

# Direct Action Works

A **legal handbook** for **civil disobedience** and **non-violent direct action** in Canada



**Aric McBay** and **Pamela Cross**

**Direct Action Works: A legal handbook for civil disobedience and non-violent direct action in Canada / Aric McBay and Pamela Cross**

**Cover photos:**

(Top left) A rally as part of the prison farm campaign in Kingston, Ontario. (Aric McBay)

(Top right) Tamil protestors block the Gardiner Expressway in Toronto to demand Canada intervene against in the killings of Tamil civilians by the Sri Lankan government. (May 10, 2009. 松林 L via Flickr, <https://www.flickr.com/people/10014440@N06>)

(Bottom) A blockade of a bridge at English River in solidarity with Grassy Narrows. (July 26, 2006. Rainforest Action Network via Flickr.)

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## **Legal disclaimer**

This handbook provides information about possible legal situations that can arise when people plan and participate in civil disobedience/non-violent direct action campaigns and actions. It is general information, current to March 2019. It is intended to assist people in learning generally about non-violent direct action, how to plan effective campaigns, and possible legal consequences of different kinds of actions.

It is not intended to be legal advice and should not be relied upon as such.

If you have legal questions or concerns or need legal advice, you should speak with a lawyer who can assist you based on the specific information you provide to them.

The authors of this handbook take no responsibility, legal or otherwise, for how readers may interpret, apply, share, or otherwise use the material contained in it.

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We would welcome sponsors for future versions to support printing and updates; please email [info@directaction.works](mailto:info@directaction.works).

## **Thank you to our test readers and proofreaders!**

We are grateful to the dozens of activists and organizers who gave their time and attention to offer feedback on draft versions of this handbook.

## Author biographies



**Aric McBay** is an organizer, a farmer, and author of four books. He writes, speaks, and gives workshops about effective social movements. He has organized campaigns around prison justice, Indigenous solidarity, pipelines, unionization, and other causes.

His latest book, *Full Spectrum Resistance* (Seven Stories Press, 2019) is a two-volume exploration of how to build powerful movements and knit together struggles using diverse tactics.

[www.fullspectrumresistance.org](http://www.fullspectrumresistance.org) / [www.aricmcbay.org](http://www.aricmcbay.org)

**Pamela Cross** is a long-time activist who lives in eastern Ontario. She has been involved in a wide range of resistance activities, including non-violent direct action/civil disobedience on such issues as reproductive choice, prisoner rights, Central America solidarity, environment/energy, Indigenous land rights, militarism, violence against women and more. She has also been involved in electoral politics, running unsuccessfully for the NDP in Ontario and successfully as a school board trustee in Frontenac County. She became a lawyer in the early 1990s, so she could use that tool in her work for social justice. She began her second year of law school from jail, after being denied bail for her role in Oka solidarity actions.



Pamela's day job is working with survivors of gender-based violence who engage with the criminal and/or family law systems, and she continues to be involved with direct action politics, mostly as a trainer and educator. [www.pamelacross.ca](http://www.pamelacross.ca)

*This handbook is organized in a chronological way, to help you plan and prepare for action, carry that action out, and handle post-action legal support.*

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**Above:** Old growth forest on the Haida Gwaii archipelago. (*Aric McBay*)

# Introduction

*Aric McBay*

In October of 1985, 72 people were arrested while engaged in non-violent direct action against logging on Haida Gwaii (then called the Queen Charlotte Islands).<sup>1</sup> It was a powerful and effective act of defiance against the Canadian state.

But, like many powerful acts of defiance, it was rooted in a long history of injustice and resistance.

The Haida Nation—as with many First Nations—had endured acts of genocide at the hands of the Canadian government. Haida children had been forced into residential schools, their language had been banned, and the government forbade the potlatch, one of the Haida’s most important cultural, political, and economic events.

Of course, the Haida resisted, but the power of the Canadian state meant that they often had to defy repressive laws in secret (for example, through potlatches disguised as church meetings or dinner events).

But by 1985, the crisis of outside logging on Haida lands was extreme. The lands the Haida depended on were being destroyed, and the ecology of those lands was being stripped against Haida wishes.

The Haida had made polite requests for years, including through the courts, but the federal government had not listened. Open disobedience was called for.

So the Haida community decided to take action at a place called Lyell Island (also called Athlii Gwaii).<sup>2</sup>

They blockaded logging roads on the island (one of more than 300 in the archipelago). Their blockade got attention from both national media and the RCMP. In the month of October 1985,

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there were 72 arrests. Of those arrested, 17 were charged with “mischief” and contempt of court, and 10 were actually convicted.

Still, the Haida refused to back down, and they mobilized a growing wave of media attention and public support, so the government had no choice but to give in.

Soon, the south end of the archipelago became an enormous national park, and in a novel arrangement it was co-administered by Parks Canada and the Council of the Haida Nation.

The Haida used their strong community, their solidarity, and their willingness to defy Canadian law—while asserting their own Haida law—to win more concessions in the years that followed.

And a song sung at Athlii Gwaii became the official Haida national anthem.

The struggle at Athlii Gwaii is far from an isolated example. Many movements have deliberately broken the law—using civil disobedience—in order to struggle for greater justice and equality.

Indeed, because injustice is often embedded within the structure of the law through systems like apartheid or segregation, civil disobedience and direct action have been the norm—rather than the exception—for many movements in history. The women’s suffrage movement, the civil rights movement, the labour movement, and many anti-colonial and independence movements all defied the law in order to win their rights and freedoms.

