airport in October 2007. The sexual assault of a young woman in an Ottawa jail by a police officer currently charged with that assault provides another example.

And finally the many examples of excess and illegal force used by the police during the G20 demonstrations in Toronto in June 2010. This event at which some 1100 protesters were arrested has been described – with some accuracy - as "the most massive compromise of civil liberties in Canadian history". The subsequent inquiries that have almost uniformly condemned police violence and police illegal conduct were vigorously resisted by both the police and the politicians until video-taped recordings of this violence and illegal conduct began to surface, and the public pressure for independent inquiries became impossible to resist. The fact that the police use of face shields made identification difficult if not impossible, combined with many of the officers illegally removing their mandatory name tag, slowed the progress of the inquiries, but did not prevent the worst of the police misconduct resulting in criminal charges.

In December, 2013, one Toronto police officer was convicted of assault with a weapon for using excessive force during the arrest of a protester. He was sentenced to 45 days in jail. The protester was on the ground when he was assaulted and the officer's name tag and baggage were not visible. The trial judge concluded that the latter was the result of a deliberate act designed to make it more difficult for anyone to identify him.

One of the best recordings still available can be viewed online at toronto.mediacoop.ca. Toronto Media Coop did extraordinary work recording and then publicizing the worst of

the police criminal conduct. Some is also available on the CBC program 'The Fifth Estate'. Finally, a good deal of footage is still available on YouTube, accessible simply by searching G20.

The feature that all of these events have in common is that they were all videotaped and later publicized using that videotape. The point is of course, that the value of cameras during protests is beyond question. Most protest organizers arrange for individuals to act as dedicated videographers or photographers whose sole task is to record the event. This is becoming increasingly important as the use of police body cameras spreads, and enabling activation and recording with the push of a finger. Even inexpensive GoPro helmet cameras used by cyclists and skiers will do for demonstrators.

Police do not like being watched, or worse, being caught committing an illegal act. Bear in mind that they may attempt to seize your equipment, or your cell, or worse threatening to charge you, or charge you for the simple act of photographing their conduct. That conduct is illegal, and is theft. The simple act of recording police conduct is perfectly legal of course, as objectionable as the police routinely find.

Drones are now being used in some larger demonstration situations. The smallest, the DelFly, flies autonomously, weighs about 20 grams, and carries two video cameras and an onboard processor. http://diydrones.com is a website to investigate if your group is considering purchasing your own drone.

Recorders: A recording of remarks by police is a valuable form of documentation.

Clothing: Ask yourself whether the shoes you are wearing are comfortable for running, and whether the clothes you are wearing will attract too much attention. Also, keep in mind that you do not want to be easily grabbed by your clothes or hair by someone attempting to restrain you.

Water bottles: Use for bathing your eyes in the event the police used tear gas. You may consider wearing glasses rather than contact lenses.

Prescription drugs: Have these in their original packaging, in case you are detained.

Identification: You may wish to carry photo identification such as a driver's license, to ensure that you are released from jail within a reasonable time if you are arrested. Write the phone number of your support person or lawyer on your arm, so you can call if you are arrested.

Cell Phones: Views are mixed on whether to bring cell phones to demonstrations. They can of course be invaluable to communicate by phoning, texting or tweeting during the demonstration. They can also be invaluable for photographing and preserving evidence of police misconduct.

The downside is if you are arrested they may be seized. The issue of whether once they have been seized they can be searched without a warrant for numbers, messages, or photographs has been the subject of contradictory decisions in Canada. The Supreme

Court of Canada recently ruled unanimously in *R. v. Vu,* 2013 SCC 60 that computers and cell phones called for distinctive treatment under the *Charter* as computer and cell phone searches gave rise to particular privacy concerns. The Court held that another specific warrant was required for the police search of a computer or a cell phone during the execution of a warrant. However, the Court's decision does not clarify the law regarding searches of a computer or cellphone incidental to an arrest.

It is open to the police to seize the device and then apply for a warrant from the Court enabling them to search them. Even where there is a warrant for a computer search or cell phone search, the SCC held in *Vu* that the police are not permitted to "scour the devices indiscriminately."

Following the SCC's decision, the BC Court was reluctant to follow the previous law in *R. v. Giles* (2007), BCSC 1147 case and held that a warrant was required to conduct a search of an iPhone that was seized at the time of the accused's arrest (*R. v. Vye*, 2014 BCSC 93).

On May 23, 2014, the SCC will soon hear a case from Ontario, *R. v. Fearon*, involving the search of cell phones incidental to an arrest which will hopefully clarify the law on this issue.

If you do decide to take your cell phone, you may wish to avoid the difficulties flowing from the current state of the law by ensuring there is nothing recorded on the cell phone memory before you leave for the demonstration. It should be noted that BlackBerries were the cell phones of choice for protestors in Egypt and Tunisia, because of their encryption software. Apparently the new version – the BlackBerry 10 Smartphone – carries new and improved encryption software. It was recently announced that it had obtained security certification from the U.S. Government, something Apple does not have.

Additional concerns have been raised about using iPhones after Apple announced in September 2012 a patent for technology that would allow the police to block transmission of all information including videos and photographs from any public gathering or protest. Ostensibly, the technology has been developed for threats to national security, but no doubt will be made available to the police who will make use of it during protests and demonstrations. Apparently the technology enables the transmission of an encoded signal to surrounding wireless devices directing them to disable all record functions. The signal can be transmitted by GPS, Wi-Fi, or mobile base-stations.

A third option you may wish to consider is to carry a digital camera for photographing or creating videos of illegal police behavior.

You may also want to track the Federal government's current plans for legislation allowing police warrantless searches of our computers as well as our cell phones. Those amendments were originally to be part of the omnibus crime bill introduced in Parliament on Monday, September 19, 2011, in what the *Globe* called the 'Prison is the Answer to Everything Bill', but were removed at the last minute. The Justice Minister announced that the government was not proceeding with Bill C-30. Free-speech advocates have

described that announcement as representing an important victory. Others, less trustful, were concerned this may be just a short-term delay. These concerns were substantiated as it appears that Bill C-30 has returned in the form of Bill C-13, the new anti-cyberbullying legislation, which grants new powers to the police about monitoring online activities without specifically being directed at cyberbullying. It could effectively allow telecom companies to handover information about their customers to the authorities without a warrant

The omnibus crime bill, the *Safe Streets and Communities Act*, S.C. 2012 c.1, was eventually passed on March 12, 2012 and received royal assent a day later.

What to leave at home

Do not bring your address book or any other document containing sensitive information. Despite the recent BCSC decision in *Vye* about cell phone searches, you may also not want to bring a cell phone until the law is settled and clarified by the SCC.

Do not bring any illegal drugs.

Do not bring anything that might be considered a weapon.

Bring one piece of photo identification and leave the rest at home. If you are arrested, the police may demand photo identification before they will release you.

Watch what you say

Remember, undercover police may be mingling with the crowd. Be careful about what you say. Do not try to expose an undercover police officer yourself by shouting and pointing at him or her; you may be charged with obstruction. Instead, find discreet ways to inform the people around you of potential undercover police presence.

If you are using cellphones at the demonstration, bear in mind that cellphone conversations are easily intercepted, whether it is legal to do so or not.

Voluntary dispersal

Always leave in groups following an event. This is the most vulnerable time for arrest. People are most often improperly targeted for arrests at the end of the demonstration.

One of the most objectionable police tactics used on occasion is ‘kettling’, or boxing in groups of protesters leaving them no exit route, ostensibly to ‘regain control of the streets’, but more probably to crush protests. That was one of the many criticized Toronto G20 and the Québec Education/Bill 78 protest police tactics, though perhaps one of those that drew the sharpest criticisms. In Montréal in June 2012, some 518 peaceful protesters were arrested, many of them illegally, using the kettling technique.

The two responses to kettling that have proven the most effective are these. First, assign protest marshals to operate separately from the largest protest group but be in constant contact with it. The task of these protest marshals is to keep track of the largest and most mobile of the police formations and to communicate with the protest group in advance of the arrival of the police. This enables the protesters to leave the area altogether or to move to another protest area.

The second and more controversial of the moves to counter kettling is to use cell phones, the internet, and other methods of communication to call additional protesters to the site of the kettling. As these additional protesters arrive in sufficient numbers, the result can often be the kettling of the police themselves between the original protest group and the newly arrived group of protesters.

Another classic police tactic is 'snatching' or using the snatch squad. It involves using a very large physically intimidating police officer, or several similar-sized police officers, or a flying wedge of police to enter into the crowd to apprehend leaders or demonstrators who are the most violent or taunting. Once the snatch is made the police ranks close around the demonstrator taken by them. The object is to make what they view as a legitimate arrest and/or at the same time intimidate the remaining demonstrators.

You may wish to consider leaving before the event ends to avoid some of these consequences.

Involuntary dispersal by riot police

If the police try to disperse the crowd, remember to leave in groups of about ten to fifteen, so that you have some witnesses and support.

The police may use a number of potentially harmful tactics to disperse the crowd. Efforts should be made to persuade the police to disclose what they plan to use for crowd control to the public. The following have been used in previous demonstrations:

Pepper spray: If you are pepper-sprayed, do not rub your eyes. Thoroughly rinse the affected areas with water. Do not panic; the burning sensation will pass in time. One of the unspoken features of pepper spray is that it blurs your vision, to the extent that you are not able to witness any police misconduct that may follow.

Tear gas: Comes in a variety of forms:

> **HC** – this is crowd-dispersing smoke. It is white smoke that is harmless and non-toxic. It is used for the psychological effect.
>
> **CN** – this is standard tear gas. It smells like apples. It causes a burning sensation in the eyes and skin and may irritate mucous membranes.
>
> **CS** – this is much stronger than CN, but has the same effects. It has a strong pepper-like smell and causes nausea and vomiting.

If you are sprayed with tear gas, try to do the following:

1. Do not panic. The effects will wear off in about ten to fifteen minutes. Panicking will only make it worse.

2. Go to a well-ventilated area, facing the wind with your eyes open. Do not rub your eyes.

3. Have a friend rinse your face and any exposed parts of your body with water. Adding baking soda to the water will improve its effectiveness as a liquid solution.

Stun guns: Also referred to by the brand name Taser. Police use stun guns that deliver a 50,000-volt shock that overwhelms the central nervous system. There have been at least eighteen deaths in Taser-related incidents across Canada in the past six years. This includes the tragic death of Robert Dziekanski at the hands of the RCMP at Vancouver Airport on October 14, 2007.

Sonic guns: The technical name for the sonic gun is "Long Range Acoustic Device" (LRAD). Much like the police press releases surrounding Tasers, we hear regular assurances that LRADs are really very simple devices used to communicate with large crowds in emergencies.

