

**PROTESTERS' GUIDE
TO THE LAW AND**

CIVIL DISOBEDIENCE

IN BRITISH COLUMBIA



BY LEO MCGRADY Q.C.





Civil disobedience is not our problem. Our problem is civil obedience.

Our problem is that numbers of people all over the world have obeyed the dictates of the leaders of their government and have gone to war, and millions have been killed because of this obedience...

Our problem is that people are obedient all over the world in the face of poverty and starvation and stupidity, and war, and cruelty.

Our problem is that people are obedient while the jails are full of petty thieves, and all the while the grand thieves are running the country. That's our problem.

– HOWARD ZINN



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INTRODUCTION

I have written this paper to help 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 civil disobedience, and to avoid committing any criminal offence. It's also designed to assist you in the event you are arrested.

Everyone must make their own individual choice about whether or not to engage in civil disobedience. It is your responsibility to become fully informed about what consequences may follow from engaging in any form of protest.

The information here offers a general road map of your rights in a conflict situation. 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 BC as of December 1, 2001.

It's 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.

There is no doubt that civil disobedience can be particularly effective in motivating social and political change when exercised in collective action. The long history of civil disobedience as practiced by different peoples around the world is mirrored here in British Columbia.

Aboriginal peoples in BC have engaged in various forms of creative civil disobedience since their

lands were first colonized under British and then Canadian law. The Gitksan and Wet'suwet'en nations of northern BC successfully combined blockading and court actions which led to the Supreme Court of Canada's unanimous Delgamuukw decision in 1997 recognizing aboriginal title. The Neskonlith people occupied the Sun Peaks resort development site near Kamloops in assertion of their territorial claims, through 2001.

Our province has an extensive record of conflict between lawmakers, bosses, 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 BC workers walked off the job in protest.

Today, health care, community social service and government workers consider taking mass action in response to the breaking of their contracts by the Campbell Liberal government.

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

The "Clayoquot Summer" of 1993 was a non-violent environmental protest that led to the arrest of almost 1000 people. It was the largest act of civil disobedience in Canadian history, and resulted in reforms to BC's forest practice laws. In 1998, irate BC fishers blockaded American boats and a ferry to protest rapidly diminishing wild salmon runs amid the collapse of international salmon treaty talks.



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

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

Over the past five years, a wide range of BC citizens have joined in anti-corporate globalization actions from the APEC meetings at the University of BC, to WTO in Seattle, and the FTAA events in Quebec City.

Students occupied Premier Gordon Campbell's office for two days in February 2002 to protest increases in tuition fees.

British Columbians will continue to put themselves on the line until, as BC poet and peace activist Dorothy Livesay once said, people's demands to "give us bread, but give us peace" are met.

There is judicial recognition of the important role civil disobedience has played in the preservation of our democratic rights. The law does recognize your right to engage in civil disobedience.

However, this guide takes into account the new post-September 11, 2001 federal laws including Bills C-24, C-35, C-36, and C-42. These bills were ostensibly intended for terrorists and organized crime, but contain many additional handy provisions for use against protesters.

All of the *Criminal Code* sections, as well as the new bills, are readily accessible. See the Department of Justice website: <http://lois.justice.gc.ca/en>.

A number of publications have been helpful in my preparation for this paper. I would like to thank the Collective Opposed to Police Brutality (Quebec) for their booklet entitled *Guess What! We've Got Rights?!* (Montreal, March 1999). I have used the framework from this booklet and adapted references to laws as they apply in BC.

As well, I would like to thank the Law Union of Ontario for their informative manual *Offence/Defence: Law for Activists* (1996 edition). I have also received invaluable assistance from two lawyers Sam Black and Sarbjit Deepak with our firm (McGrady, Baugh & Whyte).

This BC guide has been written in the same spirit as the above Quebec and Ontario works. It is anti-copyright. You are invited to freely copy and reproduce this work, but credit for authorship is appreciated.

I plan to revise and add to this guide on a regular basis. Also in the works is a companion guide pertaining to the rights of union members in exercising job action.

I welcome your questions, comments and suggestions. My e-mail address is lmcgrady@axion.net.

*Leo McGrady Q.C.
Vancouver, BC*



Workers are torn between their legal obligations on one hand and the reality of poverty on the other. A worker's concept of justice necessarily includes social justice.

- GRACE HARTMAN, CUPE PRESIDENT (1975-1983)

DEMONSTRATIONS

Protecting your identity

Many times undercover police officers go unnoticed as they mingle with the demonstrating crowd. Their main objective is to identify demonstrators, activists, organizers and speakers.