**Below:** An Extinction Rebellion street blockade in London. (David Holt via Flickr / Wikimedia Commons)



## Why do groups use civil disobedience and non-violent direct action?

- **To explicitly challenge an unjust law.** At one time, slavery, segregation, and apartheid were legal in the countries that practiced them. This was a key reason for civil disobedience during the civil rights struggle in the United States: Martin Luther King argued that “one has a moral responsibility to disobey unjust laws.”<sup>3</sup> In some cases, the breaking of a law is meant to initiate a legal challenge that can be pursued in the courts (a process that usually takes years).
- **To stop something bad, regardless of the law.** Defiance is not always used to challenge a law, but sometimes simply because it is the right thing to do. Indigenous peoples have taken action in this way many times; for example, the Unist'ot'en Camp which is built on a planned pipeline route in “British Columbia.” The camp

organizers explain: “The Unist'ot'en Camp is not a blockade, a protest, or a demonstration—it is a permanent, non-violent occupation of Unist'ot'en territory...”



**Above:** A demonstrator at the Melbourne Global Climate Strike on September 20, 2019. (John Englart (Takver) via Flickr.)

- **To show an emergency.** Most of the time, in public at least, the great majority of people obey the law. People try to maintain “normality” even under authoritarian dictatorships and situations of great crisis. So some movements break the law to try to disrupt business-as-usual as a way of snapping the general public out of their usual routines and habits. Extinction Rebellion, which organized first in the UK, has used mass civil disobedience to draw popular attention to the climate emergency, and the movement has spread to other countries.
- **To show strength and empower participants.** Not all civil disobedience has the goal of building global movements, overturning established laws, or creating national policy changes. Sometimes the point is simply for a group or a movement to assert itself, to show that it is not timid and that activists don’t have to just comply with whatever a police officer or government officials tell them to do. This could be as simple as refusing to move a protest march off a roadway and onto a sidewalk.
- **To maximize leverage and “people power” through disruption of the status quo.** If you have picked up this handbook, it is probably already clear to you that most systems of power in our society are stacked in favour of the rich and powerful. From parliament to the courts to the mass media, most of our institutions are meant to keep such people comfortable and wealthy, and to maintain the current social order. Disruption of business-as-usual—whether by blocking an intersection or shutting down a stock exchange—can have a profound social, political, and economic impact. It can allow a small number of people to create far more leverage than we could via petitions or letters to our Member of Parliament.
- **To continue the struggle when other options have failed.** In almost every example we will discuss in this handbook, groups and movements tried for years or even decades to correct injustice through polite requests and “proper channels.” So those

movements decided to escalate to more disruptive tactics, which often created change much more rapidly.

- **To refuse to be complicit.** Tax resisters throughout history have refused to pay taxes to governments engaged in war. Many activists in the climate struggle have said that, whether they succeed or fail, they want to be able to tell their children and grandchildren that, at the very least, they tried. Sometimes it matters to just say: *no*.

We are living in a time when inequality is on the rise, when our biosphere is in crisis, and when so much of what can make our society fair—from unions to feminism to human rights—is under attack.

We wrote this handbook because this moment in history is ideal for a reinvigoration of civil disobedience and direct action.

In writing this handbook, we have been inspired by the work of activists in many settings—unions, public health care advocates, anti-racism activists, teachers, gender-rights activists, anti-poverty organizations, environmentalists, Indigenous communities, immigrant and refugee rights groups, members of the disability rights movement, and others. We hope, in turn, that this resource will be a helpful tool for them as well as for those who are newer to the idea of civil disobedience/non-violent direct action.

# Definitions

Many different terms are used—civil disobedience, civil resistance, direct action—to refer to an overlapping collection of tactics and approaches.

**Civil disobedience** is the public and deliberate refusal to follow specific laws or demands of a government (or its representatives), and the public and deliberate breaking of laws to demonstrate opposition to government or corporate policy or action.

While the term “civil disobedience” is widely used and recognized by the general public, the precise definition of the term varies. For some people, it means breaking an unjust law and then turning yourself in to the police. For others, it means rejecting the authority of the police in general.

Some organizers dislike the framing of civil disobedience; they argue that we should not define our tactics in reaction to the law or to the state; that we should develop our own strategies proactively rather than reactively.

If our goal is only to get the government to change a law or to get a corporation to change a policy or practice, they might argue, then civil disobedience could just be a form of “militant lobbying.” That, instead, we should focus on building up communities of resistance to create the world we want to live in.

Partly for those reasons, many activists actually prefer to use the term “direct action” (in contrast to the “indirect action” of asking government to do something).

Since “direct action” has been used to mean anything from protests to armed self-defence, some organizers prefer the phrase “non-violent direct action.”

**Non-violent direct action (NVDA)** disrupts or interferes with business-as-usual in order to challenge injustice and provoke social change; it refrains from harming or injuring other people; it may be illegal; it can include marches, sit-ins, strikes, pickets, boycotts, damage to property, and many other tactics.

While civil disobedience is intended to deliberately break the law, some forms of NVDA are totally legal in some circumstances. It is not necessarily illegal to hold a picket or a protest march; but if that march lacks a permit, or if it blocks an intersection or a highway, a police response is likely. The legality of different NVDA tactics can be unclear, which is why it’s important for activists to give some thought to legal considerations and police response in order to make good decisions.

Furthermore, NVDA is not just about making a point; direct action is meant to *disrupt or interfere with* systems of power and injustice. This usually requires escalation, which means effective movements will get push-back from police and the courts sooner or later. That is even the case when we use non-violent forms of direct action. (And just because a group is non-violent doesn’t mean all actions are totally safe for participants, which we’ll come back to.)

