

Laws and Legal Implications of Public Protest

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Laws and Legal Implications of Public Protest

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Tracy Withrow
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Abstract

Working in conjunction with the Council of Canadians as well as OPIRG Peterborough, the object of this research project was to determine the laws and legal implications surrounding public protest as well as what information in regards to these laws needs to be clarified. How the laws have changed in the past 20 years and what went wrong in the Toronto 2010 G20 summit were also questions of interest in this research project. The goal of this research was to provide an easily accessible document that would explain the laws and legal implications surrounding protest so that incidents such as the ones that occurred during the Toronto 2010 G20 summit could be avoided in the future through education on this topic.

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Glossary

<i>Abstain</i>	to choose not to do or participate in something.
<i>Acquiescent</i>	willing to carry out the orders or wishes of another without protest.
<i>Adjourned</i>	to suspend until a later time.
<i>Arrest</i>	the process of taking a person accused of a crime into custody by a law enforcement officer.
<i>Assembly</i>	a group of persons who are gathered together for a common purpose.
<i>Beset</i>	to trouble or threaten persistently; to surround and harass.
<i>Breach</i>	failure to perform a promised act or obligation.
<i>By-law</i>	a law made by a municipal government.
<i>Charter of Rights and Freedoms</i>	is a bill of rights entrenched in the Constitution of Canada which guarantees certain political rights to Canadian citizens and civil rights of everyone in Canada from the policies and actions of all levels of government. It is designed to unify Canadians around a set of principles that embody those rights.
<i>Compliance technique</i>	methods designed to inflict discomfort or pain and secure the co-operation of the person affected.
<i>Conspire</i>	to secretly plot or make plans together.
<i>Constitution</i>	a set of rules for government that enumerates and limits the powers and functions of political persons.
<i>Convention</i>	a large formal assembly.
<i>Criminal Code</i>	compilation of government laws that outline a nation's laws regarding criminal offenses, and the maximum and

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minimum punishments that courts can impose upon offenders when such crimes are committed.

Curtailed

to restrict or place restrictions on.

Demonstration

a form of nonviolent action by groups of people in favour of a political or other cause, normally consisting of walking in a march and a meeting (rally) to hear speakers. Actions such as blockades and sit-ins may also be referred to as demonstrations.

Enforcement

to ensure observance of laws and rules are abided by.

Entrenched

established firmly and securely.

Ex parte

when one party to a case speaks or meets with the judge without the presence of the other party or the other party's attorney.

Grievance

a complaint about a wrong that causes resentment; another word for grudge.

Ignorance

the lack of knowledge or education on a particular subject, not to be confused with being unintelligent.

Indictable offence

a serious criminal offence that is usually heard in a higher court before a judge and jury.

Injunction

a document issued by a court (an order) that prohibits a party from doing or continuing to do a certain activity, and allows arrests to be made if the order is not followed.

Intent

the planning and desire to perform an act. In a criminal court in order to prove intent the mens rea (the mental state) must be proven.

Law

legal document setting forth rules governing a particular kind of activity; a rule or body of rules of conduct inherent in human nature and essential to or binding upon human society.

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<i>Offence</i>	an act punishable by law.
<i>Reasonable grounds</i>	the conclusion in relation to an act against the law, that a normal individual of sound mind would be able to reach given a set of facts.
<i>Riot</i>	an unlawful assembly that has begun to disturb the peace tumultuously.
<i>Speculative</i>	an assumption based on guessing or unfounded opinions.
<i>Summary offence</i>	is a criminal act such as a petty crime that is proceeded through court without a jury.
<i>Tumultuously</i>	chaotic, disorderly, clamorous, or uproarious occurrence.
<i>Unlawful</i>	not conforming to, permitted by, or recognized by law or rules.
<i>Unsanctioned</i>	without explicit official permission.

Introduction

The first supporter of this project is the Council of Canadians, which is a citizen's organization that started in 1985, and since then has developed over 70 chapters all across Canada. This organization works to protect Canadian independence by promoting progressive policies on topics such as fair trade, clean water, health care, and other social or economic issues. The Council of Canadians develops campaigns to put the main issues of the country, such as fair trade, clean water, and health care as mentioned above, into public view. These campaigns include speaking tours, days of action, conferences and demonstrations. They also support research projects, like this one for example, in order to educate the public on topics of concern. All of these actions are put into motion in order to ensure that all levels of the government know the kind of Canada the public wants. In 2010, the Council of Canadians celebrated their 25th anniversary, which is a celebration of a strong history full of many victories that they have achieved on many different issues.

The second supporter of this project, OPIRG, which stands for the Ontario Public Interest Research Group, is a provincial network of eleven non-profit, university student funded, and directed organizations. The Peterborough network of OPIRG was established in 1976 and consists of a volunteer board of directors and one full time staff member who administers the office and networks with other community organizations. OPIRG is committed to research, education and action on social justice and environmental issues. They organize many public events such as speakers, campaigns, films, and workshops on different topics, in order to educate the public. OPIRG has had 33 years of action in Peterborough and has worked on a wide range of issues, which have been a great contribution to society.

Background

Before the *Charter of Rights and Freedoms* was entrenched in the Constitution of Canada, the freedom to assemble was not considered a fundamental freedom by the Supreme Court of Canada. In 1978 the Supreme Court of Canada ruled in a case against public demonstrations saying that the Supreme Court itself did not regard demonstrations and street assemblies as fundamental rights or individual rights. There are numerous other court cases questioning this view, and many were significant in influencing what lead up to the decision to entrench the Charter in the Constitution, by Prime Minister Trudeau (1).

In 1969 the city of Montreal enacted a by-law which prohibited any demonstrations in order to maintain peace and public order. Immediately this by-law was challenged, in the case *A-G. v. Claire Dupond*, where Dupond argued that the prohibition of demonstrations infringed her Charter rights, but the case was dismissed and the by-law upheld, because the court believed there was potential for large incidents to occur and this by-law deterred these incidents before they happened. The court stated that s. 63 of the *Criminal Code*, which defines an unlawful assembly, makes it an offence to engage in any assembly at all, and that demonstrations are not a form of free speech. The results of this decision allowed municipalities to prohibit assemblies at will if the municipality could demonstrate that a possibility of violence exists. However, Dupond argued that the *Criminal Code* intended to make all assemblies that weren't violent or disturbing the peace lawful, and therefore by-laws such as the above mentioned Montreal one should not be able to be enacted. Finally, in 1982 the Charter was entrenched into the Constitution of Canada, which in turn made by-laws such as the one mentioned above null as it infringes the Charter rights of Canadians (1).

In order to better explain why some demonstrations and protests escalate into explosive events while others don't, a model called the Flashpoint model was developed. The Flashpoint

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model was developed by focusing on determining the occurrences during an event that prompt a riot or disorderly behaviour. While it is understood that deeper causes for riots and explosive situations exist, it is also true that immediate causes are often the result of one single incident. The Flashpoint model attempts to locate the immediate cause and interpret it into a wider context which can be used to explain why or why not disorder occurred in the given circumstance. The model consists of six levels of structure that indicate the immediate causes; structural, political/ideological, cultural, contextual, situational, and interactional (2).

The first aspect, structural, is concerned with people who have little money or power in the political sense and as a result end up with little say in what happens in society in traditional processes. It is based on material inequalities and results in social conflicts when the state does nothing to aid the situation, which in turn causes protestors to feel as though they have no stake in the social order of their society. The political/ideological aspect of this model deals with the way politicians, media, the police, and other governing individuals react to the demands and activities of protestors. If there are groups that are deemed problematic in the eyes of governing individuals then the problematic groups are more likely to be treated harshly by the police in protest situations. The third aspect, cultural, refers to the contrasting lifestyles that groups develop because each group shares the same experiences in the same areas, which in turn makes every group form different opinions of others that influence their attitudes in particular situations. The preconceived notions of individuals based on culture produces a problem in protest situations when officers from outside forces are brought in to aid the situation because these outside officials are not aware of the local issues and a greater clash of attitudes between the two groups is seen. The next aspect is contextual which has to do with the communication that occurs during the build up to an event; good communication (such as agreeing on policing

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aspects during the event, designated meeting areas, etc.) is more likely to lead to an orderly event, while bad communication (such as not making any effort to communicate on allowed areas, what should be policed, etc.) may lead to a disorderly event. The context also depends on the history between the groups that are protesting and the police, meaning that negative interaction between the two in the past may leave scores on both parts that they feel need to be settled which will result in a disorderly event (2). Another aspect that could be considered to be part of the contextual aspect are cultural factors such as the mindset people gain from television shows such as law and order, and the general distrust of the police that some people/groups have. Once again these mindsets can lead to scores that need to be settled. The fifth aspect, situational, is concerned with the actual setting of the protest or demonstration events. Physical properties of the location such as the ability of the protestors to come and go as they please, or that allows police easy access to surveillance of the area are included in this aspect; both of which are aspects that would influence whether a situation escalates to be explosive or not. Within this aspect it has been noticed that if protestors have a form of self-policing and police presence is not well shown (so riot police and dogs are hidden away) then the situations are less likely to become disorderly and more likely to continue on as a peaceful demonstration. The final aspect, interactional, refers to the interaction that takes place between the protestors themselves and the police. Interaction varies depending on the willingness of both parties to respect each other, cooperate with each other and show restraint. In the interactional aspect there may be one incident that happens, which when it is seen as unfair by either side, precipitates an explosive reaction and triggers disorder (2).

The above discussed model has faced numerous critiques since it has been discovered, the main criticism being the idea that in many riots there is a significant amount of time between

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when the precipitating event occurs and when the riot takes place, which leads to the question of how can you pinpoint what incident really caused the riot. Although the six aspects described above seem to incorporate this critique by looking at many different aspects in order to determine the precipitating incident, the model is being consistently modified and changed as events occur and are studied in order to make sure the model remains accurate (2).

Based on studies that were conducted on past protest incidents, in order to create the above discussed model it was also noticed that police are more likely to contain protests and maintain peace if their actions are supervised using clear lines of communication and command. In other words, during protest situations there needs to be someone in charge who makes orders clear of what is to be done and what is not to be done in given situations so that misinterpretations do not occur that would trigger disorder, such as the unlawful arrest of a protestor. There also needs to be clear communication between the protestors and the police officers because the peacefulness of a protest largely depends on the way both parties read the behaviour and intentions of one another. A tactic often used by police in protest situations is to adapt techniques and methods that have been used in previous situations by senior officers, even though these acts may not be defined in law as a strategic method that is encouraged. However, one of the best techniques to ensure the peace is kept during protest has been determined to be negotiating between the two groups in advance. Often, senior officers will meet with protest organizers to negotiate terms for protests so that everyone remains safe and happy. Of course this is only possible when protest groups are organized and have representatives to enter into these negotiations, which is hard in some cases because many protest groups are decentralized and lack formal leadership (2).