The parallel with Tasers is quite remarkable in other respects. Police reassurances that they did not provide special training for the use of Tasers because these are very simple piece of equipment are echoed in the current assurances that no special training is required for LRADs because all the operator needs to do is plug in a microphone and push a button.

A more accurate assessment of the LRAD's capabilities is that it could be used to disperse protesters with "intense beams of irritating—and possibly ear-damaging—sound" (Mark Hume, "Vancouver Police criticized over 'sonic gun'", *Globe & Mail*, November 11, 2009, page S2; see also Kim Pemberton, "New hailer is a loudspeaker, not a crowd-control device, police say," *Vancouver Sun*, November 11, 2009, page A5).

It is rather ironic that the use of the LRAD during the September 24 and 25, 2009 G20 demonstrations in Pittsburg is cited as an illustration of the weapon's success. Material posted on the website of the American Civil Liberty Union ("ACLU") referring to it as a "noise cannon" suggests the contrary: www.aclu.org/blog/free-speech/fighting-free-speech-g20-pittsburgh (accessed September 2011).

On November 18, 2009, the VPD announced they would disable the "tone" capability of the device for the time being, until they develop an appropriate policy for its use and their officers are trained in its proper use. They will also seek the approval of the Police Board before reversing that decision.

Social media censorship controls

It seems that one of the first comments by politicians after any demonstration or protest is to speculate on how things would improve if they had the power to impose social media censorship controls. The latest, of course, was Prime Minister Cameron speculating in August in 2011 about the adoption of such controls as a key feature of a new cyber doctrine for Britain.

Most critics suggest that such an attempt would backfire and jeopardize the legitimacy of the censoring government. They also point out that such a move would likely fuel additional unrest and make it more difficult for the authorities to gather intelligence and information. That was certainly the result from the internet censorship imposed by Hosni Mubarek in the last days of his regime in Egypt.

You also may wish to keep in mind that Twitter recently handed over hundreds of its micro-blogging posts in the form of tweets from Occupy Wall Street protesters to a New York criminal court judge. As well last May, in a bizarre move the Québec Education Minister described the use of tweets in the circumstances of the Bill 78 protests as an encouragement to protest and illegal.

Legal observers and patrols

First Nations have for many years organized patrols of their members to protect their protesters and demonstrators. This activity frequently include shadowing the police and monitoring their activities and conduct with cameras and video tape. One of the first modern examples of First Nations using patrols of their own members for demonstrations came during the American Indian Movement in the summer of 1968 in Minneapolis, initially to deal with police brutality against Native people in the Twin Cities area.

The British Columbia Civil Liberties Association (BCCLA) developed an excellent program for legal observers to act on its behalf during the Olympics. These volunteers focused on police, military and private security conduct to ensure accountability. They observed major protests and reported their observations back to the BCCLA's team of volunteer lawyers. In some cases, these lawyers may be able to go to Court to protect people's rights where complaints could not be resolved informally.

The legal observer program is similar to the very successful Gandhi-inspired "protective accompaniment" practice used in Mexico and Latin America by Peace Brigades International for almost thirty years now. It uses non-violent methods to help deter politically motivated violence and assert human rights in high conflict-areas (see www.pbicanada.org).

The American Civil Liberties Union (ACLU) has also made effective use of the legal observer program in a wide range of free speech campaigns, including the September 24 and 25, 2009 G20 protests in Pittsburgh.

The National Lawyers Guild has prepared a very detailed and helpful Legal Observer Manual: nlg.org/resources/legal-observing/ (accessed September 2011). The first recorded arrest of legal observers occurred on August 21, 2014 when four National Lawyers Guild – trained legal observers were arrested. They were attending a demonstration in Ferguson Missouri protesting the fatal police shooting of an unarmed black teenager, Michael Brown; and also protesting the growing militarization of the police in the US. Immediately prior to their arrest they had been photographing a police command station.

In 2013 ordinary citizens in Santiago, Chile have developed the observer system to a very sophisticated level to deal with police violence and abuses that reminds some of the worst of the Pinochet years in the 70s and 80s. Student demonstrations and occupations over education policy are once again a common site in the streets and schools of Santiago. The police have become progressively more violent using tear gas, chemical laced water cannons, batons wielded as clubs, and horses often used as 700 pound weapons.

Citizen observers are called "helmets" for the headwear used during the demonstrations. They are average citizens ranging in age from their teens to their 70s and covering all occupations. They are often accompanied by law students who provided legal advice to those being detained. They are often joined by members of activist trade unions. These are the key features of the procedures they have adopted:

- protesters often call them in advance.
- helmets speak to each other by phone or communicate by e-mail in advance of each demonstration, assigning tasks and locations.
- they wear the same colored hardhats, often just purchased from the local hardware store, with either the initials or the words *Human Rights* in Spanish printed on the front.
- they distribute flyers describing their role and describing the rights of the protesters, including their rights when they are detained;
- they hang large identity and organizational cards around their necks so that they are readily identifiable and distinct from the protesters on whose behalf they are present as observers.
- they are all trained in the legal basics of protests and demonstrations.
- they must not interfere in any of the protests.
- they must not shout at or coerce the police.
- they must always work in pairs.
- before starting their work at a particular demonstration they speak with the police officer in charge. They advise them they are not there to intervene, or to assist anyone being arrested. They are there simply as observers.
- they verbally tell the police when they are acting illegally; or when they are assaulting protesters.

- they photograph or film the event, paying particular attention to the names and ranks of any offending police officers, as well as license plates of police vehicles and names of commanding officers.
- they also keep track of the names of those arrested, often posting those names on Twitter as a way of notifying their family and friends of their arrest.
- they compile a report at the end of the demonstration and provide it to a variety of human rights organizations.
- They also volunteer to appear as witnesses in Court.

Are the police bothering you?

Prior contact with the police

It is generally worthwhile to have your organization make contact with the police and establish a relationship before you decide to engage in protest activity. But before you share information with them, decide exactly *how much* information you are prepared to share. Telling them the approximate number of demonstrators you are expecting and the location and/or route of a demonstration makes some sense. Organizations like the BCCLA also recommend appointing a group spokesperson for an event; this person can then be given a cell phone to encourage communication with the police.

There may be lessons learned from contact with the RCMP prior to and during the Olympics. A number of individuals otherwise inclined to make contact with the police prior to demonstrating had been discouraged from doing so by a presentation by the RCMP. In an appearance in July 2009 before Vancouver City Council, they appeared to characterize all demonstrators as engaging in "criminal protests" around the Olympics. They argued that characterization justified what have been described as "secret police" tactics—police visiting active opponents of the Olympics at their homes or workplaces, as well as accosting people on the street, to question them about their plans for the Olympics.

Fortunately, this approach has not been adopted in many other cases. There have been many situations in B.C. which the police, including the RCMP, have been respectful of citizens' right to peacefully protest unjust laws or decisions.

Identifying yourself

At common law, a citizen has no legal duty to identify him- or herself to the police. This right is waived if the police see a person committing an offence.

When the police stop a citizen who they have not seen committing an offence, but merely because they are suspicious of that person, the Courts have upheld the citizen's right to refuse to identify him - or herself. Such a refusal, where the citizen has a lawful excuse not to respond to the authority's demand to identity him - or herself, is not considered to

be obstruction.

The law obliges you to identify yourself to police in the following situations that are relevant to protests:

1. Absent some statutory provision to the contrary, a person must identify him - or herself to a police officer only if that police officer is in a position to arrest that person or to issue some form of summons.

2. You should identify yourself if you have been lawfully arrested. A refusal to identify yourself once you have been lawfully arrested can result in a conviction for obstructing a police officer.

3. If you are driving a motor vehicle, you must show your driver's licence. If you do not have your licence and the officer asks for your name and date of birth, you should provide it.

4. The *Trespass Act*, R.S.B.C. 1996, c. 462, makes it an offence to enter premises that is "enclosed land", enter premises after receiving notice from an occupier of the premises or an authorized person that entry is prohibited, or engage in an activity on the premises after you were given notice that the activity is prohibited. If you have been directed to leave the premises or not engage in an activity that is prohibited, it would be an offence to remain on the premises, or re-enter the premises, or resume the prohibited activity.

   There are a number of defences to these offences, such as receiving consent from the owner, having lawful authority or a colour of right. The *Act* requires you to provide your correct name and address if you are on premises or "enclosed land" and there are reasonable grounds for the occupier or a person authorized by the occupier to believe you have contravened the provisions of the *Act*.

5. According to some municipal bylaws, if you are found at night in a public place (e.g. a park), you are obliged to identify yourself or you may be charged with vagrancy.

It is extremely important to stay calm when you are asking the police if you are under arrest. If you yell, or draw attention to yourself to the extent that you cause a disturbance, the police may be able to arrest you for breach of the peace.

The Vancouver-based Pivot Legal Society produces a Rights Card that summarizes your rights and suggests a way of addressing a police officer in a manner designed to secure those rights. A copy can be downloaded from their website, www.pivotlegal.org, (accessed September 2011) or obtained as a folding card from Pivot. Over 100,000 have been distributed over the past few years.

Police Surveillance

You should also bear in mind that you are probably being videotaped on a fairly constant basis during any demonstration. You may also want to assume that your cellphone is being wire-tapped and recorded at all times. Under certain circumstances set out in section 184.4, police had the power to intercept private communications without Court authorization. That power applies in circumstances in which immediate action was called for to prevent serious harm. In *R.* v. *Sipes,* 2009 BCSC 285, the Court held that it was bound by the Court's decision in *R v. Tse,* 2008 BCSC 211 that section 184.4 was constitutionally invalid for breaching section 8 of the *Charter*. The Supreme Court of Canada recently ruled that section 184.4 of the *Criminal Code* violated section 8 of the *Charter* for failing to provide any oversight over the use of the power: *R. v. Tse*, 2012 SCC 16. However, the ruling suggests that unauthorized wiretaps in emergency situations could be constitutional if it is legislated correctly. In response to the *Tse* case, the government passed legislation in March 2013 amending section 184.4 which replicated the previous language but, among other changes, restricts the use of the power to police officers, instead of peace officers. It now provides that a police officer may intercept private communications without Court authorization in circumstances where immediate action was called for to prevent serious harm and authorization, with reasonable diligence, could not be obtained. To address the concerns raised in *Tse,* the new provision also requires that the person who was the object of the interception be notified within 90 days of the interception (with the possibility of an extension). The *Tse* case has been recently referred to by the SCC in *R. v. TELUS Communications Co*., 2013 SCC 16 about the interception of text messages.