Even within that definition, of course, there are many differing perspectives, especially about the definition of nonviolence. For example, is property destruction considered nonviolence? As part of the struggle to win the vote for women, early-twentieth-century suffragists burned down empty buildings and postal boxes. Some people would consider that a form of “violence,” even though no one was harmed.

When speaking about protests, some members of government and of the press have used “violence” to refer to property destruction like window-breaking or spray-painting. Even the definition of “property destruction” has been over-extended—one student protest leader recently received a bill for damages after students drew with chalk on a public building, even though that chalk would be washed away by the next rainstorm.<sup>4</sup>

In this handbook, we will not be using the term “violence” to refer to property damage. Many of the groups and movements we discuss—like missing and murdered Indigenous women or climate refugees—are on the receiving end of horrific structural violence. To refer to spray-painting as “violence” would trivialize those genuine experiences of violence.

In any case, this is a practical handbook, not a work of philosophy. So we won't try to resolve long-standing differences of perspective.

Instead, we want to provide tools and information so that groups can develop their own strategies and make intelligent choices. And further, to help understand how the police and courts are likely to respond to those choices, in a Canadian legal context, so that activists can tailor their strategies accordingly.

## Sidebar: Should everyone get arrested?

**Myth:** The purpose of civil disobedience is to get everyone arrested.

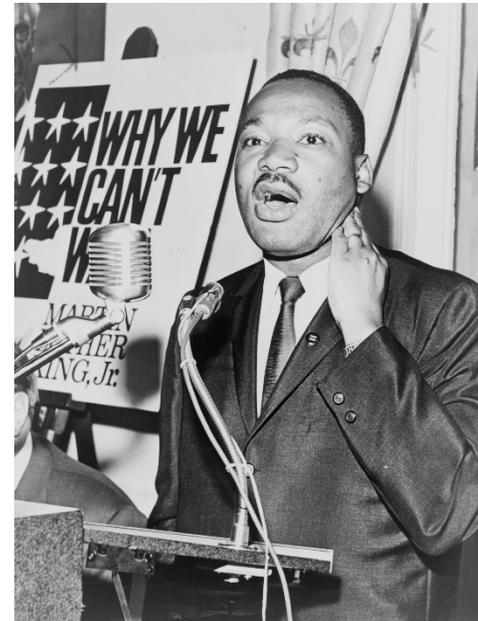
**Reality:** There are many different strategies; some encourage arrest and some try to avoid it.

There are some traditions of civil disobedience that encourage deliberate arrest. For example, in his Letter from a Birmingham Jail, Martin Luther King writes: "One who breaks an unjust law must do so openly, lovingly, and *with a willingness to accept the penalty.*"<sup>5</sup> The penalty being arrest and likely imprisonment.

This wasn't a by-product of King's philosophy, but its purpose. He adds: "I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law." (See page 41 for further discussion about this idea of respect. )

Some Indigenous land activists argue that occupying land that is rightfully theirs cannot be breaking the law, even though they are routinely arrested for doing so. As Arthur Manuel writes about efforts by the Secwepemc people to stop the Sun Peaks ski resort development on Skwelkwek'welt in *Unsettling Canada: A National Wake-Up Call*: "The criminalization of my people continued with more than fifty arrests for inhabiting our own land." This perspective provides a different understanding of what civil disobedience is.

To encourage arrest is one strategy, but it's far from the only strategy. To "arouse the conscience of the community" is a perfectly fine goal in some cases.



**Above:** Dr. Martin Luther King, Jr. speaks on June 8, 1964. (World Telegram & Sun photo by Walter Albertin via US Library of Congress.)

But getting arrested can also mean moving from where we have an advantage (e.g., the streets, our communities) to the jails and courts, where we are usually at a disadvantage, which we discuss further on page 106. Consider whether deliberate arrest at a given action will be worth the time, energy, money, and inconvenience needed to fight the charges in court.

And—while many people want to participate in groups and movements using NVDA—not everyone faces the same level of risk if arrested or encountering police.

For that reason, some practitioners of NVDA do their best not to be arrested, so that they cause as much disruption as possible at one action and then be free to continue taking action. That can maximize their overall impact.

We will come back to strategy, and to the courts, later.

# The baby occupation

*Pamela Cross*

In 1974, a group of students at the University of Guelph came together to create an on-campus child care centre. We sought the support of the student government for our approach to the university administration, from whom we were requesting rent-free space to house the child care centre.

Child care was not a big issue for the student government, which was headed by young, single men, so we decided that direct action was needed to get their attention. With the full support of the president's secretary, a mother, we brought our babies into his office and left them there.

This was in the days before cell phones, so we didn't go far, and the baby occupation didn't last long. No babies were harmed in any way in the execution of this direct action. We got the president's attention, and the student government supported our call for the administration to find us free space, which it did. The Campus Child Care Cooperative opened in 1975, and remains open to this day, although it is now housed in space designed specifically for its use.

# Is civil disobedience right for us?

If you are reading this, there are two fundamental questions to consider as you proceed: Are civil disobedience and NVDA a good match for our group and campaign? And are civil disobedience and possible arrest feasible for me personally right now?

1) Are civil disobedience (CD) and non-violent direct action (NVDA) a good match for our group and campaign?