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Many of the rights and freedoms that people enjoy today, such as the women's right to vote, and the right for homosexuals to marry came from successful protests. If these protests had not occurred then women today may still be unable to vote and still be seen as below men on the social scale which would be a great economic and human rights setback. Protesting for your rights is a long respected tradition in Canada, yet is still viewed by the government as an extreme activity or an unlawful action that needs to be restricted. Because many people or countries see protests as dangerous situations criminal law has been introduced to protect the public, which as a result causes the space in which a protest can occur to be restricted (3). In particular, when foreign governments are coming to Canada for any reason that may result in protests their government insists on protection for their officials that is not consistent with the rights of Canadians, yet in order to satisfy the foreign officials police officers will often go above and beyond to meet their demands. Although Canadians have the right to assemble and freedom of speech, these rights may be breached in order to comply with another governments needs in a given situation, which brings on an ethical debate as to whether or not that is lawful in any circumstance (4).

There are a few points that protestors should be aware of when they are planning to attend a public demonstration, with the most important being the fact that the more people that attend the protest, the more powerful it will be. A protest that has only a few people is seen as less powerful and meaningful than a protest that contains a large amount of people who are trying to prove a cause or point. It is important to remember that when encountering company members to which the protest is against, or police members who are policing the situation, the goal is to stay calm and seek to reason. It is reasonable to question what is being asked, but this should be done so in a polite manner because although the right to protest does exist, being polite

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helps alleviate aggravated situations. That being said it is also important for police officers to remember the same thing; protestors have the right to protest so when asking them to comply with regulated conditions it should be done so in a polite manner, not aggressive. As long as a public area is not being blocked, the protest remains peaceful, and no threats of violence are committed, there is nothing unlawful about a protest and therefore it should be able to continue without incident (3).

The only situation in which notice must be given before a protest is initiated occurs when the assembly is around the federal Parliament buildings. Police can impose conditions on any protest that they believe a disturbance of the peace will result from if they do not impose such conditions, but the conditions need to be imposed in a manner that does not infringe a person's Charter rights. In other words, the police cannot say the length of time a protest can take place or the number of people that can attend; they can only prevent public places from being misused and ensure that the peace is kept by and for everyone. If an assembly takes place on private property without consent then it is considered trespassing and protestors can be forcibly removed if they do not leave on their own. When protesting a company, the company can apply for an injunction which, if violated, can lead to criminal penalties (3).

In the last quarter of a century there has been a dramatic increase in the number of public demonstrations that have occurred which all resulted in action being taken in order to maintain public order. The fact that action was taken brings forth concern that there really isn't any right to demonstrate publicly. Provinces and municipalities agree that the roads, highways, and public areas such as parks are for the public to use but this use becomes limited when the property use begins to be abused and not be used for what it was intended. This does not mean that public property was not meant for individuals to use in order to exercise their fundamental freedoms, it

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means that if in the process of exercising their freedoms it impedes someone else's freedom to use a public park peacefully as it was intended without listening to others protest, then it becomes a problem. However, there is the overall feeling that preservation of public peace rises above anything else, including Charter rights (5).

Law enforcement authorities in Canada do not have specific authorization to take measures commonly thought necessary to their mission, however these officials often do anyways because it is not a commonly known fact that their actions are not legal (6). Public order policing has come to include security fences being installed around the area in question, "protest areas" being designated for protestors to congregate, restricted access to public spaces, police surveillance of the area, and searches of people in these areas without cause. Despite the fact that it has come to include such things, none of these actions are set out in law as things that the police have the power to do, and no one has attempted to take the step to include these laws in legislation to produce less controversy. Because these laws are not present police are forced to make and abide by their own guidelines, which is a major cause of concern. Among other things, this is a sign that the government needs to establish public policing legislation to protect both officials and protestors alike (6).

Although many aspects are unclear about protests, there are legislations and case law governing these situations that should be publicized and clarified in order to create a safer environment for protestors, police, and members of the public. These laws and case law will be discussed in detail in the upcoming sections of this paper.

Methods

The laws that are in place currently for public protest and demonstrations were found by looking through and analyzing the *Criminal Code* to determine what aspects applied to protest and what the law is interpreted to mean. Once all the relevant sections were determined, case law was then examined to see how these laws were further refined in different cases, which becomes a binding law for any situation to come to the same level of court after this point. Laws and case law were examined for different levels of law, federal and provincial. It is important to note that most laws found were classified as federal law. The reason for this is the fact that federal law is set out by the *Criminal Code* while provincial law differs depending on the province or city you are in so it is not the same throughout Canada. That being said, decisions made in provincial court are specific to their province but are binding on every court at the same governmental level as them, and although they are not binding across provinces in general most provinces will follow these decisions unless they feel they are in a situation with extenuating circumstances, which in turn makes it in a sense a Canada wide law.

Next, case law that have been decided in the last 20 years were specifically looked at in order to determine how the laws have changed during this time frame. Interviews of local Peterborough activists were conducted in order to determine what knowledge the public has about the current laws that are in place and how these could be made better public knowledge.

Finally, a small case study was completed on the Toronto 2010 G20 summit in order to determine what happened that was legal, what happened that was illegal, and what needs to be changed in order to prevent more situations like this from occurring. Because a public inquiry is still ongoing for this event information that was gathered is solely based on media articles, videos and personal accounts published on the internet as that is all the information that is available at this time.

Criminal Code

The first place to look for laws that surround public protest would be in the *Criminal Code* as it contains federal laws that are enforced throughout Canada. There are a number of sections that relate to public protest and demonstrations which will be set out, explained, and discussed in the next few paragraphs.

First, it is important to note a section at the end of the *Criminal Code*, which is the *Charter of Rights and Freedoms* that is entrenched into Canadian Constitution as mentioned above. Of particular importance in this section is the part regarding fundamental freedoms which states the following:

Section 2 (7, pg 1728)

2. Everyone has the following fundamental freedoms
 - a) Freedom of conscience and religion
 - b) Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication
 - c) Freedom of peaceful assembly
 - d) Freedom of association

The above section denotes that as a Canadian citizen every person has the right to come together for a common cause, speak their mind and think what they want, and associate with whomever they choose. Further, this section was interpreted by case law to indicate that courts require the Crown to show a compelling reason of why the basic rights of an individual to do what's lawful should be curtailed or restricted in order for these rights to be violated, as decided in the case of *R. v. Collins* (7, pg 1731).

The first section of importance in relation to public protest in the *Criminal Code* is on the ignorance of law, and states the following:

Section 19, Ignorance of the law (7, pg 61)

19. Ignorance of the law by a person who commits an offence is not an excuse for committing that offence

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Based on the section above, this law indicates that just because an individual is not aware that their actions are against the law does not mean that the individual should be able to commit the offence without any punishment. It is very important to note this when looking at the laws surrounding public protest because in many cases people are not aware that there are rules around private property or blocking access to public property etc. If a protestor is unaware of the fact that the area they are protesting on is private property for instance, then they will feel punishment is not possible it was not evidence that the area was private property not know this and that it is against their rights to be punished. The above stated law supports the fact that not knowing the law is no excuse against breaking it and doing so punishable.

The next section of importance is in relation to the protection of persons administering and enforcing the law and states the following:

Section 25, Protection of persons administering and enforcing law (7, pg 75)

25 (1) Everyone who is required or authorized by the law to do anything in the administration or enforcement of the law

- (a) As a private person
- (b) As a peace officer or public officer
- (c) In aid of a peace officer or public officer, or
- (d) By virtue of his office,

Is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as necessary for that purpose

In this section the law indicates that as a police officer who is trying to enforce the law, if there is reasonable belief that the use of force is necessary and the only option in order to protect the public and keep the peace, then by law the police officer is authorized to use as much force as necessary to enforce the law and protect citizens.

One of the most common occurrences that people are taken into police custody for during protest is for breaching the peace. The law on this is set out in the *Criminal Code* in this next section, which says that:

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Section 30, Preventing breach of peace (7, pg 87)

Everyone who witnesses a breach of the peace is justified in interfering to prevent the continuance or renewal thereof and may detain any person who commits or is about to join in or to renew the breach of the peace, for the purpose of giving him into the custody of a peace officer, if he uses no more force than is reasonably necessary to prevent the continuance or renewal of the breach of the peace or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of the breach of the peace

Section 31, Arrest for breach of peace (7, pg 87)

31(1) every peace officer who witnesses a breach of the peace and everyone who lawfully assists the peace officer is justified in arresting any person whom he finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join or renew the breach of the peace

(2) every peace officer is justified in receiving into custody any person who is given into his charge as having been a party to a breach of the peace by one who has, or who on reasonable grounds the peace officer believes has, witnessed the breach of the peace

A breach of the peace occurs when someone disturbs the peace by any means whether it be causing a scene, making excessive amount of noise, arguing or fighting, etc. In other words, this section dictates that anyone who comes across someone disturbing the peace is allowed to use only as much force as necessary in order to prevent them from continuing this or from re-initiating this breach. Police officers are also included in this section and the law is the same for them with the exception that they can also receive into custody someone who has been detained by another person for the breach of the peace.

Continuing through the *Criminal Code* the next section of importance that is come across is the suppression of riots which is dictated as:

Section 32, Suppression of riots (7, pg 88)

32(1) Every peace officer is justified in using or in ordering the use of as much force as the peace officer believes, in good faith and on reasonable grounds

- (a) Is necessary to suppress a riot
- (b) Is not excessive, having regard to the danger to be apprehended from the continuance of the riot

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The interpretation of this law indicates that police officers have the right to do what they must and use force for the purpose of stopping or preventing a riot from occurring. Based on the above law, if an officer believes that an assembly is going to get out of hand based on actions or statements made by members of the assembly, he/she has the right to step in and do what it takes to prevent this from happening in order to protect everyone involved.

Now we are beginning to reach sections that are more specific to demonstrations and protests, which starts with unlawful assemblies and states that:

Section 63, Unlawful Assemblies (7, pg 121)

63(1) an unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when they are assembled as to cause persons in the neighbourhood of the assembly to fear, on reasonable grounds, that they

(a) Will disturb the peace tumultuously; or

(b) Will by that assembly needlessly and without reasonable cause provoke other persons to disturb the peace tumultuously

(2) persons who are lawfully assembled may become an unlawful assembly if they conduct themselves with a common purpose in a manner that would have made the assembly unlawful if they had assembled in that manner for that purpose

(3) persons are not unlawfully assembled by reason only that they are assembled to protect the dwelling-house of any one of them against persons who are threatening to break and enter it for the purpose of committing an indictable offence therein

There are numerous important factors in this law to note. The first is that in order for this law to be applicable there has to be three or more people assembled together and these people have to have the intent to carry out an agreed upon purpose. What is meant by having the intent to carry out a common purpose means that three or more people have come together in one spot, who each possess the same thoughts or ideas on a topic, and are supporting it together in the form of a protest. Basically, this law states that if citizens who are part of the neighbourhood where the assembly is taking place, but are not part of the assembly, believe that this assembly will disturb the peace in their area or cause a fuss which will in turn provoke others to join in and continue

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the disturbance, then the assembly will be deemed unlawful and can be broken up. It also implies that as soon as members of an assembly begin to participate in behaviour that is not lawful to begin with and had they conducted themselves in such a manner in the first place when they came together it would have been prohibited, they become an unlawful assembly. The only exception to the previous statement is in the case of an assembly protecting a person's private property from harm. It is important to note here the difference between a breach of the peace and an unlawful assembly. A breach of the peace encompasses one person (although more may be present) who is somehow disturbing the peace in any way that is bothering other individuals, while an unlawful assembly consists of three people or more who are disturbing the peace while they are assembled for a common purpose.