You can choose to wear a mask or other head-gear to protect your identity. However, there are some drawbacks to this. 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. Second, wearing a mask may frighten other demonstrators.

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: handy for taking detailed notes of any incident that might occur during the demonstration. For example, if there are arrests, note the names of people arrested, their telephone numbers, contacts, details of the arrest, etc.

Still cameras and video cameras: police do not like being watched or, worse, being caught in the commission of an illegal act. Photo and video documentation may keep the police in line, or may prove useful for providing evidence in cases where police step out of line.

Tape-recorders: a tape-recording of remarks by police is another 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. Further, you don't want to be easily grabbed by your clothes or hair by someone illegally attempting to restrain you.

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

Items you may wish to leave at home:

Don't bring your address book or any other document that contains sensitive information.

Don't bring any illegal drugs.

Don't bring anything that might be considered a weapon.

Bring one piece of photo identification and leave the rest at home.

It takes a loud
voice to make
the deaf hear.

– EMMA GOLDMAN



Watch what you say

Remember, there may be undercover police 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. However, you can find discreet ways to inform your friends around you of potential undercover police presence.

Voluntarily dispersing

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 a demonstration.

Involuntary dispersal by riot police

If the police try to disperse the crowd, remember to leave calmly in groups of about 10 to 15 so that you have some witnesses and support.

The police may use a number of potentially harmful tactics to disperse the crowd:

Pepper spray: if you are pepper-sprayed, do not rub your eyes. Thoroughly rinse the affected areas with water. Don't panic. The burning sensation will pass in time.

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 will smell like apples. It causes a burning sensation in the eyes and skin. As well, it may irritate mucous membranes.

CS – this is much stronger than CN, but it has the same effects. It has a strong pepper-like smell and can cause nausea and vomiting.

If the police use any of the above methods to disperse the demonstration and you become a victim, try to do the following:

1. Do not panic. The effects will wear off in about 10 to 15 minutes. Panicking will only make it worse.
2. Go to a well-ventilated area, facing the wind with your eyes open. Don't rub your eyes.
3. Rinse your face and any parts of your body that are exposed with water. Adding baking soda to the water will improve its effectiveness as a liquid solution.



The state can't give you freedom, and the state can't take it away. Freedom is something you're born with, and then one day someone tries to deny it.

— UTAH PHILLIPS

Bill C-42: expanded definition of 'military-security zone'

Bill C-42 amends the *National Defence Act*.

The amendment enables the Minister of Defence to declare a specific area a 'military-security zone' (section 260.1). The zone may be an area of land, water, airspace, or a structure. The zone may be a fixed or a moving zone. Anyone may be forcibly removed from that zone.

Such a declaration could be issued for a geographic area encompassing all of the potential areas for demonstration and protest around the meetings. Some refer to the bill as the "Kananaskis Bill", designed specifically for the G-8 Summit. This bill has not yet been passed into law, but is likely coming soon.

It is unlikely this section would have any relevance during demonstrations in British Columbia with respect to the anti-labour legislation passed by the Liberal government on January 27, 2002.

ARE THE POLICE BOTHERING YOU?

Identifying yourself

The law obligates you to identify yourself to police in the following cases:

1. If a police officer is in a position to arrest you, or to issue some form of summons to you, and you do not identify yourself, you may be charged with obstruction: *R. v. Legault*, [1998] B.C.J. No. 1309.
2. If you are driving a motor vehicle, you must show your driver's licence: *Motor Vehicle Act*, ss. 71 and 73.
3. If you are found in a bar or movie theatre, you are obliged to prove that you are of legal age.
4. According to some municipal bylaws, if you are found at night in a public place (i.e. a park), you are obliged to identify yourself or you may be charged with vagrancy.

Other than these exceptions, you are never obliged to identify yourself or speak to the police. The Collective Opposed to Police Brutality's booklet entitled *Guess What! We've Got Rights?!* suggests that:

If police ask you to identify yourself or to come with them, ask them: "Am I under arrest?"

If you're not, you may tell them, calmly and firmly, that you don't have to either identify yourself or follow them.



An individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty to arouse the conscience of the community over its injustice, is expressing the very highest respect for law.

– DR. MARTIN LUTHER KING

Carrying identification

Canadian law does not require that you carry identification (unless you are driving a motor vehicle). However, by carrying identification, you may avoid a trip to the police station in case of a minor infraction.

Do the police have to identify themselves?

In BC, according to the *Police (Uniforms) Regulations* of the *Police Act*, all uniformed officers have to wear a “badge, metal, plastic or cloth, bearing an identification number or name” above their right breast pocket of the uniform. The only exception is for executive and senior officers, who are not required to wear such identification.

Undercover police, of course, are not referred to in this regulation.