Consider these questions:

- **Have we or other people tried more traditional or preliminary approaches?** Usually, civil disobedience is undertaken after some other tactics have failed. Your group doesn't have to be the one to have tried those approaches. But, if they have been attempted, the public is more likely to see CD as legitimate, and participants are more likely to see it as "worth the risk."
- **Is there a risk of real harm if we *don't* use CD or NVDA?** There are some situations where the harm is both real and immediate, and CD/NVDA may be able to stop that real harm from happening. In the case of Lyell Island, discussed in the opening pages of this handbook, the Haida people knew that failing to take action against logging would mean the loss of irreplaceable old-growth forest. Likewise, struggles against fracking, or to increase health and safety protections for workers, can help to prevent real harm to people and the planet.
- **Are we part of a group or movement with the organizational capacity to maximize our impact?** Civil disobedience doesn't have a big impact if no one hears about it. Usually, to make the most of any action, your group or movement needs to be able to promote or publicize the action, communicate messages to allies and the broader public, and have other capacities like intelligence-gathering to plan impactful actions. NVDA can often

achieve more if we can reach the hearts and minds of bystanders and potential supporters, especially if they may be inconvenienced by what we are doing.

- **Do we have enough people to make an impact?** A handful of people—or even one person, like Rosa Parks or Viola Desmond—can use civil disobedience. But those individuals or small groups have their impact mostly by inspiring others to take action in larger groups. The number of people needed also depends on your chosen target; five or ten people can shut down an office, but if you want to use a snake march to shut down a bridge, you need many more people.
- **Can CD/NVDA help to catalyze the change we want to see?** CD/NVDA probably works better when people want to stop a government from doing something it shouldn't than when people want to make a government do the right thing, but there are no iron-clad rules about when it should or should not be used.
- **Can we ensure participants are trained and informed about the risks?** While there are communities of resistance where many people have participated in CD/NVDA, in general most people in Canada have no experience with civil disobedience and do not know how to navigate the courts or legal system. When there is a significant risk of arrest, it is ideal to provide planning and training in advance of an action. Where large numbers of people are coming together on short notice without training—such as a one-day national convergence on a particular city—there can be extra risks for participants.
- **Do we have the resources to provide legal support to arrestees after the fact?** If members of your group are going to risk arrest, it's important to have some legal support in place in advance. This could include access to lawyers, money for legal costs such as legal fees, people lined up to act as sureties, and other issues discussed further on page 79.
- **Is there potential to escalate?** Very few campaigns accomplish their goals with a single act of civil disobedience or NVDA. At the beginning of a campaign, ask: What actions can we carry out

successfully with the people we have? Can we identify a series of achievable actions that grow in size and become more disruptive as our movement grows larger and more confident? Often it is the threat of continued escalation—rather than any one action—that causes those in power to capitulate.

If you can answer yes to all of these questions, civil disobedience/NVDA might be a good match for your group or your campaign.

If you *can't* answer yes to all of them, that doesn't mean you shouldn't use CD or NVDA. But it does mean that civil disobedience or NVDA could come with higher risks of failure, and it might be worth considering what kind of outreach or preparation your group would need to do to be able to say "yes" to more of these questions.



**Above:** Moments before their arrest, four demonstrators block access to a Maryland courthouse as part of a campaign against plans to build a natural gas export plant at Cove Point on Chesapeake Bay. (*Chesapeake Climate via Flickr.*)

## 2) Are civil disobedience and possible arrest feasible for *me personally* right now?

Consider these questions about your own situation:

- Are you at risk of losing your job if you have a criminal record, or if you have to miss several days of work because of arrest or time in court\*?
- Do you have any medical or mental health issues that would make it inherently traumatic or dangerous to be arrested or spend 24 to 36 hours in a cell?
- Do you have family or personal obligations that you *can't* pass on to other people for 24 to 36 hours?
- Are you at additional risk because of some of the additional considerations discussed below?
- Are you willing to follow a collective plan with your group, including not talking to police beyond what is necessary?
- Are you willing to accept the inconvenience of arrest, including possible bail conditions or greater difficulty travelling to other countries?†
- Could an arrest jeopardize your immigration status in Canada?

Your responses to some of these questions may mean this is not the time for you to be involved in an action that could lead to arrest; for instance, if you have serious personal commitments that you cannot step away from for a day or two. In most cases, the decision about whether or not to participate is up to you.

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\* Some people who are very dedicated to NVDA may choose jobs career paths which are more flexible or less affected by having a criminal record. Likewise, unions that want to support NVDA by their members can try to make sure that collective agreements don't include clauses that would penalize workers with criminal charges or convictions that are unrelated to the workplace.

† Note also that *where* you get arrested can matter. If you are arrested in your home town, future court appearances might be a relatively small inconvenience. However, if you are arrested and charged in another city or province, you might have to return to that place for court appearances in the future, and that might be more disruptive to your life. Being arrested in another country, such as the United States, would likewise pose more challenges—but the details of international laws are beyond the scope of this handbook.

However, if you do not think you can follow a collective plan with your group, the group may decide that it does not want you to be involved, even if you want to be.

Just remember that most of the people in any campaign aren't at risk of arrest, and don't need to be. There is an enormous need for people in organizing and supporting roles including legal support, training, communications and the media, and other specific roles explored later in this handbook.

(If you still aren't sure, it's worth giving some more thought to the additional considerations below. Are there things that you want to do reduce the level of risk you feel comfortable with? Likewise, what information do you need when making the decision about whether or not to risk arrest? For example, there may be some wrongs that, for you, are worth risking arrest and others that are not.)

It's also important for everyone in a group to understand the need for people in both arrestable and non-arrestable roles. Civil disobedience depends on *some* people willing to risk arrest, but a person who is risking arrest is not inherently more important or valuable than the person who is making posters, taking legal support calls, or cooking a meal for a planning meeting. All these roles are important and necessary for success.