In relation to the above section, are the sections on riots and the punishment of riots which are the following:

Section 64, Riot (7, pg 122)

A riot is an unlawful assembly that has begun to disturb the peace tumultuously

Section 65, Punishment of rioter (7, pg 123)

Everyone who takes part in a riot is guilty of an indictable offence and liable to imprisonment for a term not exceeding 2 years

These sections are simple to understand and very straight forward. When people participating in an assembly start conducting themselves in a way that disturbs the peace and causes harm to other people, then it becomes a riot. In order for an assembly to become a riot there needs to be actual or threatened force and violence, and people have to be proven to have taken part in the disturbance in some way before they can be charged under this law. Another factor that comes into effect for the application of this section is that the person must intend to take part in the disturbance or act as though they intended to, as many people will act intentionally but later say

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they didn't. Being charged under s. 64 has the max penalty of 2 years in prison, but could have punishments much smaller such as fines.

Following the punishment of rioters section there is a section on the punishment of unlawful assembly for people who are charged under this section, which is the following:

Section 66, Punishment of unlawful assembly (7, pg 123)

Everyone who is a member of an unlawful assembly is guilty of an offence punishable on summary conviction

An offence that is punishable on summary conviction means that the punishment for the offence can be imprisonment for a maximum of six months, a fine for \$5000 or both, but it cannot exceed the above mentioned fine or jail sentence.

The next section that is relevant to protestors would be the section on reading proclamation and the punishment for not abiding by this law, which dictates that:

Section 67, Reading proclamation (7, pg 123)

67(1) A person who is

- (a) A justice, mayor or sheriff, or the lawful deputy of a mayor or sheriff
- (b) A warden or deputy warden of a prison, or
- (c) The institutional head of a penitentiary, as those expressions are defined in subsection 2(1) of the corrections and conditional release act, or that persons deputy

Who receives notice that, at any place within the jurisdiction of the person, twelve or more persons are unlawfully and riotously assembled together shall go to that place and, after approaching as near as is safe, if the person is satisfied that a riot is in progress, shall command silence and there upon make or cause to be made in a loud voice a proclamation in the following words or to the like effect:

Her majesty the queen charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business on the pain of being guilty of an offence for which, on conviction, they may be sentence to imprisonment for life. God save the queen.

Section 68, Offences related to proclamation (7, pg 124)

Everyone is guilty of an indictable offence and liable to imprisonment who

- (a) Opposes, hinders or assaults, wilfully and with force, a person who begins to make or is about to begin to make or is making the proclamation referred to in section 67 so that it is not made;

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- (b) Does not peacefully disperse and depart from a place where the proclamation referred to in section 67 is made within 30 minutes after it is made; or
- (c) Does not depart from a place within 30 minutes when he has reasonable grounds to believe that the proclamation referred to in section 67 would have been made in that place if some person had not opposed, hindered, or assaulted, wilfully and with force, a person who would have made it

Based on this law, anyone of authority such as police officers who receive word of an assembly that has become unlawful and contains twelve or more people is occurring is legally allowed to go to the area and read the proclamation to the rioters which dictates that the rioters must stop what they are doing and leave the area. Anyone who tries to stop this proclamation from being made by any means, including assault, who does not leave the area within 30 minutes of being read this proclamation, and who does not disperse 30 minutes after the proclamation was attempted to be read but was unable to due to forcible actions (such as threats, yielding weapons, etc.) from members of the group, will be liable to be charged under this section. If police arrive on the scene and try to read a proclamation but are met with a riot that does not settle and does not let them speak, within 30 minutes they are allowed to arrest anyone who does not disperse, regardless of if the proclamation has been read or not.

Following this law the next important law in the *Criminal Code* relates to causing a disturbance, and it says that:

Section 175, Causing disturbance, indecent exhibition, loitering, etc. (7, pg 331)

175(1) Everyone who

- (a) Not being in a dwelling-house, causes a disturbance in or near a public place
 - (i) By fighting, screaming, shouting, swearing, singing or using insulting or obscene language
 - (ii) By being drunk or
 - (iii) By impeding or molesting other persons
- (b) Openly exposes or exhibits an indecent exhibition in a public place,
- (c) Loiters in a public place and in any way obstructs persons who are in that place, or
- (d) Disturbs the peace and quiet of the occupants of a dwelling-house by discharging firearms or by other disorderly conduct in a public place or who, not

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being an occupant of a dwelling-house comprised in a particular building or structure, disturbs the peace and quiet of the occupants of a dwelling-house comprised in the building or structure by discharging firearms or by other disorderly conduct in any part of a building or structure to which, at the time of such conduct, the occupants of 2 or more dwelling-houses comprised in the building or structure have access as of right or by invitation, express or implied
Is guilty of an offence punishable on summary conviction
(2) in the absence of other evidence, or by way of corroboration of other evidence, a summary conviction court may infer from the evidence of a peace officer relating to conduct of a person or persons, whether ascertained or not, that a disturbance described in 1 (a) or (d) or an obstruction described in 1 (c) was caused or occurred

The interpretation of this law is simple, while its wording might be complicated. It is saying that anyone who causes a disturbance in or near a public place by any of the means described is guilty of an offence under this law and can be charged. The law also states that a person who is loitering in a public place and in doing so obstructs people who are in that place and using it for its purpose is also liable to be charged under this section. It also dictates that if there is no direct evidence that this disturbance has occurred when someone who has been charged under this section is brought to court the evidence from the police officer who conducted the arrest could be used.

A law that can be applied to participation in public protest that is not often thought of as relevant to this situation is assault. This law states that:

Section 265, Assault (7, pg 554)

265(1) a person commits assault when

- (a) Without the consent of another person he applies force intentionally to that other person, directly or indirectly
 - (b) He attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe upon reasonable grounds that he has, present ability to effect his purpose; or
 - (c) While openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs
- (2) This section applies in all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault
- (3) For the purpose of this section, no consent is obtained where the complainant submits or does not resist by reason of

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- (a) the application of force to the complainant or to a person other than the complainant
- (b) threats or fear of the application of force to the complainant or to a person other than the complainant
- (c) fraud; or
- (d) the exercise of authority

Many people do not realize that acts, such as arrest using unnecessary force or throwing rocks at a police line, committed during protest by police officers and protestors may be considered assault. The law described above demonstrates that any force that is intentionally applied to another person without their consent, as well as threats, attempts, or the use of weapons on another person is classified as an assault, whether it be a police officer arresting someone by throwing them onto the ground forcefully when it is not necessary or a protestor forcing their way violently through a barricade of police officers around an area. However, consent is not considered to have been given if someone agrees to the act because they are fearful or because they believe the person is of higher authority than them. If a protestor is being forcibly arrested and thrown to the ground when they are not resisting but they give in and accept it because they believe they can't say anything about it since police are officers of the law, it is not consent. It also means that if there is one police officer trying to disperse a group of protestors who are threatening the officer with violence and the officer ends up backing off and letting them remain because of fear of personal safety, this is also not consent. The grey area in this law is the fact that no person consents to having force applied to them, so how can assault be applied at all. An example would be, if a protestor were to be arrested and they agree to the arrest (or they are not resisting the arrest) and get thrown to the ground aggressively, police officers may think that was part of the consent given and therefore not assault on the person however the person did not consent to this force, they consented to being arrested.

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The next section indicates the punishment for persons committing the action of assault, which states that:

Section 266, Assault punishment (7, pg 558)

Everyone who commits an assault is guilty of

- (a) An indictable offence and liable to imprisonment for a term not exceeding five years; or
- (b) An offence punishable on summary conviction

Based on the above section the meaning is straight forward as it states how someone is to be punished if they commit assault, and the limitations to punishment (what it cannot exceed).

Intimidation happens often during public protest whether it be by police towards protestors or protestors towards police/groups/companies they are protesting. However, there are laws against intimidation which state that:

Section 423, Intimidation (7, pg 745)

423(1) Everyone is guilty of an indictable offence and liable to imprisonment for a term of not more than 5 years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has lawful right to do, or to do anything that he or she has a lawful right to abstain from doing

- (a) Uses violence or threats of violence to that person or his or her spouse or common-law partner or children, or injures his or her property
- (b) Intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged
- (c) Persistently follows that person
- (d) Hides any tools, clothes, or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them
- (e) With one or more other persons, follows that person, in a disorderly manner, on a highway
- (f) Besets or watches the place where that person resides, works, carries on business or happens to be, or
- (g) Blocks or obstructs a highway

Based on the above definition, anyone who makes someone do something they don't want to do by intimidating them with threats, violence, or any other means can be charged under this

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section. If during a protest that is taking place against a company, for instance, workers are trying to get into the building and protestors restrict the workers access to their jobs by any other means then blocking it (so by threats or violence) then it is intimidation and they can be charged under this section.

The next section from the *Criminal Code* that is related to protests is the law on conspiracy which dictates that:

Section 465, Conspiracy (7, pg 821)

465(1) except where otherwise expressly provided by law, the following provisions apply in respect of conspiracy

- (a) Everyone who conspires with any one to commit murder or to cause another person to be murdered, whether in Canada or not, is guilty of an indictable offence and liable to a maximum term of imprisonment for life
- (b) Everyone who conspires with any one to prosecute a person for an alleged offence, knowing that he did not commit that offence, is guilty of an indictable offence and is liable
 - (i) To imprisonment for a term not exceeding ten years, if the alleged offence is one for which, on conviction, that person would be liable to be sentence to imprisonment for life or for a term not exceeding fourteen years, or
 - (ii) To imprisonment for a term not exceeding five years, if the alleged offence is one for which, on conviction, that person would be liable to imprisonment for less than fourteen years, and
- (c) Everyone who conspires with anyone to commit an indictable offence not provided for in paragraph (a) or (b) is guilty of an indictable offence and liable to the same punishment as that to which an accused who is guilty of that offence would, on conviction, be liable; and
- (d) Everyone who conspires with anyone to commit an offence punishable on summary conviction is guilty of an offence punishable on summary conviction

The relationship between this law and public protests is based on the concept of an assembly becoming an unlawful assembly and acts being committed such as assault or riots. This law specifies that if members of an assembly come together for a common purpose which includes committing an act that is considered an offence then it is considered a conspiracy and will be charged as such.

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All of the laws outlined above are from the *Criminal Code* and are applicable to enforce during public protests and demonstrations. It should be noted at this point that the wording of the *Criminal Code* is directed towards members of the general public acting illegally and not police officers, however all laws still apply to police officers even though they are the people enforcing the laws because this does not exempt them from being lawful individuals.