If you are demonstrating at some special event such as the Olympics, expect to encounter an extraordinary number of police, armed forces and private security, as well as all forms of electronic surveillance. The chief of Olympic security had approximately 900 perimeter cameras, 7,000 police and 5,000 private security officers and 4,500 members of the armed forces.

Also, many will recall ICBC's assistance provided to the Vancouver Police in identifying Vancouver rioters subsequent to the Stanley Cup Riot of June 2011. Since February of 2011 the face recognition software used by ICBC provided by an American company, L-1 Identity Solutions, has enabled ICBC to scan photos from sources outside ICBC's own database of B.C. drivers' licences. The police have provided copies of photographs they took, photos from the surveillance cameras, and photos posted on public riot websites to ICBC for identification purposes. Many thousands of hours and hundreds of thousands of dollars' worth of police investigative time have been expended in this investigation. Following an investigation, B.C.'s Privacy Commissioner issued a report on February 16, 2012 stating that ICBC cannot use facial recognition software to identify Stanley Cup rioters without a warrant or Court order. The investigation report is available on the Office of the Information and Privacy Commissioner website (www.oipc.bc.ca/investigation-reports/1245).

We must expect and demand that similar resources will be expended in determining the identity of police officers who have committed criminal offenses and acted illegally during protests, as many did during the G 20 protest in Toronto in June 2011.

There has been much discussion recently about new computer surveillance technology called FinSpy, specifically engineered to avoid detection by standard antivirus software such as Kaspersky or Symantec. It is produced by a British company called Gamma Group, and is sold routinely to police for criminal investigations, but presumably is available for use during protests, or planning for protests. It can grab images from computer screens, record Skype chat, turn on cameras and microphones, and log keystrokes. Some have claimed that mobile versions of the spyware are available for all major mobile phones. There are published reports of the spyware being installed in the computers of protesters/activists, and being used to track their emails.

Do the police have to identify themselves?

In B.C., according to the *Police (Uniforms) Regulations* of the *Police Act* (B.C. Regulation 564/76, section 8), all uniformed officers have to wear a "badge, metal, plastic or cloth, bearing an identification number or name" above the right breast pocket of their uniform. Only executive and senior officers are not required to wear such identification.

Undercover police, of course, are also excluded from this regulation. If their identification is not clear, you should ask the officer to identify him or herself.

Police often illegally remove their identification during protests. If that happens, you may want to request their identification, and or photograph them.

It may be worth photographing, and writing down a description of any officer acting illegally or improperly. Try to remember or note obvious characteristics such as height, weight, hair colour and any distinguishing features, such as eyeglasses, scars, etc.

Racial profiling: the offence of *demonstrating while Muslim*

Professor Patricia Williams of Columbia University has described the psychological harm caused by racial profiling as the equivalent of "spirit murder," because that expression captures the psychological and emotional suffering not adequately addressed by the law cited by R. Bahdi, "No Exit: Racial Profiling and Canada's War Against Terrorism," in "Civil Disobedience, Civil Liberties and Civil Resistance: Law's Rule and Limits" (2003) 41 Osgoode Hall L.J. 293 at 311.

For its First Nations, Chinese, Japanese, Punjabi, South Asian, Black and Muslim residents, racial profiling has existed in B.C. throughout the province's history. Much the same, of course, can be said of other provinces in Canada. This remains true despite the recent and groundbreaking official recognition of racial profiling in our police and judicial system by both the Courts and political figures. During and after your demonstration, you may well be confronted with official statements denying the existence of racial profiling.

The leading case in Canada on the issue is *R.* v. *Brown* (2003), 64 O.R. (3d) 161, available on the Ontario Courts' website (www.ontariocourts.on.ca). The definition of racial profiling adopted by the Ontario Court of Appeal was advanced by one of the intervenors—the African Canadian Legal Clinic:

> Racial profiling is criminal profiling based on race. Racial or colour profiling refer to that phenomenon whereby certain criminal activity is attributed to an identified group in society on the basis of race or colour resulting in the targeting of individual members of that group. In this context, race is illegitimately used as a proxy for the criminality or general criminal propensity of an entire racial group (paragraph 7).

The Court emphasized that the attitude underlying racial profiling may be consciously or unconsciously held. The police officer need not be an overt racist. His or her conduct may be based on subconscious racial stereotyping (paragraph 8). The Court also set out the kinds of proof, primarily direct evidence, by which racial profiling can be proved (paragraphs 42 to 49).

The Court noted that the typical assumption that racial profiling is more likely to occur in an area where the population includes a large proportion of the targeted racial group was simply not accurate. Studies demonstrated that profiling was more likely to take place in areas where the victims looked out of place (paragraph 87).

The Court adopted this passage, parts of which had also been quoted with approval by L'Hereux-Dube J. and McLachlin J. in the Supreme Court of Canada at paragraph 46 of *R.* v. *S. (R.D),* [1997] 3 S.C.R. 484:

> Racism, and in particular anti-black racism, is a part of our community psyche. A significant segment of our community holds overtly racist views. A much larger segment subconsciously operates on the basis of negative racial stereotypes (paragraph 94).

One of the other misconceptions about racial stereotyping is that when you complain about it, you must establish that the decision or conduct was based on race. In fact, this is not the case. You need only establish that race was a factor in the decision or conduct, which can be established by indirect or circumstantial evidence (*Troy* v. *Kemmir Enterprises,* 2003 BCSC 1947).

Hijacking your protest

Virtually every peaceful non-violent civil disobedience event attracts other protesters who engage in violent activity directed towards the police or towards property. Oftentimes these protesters are masked; on occasion they are agent provocateurs or police officers themselves, as we saw in the Montebello illustration above. Often they mingle with peaceful protesters, in the hope that these peaceful protesters will inadvertently act as their cover or to make it seem as if their numbers are greater than they truly are.

They may initially attend the protest without masks, then mask for a period during which they engage in illegal and violent acts. They then remove their masks and blend in with the crowd.

This was the conduct engaged in and filmed in the G20 demonstration, which had been peaceful. A small number of black clad protesters – perhaps 100 – separated from the crowd and began torching police cars and then smashing windows. Then they remove their black outer clothing and blended in with the crowd of peaceful protesters. Some speculated that, as in the Montebello illustration, these violent demonstrators where agent provocateurs whose task it was to discredit the peaceful protesters and their objectives. The filmmaker – Joe Wenkoff - speculated that it was odd considering the 1.5 billion dollars spent on security, and the presence of approximately 20,000 police officers in the general area of the demonstration, that there wasn't a single police officer within blocks of the violence, which took place in one of the prime business areas in downtown Toronto and an area easily anticipated to be a magnet for this kind of violent demonstrator.

It goes without saying that the activities of these individuals frustrate and discredit the conduct of the peaceful non-violent protesters. The media often seizes upon the conduct of the violent few to characterize and discredit the entire protest movement.

There are a few basic steps that may minimize these results and protect you against this type of conduct.

The most obvious one is to physically move away from these individuals when they attempt to join your group of protesters.

It is also helpful to state clearly in a very loud voice that you disprove of the violence and are not part of it in any way.

We also strongly recommend the use of marshals around all four perimeters of your group of protesters. The function of the marshals is to ensure that other violent individuals cannot mingle with your particular group. They also perform a valuable function in keeping your group physically together.

The Deconstructionists Institute for Surreal Topology [DIST] – the originators of the teddy bear catapult – developed this list of options for dealing with the bloc at the FTAA protest in Québec city and 2001:

- forming the Gary Coleman bloc – continuously walking up to the police and demanding "Whatcha talkin about, Willis";
- the bloc parents; and
- the fuchsia bloc - whose role it was to dress in tights and pink tutus, and tease them mercilessly.

Detention

Canadians expect to be able to walk freely without being arbitrarily detained. These expectations are confirmed through section 9 of the Canadian *Charter of Rights and Freedoms*, which sets out that "Everyone has the right not to be arbitrarily detained or imprisoned." If you are detained by police for investigative purposes, the police must advise you, in clear and simple language, of the reasons for the detention.

The power to detain cannot be exercised on the basis of a hunch or intuition gained by experience, nor can it become a de facto arrest. Police officers do not have carte blanche to detain.

As a result of recent rulings by the Supreme Court of Canada, police officers may briefly detain an individual for investigative purposes. They may do so only if there are reasonable grounds to suspect, in all the circumstances, that the individual is connected to a particular crime and that such detention is necessary. At a minimum, they must advise you clearly and simply of the reason for your arrest: *R.* v. *Mann*, 2004 SCC 52.

The detention must be conducted in a reasonable manner. Investigative detention should be brief. There is no obligation on the detained person to answer questions.

Arrest

Individuals who engage in acts of civil disobedience should be prepared for arrest and expect to be arrested. You should probably not anticipate that the arrest will only follow some illegal conduct. Many of us for example saw the YouTube clip from the peaceful G20 demonstrations of the young woman blowing bubbles at the front of the police line. While one officer smiled and indeed was understandably mildly entertained by blowing bubbles as an act of protest, another officer repeatedly threatened the person with an assault charge. A few moments later she was shown on the clip being handcuffed, arrested, and led into the police wagon.

Arrest with a warrant

A warrant for arrest is a piece of paper signed by a judge with your name and the alleged offence you have committed written on it. You may ask the police officer to show it to you - if you do, the police officer is required to show you the warrant.

Arrest without a warrant

The *Criminal Code* (section 495) states that you can only be arrested without a warrant if:

1. a police officer believes on reasonable grounds that you have committed or are about to commit an indictable offence;
2. a police officer sees you committing a criminal offence; or

3. a police officer has reasonable grounds to believe that there is an outstanding warrant for your arrest (e.g. for unpaid tickets).

An arrest without a warrant is only lawful if the type of information which would have been contained in the warrant is conveyed to you orally. The alleged offence should be conveyed before the officer questions and obtains a response from the person under arrest or detention. These basic and important values are included in section 10(a) of the *Charter of Rights and Freedom*, which states that "Everyone has the right on arrest or detention to be informed promptly of the reasons therefore…". The purpose of communicating this information is to enable the person under arrest or detention to immediately undertake his or her defence, including a decision as to what response, if any, to make to the accusation.

You may not wish to speak to anyone regarding your arrest

Many demonstrators have a rule that they do not say anything to the police. However, once arrested you are required to provide the police with your first and last names, complete address, and your date of birth.

You have a right to remain silent. Immediately ask to speak to a lawyer. If you cannot afford one, get legal aid or speak to the appointed Duty Counsel whose job it is to advise you of your rights. Under no circumstances should you give up your right to speak to a lawyer. There is no such thing as "only one phone call." You have a right to take appropriate steps to contact legal counsel.