We need to put the risks we face in context. We should balance the risks: *What do we risk by taking action?* vs. *What do we risk by failing to act?*

Civil disobedience has always come with risks, but people around the world have used it for generations because the risks of *inaction* were greater. Civil rights activists had the courage to put the risks of continued segregation and the ongoing oppression and impoverishment of their children and grandchildren ahead of the personal risks of using civil disobedience.

In the current moment, people take action because of other risks. The risk that our union protections will be incrementally eroded in the guise of "austerity." That our human rights will be eroded

by demagogues or xenophobes. That climate change will make our planet uninhabitable for future generations.

It's the balance of risks that we must put into context.

In that same vein, it's also important to remember that you don't have to be an "expert" on an issue to take action. You should take the time to learn enough about the issue to understand why you are taking action, but you don't need to be an academic or a spokesperson. Emotional reasons for being involved are just as legitimate as detailed knowledge; often personal reasons make a bigger impact on bystanders. Of course, participants should be able to articulate some basic familiarity with the issue and why it is important enough to them that they are willing to break the law and risk arrest.

When we lay out all of the potential risks or consequences of civil disobedience, it can look a bit daunting. But many people who participate in CD/NVDA have felt the opposite. Taking action can be fun! It can be an exhilarating, empowering, and life-changing experience. It can help us feel more strongly connected to our friends and our comrades, and make us feel more able to make change in the world. It can make the world feel like a better place to live.

Also, it's important to consider that the risks and consequences for a relatively healthy and privileged person here in Canada are not what they can be in other places or for marginalized people here. You won't be shot or have to flee for your life, for example. So take into account that if someone has to stand up to something, maybe it should be you so it doesn't have to be someone else.



**Above:** As part of a civil disobedience action, demonstrators lay down in the street as part of a protest during the 2004 Republican National Convention in New York City. (Jonathan McIntosh via Wikicommons.)

# Before an action

*Aric McBay*

Effective civil disobedience doesn't happen in isolation. CD and NVDA have the most impact when they are part of a campaign—an escalating series of events and actions that build toward a shared goal, while increasing a group's impact and participation, and develop its capacity for communication, fundraising, and strategy.

When we see protests in the news, we always see the action in isolation, without the behind-the-scenes development of the campaign. A campaign's structure allows participants in a movement to learn, improve, and grow in number as part of a long-term strategy.

If this doesn't happen, there is a risk that CD/NVDA could just be a response to something bad happening in the news. Now, it may be good to respond when something bad happens, but groups that are purely reactive may not be as effective over the long term. It's important to proactively build skills, improve our tactics, and build our impact over time.

Escalation is at the heart of a winning campaign.

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# Escalation

It is quite typical for a campaign to begin with low-risk tactics like letter-writing and petitions, and then become more aggressive over time as the “usual channels” fail to get the desired results. Sometimes civil disobedience and NVDA are used as a last resort in a campaign, after every other tactic has failed.

It is certainly better to use CD/NVDA as a last-ditch campaign effort than for everyone to give up and go home. But the *best* option is to begin a campaign with all these tactics in mind, so that you can keep your options open.

Indeed, planning for civil disobedience from the beginning can make even low-risk tactics more effective, especially when those in power know that if they refuse to listen to polite requests they will have to deal with more disruptive tactics.

What does it mean to plan for civil disobedience in a campaign?

- **Plan out actions that escalate in size and risk over time.** Very few people are willing to jump from signing a petition straight to being arrested. It takes time to build trust and skills in a group, and people need to get acquainted with the idea of risking arrest. Ideally, this will happen over a series of actions over a period of months.
- **Emphasize collective action and community strength.** Civil disobedience and NVDA are forms of collective action, rather than individual action. With that in mind, it's important to bring people together as early as possible in a campaign. You can and should use many different tactics; but if you have to choose between running an online petition and holding a rowdy town hall meeting, a town hall meeting will usually give people a better sense of their community power.

- **Develop shared goals, but encourage respect for a diversity of tactics.** It is immensely helpful if most of the people participating in a campaign have a clear and common understanding of the goal of the campaign. This requires a bit of effort, and this shared understanding usually develops out of a lot of conversations and dialogue, as many different people try to articulate what victory might look like. And while a common goal is important, it's also important for organizers to understand (and again, to articulate) that it takes many different tactics to win a campaign. Not everyone in the same movement has to use the same tactics, or even agree on what tactics are best.
- **Build trust among members of your group.** When planning an action that challenges state or corporate power, you need to be able to trust and be trusted by the people around you. You may have to make decisions and change plans quickly. Being approached by armed police officers, sometimes in full riot gear, can be intimidating. No matter how much training you have had, being put in a police van, being strip searched, and being handled roughly by the authorities can all be scary. You need to know that you can count on your comrades and that you all share a commitment to what you are doing.
- **Build capacity and training over time.** It takes time to build a group's confidence and skills. Once people see NVDA in action, more people will want to join and participate in training.
- **Develop cooperation and alliances, near and far.** Unless you are a large and well-established organization, you probably don't have the capacity to run a lengthy civil disobedience campaign by yourself. That means you'll have to reach out to other people and groups in your local community. (You may also want to coordinate with other more distant communities for coordinated action.) Having greater numbers is important, but so is looking for people and groups who can complement existing organizers and strengthen your weak points, whether that is in communication, training, or something else.
- **Be smart, intentional, and creative with your tactics.**



**Further reading:** To learn more about campaign strategy and movement building, see chapters 11 and 12 of *Full Spectrum Resistance* by Aric McBay.

## Collective action

The success of CD/NVDA almost always requires *collective action*; groups of people working and taking risks together.

There have been a handful of high-profile individual acts of civil disobedience, like Tim DeChristopher's disruption of oil and gas land auctions, or whistleblowers such as Chelsea Manning and Edward Snowden.