Case Law and Legislation

The next place to look for laws that apply to public protests and demonstrations are in case law. Case law are rulings that have been made in cases that have come to court which basically refine laws based on the circumstances. For instance, if someone is arrested because they are in a public place such as a park protesting but by doing so the individual was restricting the ability of other citizens to use the park for the parks intended purpose, the arrested individual may say this infringes their right for freedom of assembly. When brought to court the judge would agree but say that the individual is restricting other people's right to use a public place, which therefore makes the individual accountable and refines the law of freedom assembly to include the clause that as long as an individual is not disturbing people from using the area for its proper intentions then the freedom to assemble exists. If the decision is made at provincial level it would then be binding across all other courts that are the same court level, and courts of a higher level and of other provinces would generally do their best to maintain this decision in subsequent cases unless the court feels that the circumstances of the case at hand are extenuating and require different rulings. The following pages will discuss numerous case law that determine refinement in laws related to public protest.

Harrison v. Carswell, 1976 (8)

The respondents in this case decided to strike at their job and proceeded to conduct a lawful strike by picketing on the sidewalk in front of the premises. However, as this was private property, the manager informed the picketers that they could not picket there and asked them to leave the premises, which they refused to do and as a result the picketers were charged. This case is related to the aspect of freedom of expression because although everyone is entitled to express their rights, if they are doing so on property that is not public property and are informed of this but refuse to leave, they can be arrested and charged.

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R. v. Kalyn, 1980 (7, pg 123)

In this case the accused was charged with participation in an unlawful assembly and had the defence that they did not conduct themselves in an unlawful manner even if others did. The judge ruled that in order to become an unlawful assembly it only takes the actions of a few members of the assembly and this renders all members of the assembly liable to be charged with unlawful assembly. The resulting judgement refines the law for unlawful assemblies in terms of the fact that once an assembly turns unlawful and a participating individual of the protest realizes it has done so, as a reasonable person the individual should walk away from the situation because it is unlawful. If the individual does not walk away from the situation then they are then considered to be participating in it and are liable to be charged under this section.

R. v. Collins, 1982 (7, pg 1731)

In the case of *R. v. Collins* the accused was released on bail conditions while awaiting trial for obstructing the police, and the conditions of the release included the fact that he not attend a demonstration or demonstrate or in any way cause a disturbance within half a mile of a particular factory. The accused felt that these conditions infringed his charter rights and that even if the conditions imposed were bail conditions the court should not be allowed to dictate whether he participated in a demonstration or not. He appealed these conditions and it was ruled that these conditions should not have been imposed because the rights of an accused cannot be restricted based on a speculative concern of danger. The ruling made in this case concerns the right to the freedom of assembly and further refines this law to indicate that it cannot be infringed on the basis that police suspect the person may participate and cause danger. If the court does not have probable grounds to believe there is danger then it cannot restrict a person's freedom.

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R. v. Peters, 1982 (9)

The defendant is charged with causing a disturbance in or near a public place by using obscene language. The defendant is questioning whether or not this is causing a disturbance as the only people present were police officers at the time and he was using only a loud voice. The judge ruled that the defendant is correct in this court case and he was acquitted. The decision made refines the law of cause a disturbance because as you can see using a loud voice to utter obscenities in the presence of police is not considered a disturbance of the area as it is not disturbing anyone but the police.

R. v. Paulger and Les, 1982 (7, pg 122)

In the case of *R. v. Paulger and Les* the accused was charged with being part of an unlawful assembly but believed like the above accused that they themselves were not liable because they did not intend to participate in an unlawful assembly and were just doing what was asked of them. The judge, in this case, ruled that if an individual is a part of an assembly that becomes unlawful through other peoples actions and that individual subsequently begins to partake in the unlawful assembly, then the individual cannot create a defence in saying that they did not intend to because they were just doing what was asked. This ruling refines the law on unlawful assemblies further because although an individual cannot be charged if they were unaware this was the initial purpose, an individual can be charged if they participate in the unlawful assembly after realizing it has become such.

R. v. Brien et al., 1993 (10)

The defendants in this case were charged with participating in a riot but the defendants argued that the *Criminal Code* infringes their charter rights on this and that the definition of unlawful assembly allows for someone who is not guilty to be found accountable without having

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any intent to do so. The defendants believed that a gathering of people (of 3 or more) may be wrongfully deemed unlawful by a neighbour who mistakenly thinks that the peace will be disturbed. They also believed that anyone participating in a lawful assembly is at risk of being charged under the unlawful assembly section because if the assembly turns unlawful even if they didn't intend to cause a disturbance they will be punished for others wrongs. The judge in this case ruled that once a disturbance of the peace has begun a reasonable person will disassociate themselves from this assembly as they did not intend for this to happen. The judge also ruled that there must be violence or threatened violence in order to have a riot so there is no way that a wrongful conviction can occur in this section. This refines the law for unlawful assemblies as well as riots, because it dictates that you cannot be charged under these acts unless you continue to participate in this assembly after you realize this is occurring, at which point you become part of the disturbance.

Elizabeth Bagshaw Society v. Breton et al., 1995 (11)

The defendants are protestors who are anti-abortion activists who have been picketing outside the clinic, blocking the doors and using tactics that are aimed to dissuade women from accessing abortions. An injunction has been ordered to prevent them from picketing and trying to stop people from having abortions as they are going in, but these acts have continued anyway. The results of these actions have been damages to the company and their property and the company is seeking a permanent injunction to prevent protestors from picketing, trespassing and interfering with their business. Police have had to remove the defendants from sitting in front of the emergency exits at this clinic numerous times and they do not deny that they have done so. The defendants believe they only acted out of necessity and for their own personal beliefs, and that they planned to block doors and exits for a good reason. The judge ruled in favour of the

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clinic which was protected and granted damages. In this case there is an issue of competing rights and it refines laws on trespass and freedom of expression, because it acknowledges that while personal beliefs may be against something and they have the right to express it, when blocking a company and preventing their everyday business it is unfair and unlawful and liable for conviction.

R. v. Leconte, 2000 (7, pg 122)

The accused in this case was charged with participating in an unlawful assembly but their position was that they did not know that the assembly was together for the purpose of becoming unlawful and therefore should not be charged under this section. The court judge in this case ruled that an individual member of an assembly is not guilty if he is unaware that other members of the assembly gathered with the intention of disturbing the peace or that some members were participating in behaviours that caused fear in the neighbourhoods because they did not intend to partake in any of this. In this case the ruling refines the law on unlawful assemblies because although an assembly becomes unlawful when everyone gathers for the purpose of committing a disturbance, if an individual is part of that assembly and do not know of this intention then said individual cannot be guilty just because they are present because that was never their intent.

Interfor v. Kern et al., 2000 (12)

The defendants in this case were protesting the logging that Interfor was conducting in a specific area, and were videotaping/ following workers as they were working which put them in close proximity to working areas which is a safety hazard. The police in this case determined that the actions being taken by protestors were not a criminal offence and they should not be arrested or told to leave the premises. Once again this case is in relation to the freedom of expression and assembly because it dictates that as long as you are not conducting yourself in a manner that

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disrupts the work of the individuals you are protesting then you are not committing an offence and should not be arrested, unless an injunction is in place.

Slocan Forest Products Ltd. v. Rutkowsky et al., 2000 (13)

In this case Slocan is a logging company who wants an injunction preventing people from protesting their work areas because they were met with a blockade when they tried initially to get down the road. The protests only ever lasted an hour, they were always peaceful, and they were asked to meet with the manager to discuss further which they showed up for but the manager did not. The judge in this cause ruled that an injunction could not be given because they did not do anything unlawful and the workers could still continue to work therefore the protestors had a right to conduct themselves in the manner that they did. This case demonstrates that as long as a protest is conducted in a lawful manner and does not interfere with the work of the company then they cannot be charged for anything and have no reason to have an injunction placed on their freedom of expression.

Sun Peaks Resort Corporation v. Billy et al., 2001 (14)

In this case members of an Indian band were protesting on the land of this ski resort and impeding access to this land. The ski resort owns the land and the Indian band only started occupying it when they learned of new developmental plans. The company asked the band to leave their land and everyone voluntarily left the land except for three people who refused too, so the company sought an injunction to force them to leave while the band said that this would infringe their rights and freedoms. The judge ruled that an injunction should be granted because the ski resort owned the land and is allowed to do what they please with their own property. The above mentioned case relates to private property and the fact that protest cannot be conducted on

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private property once they are told to leave the premises or they can be forced to leave and it is not a violation of rights and freedoms.

Alliford Bay Logging (Nanaimo) Ltd. v. Mychajlowycz et al., 2001 (15)

In this case the Alliford logging company is applying for an injunction to ban the defendants and anyone involved with them from entering his work areas on Catface mountain, and from blocking access to them. Protestors blocked the access road at this location by standing across the road causing workers to not be able to work that day, so an ex parte order was granted which is a document stating that protestors are not allowed to block the road between specific hours. The ex parte was served to them the following day and most people stepped aside except for one person in particular and police would not arrest this person, so work was not completed. Based on the case information the judge ruled that it was lawful for protestors to exercise their right to assembly on the roads as long as they do not impede access to the area and put themselves in harms ways. Just because one person violated the ex parte does not give reason for all protestors to be restricted by an injunction and therefore one was not granted. This refines the right to assemble in terms of the ability to express this right as long as they are not violating what the company is intending to do. If they are not interfering with work then they are not going to be forced to disperse the area because it is their right to be there.

Hamilton City v. Loucks, 2003 (16)

The defendants in this case created a human blockade at the entrance of a construction site that they did not approve of and even after being told there was an injunction on them protesting there they remained so they were arrested. They state that it is their right to freedom of expression to participate in demonstrations in this area. The judge in this case ruled that while an individual is allowed to exercise their freedom of expression in a public place at any time, the

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form in which they do so must be compatible with principal or intended function of that place.

Based on the above statement, this means that obstructing the cities sidewalks is not a form that is compatible with the intended purpose which is for people to walk and therefore freedom of expression cannot be done in this way. The judge also pointed out that while many good results have come from protesting and demonstrations the people who have engaged in these successful events have always been brought to court and punished for disobeying the law. The reason for this is that people cannot be allowed to engage in unlawful conduct, even if it is for a good cause; all citizens must be compelled to obey the law which is why it is enforced in these situations whether intentions are good or not. This case law refines the freedom of expression to be understood that although you have the freedom of expression you cannot display this in a way that prevents other citizens in their freedoms to use public places as they were intended.

Verchere v. Greenpeace Canada, 2004 (17)

The respondents in this case is a logging company who were logging at a particular island and Greenpeace Canada sent protestors over to this island on a boat in order to protest this work because they believed that the company carried out bad logging practises. The protestors chained themselves to machines and climbed on machines, forcing workers to stop work and because the protestors would not leave the workers were transported back to land and sent home. The company then applied for an injunction, at which time the protestors did withdrew and leave, however workers were not paid for this period of missing work and charged the protestors for damages that they caused. The judge in this cause ruled that the protestors were aware that by stopping the workers from completing their work as they intended would cause for a loss in wages and therefore should pay damages to these individuals as they interrupted their obligations. This case once again refines the freedom of expression and assembly because

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although an individual is allowed to express them self and assemble to do such, once they begin preventing people from completing their obligations which results in a loss of wages the individual is violating the workers rights and can be charged and ordered to pay damages for this.