If the identification is not clear, you should ask the officer to identify him/herself. However, you probably won’t get the answer you are expecting.

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

Bill C-24: the police as criminals?

A new law came into effect as of December 18, 2001 called *An Act to amend the Criminal Code (organized crime and law enforcement)*. On the surface, it is intended to, and probably does, aid in the fight

against organized crime. However, this law contains an important feature that you should keep in mind.

In certain circumstances, the new legislation authorizes the police to violate the law.

Designated police officers are entitled to violate the law, and are immune from criminal liability. There are some pre-conditions, such as the requirement that the officer believe that his/her illegal conduct is reasonable, and proportional to the offence being investigated; there must be no serious loss or damage to property; and there must be no intentional bodily harm.

There is no provision in the new legislation 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*).

The \$10,000 or more per day the RCMP are spending in 2002 on satellite uplink trucks, and continuous video surveillance of the Kananaskis site and surrounding communities, may in fact have the unintended effect of holding police excesses in check.

**Power concedes nothing
without a demand; it never has
and it never will.**

– FREDERICK DOUGLAS



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 offence;
2. a police officer sees you committing any criminal offence; or
3. police have reasonable grounds to believe that there is an outstanding warrant for your arrest (e.g. for unpaid tickets).

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, and the police officer is required to show you the warrant.

Arrested for what?!

If you are arrested, the police have to tell you what they are charging you with. Ask them what they are charging you with. The most common charges are:

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.

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 sitting silently chained together in this case 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. The key is not to destroy, damage, render inoperative property, or prevent or interfere with its lawful use.

Creating a human barricade so that no person can get by is mischief: *Regina v. Mamolita et al*, [1983] 9 C.C.C. (3d) 85.

Assault

An assault consists of any use of force against another person directly (i.e. with your fists) or indirectly (i.e. throwing your glove at a person). 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. An assault can be very minor.

Assault in 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 yourself.

Peace cannot be kept
by force; it can only
be achieved through
understanding

– ALBERT EINSTEIN



Obstructing a police officer

Anyone who resists or wilfully obstructs a police officer in the execution of his or her duty or any person lawfully acting in aid of such an officer is guilty of an offence. As well, if someone omits, without reasonable excuse, to assist a police officer in the execution of his or her duty in arresting a person or in preserving the peace, after having reasonable notice that he or she is required to do so, is guilty of an offence.

A person asking why their friend is being arrested is not obstruction (*Regina v. Long*, [1970] 1 C.C.C. 313).

Causing a disturbance

This offence 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 by loitering in a public place and in any way obstructing persons there.

Speaking normally through an electronic megaphone can constitute causing a disturbance: *R. v. Reed* (1992), 76 C.C.C. (3d) 204 (B.C.C.A.).

Unlawful assembly

An offence of unlawful assembly requires that three or more persons be involved, and that they assemble in a way, or behave in such a way after assembling, 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. 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 that there is 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 that he or she had taken part in the disturbance (intention can be inferred through being reckless).

Contempt of Court

Contempt of Court is conduct that is in deliberate or wilful disobedience of a Court order and thus offends the Court. In recent years, the government and private companies have been granted injunctions against potential demonstrators. Once an injunction is violated, a person can be charged with contempt.

Why shouldn't communities have a dominant voice in running the institutions that affect their lives?

— NOAM CHOMSKY



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.), 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: Rogers Cable T.V. Ltd. v. IBEW, [1993] B.C.J. 2822 (B.C.S.C.), at page 3.*

3. *Did the accused do one or more acts amounting to disobedience of one or more of the terms of the injunction? In Alran Industries Ltd. v. Delta Cedar Products Ltd., [1996] B.C.J. No. 729 (B.C.S.C.), at page 4, the Court stated that "disobedience must be proved to be 'deliberate' or 'wilful'".*
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, whereas for criminal contempt the fourth element has to be proved.

Fines can run from several hundred dollars to a few thousand dollars. A term of imprisonment may be imposed.



Educate yourself for the coming conflicts.

MARY HARRIS JONES, AKA MOTHER JONES

You are under no obligation to speak to the police, beyond providing ID if required

If you are arrested, you have no obligation to speak to police, except, of course, to provide identification in the circumstances listed above (i.e. arrest). You have to provide only your first and last names, complete address, and your date of birth.

Try to remember all the details of your arrest. For example: who arrested you, the time of the arrest and, if possible, the name/badge number of the arresting officer.