It is very rare, however, for truly individual actions to have a lasting impact without provoking collective action. Other people have to expand and communicate their act (e.g., Greenwald and *The Guardian* for Manning). At the very least, the particular people involved in these high-profile actions need popular support after the fact, to help get or keep them out of jail.

Without collective action, support, and coordination, actions by individual people tend to fizzle. Even in the best case scenario, the personal price paid by individuals like Chelsea Manning or Edward Snowden can be incredibly high.

Consider Henry David Thoreau, who coined the term *civil disobedience*. Because he was opposed to the American invasion of Mexican territory which began in 1845, and the U.S. government's support of slavery, Thoreau refused to pay taxes to the federal government for several years.

In 1846, Thoreau was arrested because of his tax refusal and spent a night in jail. However, someone else (likely a neighbour or relative) paid Thoreau's taxes and he was promptly released, much to his disappointment. Furthermore, Thoreau was not part of a campaign to promote tax refusal, and so very few people heard about his act of resistance until long after the Mexican-American War ended in 1848.

Ironically, given the fact that many view Thoreau as the originator of the idea, Thoreau's own act of civil disobedience had very little



**Above:** Tim DeChristopher at a court appearance on July 26, 2011. (Jonathan Mauer via *Wikicommons*.)

impact on the war, in large part because it was not a collective form of coordinated action.

Thoreau, of course, did not invent civil disobedience. Oppressed peoples have been using collective resistance of many forms for thousands of years.

Collective action works. Individual resisters are more easily dealt with—or dismissed—by those in power. But when we take action in a group, whether for a strike or a blockade, our impact is magnified exponentially.

Because of this strength, however, those in power will try to break the solidarity of our groups to render us ineffective. They will try to intimidate a few people to leave an action in the hopes that the whole group will crumble. They will encourage a handful of people to cross a picket line to weaken the strike. Or they will attempt to convince one or two arrestees to testify against the rest, to undermine the legal defense of the group.

There is nothing intrinsically wrong with, for example, deciding to end an action because it has become too difficult or dangerous. But if we want to uphold solidarity and maximize our impact, it is important to *decide* together, instead of simply having people trickle away.

To take collective action, we must be able to make collective decisions.

# Decision-making

There are several methods of decision-making commonly used for CD/NVDA, including:

- consensus-based decision-making
- majority rules
- hierarchies

Each has its pros and cons, and some have implications for dealing with police or the legal system.

Effective decision-making takes practice and training. Good facilitation, including conflict resolution, is also important.

## Consensus-based decision-making

Through facilitated discussion, the group discusses all of its options in detail until everyone agrees on a single course of action. Participants can agree to any given decision, block it, or “stand aside.”

You might find it helpful to use this approach to consensus decision-making, especially if this is new to you or your group. When the group has a decision to make, after there has been a thorough discussion, ask the members of the group to identify their position with the decision by picking one of the following numbers:

1. I agree wholeheartedly and without reservation.
2. I find the decision acceptable.
3. I am not enthusiastic about the decision, but I can live with it.

4. I do not fully agree with the decision, but I do not choose to block it. I am willing to support the decision in the interests of group solidarity and moving on.
5. I need more information before I can support the decision.
6. I do not agree with the decision and am blocking it.

If everyone in the group is at numbers 1 to 4, the group has achieved consensus. Of course, if the entire group is at 4, more discussion is probably a good idea, so that other ideas can be explored. If anyone is at 5 or 6, there needs to be further discussion and/or new ideas put forward or the decision cannot be made.

#### **Pros of consensus:**

- Builds solidarity by ensuring that everyone has been consulted and has committed to an action.
- Generally produces a pretty good plan, because input and information from many different people has been considered.
- Many practitioners of NVDA are experienced in this style of decision-making.
- A “leaderless” action sometimes stymies police, at least temporarily, because they don't know who to make demands of, or who to arrest first.
- By including everyone in planning and decision-making, a group can build capacity, especially in its early days.

#### **Cons of consensus:**

- Requires some initial training and a common set of core beliefs among all participants.
- Can be quite slow. In slow-moving actions like occupations or blockades, this slowness can be an asset, as it can maintain group solidarity and act as a way to stall if the group is asked to leave. However, in a fast-moving situation like a snake

march it can be a liability; either the group can't make a decision, or people will jump in and make a decision for the group.

- Some of this can be addressed by creating a “playbook” for actions or by discussing how to respond to different scenarios in advance. Of course, contingency-planning requires even more investment of time up-front.
- The time-consuming nature of the process can be a barrier to participation. People who have other time obligations in their lives—like kids, long work hours, and care-giving—may not have the luxury of staying for endless dialogue and re-discussion. Consensus can unintentionally exclude those people from participating in decision-making or action.
- It becomes impractical with large groups; however this can sometimes be handled by dividing the participants into affinity groups, or by using consensus within an organizing group that is representative of all participants.
- Can cause a proposed action to default to the “lowest common denominator” which may not be as impactful. That's not necessarily bad, as a group needs to be able to make thoughtful decisions about the level of risk taken.
  - This can be moderated by encouraging people who don't want to participate in a higher risk action to “stand aside” instead of blocking, or by using a modified process like “consensus minus one” in which universal consensus is not required.
- Can encourage “groupthink,” in which people may be afraid to offer different ideas, opinions or perspectives or to go against the perceived group position.
- In theory, consensus treats everyone's input as equal; in practice, however, this can obscure the fact that it is rare that everyone has exactly equal standing and experience, and consensus works better if we acknowledge that.
  - For example, it's easy for one or two outspoken people to dominate the consensus process; because of blocking, one person can control the direction of the entire group. Unequal dynamics can develop,

- especially if not everyone is participating in good faith. Someone with a strong personality or lack of self-awareness can take over the process, even if they don't intend to.
- o Conversely, there are situations where some people do have a greater stake in a discussion; if a group is organizing an action against racism, it may be that people of colour do have more meaningful opinions in the decision-making, and the consensus process can paper over that if we are not thoughtful and deliberate in how we use the process.