R. v. Drury et al., 2004 (18)

The defendants in this case were protesting at a community center where the premier was supposed to be but who did not show up. One protestor was arrested for wearing a clown nose and acting out a skit where he ended up hitting a police officer, which resulted in a loud and angry response. The defendants believed in this way their rights have been violated and that the police were looking for a fight. The judge ruled that although they believe the hit was unintentional, under the circumstances the officers acted reasonably in arresting them. While the judge agrees that in some cases police were aggressive it was only after a prolonged effort to disperse people peacefully and there is no evidence they misused their power. In conclusion, the judge decided that this was indeed an unlawful assembly, even though not everyone took part in it and therefore the charges should remain. The law of unlawful assembly is refined further from this case in the sense that demonstrations are allowed but assaulting a police officer by hitting him/her is not and will result in arrests, which may be misinterpreted as a misuse of power but it is not.

British Columbia (Attorney General) v. Sager et al., 2004 (19)

In this case the government acquired land in which they decided to build a parking lot on, however citizens did not approve of this and participated in protests at the entrance to the area which prevented work from being done. The government is charging them with trespassing and wants to place a restraining order on them to prevent them from continuing to do so. The

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protestors say that they were unaware that they were not allowed on the area that they were at because they did not know it was private property. The government had not labelled the boundaries to the land to indicate what part is private property and what is not. Because of this the judge ruled that the defendants are not to be charged with trespass as the land was not clearly labelled to inform them of this. This case refines the *Trespass to Property Act* (shown below) by stating that while land may be private property, if its boundaries is not clearly labelled then protestors are not at fault for being on land that they did not know was private property.

R. v. Babb et al., 2006 (20)

The defendants in this case were charged with failing to leave the premises when directed to do so under the *Trespass to Property Act*. The defendants showed up at the company to protest and were told by security personnel that they were not allowed to do so, but they did anyway which resulted in them being arrested by police. The trespass act gives the landowner the right to decide who is permitted on their land and who is not, and they are not required to give a reason as to why they decided it as such. The judge ruled that the defendants had no right to go on the companies land, and that while the court is mindful of the charter rights there are exceptions and limitations to a person's conduct, therefore they were in the wrong and can be charged under this section. This once again refines the right to freedom of expression, which dictates that although an individual has the right to express them self it comes with responsibility to respect the rights that others have, which may be as simple as privacy of land.

R. v. Conway et al., 2006 (21)

The defendants in this case face charges of riots and unlawful assembly because they barricaded outside (from another area) police forces into the station and put on a visible show of force using bulldozers. For 37 hours this situation continued, before things were settled down

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and people were arrested, allowing the outside police officers to leave. The judge in this case recognized the fact that even though someone is convicted of unlawful assembly, they can be discharged if it is in the interest of the accused and not contrary to public interest. If the accused is a good person who is a first time offender who they do not believe will re-offend the judge will likely opt to discharge them because they are hesitant to burden someone with a criminal record for this offence unless they already had one. The judge ruled that in this cause the riot was a violent offence so as a result people who had no criminal records got conditional discharges while people with records get fines and prison time. This case refines the punishment of unlawful assembly and riot because although there are max penalties, a judge can use their discretion to create punishments within legal parameters.

Of all of the above mentioned cases that pertain to laws regarding public protest it is important to note that no case deals with instances where police officers have disobeyed the law in protest situations and have been prosecuted as such. The reason for this is that when looking through case law for public protest there are no court cases to date that deal with any situation of this nature. As will be shown later in the discussion of the G20 Toronto 2010 summit there are some clear incidents in this case study alone where police officers have disobeyed the law during policing of a protest, so the reason for the lack of case law covering this area is unknown.

Now that case law of importance have been set out, provincial laws are the next place to look for laws governing public protest and demonstrations. Many provinces put acts in place that governs different things, such as trespassing or private property. Although there are many provincial acts in place in Ontario, only three relevant ones were found for this research, which are set out below. It is important to keep in mind that these are provincial laws, meaning they apply only in the province of Ontario, however other provinces may have similar laws or ones

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that this province does not. Because of time constraints only the province of Ontario was investigated for provincial laws. The three relevant laws are as follows:

Trespass to Property Act (22)

1. every person who is not acting under right or authority considered by law who;
 - (a) Without the express permission of the occupier, the proof of which rests on the defendant:
 - (i) Enters on premises where entry is prohibited under this act, or
 - (ii) Engages in an activity on the premises when the activity is prohibited under this act
 - (b) Does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or person authorized by the occupier is guilty of an offence and on conviction is liable to a fine of not more than \$2000
2. It is a defence to a charge under subsection (1) in respect of premises that is land that the person charged reasonably believed that he or she had title to or an interest in the land that entitled him or her to do the act complained of.

The *Trespass to Property Act* is relevant to public protest and demonstration because it indicates that in the province of Ontario if you are on private property and do not have permission to do so, and you do not leave when you are asked to do so then you will be charged under this act. Even though protestors have the right to freedom of expression and assembly, private property is also protected under the law and needs to be respected or else charges can and will be laid.

Road access act (23)

- 2(1) No person shall construct, place or maintain a barrier or other obstacle over an access road, not being a common road, that, as a result, prevents all road access to one or more parcels of land or to boat docking facilities therefore, not owned by that person unless,
- (a) the person has made application to a judge for an order closing the road and has given ninety days notice of such application to the parties and in the manner directed by this Act and the judge has granted the application to close the road;
 - (b) the closure is made in accordance with an agreement in writing with the owners of the land affected thereby;
 - (c) the closure is of a temporary nature for the purposes of repair or maintenance of the road; or
 - (d) the closure is made for a single period of no greater than twenty-four hours in a year for the purpose of preventing the acquisition of prescriptive rights.

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2(2) No person shall construct, place or maintain a barrier or other obstacle over a common road that as a result prevents the use of the road unless,

(a) the person has made application to a judge for an order closing the road and has given ninety days notice of the application to the parties and in the manner directed by this Act and the judge has granted the application to close the road; or

(b) the closure is of a temporary nature for the purposes of repair or maintenance of the road.

2(3) Notice of an application to close an access road that is not a common road shall be served personally upon or sent by registered mail to the owner of each parcel of land served by the road who would, if the road were closed, be deprived of motor vehicle access to and from the owner's land and, where the owner is not occupying the land, notice shall also be given to a tenant or occupant of the land by either,

(a) handing the notice to an adult person who is a tenant or occupant of the land; or

(b) posting the notice on the land in a place and manner that makes the notice conspicuous to an occupant of the land.

The *Road Access Act* is relevant to public protest and demonstrations because it concerns blocking roads which in many cases is done by protests in order to prove a point. The circumstances when blocking an access road is permitted is dictated within this law, and all other circumstances are punishable under this law whether people are just enacting their rights to freedom of expression or not.

Public Works Protection Act (24)

1 In this Act,

“guard” means a guard appointed under this Act; (“gardien”)

“highway” means a common or public highway or a part thereof, and includes any street, bridge and any other structure incidental thereto and any part thereof; (“voie publique”)

public work” includes,

(a) any railway, canal, highway, bridge, power works including all property used for the generation, transformation, transmission, distribution or supply of hydraulic or electrical power, gas works, water works, public utility or other work, owned, operated or carried on by the Government of Ontario or by any board or commission thereof, or by any municipal corporation, public utility commission or by private enterprises,

(b) any provincial and any municipal public building, and

(c) any other building, place or work designated a public work by the Lieutenant Governor in Council. (“ouvrage public”) R.S.O. 1990, c. P.55, s. 1.

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2(2) Every person appointed as a guard under this section has for the purposes of this Act the powers of a peace officer.

2(3) Subject to the regulations and to any special direction of the Solicitor General or the Commissioner of the Ontario Provincial Police Force, every guard shall obey all directions of the person appointing him or her, any inspector of the Ontario Provincial Police Force, the chief of police of the municipality in which is located the public work that he or she is protecting, and the person who is in charge of the protecting of the public work.

3 A guard or peace officer,

(a) may require any person entering or attempting to enter any public work or any approach thereto to furnish his or her name and address, to identify himself or herself and to state the purpose for which he or she desires to enter the public work, in writing or otherwise;

(b) may search, without warrant, any person entering or attempting to enter a public work or a vehicle in the charge or under the control of any such person or which has recently been or is suspected of having been in the charge or under the control of any such person or in which any such person is a passenger; and

(c) may refuse permission to any person to enter a public work and use such force as is necessary to prevent any such person from so entering.

5(1) Every person who neglects or refuses to comply with a request or direction made under this Act by a guard or peace officer, and every person found upon a public work or any approach thereto without lawful authority, the proof whereof lies on him or her, is guilty of an offence and on conviction is liable to a fine of not more than \$500 or to imprisonment for a term of not more than two months, or to both.

5(2) A guard or peace officer may arrest, without warrant, any person who neglects or refuses to comply with a request or direction of a guard or peace officer, or who is found upon or attempting to enter a public work without lawful authority. R.S.O. 1990, c. P.55, s. 5.

This act is very important as it explains what public work is considered to be, which is different than public places (such as sidewalks) and that police have the right to ask for identification or not allow you to be in that place for any reason, and that they can arrest and search without a warrant any person that they deem necessary in the situation. In areas where protests are taking place individuals are often asked to produce identification and many people do not believe that it is legally allowed and therefore do not comply which may result in arrest.

One final interesting legal document that was found was a privileges and immunities order for the G20 summit in Toronto 2010 (25). The privileges and immunities order is

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interesting because it states that between specified date's organizations that are travelling to Canada for this conference are considered to have the legal capacity as a Canadian legal body, thereby giving them privileges and protection while in the country. Basically, this Act temporarily amends other laws that say different for this occasion and these circumstances.

Whether or not this order was made public knowledge or not is unknown, which leads to the idea that perhaps other laws can be amended in this way in different circumstances but it may not be published and made public knowledge. If this can occur then there is the potential for laws to be changed and citizens to end up violating them without realizing it, which seems like something the government would not want.

How have laws changed?

The *Criminal Code* was first written in 1892, and turned into the code that we see today in 1955 (26). Amendments have been made to the laws throughout the years in order to add more sections, re-define laws, and exclude some laws that may infringe rights. Even today laws are being refined continually within the code although not as often as when it was first written. The way that amendments occur to the *Criminal Code* is that an issue is brought up in government and presented as a bill. The bill goes through a voting process and if accepted becomes a law, and the *Criminal Code* is then amended to include the information in this bill. It is possible to review the bills that have been passed in each session on the government parliament website to see the amendments that are being made (27).

When looking at the bills passed in the past 20 years, none of the laws that have been edited have been related to the laws indicated above that have to deal with public protest and demonstration. This may be due to the fact that many provinces enact provincial acts in order to cover areas such as trespass and private property, so further amendments have not been an issue, indicating that the laws that are set out above have been in place for at least 20 years, maybe more. It is also evident based on the case law once again mentioned above that while laws are constantly being refined, the basics are not changing. Case law will refine laws further as situations occur that require clarity, but they will not change the law completely to say something different.