You may not wish to speak to anyone, other than a lawyer, regarding the circumstances of your arrest. The police may try to engage you in conversation by being friendly and concerned, or may try to use the "good cop/bad cop" routine. They may make promises that are not binding. They may tell you lies to intimidate you. Do not discuss your arrest with a person in your cell; that person could be an undercover police officer.

Just stay calm. Continue to request to speak to a lawyer. The police can only hold you for 24 hours before taking you in front of a judge.

Arrested for what?

If you are arrested, the police must tell you what they are charging you with. The right to be promptly advised of the reason for one's detention is embodied in section 10(a) of the *Charter of Rights and Freedoms*. The right to be informed of the true grounds for the arrest or detention is also firmly rooted in the common law, which requires that the detainee be informed in sufficient detail so that he or she "knows in substance the reason why it is claimed that this restraint should be imposed." The right is founded on the notion that a person is not obliged to submit to an arrest if they do not know the reasons for it.

Ask the police if you are under arrest and if so, what the charge is

B.C. Crown Counsel's policy on civil disobedience is referenced in *Slocan Forest Products Ltd.* v. *John Doe,* [2000] BCJ No. 1592 at para 24:

> On occasion those involved in public demonstrations come into conflict with the law and obstruct or interfere with the rights of others. The use of criminal sanctions in these situations is generally not appropriate. Charges may be considered where the circumstances described in #7 below exist.
>
> When Crown Counsel are consulted, they should encourage the police to exercise discretion in selecting an appropriate response for each factual situation while ensuring that the general public is not unduly inconvenienced.
>
> The following guidelines apply to civil disobedience situations:
>
> > Where the civil disobedience affects only a selected group of individuals, those individuals should generally be encouraged to apply for a civil injunction to stop the disobedience;
> >
> > In the event the civil disobedience continues after an injunction is granted the party obtaining the injunction should be encouraged to proceed with civil contempt proceedings in the Court in which the injunction was obtained.
> >
> > The Attorney General may intervene in the contempt proceedings where the contempt becomes criminal in nature. This usually will occur only where the conduct of disobeying the Court order tends to bring the administration of justice into public ridicule or scorn or the disobedience otherwise interferes with the proper administration of justice.
> >
> > In appropriate cases, where a large sector of the public is affected by the demonstrators, and the demonstration affects public property such as highways or waterways, the Attorney General, acting for the Ministry affected, may bring an application for an injunction to cease the disobedience. Any subsequent contempt proceedings would be pursued by the Attorney General.
> >
> > Civil contempt proceedings are more expedient and more effective than lengthy criminal proceedings under section 127 of the Criminal Code. As a result prosecutions under section 127 for the disobeying of an injunction are discouraged.
> >
> > In cases where there are reasonable grounds to believe that the injunctive relief would either not be granted or that it would be ineffective, consideration should be given to charges under provincial or federal statutes rather than the Criminal Code. Where a provincial or federal statute or regulation applies to the facts of the case, it is preferred that action be taken under such legislation or regulation (e.g., section 6 and 14 of the Highways Act).
> >
> > Charges under the Criminal Code against demonstrators may be

> appropriate in the following situations:
>
> > conduct involving violence resulting in physical harm, which is not insignificant, or consisting of assaults with a reasonable apprehension of violence or physical injury.
> >
> > conduct causing property damage, which is not insignificant, or where there is property damage and there is a reasonable apprehension of further serious property damage.
> >
> > conduct involving an assault on a peace officer, which is not insignificant.
> >
> > conduct where the public interest clearly requires a prosecution.
>
> When the conduct described in (a), (b), (c) or (d) exists and criminal charges result, other Criminal Code charges such as mischief (s. 430(1)(c) or (d)) or obstruction of a highway (s. 432(1)(g)) may also be appropriate.
>
> Crown Counsel should be aware that police have the power of arrest under provincial statutes to prevent the continuation of an offence (*Moore* v. *The Queen,* (1978) 43 CCC (2d) 83). There also exists under the Criminal Code and under the common law the power to arrest for breach of the peace without the necessity of criminal charges as a consequence.
>
> All proposed prosecutions in this category, or civil injunctions that come to the attention of Crown Counsel who, in turn, will consult with the Director of Legal Services . . . about the appropriate action to be taken pursuant to these guidelines.

In *Slocan Forest Products Ltd., supra*, the B.C. Supreme Court, although disapproving of "police neutrality in the instance of genuine civil disobedience", made the following comment with respect to labour disputes:

> 46 In the context of an ordinary civil dispute police restraint and the maintenance of police neutrality may be very important. The police should not generally be seen to take sides in anything that is essentially a civil dispute.

See *Canada Post Corp.* v. *Canadian Union of Postal Workers* (1991), 61 B.C.L.R. (2d) 120, for a helpful discussion of such considerations.

The Criminal Justice Branch, Ministry of Attorney General, Crown Counsel Policy Manual on Civil Disobedience, updated October 2, 2009 is available at:

The most common charges

Mischief

This offence is extremely broad in its scope and includes destroying, damaging or rendering inoperative property, or preventing, or interfering with its lawful use.

The key is not to destroy, damage, or render inoperative property, or prevent or interfere with its lawful use.

In *R.* v. *Mayer,* [1994] Y.J. No. 142, three individuals sat silently chained together to a railing in the legislature in the Yukon. The Court stated that their actions did not constitute mischief. Actions constituting slight inconvenience that do not interfere or interrupt the lawful use or enjoyment of property do not amount to criminal mischief.

In *R.* v. *McBain,* [1992] A.J. No. 515 (Prov. Ct.), the mere presence of protesters sitting in the public waiting room of a minister's office during regular business hours was not considered to be mischief. However, it became mischief when the protestors refused to leave when the office was closing for the evening.

Creating a human barricade so that no person can pass is mischief.

Protesters chaining themselves to the anchor chain of a U.S. aircraft carrier were found to be interfering with the potential use of the ship's anchor and were convicted of mischief.

Electronic civil disobedience and mischief

Electronic civil disobedience often constitutes the offence of mischief. Some protesters view electronic media as a new space within society that can be used in much the same fashion as you would a city council, chamber, legislative grounds or city street.

One of the most popular of such acts of civil disobedience in past years involved the use of a software referred to as "FloodNet" which invited mass participation in what came to be described as virtual sit-ins against the Mexican government during the Chiapas uprising in southern Mexico in 1994.

Another group called X-Ploit hacked the website of Mexico's finance ministry and replaced it with the face of the Mexican revolutionary hero Emiliano Zapata, in sympathy with the Zapatista rebellion in Chiapas.

Other protesters staged an electronic blockade of Mexican embassies and consulates in the United States and Canada, in solidarity with the teachers and protesters of the State of Oaxaca.

Electronic civil disobedience is often used in combination with street demonstrations, as it was during the World Trade Organization demonstrations in Seattle. The disadvantage

of electronic civil disobedience, of course, is its lack of visibility. This is perhaps more than compensated for by its reach in terms of numbers and geography.

In addition to the offence of mischief, this type of civil disobedience can also involve violation of copyright and trademark laws, with civil rather than criminal consequences.

Until recent months those engaging in this type of electronic civil disobedience have felt relatively invulnerable because of their technical skills and ease with which they were able to hide their tracks. That seems no longer to be the case.

Hacking has gained in popularity as a political tool in recent months as a result of a group of global hackers knows as "Anonymous" recently took control of the Syrian Ministry of Defence website and substituted messages of support for the Syrian protesters. In addition, that same group took over Murdoch's *News of the World* website temporarily, again, in protest against Murdoch's history of hacking.

In 2012, some twenty-one people were arrested in the U.S., England and Holland in connection with the denial of service attacks on Paypal in protests against the decision by that company to outlaw contributions through Paypal to Julian Assange's Wikileaks Fundraising Campaign.

Denial of service attacks can incapacitate a website with overwhelming traffic.

Assault

An assault consists of <u>any</u> use of force against another person directly (e.g. with your fists) or indirectly (e.g. throwing a pie at the prime minister). Assault includes an attempt or threat to use force against another person if that person has reason to believe that the attempt or threat could be carried out. The force or attempted force must be applied in an intentional manner. An assault can consist of a very minor force. However, where the force applied is as a result of carelessness or reflex action, no assault is committed (see *R.* v. *Drury,* [2004] B.C.J. No. 1317 (Prov. Ct.), where several protesters were charged and convicted of assaulting police officers during a demonstration against the Campbell government's educational policies).

Assault during an attempt to resist arrest is more serious. It includes assaulting any public officer or peace officer engaged in the execution of his or her duty, or of assaulting a person with intent to resist or prevent the lawful arrest or detention of anyone, including you. The *B.C. Crown Counsel Policy Manual* suggests this type of conduct will invariably result in charges being laid.

It is not an offence to resist an unlawful arrest. However, the right to resist an unlawful arrest belongs solely to the person arrested; it does not extend to a friend of the person arrested.

Obstructing a police officer

Anyone who resists or willfully obstructs a police officer in the execution of his or her duty or any person lawfully acting in aid of such an officer may be guilty of an offence.

The elements of the offence of obstruction which must be proven are as follows:

- that there was an obstruction of a police officer;

- that the obstruction affected the police officer in the execution of a duty that the police officer was then executing; and

- that the person obstructing did so willfully.

The law recognizes a distinction between a peace officer being "engaged in the execution of his duty" and simply being on duty, in the sense that he or she is "at work". Where the activities of a police officer are unlawful, even though undertaken with the specific intent of discharging one or more of the general duties of a police officer, they will not amount to a "duty". What amounts to a "duty" will depend, in each case, on the nature of the police officer's activities at the time of the obstruction.

To trigger a charge of obstructing a police officer in the execution of his or her duty requires some knowledge on the part of the person to be charged that a threshold has been crossed and the police officer is now in a position to arrest or issue a summons or appearance notice.

A person asking why his friend is being arrested is not obstructing a police officer. If the actions of police may be considered to be grossly excessive under the circumstances, verbal protestations by an arrested person or by someone acting on their behalf may be considered fully justified, and thus not obstruction.

It is also not an obstruction for a citizen to ask in a persistent manner the reason for an arrest. The exercise of this right cannot be converted into obstruction unless it is intemperate, unduly persistent and irrelevant, or made in an unreasonable manner.

However, if a person physically grabs hold of a police officer while the officer is arresting his or her friend, this may lead to a conviction for obstruction.

The *B.C. Crown Counsel Policy Manual* suggests this type of conduct will also invariably result in charges being laid.

Causing a disturbance

Although everyone has the right of freedom to express themselves under section 2(b) of the *Charter of Rights and Freedoms*, there is also a collective interest in peace and tranquility in a public place. The rights of the individual must be balanced against those

of the public. The issue is where to draw the line. Some disruption of the peace and tranquility of a public place must be tolerated.