Many demonstrators have a rule that they do not say anything to the police. While in custody, you may not wish to speak to anyone you do not know and trust – regarding the circumstances of your arrest – because the person you may be speaking to in your cell could be an undercover police officer. You have a right to remain silent. Immediately ask to speak to a lawyer. If you cannot afford one, get legal aid. **Under no circumstances should you give up your right to speak to a lawyer.**

The police may try to engage you in conversation by appearing friendly and concerned. The police 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. Just stay calm. They can only hold you for 24 hours before taking you in front of a judge.

SEARCHES

Any search before an arrest is illegal unless the police have “reasonable grounds to believe” that you are in possession of an illegal item or substance such as a firearm or drugs. The “reasonable grounds” concept is vague and open to interpretation. The police may abuse their power, as has been the case many times!

If you feel that the police are abusing their power, let the police know that you don’t agree with them searching you. Again, try to remember all the details that you can. For example, the name/badge number of the police 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 choose to later.

If you are arrested, the police can search you, but they can’t arrest you just for the purpose of searching you. Police will most often search you after arrest to make sure that you don’t pose a danger to them or yourself. As well, they may search you in hopes of finding more evidence that can be used against you.

Remember, you can only be searched by an officer of the same sex (however, there are a few exceptions). There are three types of searches: (1) summary search, which is a general “pat down” or “frisking” over clothing or inside pockets; (2) strip search, which generally involves the removal of all your clothes to permit a visual inspection of a person’s private areas; and (3) a

...whoever's in charge up there
had better take the elevator down
and put more than change in our cup
or else we
are coming
up

— ANI DIFRANCO



TRESPASS

As a general rule, other than on enclosed land, there is no provincial offence of trespassing in British Columbia, as there is in some other provinces.

However, trespassing in a private building or on private property, or public building or property to which access is restricted, remains a civil wrong, or a tort. **If requested to leave, you must comply.**

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 by, for example, going limp, is not a deemed assault.

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

On December 6, 2001, 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. They may be conducted only where there are reasonable and probable grounds for that type of search (*R. v. Golden*, 2001 S.C.C. 83).

Although you may choose otherwise, it is generally wiser not to speak to the police without a lawyer's advice, even during a search, unless you have to provide identification. Some have described it as the golden rule for demonstrators: speak to a lawyer before you speak to the police!

LEAFLETING

As a result of a recent Supreme Court of Canada decision, in the case of *Pepsi-Cola Canada Beverages*, 2002 S.C.C. 8, peaceful protesting and picketing at secondary sites are now permitted as part of our Charter rights of freedom of expression.

Leafleting with accurate, non-defamatory information is similarly an exercise of our freedom of expression rights: *Kmart Canada*, [1999] 2 S.C.R.



OTHER NEW BILLS

Bill C-36: what could be called the ‘make demonstrators terrorists’ Act

Many thoughtful and reasonable people have expressed the view that the new federal terrorism legislation was unnecessary; that the existing laws, administered with greater resources, were adequate to deal with the unique and insidious nature of terrorist activity. They have expressed the concern that part of the government’s motives in passing such laws was their value in dealing with the growing protests against the World Trade Organization (WTO) and the Free Trade Area of the Americas (FTAA).

Bill C-36 amends the *Criminal Code* by adding section 83.01, a new, broad, and very complex definition of terrorism. For our purposes, the relevant parts can be summarized as follows:

It is a terrorist activity for a person with a political purpose to do anything with the intention of compelling a person or government to do something that 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.

The section excludes protests or strikes that are not intended to result in the harm described above. However, it is conceivable that a police officer could decide that a trade unionist who was peacefully demonstrating at Kananaskis, but who was standing a few feet away from a demonstrator who had

become violent, should also be arrested for ‘terrorist activity’.

It is also possible that police could consider union members who are, for example, engaging in a wildcat strike in the hospital sector, and picketing to protest anti-union legislation, as coming within the definition of terrorists engaging in terrorist activity.

That’s not all. The section casts a wide net over anyone even “attempting” or “threatening” such conduct. Or “counseling” such action, or even assisting someone after they have committed such an act.

Bill C-35: perhaps more aptly described as the ‘police can do anything’ Act

You should also keep in mind the extraordinary new powers given to the police under Bill 35, *An Act to Amend the Foreign Missions and International Organizations Act*. This gives the RCMP broad new statutory powers “to ensure the security for the proper functioning of any inter-governmental conference”.

On one reading of that legislation, the police are able to do “anything” they consider reasonable and appropriate to protect those involved in these summits (section 10.1). Bill C-35 was passed on November 29, 2001, but has yet to receive royal assent. It will likely be in effect soon – certainly in time for the G-8 meeting at Kananaskis, Alberta 2002.

The federal Minister of Justice recently indicated that there may be more legislation of this nature coming to deal with the issue of terrorism.