Despite the fact that the laws surrounding protests have not changed in the past 20 years there is an overall assumption among protestors that laws are changing in relation to public protest and demonstrations because there seems to be more cases, incidents, and arrests over these. It is my opinion that the reason for this feeling is the fact that protests are starting to become a more common occurrence in society today as more people are speaking out on issues which, as a

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result, leads them to also become bigger in magnitude. Because this is becoming more common there are often more disturbances, and more police present to compensate for the increasing amount of people partaking in protests. Increased police presence leads to higher tensions and more over-reaction on both parties' parts, which as a result leads to more arrests, more people feeling like their rights have been violated, and more outrage on the subject of laws around protests.

G20 Toronto 2010

The G20 summit that occurred in Toronto in the summer of 2010 has been getting a lot of attention from the media, the government, and many active protest groups since it has occurred. The reason for this is because many protestors have had their rights violated in various ways including arbitrary arrests, assaults, kettling, and sexual assaults. The following section of the research includes a very brief case study on this incident that barely begins to scratch the surface of this situation. Information presented is based on personal accounts, videos, and media articles as a public inquiry does not exist, so until one is completed and those findings can be accessed the information presented may contain bias. Another report which is highly recommended is the Ombudsman report which looks into the issues of this incident in depth and gives recommendations of what needs to be done by the government on this topic.

Spread all over websites such as YouTube are videos taken from the G20 summit by protestors and bystanders. Most of these videos display protestors getting their rights violated by being arrested for walking down the street, beat up for no reason, being forced to leave areas when they have a right to be there, and being told not to complete simple activities such as blowing bubbles. Many of the acts carried out by police officers that are witnessed in these videos are sickening and should not have occurred in the first place regardless of how bad the situation escalated to. After this incident and the release of these videos from citizens, many people feel that the Toronto police chief and other associated officials should be charged for the unnecessary violence that occurred. Based on the accounts of protestors who were present, the picture is being painted that this violence was coordinated in order to intimidate the public (28). The Toronto police chief holds that there is no evidence to indicate that officers have committed acts of unnecessary violence and therefore they cannot be charged, however this disregards the fact that there are videos all over the place showing that there is plenty of potential evidence.

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Over a thousand people were arrested throughout the weekend of the estimated ten thousand that were in attendance, which in itself should indicate to the government that something was not right in this situation. People were being attacked and arrested no matter where they were, yet only 315 of the 1100 were actually charged with something in the end. The numbers alone from this summit should send up a red flag because people were being arrested purely to get them off the streets during the protest, not because they were doing anything wrong. Not only were people arrested for no reason but Toronto civilians who had nothing to do with protest but happened to be downtown ended up being arrested by the end of the weekend, including a TTC worker who was in uniform on the way to work (29).

Police presence at this protest was conducted in an inappropriate manner; instead of wearing their uniforms and making their presence known, many of them were dressed in full riot gear standing in a line which increased tension as protestors were plain clothed and defenceless (29). Although it is unclear the reason behind this obvious show of power, there was no need for police to be present in this gear, while it is understandable that they should have it available to them in case they need it, they should not be wearing it the whole time for the purpose of intimidating protestors into keeping quiet or dispersing. The police designated a free speech zone in Queens park for the summit which was supposed to be a place for protestors to speak their mind and be safe. However, on June 26 in the evening the park was raided and people were kettled and arrested because police said they saw “thugs” come into the area to get changed so they needed to get them (29).

The G20 summit protests did not start off in an inappropriate manner, it just ended in one. It is an agreed upon fact that in general the first day consisted of peaceful protests with some people vandalising things and others protestors were trying to prevent them from doing so. While

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some things were chaotic in general the police were un confrontational and vandalism was stopped in an appropriate manner. On the second day is when things escalated and went downhill. People were encircled and told to move yet they had nowhere to go, so they were arrested, but when placed in cells they were overcrowded with people and had to fight for food and water. Many people who were arrested were told it was for one reason, then the charge changed to another reason until eventually it was dropped because there was really no reason at all (30).

There is one case in particular that proves the unnecessary violence has been committed by police and it is the case of Adam Nobody. There was video evidence showing him being surrounded by police officers and held to the ground, then punched repeatedly in the face. When he said his last name the police thought he was being smart and continued to kick him and beat him, causing him to have a facial fracture and broken nose, among other minor injuries (31). The police officer involved became the first officer from this incident to be charged with assault, and he has also been charged with assault in another case for abusing another woman present at the protest.

According to members of protest groups that were actively organizing the G20 summit protests, months before the G20 summit was to commence undercover police officers were infiltrated into various organizations. Many people involved with these organizations and who were present at the summit say that these are the people who often incited that violence should occur and tried to provoke people to use violence at protests and when talking about protests. They often bad mouthed police officers and tried to plan events that would be deemed unlawful.

There are incidents that occurred where people were shot with rubber bullets for no reason and pepper sprayed. There were even inhumane cases such as a protestor with a prosthetic

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leg who was told to get up off the ground and leave, and when he did not get up fast enough they pushed him down and arrested him. They then took his prosthetic leg and told him to walk and when he couldn't walk they said he should hop. No matter what your designation is, police officer or citizen, an act like this should never be committed ever. It is an infringement on so many rights and is cruel. In another incident the police line with riot gear is complete and out of nowhere they part, run out and grab people and drag them back through the line to arrest them. Clearly an infringement of rights has occurred and this only scratches the surface of what is wrong (32).

While police were undoubtedly using excessive violence when not required and arbitrarily arresting people, there are numerous acts committed by protestors that were wrong. One in particular are referred to as the "black bloc" riots. Because of these riots, the first use of tear gas in the city of Toronto that has ever occurred, and resulted from four police cars being set on fire, numerous businesses having their windows broken for no reason, and police officers having bricks, rocks, and spit being thrown at them. Whether or not police have committed unlawful acts throughout the weekend does not give anyone the right to commit riotous acts and violence towards them (33). Riots are not permitted by law, as set out in the previous sections of this report and although response was slow due to focus on other areas this does not mean that setting police cars on fire is permitted.

As mentioned above the Ombudsman report is a very important source of information for this protest as it indicates major circumstances that are wrong with the situation. One of the main things this report points out is the fact that Regulation 233/10 was passed in order to enhance security measures and was in essence a secret law as its passing was not made public. While they believe the regulation itself is an infringement of rights, if it had been published ahead of time to

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the public then they could have made themselves aware of this and been more prepared to abide by the laws. This regulation was however published in the Ontario Gazette which is all that is required by law, called the *Official Notices Publication Act*, and states that:

2(1) Unless another mode of publication is authorized by law, there shall be published in *The Ontario Gazette*,

- (a) all proclamations issued by the Lieutenant Governor;
- (b) all notices, orders, regulations and other documents relating to matters within the authority of the Legislature that require publication; and
- (c) all advertisements, notices and publications that are required to be given by the Crown or by any ministry of the Government of Ontario, or by any public authority, or by any officer or person.

Based on this law they are not required to publish the regulation anywhere else as it is already published where the law dictates it should. The regulation was part of the *Public Protection Works Act*, which is stated above, and gives police the power to ask anybody in the vicinity for identity and to conduct random searches. Not identifying themselves is an offence under this law, and has been since it was put in place. The Ombudsman report questions this law and as a result the Ontario government has agreed to look into this law to determine if it is infringing the rights of protestors (34).

In summary, many things happened during this protest that were illegal and infringed the rights of protestors. While not everything that occurred was illegal there were far more incidents of illegal action than legal action and this is a problem. Police officers have no right to arbitrarily arrest individuals for no reason, they have no right to commit violent acts towards people, and no right to make up laws and enforcement. On the other hand, protestors do not have the right to riot and cause damage which puts many members of the public at risk. Both of these acts from the police and protestors are against the law and should be punished. Guidelines need to be developed to teach police officers how they should deal with protest situations and what they are

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allowed to do so that both they and protestors know this information. This case study itself does not do the situation justice, it is barely scratching the surface. All the injustices on both parts need to be brought to light and hopefully a public inquiry will be conducted to do so.

Interviews

As mentioned above, for the purpose of this research seven local Peterborough protestors were interviewed in order to determine what is known about the laws currently in place, and if they believe the laws have been changing over the years they have been protesting. These volunteers were asked numerous questions (which can be found in the appendix).

The experience level of these protestors ranged from 2 to 14 years and included all different types of protests, whether it be lowering tuition for university protests, or the G20 summit in the summer of 2010 in Toronto. During their involvement the number of protests attended also ranged from 10 to 20, which is a substantial amount. The first main question asked concerned the difference in treatment between small and large scale protests that they have attended. Many of the interviewees said that they have not personally experienced a difference in treatment but they have heard stories of this happening and in some cases have witnessed this happening. There was a general consensus that small protests are more laid back in terms of police presence while large scale protests have more of an intimidating police presence, which is assumed to be its intended purpose. Small protests have less of a risk of physical violence and less press attention, while large protests are more confrontational because of the number of people present. It also depends on the issue that is being protested in some circumstances and not the scale. Basically it was determined that treatment differences do occur but it is circumstantial not a predetermined decision to treat people different because they are protesting.

When asked about how restricted they feel during protests the general consensus was that they felt very restricted because even on occasions where the protest is completely lawful protestors are only allowed to protest where police say they can or move where police designate they can move to. At any moment police can restrict this allowance further or break up the

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marches that they allow and disperse anyone just because, even if the circumstances have been previously agreed on they will change it within a seconds notice. Anything that you say at a protest is restricted and puts you at risk for being arrested, especially when you are at a large protest where more eyes are watching you. There is also a restriction issue when it comes to private security being brought in to help ensure the protest remains safe because private security is a lot less visible and less accountable for their actions. Mostly mobility rights are restricted in most protests, with people being limited to certain areas. There are also restrictions on things such as face masks not being allowed or scarves around faces not allowed, even in winter. In general there are not many restrictions besides mobility placed on protestors, except for cases like G20.

When asked if they knew what they are legally allowed to do at protests, so what laws are in place for protest many people knew basic charter rights such as freedom of speech, freedom of assembly, etc. but the consensus seemed to be that no one was sure the exact laws beyond this point. While they are aware of things they have seen happen, such as you cannot block a public place from being used for its rightful purpose, or that you cannot have weapons, this is based on what they were told they cannot do while at a protest. The information obtained is a major discovery as it points out the fact that laws such as the ones that are set out in the above sections need to be better publicized in order to inform protestors of their rights.

On the other side of this, protestors were asked what they know they are not legally allowed to do at a protest. The consensus on this question was things like obstructing private property, vandalism, violence, threaten, disguise yourself and riots are not permitted however unusual things like not permitted to hold signs cause they could be weapons, or carry cameras because that produces evidence have also been expressed. Information such as this is interesting

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because while some illegal acts as stated above are not known, other acts that are not illegal are considered to be illegal, such as carrying a camera.

Next, protestors were asked whether they believed the police officers acted legally during protests or if they feel this never occurred. The consensus on this was that they act legally sometimes and illegally at others, an example given would be they allow you to march in this specific area for over an hour then all the sudden round you up and arrest you when nothing has changed, so it was legal at first and now it's illegal for no reason. It was also mentioned that it once again depends on the circumstances of the protest; at small scale protests police tend to stand back and observe while at larger scale protests with heavier issues police are present in larger numbers and are more heavy-handed. Brutality seems to occur often in these situations, but they are also often very respectful in other situations.