The offence of causing a disturbance can be committed in a variety of ways. The most common are by fighting, screaming, shouting, swearing, singing or using insulting or obscene language, impeding or molesting another person, or loitering in a public place and in any way obstructing persons there.

The disturbance is of the public's use of a public place and not the disturbance of an individual's mind. The intensity of the activity and its effect on the degree and nature of the peace that is expected to prevail at the particular time must be considered. For a conviction to take place, the Court must find that there is an externally manifested disturbance of the public peace which interferes with the ordinary and customary use of a public place.

Using obscene language toward police officers or your neighbour where there is no evidence that anyone else heard the obscene language will not constitute a disturbance.

Speaking normally through an electronic megaphone can constitute causing a disturbance.

Union members carrying placards and shouting insulting language outside the cottage of the company president were not found to be causing a disturbance.

A person singing "Na na na na, na na na na, Hey Hey Hey Goodbye" in the public gallery of the legislative assembly was found not guilty of causing disturbance because the legislative assembly was in a state of disarray at that moment. However, if the accused had done his singing during a quiet moment of voting or almost any other "normal" period of activity on the floor, or even in an empty assembly, his conduct would very likely have been considered a disturbance.

In *R.* v. *Clarke,* [2002] N.J. No. 293 (Prov. Ct.), a group of protesters were found guilty of causing a disturbance for chanting directly outside the doors of the council chamber in city hall during a council meeting. Members of the city council were distracted and the meeting was temporarily adjourned. The protesters did not have their section 2(b) *Charter* rights violated because their right of free expression in public buildings can be limited by the legitimate purpose of the building.

In *R.* v. *Drury,* [2004] B.C.J. No. 1317 (Prov. Ct.), protesters were demonstrating against the education policies of the Campbell government. The Court held that the shouting, swearing or use of obscene language by the defendants was incidental to a disturbance that had other causes and in which other events were much more prominent. Only if the activities of the defendants materially contributed to the disturbance, lent impetus to it or gave it momentum, would they have been found guilty of causing disturbance.

Unlawful assembly

Freedom of assembly is a fundamental freedom, a value whose constitutional protection is not lost just because those taking part in an assembly have become loud and angry.

An offence of unlawful assembly requires that three or more persons be involved and that they assemble in a way, or behave in a way, that causes others in the neighbourhood to be afraid that the assembly will either disturb the peace tumultuously or provoke others to do so. Tumultuous means chaotic, disorderly, clamorous or uproarious. It means more than boisterous, noisy or disorderly conduct. Tumultuous must have an air or atmosphere of force or violence, either actual or constructive.

The fears of others must be based on reasonable grounds. An assembly can start out lawful, but later become unlawful.

A riot is an unlawful assembly. To prove a riot, it is essential that there be actual or threatened force and violence, in addition to public disorder, confusion and uproar. The accused must be shown to have intended to be a participant and to have taken part in the disturbance (intention can be inferred through being reckless).

What differentiates a riot from an unlawful assembly is that a riot entails an actual, tumultuous disturbance of the peace, whereas an unlawful assembly requires only the reasonable fear that such a disturbance will erupt.

In *R.* v. *Drury,* [2004] B.C.J. No. 1317 (Prov. Ct.), persons who had come to peacefully protest government policies were upstaged by supervening events. While it might be suspected that the presence of onlookers and peaceful protesters was encouraging to other people with objectives other than a peaceful protest, this does not constitute an unlawful assembly. To be an unlawful assembly, persons must not only have a common purpose, but must also conduct themselves in a prohibited way with the intent to carry out the common purpose.

Searches

There is an overall need to balance the competing interests of an individual's reasonable expectation of privacy with the interests of public safety. With this in mind, there are two main police powers of search: search incidental to an investigative detention and search incidental to arrest.

Search incidental to an investigative detention

Police officers may detain an individual for investigative purposes if they have reasonable grounds to suspect in all the circumstances that the individual is connected to a particular crime and that such detention is necessary.

Where a police officer has reasonable grounds to believe that his or her safety or that of others is at risk, the officer may engage in a protective pat-down search. The officer's decision to search must be reasonably necessary in light of the totality of the circumstances. It cannot be justified on the basis of a vague or non-existent concern for safety, nor can the search be premised upon hunches or mere intuition. The search must be grounded in objectively discernible facts to prevent "fishing expeditions" on the basis of irrelevant or discriminatory factors.

Both the detention and the pat-down search must be conducted in a reasonable manner, be brief and impose no obligation on the detained person to answer questions.

The "reasonable grounds" concept is vague and open to interpretation, but it is a lower threshold than "reasonable and probable grounds".

If you feel that the police are abusing their power, let them know that you do not agree with them searching you. Again, try to remember every detail you can, such as the name or badge number of the officer conducting the search and of any other officers present. This will make it easier to file a complaint or commence legal proceedings against the police if you later choose to do so.

Search incidental to arrest

In the context of a lawful arrest without a warrant, police officers are empowered to search for weapons and to preserve evidence.

If you are arrested, the police can search you, but they cannot arrest you just for the purpose of searching you. Police will most often search you after arrest to make sure that you do not pose a danger to them or yourself. They will also search you to find evidence that can be used against you.

There must be a valid purpose for the search, incidental to the arrest. A search is not to be used to intimidate, ridicule, or pressure a person into making admissions.

Types of searches

There are three types of searches:

1. summary search, a general "pat down" or "frisking" over clothing and sometimes inside pockets;

2. strip search, which generally involves the removal of all clothing to permit a visual inspection of a person's private areas; and

3. a body cavity search involving a physical inspection of the genital and/or anal regions.

Generally, you can only be searched by an officer of the same sex; however, there are a few exceptions. It is more likely that a female officer will be allowed to search a male prisoner than that a male officer will be allowed to search a female prisoner.

In *R.* v. *Golden,* [2001] 3 S.C.R. 679, the Supreme Court of Canada issued tough new rules limiting a police officer's ability to conduct a strip search. Such searches can no longer be carried out as a matter of routine policy, but only where there are reasonable and probable grounds for them. Also see *Vancouver (City) v. Ward*, 2010 SCC 27 in which the claimant sued a number of parties, including the City and the Province for violation of his Charter rights from a strip search.

For example, if the officer in charge at the Vancouver jail has not yet decided if an arrested protester will or will not be removed to the general population, the protester should not be strip-searched; if he was, it would be an unreasonable search in violation of section 8 of the *Charter.*

It is unreasonable to strip-search a person being detained for a short period of time pursuant to an arrest for breach of the peace.

For more information on your rights regarding arrest, read the "Arrest Handbook" and the "Arrest Pocketbook," available from the BCCLA's website, http://bccla.org/our_work/the-arrest-pocketbook-a-guide-to-your-rights/ and http://bccla.org/our_work/the-arrest-handbook-a-guide-to-your-rights/ (accessed April 2014).

Other Issues

Consequences of having a criminal record

There is a difference between a finding of guilt and a conviction. If a person pleads guilty or is found guilty of a criminal offence, the Court determines whether or not to enter a conviction. Instead of entering a conviction, the Court can grant an absolute or conditional discharge.

If a person has been granted an absolute or conditional discharge, they have not been "convicted" of a criminal offence. If you have been granted an absolute or conditional discharge, you should ask the local police and the RCMP to have your records destroyed.

There are numerous social and economic consequences of having a criminal record. These include possible limitations on job prospects, potential deportation from Canada if you are a visitor or even a landed immigrant, difficulty entering foreign countries, and the social stigma of having a record. For example, the U.S. *Immigration and Nationality Act* make it illegal to enter the United States if you have a criminal record unless you have an entry waiver. Such a waiver takes months to process and, if you enlist the assistance of an agency to help with the process, can cost close to $1,000 (CDN). Entry waivers are only valid for one year.

Complaints against the police

If you have a complaint concerning a municipal police detachment in British Columbia, you can file a complaint with the Office of the Police Complaint Commissioner, British Columbia. You can access the complaint form and information at www.opcc.bc.ca; accessed April 2014.

The Office of the Police Complaint Commissioner, British Columbia will assist you in filling out the complaint form. The complaint will be investigated and you will be kept informed throughout the process.

If your complaint is against the RCMP, the complaint must be made through the Commission for Public Complaints Against the RCMP, at www.cpc-cpp.gc.ca; accessed April 2014.

False imprisonment / false arrest

A civil action for false imprisonment, sometimes called false arrest, can be filed when a person is improperly detained or arrested. It is possible to file such a claim without the assistance of a lawyer in Small Claims Court. Pivot Legal Society will provide advice on how to sue the police for misconduct in Small Claims Court - contact lawyer@pivotlegal.com or 604-255-9700, ext. 132.

In *Sandison* v. *Rybiak et al.* (1974), 1 O.R. (2d) 74 (H.C.J.), police officers were found liable for illegally arresting a plaintiff for obstruction when all the plaintiff had done was ask the officers why they were arresting a third person.

Legal action against the police is much more common in the U.S. than in Canada. Although, the frequency here in British Columbia, and in Ontario is certainly increasing. One recent example in September 2012 from the U.S. arising from the unwarranted use of pepper spray by the police during the occupy protests at UC-Davis resulted in a settlement of approximately $1 million – $30,000 to each of 21 plaintiffs.

Interception of private communication

In *R. v. Collins,* [1987] 1 SCR 265, the Supreme Court of Canada decided that under Section 8 of the *Charter* prohibiting unreasonable search or seizure, a reasonable search is one authorized by a reasonable law and conducted in a reasonable manner. Generally this means that the interception of a private communication must first be authorized by a Judge pursuant to Section 186(1) of the *Criminal Code*.

A couple of ago, the Ontario Court of Appeal reversed a Trial Court decision and found that such an authorization permitted the interception of text messages, as well as oral communications: *R. v. Doroslovac,* 2012 ONCA 680 (leave to appeal to SCC refused). Some commentators have described that as a step backward in the Section 8 jurisprudence.

The Supreme Court of Canada in *R. v. TELUS Communications Co*., 2013 SCC 16 ruled that text messages should receive the same protection to which private communications are entitled under the *Criminal Code.* However, the Court was divided on the type of warrant required for police to gain access to a text message. The Court ruled that the police must apply for an authorization to intercept private communications (to wiretap) in order to access future text messages.

Malicious prosecution

If a person believes that he or she has been wrongly prosecuted by someone else, the tort of malicious prosecution can be used. In *Miazga* v. *Kvello Estate,* [2009] SCC 51 at paragraph 3, the Supreme Court of Canada set out the following four elements which the plaintiff has to prove in order to succeed in an action for malicious prosecution:

a) the proceedings must have been initiated by the defendant;

b) the proceedings must have terminated in favour of the plaintiff;

c) the proceedings must have been undertaken without reasonable and probable cause; and

d) the proceedings must have been motivated by malice, or a primary purpose other than that of carrying the law into effect.