**Overall:** Consensus is great for use within small affinity groups, for planning actions, and for post-action legal groups. Consider a fallback method if decisions need to be made quickly during an action.

## Majority rules

In majority rules decision-making, participants vote on proposed courses of action; typically support of 50% plus one is required, but higher numbers (e.g., 2/3rds) can be used.

### **Pros of majority rules:**

- Allows for fairly fast decision-making.
- Most people are already familiar with voting, consider it legitimate, and don't require special training. That said, having a good facilitator or chair for discussion and voting will make a big difference (even more so than with consensus).

- A variety of well-documented models exist (e.g., Robert's Rules of Order).
- Can scale up to any size of group.
- It's compatible with practices used by many organizations (like unions).

**Cons of majority rules:**

- Can leave a minority of the group unhappy with the outcome; when the participants of an action are self-selected volunteers, this can mean some participants feel disengaged, or that they might even quit if very unhappy.
- If a majority is already in place, the group may overlook legitimate concerns or valuable ideas that could improve the outcome.

**Overall:** Majority rules is a good form of compromise decision-making, especially if large groups of people are participating in the decision-making process.

## Sidebar: Affinity groups

Affinity groups are small groups of activists who work together because of shared political beliefs or goals. Often, they are people with common values who just like each other and enjoy working together.

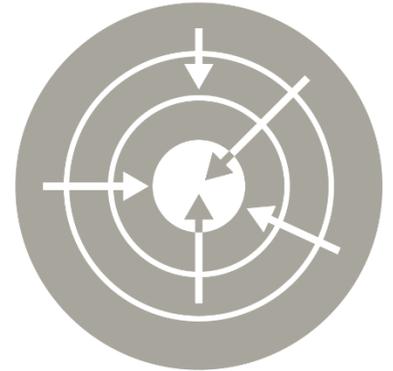
Affinity groups are typically around four to eight people in number. They may be informal groups of people who come together for a single action, but many affinity groups are meant to endure for a series of actions over the course of a campaign.

Longer-lived affinity groups are very valuable. Time allows the people in a group to get to know each other and to develop real trust. Group members can plan and prepare for actions together, make decisions collectively, and debrief and support each other after or between actions.

If a movement of people grows larger than a dozen, and they want to carry out a series of actions, it makes a lot of sense to organize people into different affinity groups. Where a number of affinity groups are working together, each group can select a spokesperson, who takes the decision of their group to a spokes council, which then attempts to finalize the decision using consensus.

This gives people friendship and face-to-face social support. But it also helps to plan and organize events. Usually an affinity group is big enough to plan an action, but can invite other people or affinity groups to join the action. If there are many active affinity groups, actions can be planned and organized in quick succession.

Affinity groups can also improve a group's sense of safety and security. Some activists will not want to break the law with people they don't know or trust. An affinity group—especially if it screens its members—can give people a more trustworthy environment in which to operate.



**Further reading:** A detailed discussion of recruitment and organizational structure are beyond the scope of this legal handbook. You can learn more about **Recruitment & Training**, as well as **Groups & Organization**, in Chapters 4 and 5 of *Full Spectrum Resistance* by Aric McBay.

Groups are also vulnerable to police surveillance and infiltration, even if they are non-violent or law-abiding. Groups are especially vulnerable when they are new, inexperienced, or growing rapidly.

For more on those topics, see *Full Spectrum Resistance* Chapter 6 (**Security & Safety**) and Chapter 9 (**Counterintelligence & Repression**).

## Hierarchical decision-making

A group of “leaders” selected or elected by participants to make key decisions on behalf of the group.

### **Pros of hierarchical decision-making:**

- Potentially the fastest form of decision-making.
- Can allow an action to be simpler and easier by making it clear who is responsible for doing what, and allowing participants to focus on their own specialized roles.
- Leaders can be chosen for particular actions as a temporary measure.
- Allows for more use of surprise as a tactic, since a smaller group needs to know all the details of a plan.
- Choosing deliberate hierarchy can be really useful if an action is intentionally led by a group that has less power in society in general—e.g., women-led, youth-led, Indigenous-led—in a way that doesn't always develop if that group is simply one part of a consensus decision-making process.

### **Cons of hierarchical decision-making:**

- The effectiveness of this type of decision-making really depends on who is chosen as a leader, and how. If the selection process is not good, or if the leaders are not good at their jobs, hierarchies can produce the worst outcomes of all three types.
- Hierarchical decision-making can inadvertently reinforce other forms of social inequality (e.g., patriarchy, racism) if the leadership is not chosen in a way that is consciously diverse. Of course, even consensus-based decision-making can reinforce social inequality if the group is full of loud-talking white men, etc.

- Leaders can be more exposed to negative attention from police, who may be more likely to arrest or charge them.

**Overall:** This *can* be a good decision-making process for use during fast-paced actions, but it can also have significant downsides. If used, best to combine it with more participatory decision-making for planning and strategy development.