When asked about what actions police officers cannot take during protests the main consensus for this was that brutality, arbitrary arrest, harassment, intimidation, racial discrimination, and restricting the areas in which they can protest in are all actions that are taken but that are not legal. In terms of arbitrary arrest many people agreed that they have only really encountered it in the case of G20, however in some cases it was not totally random but at the same time was targeting people who weren't really breaking laws. It also seems to be geared towards other racial minorities, in many cases they were arrested and then charges dropped because there was no warrant behind them.

When asked whether laws were stretched by police in order to incorporate arrests it was a general consensus that in most cases in protests such as G20 and large scale protests laws are definitely stretched in order to give reason to arrest people they come across and get them off the streets. In these situations police go into protests with the intention to fight or arrest people and

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therefore look at things more crucially to find ways to incorporate them as being against the law. One of the more interesting concepts that was brought up is this because it was a unanimous agreement among all individuals that police stretch laws to do as they please and come to protest looking for a fight. This indicates that something needs to be done to this situation in order to fix this preconception.

In the case of G20 private security firms were hired to help regulate the area and protect all citizens, and when questioned if this was an often occurrence the consensus between protestors was that this has only even been seen to happen at G20. It was also pointed out that the use of private security officials seems more dangerous because they do not abide by the same rules that the police officer does and are therefore less accountable for their actions. They often do not wear uniforms or nametags and do not identify themselves which leads to a dangerous situation because they have free rein to do what they please even if it is not legal. Another situation that occurred during G20 was that a group called the Movement Defence Committee came and put on workshops for protestors to help educate them on their rights and what they cannot do, and what to do if they got into trouble. They provided them with free legal counsel should the situation arise. When asked whether this occurred on other situations protestors agreed this was the first situation they have been provided with this support and that it is a valuable experience that should be available in all protests.

Finally, when asked whether they felt that the laws regarding public protest were made public knowledge, and what would be a good way to make them more publicly known the general consensus was that the laws are not well known at all and hard for people to find. Many people will not make the time and effort to look for these laws because it is too difficult. A way to make them more publicly known would be for the government to take it upon themselves to

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publish these laws in places like websites, newspapers, and documents that are easily accessible to the public. Also, providing more workshops such as the ones provided by the defence movement group often in order to educate protestors of their rights and laws in place. Another suggestion has been that these similar guidelines and workshops should also be provided to police officers in order to ensure they are aware of the laws they should be enforcing and acts that they should not be committing. If this information was released through the media or given to organizations such as the Council of Canadians then they could distribute this to their members and help disperse the information that way.

Based on the information gathered from these seven people it is a clear consensus that laws surrounding protest are not well known and this needs to be changed. While protestors are aware of what acts are legal on their parts and are illegal for police to commit they are not aware of laws dictating what they can do at a protest and what police can do in protest.

Conclusion

Public protest and demonstrations have been occurring for many years and have had excellent results. Every Canadian has the freedom to assemble and the freedom of expression, which allows protests to take place. In society today there are laws that govern what people can and cannot do, for instance one cannot murder another living being. With that being said there are also laws that govern what can happen and what cannot happen during public protest and demonstrations, dictated throughout the *Criminal Code*, provincial law, and case law. These laws, while readily available to the public, are not easy to interpret or to find. Because of this, not many laws are known by the public which is a major problem.

Police forces currently do not have any guidelines in place to dictate how protests should be dealt with which leads to different tactics being used by forces, or relying on tactics that were used in the past even if there is no legal support behind them. This needs to be changed and guidelines need to be created in order to ensure that all protests are dealt with in the same manner and illegal acts are not committed by police during these.

Case law, federal laws, and provincial laws that relate to public protests and demonstrations have been set out above. By placing all this information in one spot it can be easily accessed by anyone wondering this information, resulting in more informed protestors and ultimately less illegal incidents. While G20 in Toronto 2010 was clearly a protest that had many illegal acts carried out by police, it also had illegal acts carried out by protestors, as well as legal acts carried out by both parties.

In conclusion the public needs to be more informed of their rights, the laws, and all the refinements on these laws in order to peacefully participate in protests. That being said police officers need to be properly educated in this area as well in order to prevent them from taking

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illegal actions and getting away with them. Although knowing your rights does not make you immune to them being violated, it helps justice to be served if this does happen.

Barriers

During the course of research for this project there were a few barriers that caused a change in research direction. The first barrier that was encountered was in relation to finding case law for this subject matter. Because of the organization of CanLii, which is the website that contains case law, when words such as “public protest” were entered into the search every case that included the word, even people protesting their arrest or protesting the charges, is returned. This makes it difficult to find cases related to public protest because there are pages and pages of case law presented that are not relevant at all but must be sifted through in order to determine if it is the right subject matter or not. As a result, it is difficult to determine if all relevant case law was identified or if there are more that would come up with other search criteria, however many different phrases were tried such as “demonstration”, “unlawful assembly”, “assembly”, etc.

When looking for these laws and case law it took a lot of digging and deciphering in order to determine whether they were applicable to public protest and demonstrations. Because of this difficulty it took an extremely long time to find all the relevant laws on this topic, and it is unlikely that someone who does not have a law background would be able to find all of these laws or understand what they mean. This was the most shocking barrier that was encountered because you would think that these laws would be made easily understandable and accessible to the public so that unlawful acts are not committed.

Another barrier that was encountered is finding provincial and municipal laws. Because every province and city has the ability to create their own legislation and by-laws, it is hard to say what provincial and municipal laws are in Canada because they vary so drastically. Also, when searching for by-laws for a specific city such as Toronto, or legislation for Ontario, the same broad search results that occurred with CanLii happen here. No matter what the search criteria is many legislation and by-laws come up, but none that have to do with protests

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specifically. A lot of the laws that limit protest for provinces and cities are within by-laws such as private property acts, and don't directly deal with specific protests as much as violating private property. As a result, searching for both of these types of laws has proven to be very challenging.

Another barrier that was encountered involved getting volunteers to participate in interviews for the project. Because of time constraints and the time it took to get in touch with people and arrange interview times, only seven people were able to be interviewed. A greater sample size was desirable but could not fit into the amount of time that was given for this project. Also, many people view a researcher for a project like this as someone associated directly with the law and would prefer not to talk to them in order to protect themselves with further confrontations with the law. They are unwilling to associate with people that they do not trust, and with law officials being one of them it proved difficult to interview many people.

The final barrier that was experienced is the fact that a public inquiry for the G20 Toronto 2010 is not available at this date. This means that all the information that is present is media views, videos and personal accounts is the only information available at this time which may present a one-sided opinion of what happened and be unjust by presenting it in solely this manner. Because of this, the information achieved in this part of the research conducted should be read while taken into account the fact that it is not a highly recommended source of information.

Recommendations

Due to time constraints the information researched had to be narrowed in focus and as a result there are numerous aspects that warrant follow up research. The first aspect is concerning the G20 summit in Toronto of 2010. This protest is a major concern for protestors and a small case study as done in this paper does not do it justice as there are so many things left undiscovered and unpublished. The recommendation for this would be to look specifically into this summit in order to focus on the important aspects such as illegal activities and proper punishments.

The next aspect would be related to media personnel who are covering protests as they are happening. It seems as though well known papers are given privileges during protests in order to get their stories that other papers and even other papers are not given, and it would be interesting to determine whether this is the case or not, so the recommendation would be to explore this aspect to determine what privileges media coverage has.

Another aspect is the recommendation that a place be developed, whether it be a website or a journal, where laws surrounding protest can be published so that any protestor who wants to learn about the laws can easily go to and be educated. A plan should be developed on the best way to disperse this information to the public and then put into action.

A very important recommendation would be that the government put some training programs in place and create guidelines for police forces to learn and abide by in protest situations. By providing more education and training to police officials they will be more familiar with what is legal to do in these situations and what is not, and as a result be more prepared for any protest to keep everything lawful.

The final recommendation would be to develop workshops, such as the ones put on for G20 from the defence movement group that would be offered on a regular basis for protestors to

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go and learn their rights, the laws, and what they should do if these are violated. By having these workshops protestors will have more knowledge and an advantage when facing police officers who are trying to commit illegal acts.

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27. <http://www2.parl.gc.ca/HouseBills/billsgovernment.aspx>
28. <http://www.g20.torontomobilize.org/node/685>
29. http://www.newsocialist.org/index.php?option=com_content&view=article&id=304:the-g20-demonstrations-and-the-criminalization-of-dissent&catid=51:analysis&Itemid=98
30. <http://www.vancourier.com/news/Freedom+just+another+word/4316481/story.html>
31. <http://news.nationalpost.com/2010/12/21/police-officer-charged-with-adam-nobody-assault/>

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32. Toronto G20 Exposed: Final Cut. Documentary created from independent film media such as youtube.
33. <http://www.cbc.ca/news/canada/story/2010/06/26/g20-saturday-protests.html>
34. Ombudsman Report. <http://ombudsman.on.ca/media/157555/g20final1-en.pdf>

Appendix

Questions to be asked to participants:

1. How long have you been a protestor?
2. How many protests or civic demonstrations have you been involved with?
3. Based on the number of protests that you have been involved in, have you noticed any differences between how you were treated as protestor? For example, do you feel as though police officers have treated you differently at each of the events you attended? Or do you think you were treated the same way throughout the protests you have been involved in?
4. Do you feel like you are restricted during protests? For example, do you feel as though you can voice your opinion in any way you choose?
5. What are you allowed to do at a protest legally? For example, are you allowed to say what you want? Walk on private property? Interfere with daily business of a company?
6. What actions are not allowed to be taken during a protest? For example, if a police officer tells you to back up, can you refuse? Can you start a physical fight?
7. In your opinion, do police officers act legally during protests? For example, do they have the right to arrest someone for not doing as they ask? Can they tell you where you can and cannot stand? What you can and cannot say?
8. Are there actions police officers cannot take during protests? For example, are they allowed to restrict your actions during protest? Restrict where you can be? What you can say? Who you can talk to?
9. Do you feel as though the laws in place for public protests and civic demonstrations are made public knowledge? For instance, do you know what the exact laws are that are in place? Have you ever heard of any of them? Or do they need to be more widely distributed?
10. What would be a good way to make the laws regarding public protest and civic demonstrations more publicly known? For example, is there a particular place these laws should be published that would be accessible to any person who wanted to protest?

Interviewee #1

1. 14 years
2. 10
3. Not personally but witnessed others
4. Yes, because of physical presence, couldn't go places that normally could every day of the year
5. Allowed to use public spaces as long as they don't hurt people, etc. Free speech is allowed
6. Obstructing private property, vandalism, if state is allowing it, then shouldn't be against law if they give you space
7. Both legally and looking for a fight allowing people to walk/talk for an hour then rounding them up after an hour of doing same thing is illegal
8. Assault (physical, not normally allowed), stretch powers they had to include actions that wouldn't normally include. Even restrictions residents to do normal things (going down road on G20). Using weapons to physically abuse people not acceptable. Would just drive people farther away. Harsh treatment of people with different decent, youth, sexuality, etc.
9. No
10. Released in the media, media conference, make statements give media copies and let them handle it. Give groups such as Council of Canadian them to let their members know. The information has to come from authorities, they need to make the effort to make this public and hit all groups so they can say they tried to communicate it to the public. The lack of knowledge deters people from wanting to protest because they are worried about other people's actions.