Police officers have a duty to engage in a thorough investigation and satisfy themselves that they had reasonable and probable cause to continue a prosecution. Failure of a police officer to conduct an adequate investigation can constitute malice and lead to a finding of malicious prosecution.

Injunctions

An injunction is a legal remedy granted by a Court to prevent interference with the legal rights of a person, a company or the government.

Injunctions are a powerful tool used by people engaged in civil disobedience, but also by companies or governments to stop protests.

The fundamental question the Court asks when it responds to a request for an injunction is whether the injunction is just and equitable in all the circumstances of the case.

The Supreme Court of Canada, in *RJR-MacDonald Inc.,* v. *Canada (Attorney General*), [1994] 1 S.C.R. 311 at paragraph 43, sets out what the applicant must prove in order to be granted an injunction:

> First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried.

> Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused.
>
> Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits. It may be helpful to consider each aspect of the test and then apply it to the facts presented in these cases.

In *British Columbia (Attorney General)* v. *Sager,* [2004] B.C.J. No. 1114 (S.C.), the court held that an injunction is a powerful remedy which may transform a dispute between a citizen and the government into a dispute between the citizen and the Court, and is thus not to be used as a first-choice remedy except in extraordinary circumstances. The government was denied an injunction against some local citizens who were opposed to the construction of a parking lot next to Cathedral Grove Park on Vancouver Island.

The Ontario Court of Appeal has recently emphasized the complex nature of the use of injunctions in civil disobedience cases involving aboriginal and treaty rights. It is not enough to focus on the need to enforce the law but weight must also be given to the fact that aboriginal and treaty rights are in play, as are the rights to engage in lawful protests. The court held it must also consider private property issues, public safety, and finally the need to reconcile aboriginal and non-aboriginal interests through negotiations rather than through the law.

Contempt of Court

Contempt of court is conduct that is in deliberate or willful disobedience of a court order and thus offends the Court. In recent years, the government and private companies have frequently been granted injunctions against potential demonstrators. Because an injunction is an order of the Court, any person who violates an injunction can be charged with contempt.

There is a difference between civil and criminal contempt. In *Canada Post Corp.* v. *Canadian Union of Postal Workers,* [1991] B.C.J. No. 3444 (B.C.S.C.), the Court stated the difference, at page 6:

> The court must consider whether the conduct in question was so defiant of the rule of law and so designed to interfere with the proper administration of justice that it would tend to bring the administration of justice into scorn. If there is a reasonable doubt on that issue, the conduct should be characterized as civil contempt.

In *MacMillan Bloedel Ltd.* v. *Simpson,* [1994] B.C.J. No. 1913 (B.C.S.C.) at paragraph 11, the Court wrote:

> In order to establish a person is in criminal contempt of court, Crown counsel must prove beyond a reasonable doubt four elements….
>
> 1. Did the Court issue an injunction [Order] prohibiting certain acts?

2. Did the particular accused know about the terms of the injunction [Order]? Knowledge includes willful ignorance. Personal service of the copy of order is not required. It is sufficient if the evidence shows the respondent had knowledge of it.

3. Did the accused do one or more acts amounting to disobedience of one or more of the terms of the injunction? Disobedience must be proved to be "deliberate" or "willful".

4. Did the conduct of the accused amount to a public defiance or violation of the order so as to make the contempt criminal as opposed to civil?

For civil contempt, the first three elements above need to be proved; for criminal contempt, the fourth element has to be proved as well.

The punishment is generally the same regardless if a person is convicted of civil or criminal contempt. Fines can run from several hundred to a few thousand dollars, or a term of imprisonment may be imposed.

In *Hayes Forest Services Ltd.* v. *Forest Action Network,* [2003] B.C.J. No. 2184 (S.C.), aff'd [2006] B.C.J. No. 672 (C.A.), leave to appeal to the Supreme Court of Canada refused [2006] S.C.C.A. No. 227, a protester disobeyed an injunction not to interfere with the logging rights of the company. The Court ruled that the protester's disobedience of the Court order was open, public, continuous and flagrant. She was found in criminal contempt of Court and sentenced to six months' imprisonment.

Interference with contractual relations

Protests often disrupt the lives of working people. Protesters sometimes unwittingly interfere with the employment contracts of others.

The decision in the case of *Potter* v. *Rowe,* [1990] B.C.J. No. 2912 (S.C.) sets out five general requirements for a successful claim of interference with contractual relations:

1. the existence of a valid and enforceable contract;
2. awareness by the defendants of the existence of a contract;
3. breach of the contract procured by the defendants;
4. wrongful interference; and
5. damage suffered by the plaintiff.

In *Verchere* v. *Greenpeace,* [2003] B.C.J. No. 988 (S.C.); aff'd [2004] B.C.J. No. 864 (C.A.), members of Greenpeace chained themselves to logging equipment to protest logging on Roderick Island in British Columbia. As a result of the protest, the loggers could not do any work and were not paid. The loggers sued Greenpeace for interference with contractual relations and claimed recovery from Greenpeace for their lost wages. Greenpeace was found liable and had to pay the loggers several thousand dollars in lost wages.

It should be noted here that such a case may be less likely to reach the Courts today. There have been a number of recent cases in which environmental activists such as the Western Canada Wilderness Committee have picketed alongside trade unionists over job security issues.

Persons, corporations, and governments are increasingly turning to lawsuits as a way of recovering extraordinary expenditures and economic loss generally, and deterring future acts of civil disobedience. The Municipality of Langford, outside of Victoria, announced plans in 2008 to sue a group of environmental protesters to recover the costs of their interference in the construction of a new Trans-Canada Highway interchange designed to provide secondary access to the Bear Mountain Resort Development. The protesters' actions prompted a huge RCMP operation involving fifty to sixty officers. The protesters had climbed trees and remained there, interfering with equipment use and resulting in employees being sent home and a halt in construction work. One protester, Zoe Blunt, responded humorously by noting that unlike the Mayor of Langford's billionaire friends, the only asset she had was her five-year old computer. She continued:

> We would like to see all the evidence of all the money that was spent and all the plans that were made and everything that had to do with the transfer of land; and all of their own assets and all of the interests they have in Bear Mountain and other resorts and other land and properties. We would like to get that all on the table (*Vancouver Sun,* February 26, 2008, page 3).

Often the threat of a McLibel-type trial is enough to deter lawsuits against protesters. As many of you may recall, the so-called McLibel trial was the infamous court case in London, England, between the McDonald's fast food company and two unemployed individual protesters who represented themselves. The two-and-a-half year case established a British record for the longest trial, despite the defendants being denied legal aid and the right to a jury.

The U.K. Court's decision was devastating for McDonald's. It found that the company had exploited children with their advertising, produced misleading advertising, was culpably responsible for cruelty to animals, was antipathetic to unionization and paid its workers low wages. Even though the two defendants were required to pay £60,000 in damages, which they could not afford and, in any event, refused to pay, the Court of Appeal made additional findings that it was fair comment to say that the McDonald's employees worldwide do badly in terms of paying conditions and that, "if one eats enough McDonald's food, one's diet may well become high in fat with a very real risk of heart disease."

The two individual defendants appealed the case to the European Court of Human Rights and succeeded in obtaining a ruling that expanded the public's right to criticize multi-nationals and stated that British libel laws were oppressive and unfair; that the defendants were denied a fair trial; and that the case had breached the right to freedom of expression, as well as a fair trial (see www.mcspotlight.org).

Picketing and leafleting

As a result of a Supreme Court of Canada decision in *Pepsi-Cola Canada Beverages,* [2002], 1 S.C.R. 156, peaceful protesting and picketing is now permitted as part of our *Charter* rights of freedom of expression. As stated by the Court:

> The core values which free expression promotes include self-fulfillment, participation in social and political decision-making, and the communal exchange of ideas. Free speech protects human dignity and the right to think and reflect freely on one's circumstances and condition. It allows a person to speak not only for the sake of expression itself, but also to advocate change, attempting to persuade others in the hope of improving one's life and perhaps the wider social, political, and economic environment.

However, picketing which breaches the criminal law or which involves civil torts such as trespass, nuisance, intimidation, interference with contractual relations or defamation is impermissible regardless of where it occurs.

In *Compass Group Canada (Heath Services) Ltd.* v. *Hospital Employees' Union,* [2004] B.C.J. No. 57 (S.C.), union members protesting the Campbell government's health care policies picketed a hotel where a "contracting out" job fair was being held. In setting aside an *ex parte* injunction to restrain the picketing, the Court stated that there was not a strong *prima facie* case that the business of the hotel was being unreasonably interfered with. The pickets were not impeding access to the hotel, and the picketers were not threatening hotel patrons or acting in an unruly or coercive manner. Picketing in and of itself is not wrongful.

Similarly, leafleting with accurate, non-defamatory information is an exercise of our freedom of expression rights. In a government building, an individual is free to communicate in such a place if the form of expression used is compatible with the principal function or intended purpose of the place and does not deprive citizens as a whole of the effective operation of government services and undertakings. For example, distributing pamphlets and talking to members of the public in an airport is in no way incompatible with the primary function of the airport, which is to accommodate the needs of the travelling public.

Protests on Water

I'm indebted to Dan Bertrand, a Vancouver lawyer for his excellent work on this section. There is a lengthy tradition within the First nations Community of protest on water. At the time of writing, supporters of the Penelakut First Nation were using canoe and kayak blockades in order to prevent ships carrying construction crews and materials from disembarking at Grace Islet where a home was being constructed around and perhaps over a First Nations burial ground.

In Canada, the forcible boarding and seizing of vessels is a serious offence - piracy or a piratical act. Offences involving intentionally damaging or endangering ships, cargo, persons

on board are amongst the most serious in the *Criminal Code* and are found at Sections 74, 75 or 78.1.

Piratical acts are punishable by imprisonment up to 14 years, and are distinguished from piracy and the act of seizing control of ships and fixed platforms which are punishable for longer terms. A person may be found to have engaged in piratical acts who:

> (*a*) steals a Canadian ship;
>
> (*b*) steals or without lawful authority throws overboard, damages or destroys anything that is part of the cargo, supplies or fittings in a Canadian ship;
>
> (*c*) does or attempts to do a mutinous act on a Canadian ship, or
>
> (*d*) counsels a person to do anything mentioned in paragraph (*a*), (*b*) or (*c*).

