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## The Law of Protest

Workshops for the Heiltsuk First Nation



**August 30-31, 2014**

**Bella Bella British Columbia**

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**GUIDE TO THE LAW OF  
PROTESTS IN BRITISH COLUMBIA**  
  
**Leo McGrady Q.C.**

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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 Chief Doug Neasloss, Chief of the Kitasoo/Xai'xais First Nations 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.

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.

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."

...

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 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 since approximately 2008, 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 than 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. [2<sup>nd</sup> 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](http://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/Xai’xais First Nations 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 and Xai’xais 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/Xai’xais are 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.

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, Tahltan elders had occupied the company's campsite in protest.

### **The Heiltsuk's History of Protest**

I'm indebted to Jess Housty for kindly providing me with this further history of protests by her community. The Heiltsuk has a history of successful protests (primarily against sportfishing lodges and logging operations) that resulted in interruption or cessation of

activities to which the community was opposed. Community members may exercise their right to fish for food, social, or ceremonial purposes in contexts at odds with these activities.

They also have a history with protests, peaceful, unarmed protests against fish farms that resulted in a level of aggression from the RCMP that the community found offensive. These protesters are some of some of the activists now in the community.

Protests have also been a part of the community's narrative in the last few years. More recent examples include protests related to Enbridge; in solidarity with other Nations; and in response to DFO's opening of a commercial herring fishing in our territory this past spring.

The issues around the potential destruction to the community by the Enbridge development continues to be a central organizing issue. In April 2012 when the National Energy Board/Joint Review Panel came to Bella Bella to hear oral evidence from elders and knowledge holders during their review of Enbridge Northern Gateway, the community organized a nonviolent rally, primarily with families and children at the airport. It resulted in the NEB/JRP unilaterally cancelling community hearings. While leadership managed to get the hearings back on track, the community lost 1.5 days of testimony and experienced much hostility from the Panel at the hearings.

Following the debacle with the JRP the RCMP has become even more heavy-handed. Members of the community have had peaceful demonstrations and drum circles in support of Idle No More, the Miqmaq protests at Elsipogtog, and other Indigenous issues. Despite voluntarily keeping the RCMP informed as a courtesy, we are now closely monitored and recorded by multiple officers whenever we gather. Many community members feel antagonized by this, and some are concerned that the ill will it breeds between the community and the RCMP will lead to future conflict.

The community faced significant issues this spring when the Department of Fisheries and Oceans opted to open its territories to a high-kill commercial herring fishery. The herring stocks are in recovery following a collapse (largely attributed to DFO mismanagement) a number of years ago. Heiltsuk was one of several Nations to oppose the opening. Nuu-chah-nulth obtained an injunction to stop the fishery long enough for the commercial fleet to miss their harvest window. Haida were able to use their ongoing title case as leverage to get in the room with DFO and negotiate a closure in their waters.

Heiltsuk and KITASOO-XAIXAIS were left in the middle. Heiltsuk fishermen committed to marine blockades to protect sensitive spawning grounds, and in Bella Bella there were more than 40 boats and 100 individuals signed up if leadership called for a blockade.

Since action on the land is a last resort, they were attempting to negotiate a closure with DFO -ultimately, to no avail. The communities of Bella Bella and Klemtu both approached the commercial fishing fleet directly at the docks and on the water, and 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 unnecessary.

While they averted a marine blockade this spring, it was an interesting test. 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 there was perceived racial politics at play, with the RCMP stationing dozens of extra officers, boats, and helicopters in the area for several weeks.

At a bird's eye view, every major conflict the Heiltsuk has had that threatened or resulted in protests were related to resource extraction and development. The party on the other side of the conflict was government as often as business. The relationship with the RCMP is typically precarious at a community level, and cautiously engaged at a leadership level.

### **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.

## **A right to protest**

The law recognizes the important role civil disobedience has played in the preservation of our democratic rights. It also recognizes your right to engage in civil disobedience.

The point was made 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.).

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](http://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.

## 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 Sargeant, 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:

N. Idle & A. Nunns, Editors, *Tweets from Tahrir*, (New York: OR Books, 2011; [www.orbooks.com](http://www.orbooks.com)).

A fascinating trip through the many thousands of tweets from January 14, 2011 to February 11, 2011, by two London based Egyptian activists-journalists.

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](http://www.beckersettlement.com) or [www.justiceonline.org](http://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](mailto: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.

## 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.

## 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 Professor Wesley Pue (Vancouver, UBC Press, 2000) page 3. In the essay "Policing, the Rule of Law and Accountability in Canada: Lessons from the APEC Summit," Professor 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.

***Please see one of the on-line copies of the text for a complete account of the practical advice offered on the conduct of protests.***