Workshops conducted by defence movement groups only tell you your rights not what to do. In some cases they only tell you what you can't do and answer questions that people have. They also have a website that explains this information also. People in charge should also have the same briefing (police)

Interviewee #2

1. Various forms of activism for 9 years. 5 years with mass style street protest. Small as 100 people to 10000 people
2. 15-20 max
3. By own observations doesn't feel like they have experienced enough but knows there has been a change towards more
4. Yes restricted, there for lawful gathering but only allowed to move where police say (agreed upon but still set out). Can stop march wherever they want for no reason, stop half, separate groups. What they're wearing like scarves etc. in winter told to take off. Use physical force to restrict even when pre-agreed upon still heavy restrictions

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5. People have been told not allowed to speak into microphone, take away signs cause of messages on them. Cameras being confiscated. Cameras provide legal evidence for protestors should they need it.
6. Same as above
7. Depends on type of protest. Police hang back and watch for issues that aren't a greater magnitude (don't expect it to effect state). Student drop fees also not illegal actions, more oppositional is more heavier police / "hands on" act legally but stronger message. More police present, more shoving, more oppositional the more likely police are to step over the line. Start to see outright illegal acts for higher magnitude like anti-Olympics. May be legal but raises questions.
8. Depends on scenario, when they choose to its a one sided. Police only talked to people saying the laws when G20 came, but mostly what you're not allowed to do. Lies coming out, secret law, paint picture of what not to do, not both what you can as well. Might get away with more in smaller protest then larger ones like getting closer to a place. Larger protest is more likely to get told not. Easier to get away with stuff in larger crowd.
9. Laws should be established openly and written in a way you can understand as a layman. Harder to disseminate info once it's made. Can't publish it every week in paper have to find a way to educate about laws. When things like G20 come more possible to educate people. All parties have stake in helping this be known.
10. Onus on government to educate on both sides not just one. Structural question. Opposition to law doesn't mean ignorance of the law

It is possible to tell when police come in expecting trouble. At small protests you can tell they are not concerned. Large ones they are expecting to use tactical methods. Take off name tags cause expecting trouble. Direct order to get that mindset.

G20 had hired private security, was the only place noticed. Makes scenario dangerous cause they have same gear, but don't have same oversight. Don't have same structures to prevent incidents of misbehaving. No oversight but same weapons and no accountability. Overhead policing body made up of all aspects. Actual policing done by so many different types of services.

Arrest arbitrary, over 700 people arrested for nothing in G20. They don't warn you that you can't be in this area they just arrest you instead without saying anything.

Interviewee #3

1. 6 years
2. 20
3. Large scale has greater security, more daunting. Small scale has less chance of physical risk. Small get less press. Established holding signs small, more confrontational when

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you have larger whole thing less peaceful. Depends on type of protest, scale determines how peaceful it is. Road blocks are rare.

4. Always a risk when you say something to get you in trouble. Could use stuff against you when your associated with people. More eyes on you when you are at large protest. Hired security are often a lot less visible police are identifiable while private security. Use unmarked cars, don't know who you're dealing with when it comes to them. Menacing but more for presence then action. Perception that they are less accountable because they aren't public service people
5. Have right to assemble in a public area, speak freely (exceptions such as hate speak), sit ins, not confrontational, breach of the peace
6. Be violent towards people, except self defence. No attacking, destroy property, have firearms or weapons, definition of weapon seems to get extended in these, resist arrest, can't publicly identify an undercover officer
7. No not in general, at times yes. But brutality increases (in detention centers, on the streets), acting justly and acting legally are different. Enforcing laws that don't exist, even refusing to have nametag/give id numbers. Mix of higher up directions and some is personal decisions they all cover for each other. Sense they can act how they want and not be held accountable. Some is people caught up in the moment. Think should be held to higher legal standard not lower Predisposition to arrest / fight. People rounded up in private homes before damage etc. happened. Should be prepared for anything but shouldn't be at that level right away. Police often escalate things. Undercover encourage more radical in order to round them up. Stretch laws like writing in sidewalk chalk is property damage, arrested for having lawyer phone number, 5m rule made up, what a weapon is, role playing costumes with people who had nothing to do with protest stretched outside of protest situations too, but protest there is more opportunity to do so
8. They are gathering and establishment is defining how you can object which isn't fair everyone wants to be peaceful, not told how you can object, which even those are not respected as soon as they have "justified" reason to not obey they seem to do it. Arbitrary arrest aren't totally random but target people who aren't really breaking the law, appears to be arbitrary in some cases but nothing is really arbitrary
9. Not well known, personally well informed but because of time and has deliberately sought those things out. Many people involved were not protestors so they would they look it up. Not easy to see out, people who know they won't be respected will know. Some people think they don't need to know.
10. Make school teach it more. Groups like Canadian Civil Liberties Civilization should be informed to educate public. Some public domain. Can't guarantee people will seek it out. Not in easy language for a lay person so they don't know how to look or decipher. If everyone knows then the big guys can't stretch laws and get away with stuff. Workshops would be useful; they tell you what not to do which leaves room to assume everything

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else is fair game. It should happen for all protests. No matter how much you know doesn't guarantee your rights won't be violated.

Interviewee #4

1. 10 years off and on
2. Approximately 50
3. Yes depends on issue not how large they are
4. Always police present, depends on type (if marching then restricted to area) mobility rights restricted mostly
5. Charter, assembly, expression, association, ambiguous inside where they change it, different situations. Can protest. Speak mind as long as it's not hate. Be on streets saying what you want
6. Not allowed threaten/impede, not allowed to disguise yourself if you have intent, bandana over face is illegal, hood up zipped covering face is illegal
7. They are often fairly respectful and act within legal grounds. Police present increased in 3-4 years so extra intimidating are instructed to do some illegal things. Foot officers do 10% on both parts don't. Higher ups give illegal commands there were insane arbitrary arrests in G20, people were arrested for nothing at all. They stretch laws for little things and even violated laws all together. Laws are always stretched but not to the same extent in smaller protests In G20 police were riled up before they arrived so they come in ready to fight. Private security present and had no identification so not sure if you come in contact with them. They weren't given the same amount of powers though so were based under restrictions.
8. Answered above
9. Not able to find it through normal avenue, activist communities constantly distributed and updated so can know from there. Could be more explanation to help people understand. Government doesn't make available and clear, left up to activist
10. Yes give to Council of Canadians and other organization. Police on ground to be aware too would help more since they don't seem to understand. Activist groups have good explanations/distribution to people. Workshops a good idea and beneficial, should state what they can and cannot do

Interviewee #5

1. 10 years off and on
2. About 12
3. Yes definitely, subjects aren't really confronting powers directly are generally okay but you get arrested for things are larger protests that you wouldn't at smaller ones
4. Special restrictions, can't cross lines, only walk certain places, free speech zones. Less direct restrictions like masks etc.

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5. Depends on parameters walk, chant, sing, had signs in designated areas, other than that you will be arrested
6. Can't leave where they say you're allowed to be, raise voice at police, no confrontational interactions with bystanders, can't attack property
7. No. Enforcing "breaches" when it's not (like stepping off sidewalks/masks, racial slurs, assaults) Arbitrary arrest does not seem to have occurred in their opinion. They stretch laws in terms of searching possessions, requiring ID to get into areas, be assaulted by police and get charged with assault. There are personal vendettas but contingent on orders, mostly personal. Private security have less accountability for actions and don't need to wear nametags
8. Answered above
9. No, not really aware of anything before prep for G20
10. Workshops help but don't at the same time because they tell you laws but down the road it may not matter anyway, helps you be confident, never happened before until G20. Providing organization like CofC with guidelines from the man himself would be great cause kind of guessing on laws right now. Extent to which it is taken seriously depends, told what can do too but in the end doesn't matter.

Interviewee #6

1. From 1995 on
2. 12
3. G20 is in a whole other category, been to similar calibre ones that were bigger or the same scale but higher energy. Arrests for no reasons. Weren't allowed to do anything to protect yourself at all, arrested for legal info on arm. Manipulations of laws and made up laws occurred, arrested for no reason then charges dropped and they are realized. Conditions they were held in were appalling. Everyone's rights were dissolved even people who were in the wrong place at the wrong time.
4. Conflict happens in specific place. But in G20 they had police surrounding you in and confining you, can't get out so at their mercy. Kept rounding up people like this, people getting trampled and beat, even residents of Toronto trapped in their houses because they may get pulled into the situation
5. No idea if rights even apply anymore. Not giving them up just doesn't seem like they matter anymore. Rioting was permitted in G20 seemed to be permitted as no police were in sight while it was happening and they allowed it to happen
6. People shouldn't harm each other in any way, shouldn't talk about destruction of property as violence cause it's not. Violence towards protestors should not occur. Violent arrest and detentions, threats of sexual assaults
7. Answered above
8. Answered above

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9. No absolutely not, hard to find and understand. Changeable on whim, completely disregarded, officers removing nametags. Supposed to protect protestors but they are protected and protestors intimidated. Should be protected
10. Education would be helpful for all protests, people who don't know rights get extreme abuse and have trouble after seeing it. Human rights/social justice groups would help, many groups having would help. Protestors not only people other groups like homeless should be as well. Should be with more places than just activists, groups just like them too. Many violations/infiltrations happen. Go to everyone in conflict with the law.

Interviewee #7

1. 2 years
2. 10-15
3. Yes small rallies have police presence but nothing big (standing to the side talking to each other), marches always have police escorts. G20 had side of street constant police presence
4. Except for G20 generally able to do what they want to do. Events all week leading up to G20 they were very strict on everything
5. Doesn't know officially, for most part can say what you want and assembly, can't be hate speech though. Not sure about walking.
6. If in a public place yelling and holding sign its legal in his mind, doesn't know actual legalities
7. No, in terms of G20 a lot of people were mistreated, a lot of occurrences in G20 were way out of line, not allowed lawyers. Small scale ones police usually stick to them self you know they are there but they don't really do anything just a presence
8. A lot of harassment in place with police at G20 to people. If don't nothing wrong you shouldn't be questioned. Arbitrary arrest big time, no resistance but still overboard on arrest techniques, only seen at G20 few others have that many arbitrary arrests. G20 private security first time seen, but no interaction. Police go in with intention to fight, questions were about plans to hurt police, were concerned for themselves. Large part of it is stretching laws, lots of actions you could do on regular basis you get arrested for.
9. Have to look into it to find them, but not sure if they will be followed in practice since they weren't in G20.
10. Workshops valuable to protests and good source of reassurance even though in the end it didn't help as rights were violated. Be useful to have on a regular basis. In Toronto certain activist groups that if they were given laws they would be able to distribute effectively. Police also need this and more training on how to deal with situations but not sure if knowing this information will help