The principal concern during any marine protest should be safety. Just like with highway driving, there are rules of the road governing rights of way that if breached can result in fines, see the *Collision Regulations* under the *Canada Shipping Act*. However, Canadian law treats people who put others at risk with their boats or on the water more severely than it treats people who put others at risk using land based motor vehicles. Anyone who jeopardizes the safety of a vessel or persons on board is liable to be charged with an offence pursuant to the *Canada Shipping Act,* the *Criminal Code*, or both. Therefore, protestors are less likely to be charged with a serious offence if they act in a manner that does not put anyone, or any vessel in danger.

Prior to setting out on a marine protest, the master of a vessel used by protestors should ensure they have all the appropriate licenses, navigational, and safety equipment required for their voyage. Police and the Coast Guard have broad authority to inspect vessels in order to ensure their compliance with various safety and technical requirements, and they can use such legal technicalities to interfere with a demonstration. For example, police and other enforcement officers in order to verify and ensure compliance with the *Pleasure Craft Regulations* can:

> (*a*) ask any pertinent questions of, and demand all reasonable assistance from, the owner or master, or any person who is in charge or appears to be in charge, of a pleasure craft;
>
> (*b*) require that the owner or master or other person who is in charge or appears to be in charge of the pleasure craft produce forthwith
>
> (i) personal identification, and

(ii) any other document required by these Regulations; and

(*c*) go on board any pleasure craft.

Officers may board vessels other than pleasure crafts at reasonable times and carry out inspections they consider necessary to ensure compliance with the *Canada Shipping Act* pursuant to Section 211. In doing so, they can direct a vessel to stop or go to a place for an inspection for a reasonable period of time. They have extensive investigatory powers even without a warrant.

Nonetheless, in some circumstances a warrant or a detention order will be required, and so they should be requested, see the *Canada Shipping Act* Section 220, 222. Consent can also be withheld against a warrantless search of a vessel's living quarters. However, it is an offence punishable by fines or jail to obstruct officers seeking to enforce the *Canada Shipping Act* and its various regulations, or to provide false information to such officers. If you have asked for a warrant, and an officer informs you that you have no choice in the matter, then you should comply.

The master or a captain of a vessel has a special legal responsibility to ensure the safety of everyone on board. A master or captain involved with a protest should be carefully selected, informed of a protest's agenda, and any risks associated with the protest. Likewise, the owner of the vessel should be informed, as the owner may be liable for damages arising from the protest, including the actions of protestors.

Insurance is unlikely to cover damage to vessels or persons harmed in connection with illegal conduct, or conduct that recklessly places a vessel or its passengers in danger.

Masters also have limited authority to lawfully detain, put people under custody, and even use force in order to ensure the safety of a vessel and passengers. This is a power that can potentially be used against protestors who endanger vessels.

Trespass

The *Land Act*, R.S.B.C. 1996, c. 245, sets out in sections 59–68 the general offences regarding the unlawful occupation or possession of crown land. If you are trespassing on crown land, you may receive a notice of trespass and be required to leave. Failure to comply may lead to a conviction and liability for a fine of not more than $20,000, or imprisonment for not longer than 60 days, or both.

The *Trespass Act*, R.S.B.C. 1996, c. 462, prohibits trespassing on "enclosed land", on premises after you receive notice from the occupier or an authorized person that entry is prohibited, or engaging in an activity on or in premises after receiving notice that the activity is prohibited. Enclosed land is defined as land:

(a) surrounded by a lawful fence defined by or under this *Act*,

(b) surrounded by a lawful fence and a natural boundary or by a natural boundary alone, or

(c) posted with signs prohibiting trespass in accordance with s. 5(1).

If you are trespassing on enclosed land, section 8 of the *Trespass Act* requires you to provide your correct name and address if there are reasonable grounds for the occupier or a person authorized by the occupier to believe you have contravened the provisions in section 4 of the *Act*. Like all other British Columbia legislation, the *Trespass Act* and the *Trespass Regulation* can be found at: www.bclaws.ca.

As a general rule, there is no provincial offence of trespassing in British Columbia, other than on enclosed land. However, the Campbell government introduced Bill M 203-2004, *Trespass to Property Act*. This bill received second reading on May 10, 2004, but has since been withdrawn. It would have allowed the occupier, or a person authorized by the occupier, to arrest without warrant any person he or she believes on reasonable and probable grounds to be on the premises without permission. The occupier, or a person authorized by the occupier, would be able to use reasonable force to affect the arrest.

The power of arrest in the hands of landowners and occupiers is a dangerous thing. Over the past twenty years in Ontario, a province with a *Trespass to Property Act* similar to Bill M 203-2004, one of the province's largest security firms estimate its security guards have arrested over thirty thousand people.

Trespassing in a private building or on private property, or in a public building or property to which access is restricted, remains a civil wrong, or a tort. If requested to leave, you must comply or risk the consequences. If you refuse to leave, the owner or agent may use reasonable force to evict you. Even the most minimal physical resistance on your part may constitute the offence of a "deemed assault" under the *Criminal Code*. But merely passively resisting, for example by going limp, is not a deemed assault.

On March 12, 2004, five women representatives from the British Columbia Coalition of Women's Centres were arrested because they refused to leave the legislative building. The five women were protesting the Campbell government's cuts to the province's women's centres. They were charged by police with "assault by trespass" under section 41(2) of the *Criminal Code.* The Crown Attorney refused to proceed with the charge. This is not surprising given the protesters went limp and did not physically resist being removed.

Post–9/11 Legislation

After the September 11, 2001 terrorist attacks on the United States, Canada passed legislation which increased the power of police, intelligence agencies and customs officials to encroach upon civil liberties and privacy rights. The Supreme Court of Canada, in *Re Application under Section 83.28 of the Criminal Code,* [2004] S.C.J. No. 40, has expressed how liberties must not be trammeled when dealing with the challenges of terrorism:

> Although terrorism necessarily changes the context in which the rule of law must operate, it does not call for the abdication of the law…the challenge for a democratic state's answer to terrorism calls for a balancing of what is required for an effective response to terrorism in a way that appropriately recognizes the fundamental values of the rule of law. In a democracy, not every response is available to meet the challenge of terrorism. At first blush, this may appear to be a disadvantage, but in reality, it is not. A response to terrorism within the rule of law preserves and enhances the cherished liberties that are essential to democracy.

The following is a selection of Canadian legislation passed post-9/11, which is relevant in the context of civil disobedience.

Despite the above ruling by the Supreme Court of Canada, there is no question that engaging in acts of civil disobedience is substantially riskier than it was pre-9/11. Indeed, a recent report by the prestigious International Commission of Jurists (ICJ) concludes after a four-year study that what it calls a "war mentality" has seriously eroded human rights.

The ICJ is an NGO devoted to promoting observance of the rule of law and the legal protection of human rights worldwide. Its report is described as one of the most comprehensive surveys on the effects of counter-terrorism on human rights. One of its authors was former Justice Ian Binnie of the Supreme Court of Canada.

With respect to Canada, the report refers to the Maher Arar case as a "model of how transnational intelligence should not be happening." The ICJ also had the benefit of testimony from Adil Charkaoui, a Moroccan Montrealer who was jailed and, until recently, was still being monitored under a "security certificate" (ejp.icj.org).

For the third and latest Charkaoui decision in his epic six-year battle for his *Charter* rights in the context of security certificates, see *Re Charkaoui* (2009), FC 1030. Charkaoui has had several matters before the Québec Superior Court concerning his lawsuit against the government, the latest being *Charkaoui v. Canada,* 2012 QCCS 732.

The *Anti-Terrorism Act*

The *Anti-Terrorism Act* (*ATA*) received royal assent on December 18, 2001. It amends ten different statutes, including the *Criminal Code*, which it amends by adding section 83.01 and Part II.1. The overall purpose of the *Act* is the prosecution and prevention of terrorism offences. The provisions in it deal with judicial investigative hearings,

recognizance, detention, seizures and arrests and provide a new and very broad definition of terrorism. This definition of terrorism is very complex. For our purposes, the relevant sections can be summarized as follows:

> It is a terrorist activity, **for a person with a political, religious, or ideological purpose**, to do anything
>
> with the intention of compelling a person or government to do something,
>
> and which intentionally causes a serious risk to the health or safety of the public,
>
> or which intentionally causes serious interference with a public or private essential service or facility other than as a result of advocacy, protest or stoppage of work that is not intended to result in the conduct or harm of persons or causes a serious risk to the health or safety of the public.

The section includes even attempting, threatening or counseling such conduct, or assisting someone after they have committed such an act.

The most objectionable portion of the offence appears in bold above. The language was universally criticized as unnecessary and contrary to the *Charter,* and was ruled unconstitutional in *R.* v. *Khawaja,* [2006] O.J. No. 4245; leave to appeal dismissed by the Supreme Court of Canada on April 5, 2007. However, it was later upheld by the Ontario Court of Appeal in 2010 ONCA 862. In *R. v. Khawaja,* 2012 SCC 69 the Supreme Court of Canada affirmed the Court of Appeal decision and dismissed Khawaja's appeal following his conviction under the new terrorism sections of the *Criminal Code*. Khawaja argued that some of the terrorism sections infringed the freedom of expression, freedom of religion and freedom of association, and that the law was overbroad. The Court held that the law was constitutional and did not violate the sections 2 or 7 of the *Charter*. See also the Court's companion appeal reviewing the constitutionality of the terrorism sections in *Sriskandarajah v. United States of America*, 2012 SCC 70.

Section 83.28 compels an individual to testify at a judicial investigative hearing *(Application under s. 83.28 of the Criminal Code (Re)*, 2004 SCC 42). Section 83.28 of the *Criminal Code* has met the requirements of section 7 of the *Charter* and is constitutional.

The *ATA* amendments to the *Criminal Code* require the Attorney General of Canada and all provincial attorneys general to publish an annual report on the operation of sections 83.28 (investigative hearing), 83.29 (preventive arrest) and 83.3 (recognizance with condition) of the *Criminal Code*.

The amendments that the *ATA* made to the *Criminal Code* contain a "sunset" clause whereby the extended powers will cease to apply as of the end of the fifteenth sitting day of Parliament after December 31, 2006, unless extended pursuant to procedures set out in section 83.32(2)-(5). The sections ceased to have effect on March 1, 2007. The motion to extend was defeated on February 27, 2007, and again in 2008, 2009 and 2010. Critics have anticipated that the Bill would likely be presented, and may pass with no sunset clause.

On February 15, 2012, the government introduced Bill S-7, the *Combating Terrorism Act*, in the Senate, which aimed to amend the *Criminal Code*, the *Canada Evidence Act* and the *Security of Information Act* and restore expired *ATA amendments.* Just after the Boston Marathon bombings, the Bill was passed on April 25, 2013. It replaces sections 83.28 to 83.3 of the *Criminal Code* to provide for an investigative hearing for the purpose of gathering information for an investigation of a terrorism offence. It also provides for a recognizance with conditions on a person to prevent them from carrying out a terrorist activity. These sections have a sunset clause of 5 years with the possibility of an extension. It also amends the *Criminal Code* to create offences of leaving or attempting to leave Canada to commit certain terrorism offences.

The *Public Safety Act*, 2002

The *Public Safety Act*, 2002, received royal assent on May 6, 2004. The *Public Safety Act*, 2002 (*PSA*) amends several other *Acts*. The major concern for people practicing civil disobedience had been the amendments to the *National Defence Act*. Earlier versions of the *PSA* had granted the Minister of National Defence the power to designate "Controlled Access Military Zones" from which anyone could be forcibly removed. The *PSA* has now removed the provisions concerning the establishment of such zones.

However, the Federal government, through an order-in-council - in other words, at their pleasure - can establish what are now called "Controlled Access Zones". It has already designated zones in Halifax, Esquimalt, and Nanoose Bay harbours (*Canada Gazette* Vol. 137, No. 2 (January 1, 2003)), and there is nothing to prevent it from declaring other zones where there is a potential for demonstration and protest. If this is done, it will be extremely difficult to obtain a successful judicial review of the order-in-council.

The *PSA* also makes it an offence for anyone to commit an act that is likely to cause a reasonable apprehension that a terrorist activity is occurring or will occur. That is now set out in section 83.231 of the *Criminal Code*.

An *Act to Amend the Criminal Code*

On December 18, 2001, An *Act to amend the Criminal Code* (organized crime and protection of justice system participants) received royal assent. The provisions relating to sections 25.1-25.4 of the *Criminal Code* were proclaimed in force on February 1, 2002. This bill is intended to, and probably does, aid in the fight against organized crime. However, it includes an important feature that you should keep in mind; in certain circumstances it authorizes the police to violate the law.

A competent authority may designate police officers to violate the law, and become immune from criminal liability. There are some pre-conditions: the officer must believe that his/her illegal conduct is reasonable as well as proportional to the offence being investigated; there must be no serious loss or damage to property; and there must be no intentional bodily harm.

The *Act* defines a "competent authority" as the Minister of Public Safety and Emergency Preparedness of Canada in the case of the RCMP; the provincial minister responsible for policing in the province in the case of a member of a police service; or, in the case of any other peace officer, the minister responsible for the particular legislation that the officer has the power to enforce.

The *Act* contains no provision limiting the use of this new power to organized crime contexts. It can be used in the context of demonstrations (section 25.1, *Criminal Code*). A parliamentary review of sections 25.1 to 25.4 of the *Criminal Code* was required to be undertaken by January 6, 2005. The House of Commons Standing Committee on Justice and Human Rights was given an order of reference from the House on April 25, 2006 to study sections 25.1 to 25.4 and has issued an interim report which did not make any recommendations on whether or not these sections of the *Criminal Code* should be amended. The interim report can be found at the following web address:

http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2315361&Language=E&Mode=1&Parl=39&Ses=1 (accessed April 2014).

Section 25.3(1) of the *Criminal Code* requires the competent authority to publish an annual report on the number of designations and authorizations made. In addition, the annual report must, among other things, publish the number of times police officers have committed violations of the law and the nature of these violations. The annual report must not disclose any information which would compromise an investigation or legal proceeding, endanger the life or safety of any person or otherwise be contrary to the public interest.

An *Act to amend the Foreign Missions and International Organizations Act*

An *Act to amend the Foreign Missions and International Organizations Act*, S.C. 1991, c.41, received royal assent on April 30, 2002. It provides that the RCMP has the primary responsibility to ensure security at intergovernmental conferences. The RCMP can also be assisted by provincial and municipal police forces.

This legislation gives extraordinary new powers to the police, including broad new statutory powers "to ensure the security for the proper functioning of any inter-governmental conference." The *Act* allows for police to take "appropriate measures, including controlling, limiting or prohibiting access to any area to the extent and in a manner that is reasonable in the circumstance" (section 10.1(2)).

The limits of the ability of the police to take "appropriate measures" under this Bill have not yet been subject to scrutiny. However, the public outcry over the RCMP's treatment of peaceful protesters during the APEC Summit and the subsequent recommendations from the APEC Inquiry should assist the police in determining what the "appropriate measures" are, and how to conduct themselves in a "reasonable manner."

An *Act to amend the Criminal Code*

(Criminal Liability of Organizations)

An *Act to amend the Criminal Code (Criminal Liability of Organizations)* received royal assent on November 7, 2003. It is designed to attribute criminal liability to organizations for acts of their representatives or senior officers, depending on the offence.

This *Act* could be used against organizations whose members are engaged in civil disobedience. Its provisions are now incorporated into sections 22.1 and 22.2 of the *Criminal Code*. The provisions are analyzed and criticized in *Manning* et al, *Criminal Law*, 4th edition, (2009), pages 238 to 244.

Demonstrating in the United States

There are a number of considerations Canadians should be aware of if they plan to participate in a demonstration in the United States.

First, racial profiling: You should be aware that in August 2006, then Homeland Security Chairman Peter King endorsed ethnic profiling, stating that he considered it reasonable that people of "Middle-Eastern and South Asian descent" undergo additional security checks due to their ethnicity and race.

The U.S. and Canada have a Smart Border Plan to facilitate information sharing and the secure flow of people and goods across the border. Canadians now need a passport to enter the United States. A birth certificate and photo identification will no longer suffice.

A U.S. immigration officer will ask you questions about the purpose of your trip. Do not lie. Lying can lead to serious sanctions. Generally, you are allowed to visit the U.S. for recreational or tourist pursuits, visits with friends, and other social activities. If you are vague about the purpose and duration of your journey, you may be turned away. You will also be turned away if you have a criminal record and do not have an entry waiver.

The *USA Patriot Act*, passed on October 24, 2001 in the wake of the 9/11 terrorist attacks, has particular consequences for non-U.S. citizens who engage in demonstrations.

The *Patriot Act* has amended the *Immigration and Nationality Act* (*INA*) and allows the secretary of state to designate certain groups as foreign terrorist organizations. The amendments also allow the secretary of state to designate a political, social or similar group whose public endorsement of acts of terrorist activity he or she has determined undermines the United States' efforts to reduce or eliminate terrorist activities. This captures what can be termed "domestic terrorist organizations".

"Terrorist activity" is defined by section 212(a)(3)(B) of the *INA* as any activity which is unlawful under the laws of the place where it is committed and which involves among other things the use of any weapon or dangerous device to cause either endangerment to persons or substantial damage to property.

Consequently, foreign or domestic groups that have ever engaged in violent activity to persons or property can be considered "terrorist organizations." While the U.S. State Department keeps a list of designated foreign terrorist organizations, no U.S. department keeps a list of designated domestic terrorist organizations. "Domestic terrorism" is defined in section 802 of the *Patriot Act*. According to the testimony of James F. Jarboe, Domestic Terrorism Section Chief, Counterterrorism Division, FBI, before Congress on the "Threat of Eco-Terrorism," domestic terrorism is:

> "…the unlawful use, or threatened use, of violence by a group or individual based and operating entirely within the United States (or its territories) without foreign direction, committed against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives."

Non-citizens suspected of being members of a foreign or domestic terrorist organization are subject to mandatory detention during immigration or criminal proceedings. Any non-citizen who has engaged in, is engaged in, or at any time after admission to the United States, engages in any terrorist activity, can be deported.

In May 2011, three controversial provisions of the *Patriot Act* were extended for four years:

1) authorizing court-approved roving wiretaps that permit surveillance on multiple phones;
2) allowing court-approved seizure of records and property in anti-terrorism operations; and
3) allowing surveillance against a non-U.S. citizen engaged in terrorism who may not be part of a recognized terrorist group.

As a result of the *Patriot Act*, Canadian demonstrators could find themselves subject to mandatory detention and subsequent deportation.

Although he did not enter the U.S. to participate in a demonstration, the experience of Canadian citizen Maher Arar is an example of how the provisions of the *Patriot Act* can be implemented. In 2002, Mr. Arar, who is of Syrian origin, was returning from vacation in Tunisia and had a scheduled flight stopover in New York. He was detained by U.S. border officials and, instead of being deported to Canada, was deported to a Syrian jail where he was tortured. Mr. Arar's ordeal was the subject of a Canadian public inquiry which cleared him of all terrorism allegations. The Canadian government eventually settled a lawsuit brought by Mr. Arar by paying him $11.5 million in compensation. Despite the outcome of the public inquiry and political attempts to allow Mr. Arar to freely enter the United States, the U.S. government has refused to take him off its watch list.

There is a long history both in the labour movement and in the broader Canadian and American communities of engaging in civil disobedience in support of common causes in each other's countries. However, Canadians need to be aware that there are significant new risks associated with demonstrating in the U.S. since the passage of the *Patriot Act.*

The following are valuable resources which review the law of arrest in the U.S. and offer advice to people engaging in non-violent civil disobedience post-9/11:

ACT UP Civil Disobedience Manual,
www.actupny.org/documents/CDdocuments/CDindex.html.
U.S. activists generally consider this manual to be the best.

The American Civil Liberties Union Handbooks *Know Your Rights* are also excellent: https://www.aclu.org/know-your-rights-essential-resources-aclu (accessed April 2014).

The National Lawyers Guild and the ACLU of Northern California have jointly published a manual which many of us have used:
https://www.nlg.org/resource/know-your-rights

Another valuable source on civil disobedience is:
resurgence.opendemocracy.net/index.php/Civil_Disobedience.

You may also wish to check YouTube for videos of various civil disobedience events. One of the best is the late Howard Zinn, a prominent U.S. historian and activist from Boston University, speaking on civil disobedience.

Conclusion

Perhaps the best way to conclude this version of this manual is to quote a remarkable passage from a remarkable book on the APEC conference, *Pepper in our Eyes: The APEC Affair*, edited by Wesley Pue (Vancouver, UBC Press, 2000).

In the essay "Policing, the Rule of Law and Accountability in Canada: Lessons from the APEC Summit," Pue writes:

> Ultimately, however, institutional structures alone cannot resist power's corrosive effects. Our main protection lies in our own vigilance. No single institution, person, association, or idea can long defend any democracy, however stable it seems, from power's corrupting effects. A watchful citizenry, well informed about the basic principles of democratic government, is indispensable to liberal democracy. The hallmarks of freedom and constitutional liberty need to be understood, absorbed, internalized and discussed by all of us (page 3).