### **Group dynamics**

Entire books have been written about how to establish and maintain healthy group dynamics. Such a conversation goes well beyond the scope of this handbook. Here are a few general things to think about to help your group work well together:

- In all likelihood, people in your group will have different personalities. Taking time as you begin working together to get to know one another on a personal level will be helpful if you hit challenging discussions later on.
- Different people have different comfort levels and skills working in groups. Some like to be quiet and to think things through before expressing their opinions, while others think something through out loud. Some people are very confident in their opinions, sometimes more than their experience and knowledge warrant; others, less so. Those who are more confident and outspoken need to leave space for others in discussions.
- Ask everyone in the group to be honest with themselves about their own behaviour. For example, ask people to ask themselves if they:
  - take up a lot of space
  - always need to be the problem solver
  - present their ideas as though they are the right or final ones
  - get defensive if someone questions their ideas
  - nitpick over unimportant details

- need to be in the spotlight
  - tend to look for the negative
  - put other people down
  - speak for others
- It is a good idea to encourage everyone in the group to learn the skills they need to play different roles in the group: facilitator, note taker, vibes watcher, etc.
- The group needs to be prepared to manage anyone who engages in bullying or other inappropriate behaviour.





**Above:** Activists from Extinction Rebellion block the Lambeth Bridge in London England on October 7, 2019. (Stefan Müller via Flickr.)

# Planning an action

*Aric McBay*

Here are some questions to consider when planning an action:

- **What is the long-term goal of our action?** That is, what is the ultimate outcome we are seeking in the context of a campaign? And how will we measure success?
- **What is the immediate goal of our action?** What does a “win” look like for us on the day of the action? How does that build toward our long-term goal? How can we make sure that our action focuses as much as possible on people in power; the people responsible for injustice or inequality?
- **What is the target or location of our action?** Is there a particular person, place, or institution that we want to disrupt? At what times and dates could the action happen?
- **What kinds of tactics can we use?** What tactics do we have the skills for already? What tactics will have the most impact? Are there tactics we can be confident we will succeed at? Likewise, are there more ambitious tactics we might want to try in order to build our skills and capacity?
- **What people do we need for the action?** How many people are required? What skills do we need among participants to make the action a success? What risk levels are involved? How can we control the risk or make sure participants understand the risks involved? Do we want guest speakers? What allied groups or supporters do we want to invite, and when?
- **What roles are required for the action?** Who specifically will fill those roles? Will we have affinity groups or support groups?
- **Who will make decisions, and how?** Who must be involved, consulted, or informed as part of the planning process? How will

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we make decisions on the day and during the action? Can we use this as an opportunity to build capacity and alliances?

- **What intelligence and reconnaissance do we need?** Do we know about the layout of the site? Do we know when the site is more or less active? Do we know how to access and leave the site? What are expected response times from police or security?
- **What skills and training are needed?** Are there new skills we need to develop for this action? Are there new people involved who will require training? Do we need to practice, drill, or rehearse our approach? How can we role-play or practice to help people prepare for the details and the emotional experience?
- **What scenarios or contingencies can we anticipate?** How might the people at the target site respond? How might the police respond? How might bystanders respond? (E.g., will angry bystanders try to drive through a blockade line?) Can we plan in advance for responding to different scenarios?
- **What safety or security risks exist, and what support is available?** How can we make the event as safe as possible for participants and bystanders? If arrests are planned or likely, do we have lawyers or a legal support team on call? Do participants know the legal number? Do we need signage, traffic pylons, or high-visibility vests for participants? Do we have jail and emotional support teams in place?
- **What supplies, equipment, and on-the-ground support will be needed?** Do we need flyers, signs, banners, and megaphones? Is there particular clothing we need for the site or weather? Do we need lock-down equipment such as chain, padlocks, or sleeping dragons? What about technical equipment like climbing ropes and harnesses? Will we need food, water, or other long-term supplies?
- **Is there a chance of side-effects, backlash, or reprisals?** How can we avoid unnecessary problems for bystanders or potential allies? Is there a chance that this action could cause the police to

crack down on other people in our community? How can we reduce the chance of that happening, or limit the damage?

- **What media coverage or communications do we want?** Is the action a surprise, or will we notify people in advance? Or will we tell people the time or location of the action, but allow for some surprise at the event? Do we want to film or photograph the event ourselves? Or do we want to discourage people from filming or photographing participants for safety reasons?
- **Do we have a checklist or timeline for the day of the action?** Careful planning can make the plan clear to participants, and help ensure we don't forget anything important.
- **Do we have an exit plan?** When will the action end, or who is responsible for (or empowered to) deciding that the action will end? It's often good to end in a position of collective strength, rather than simply waiting for people to trickle away. For people to leave deliberately, and in small groups with a plan to get home safely, can also reduce the chance of lone stragglers being arrested once an action is "officially" over. Similarly, having an exit plan can help avoid the action ending prematurely, or being called off by someone who doesn't or shouldn't have the authority to call it off.
- **Do we have after-action, off-site supports in place?** You may find it easier to participate in an action if you know the group has taken your personal needs into account. How can the group support you with child care, not just during the action but for the day or two afterwards if you are held by the police or have to go to court right away? Do you have other dependents (aging parents, pets, etc.) that require a plan? Can the group organize meals for families of those who are arrested?
- **Do we have a debrief scheduled and post-action support ready?** It's good to set a time in advance to debrief after an action, and to analyze what went well, what could be improved, and what could be done differently next time. Also understand what other post-action support will be needed for participants, whether that's legal, emotional, or other support.

## Sidebar: Examples of tactics and action types

*Here is a short list of some common examples of NVDA; it is not meant to be an exhaustive list.*

### **Disruption of traffic and transportation:**

- slow swarms
- Critical Mass bike rides
- snake marches
- blockades
- traffic slow-downs (including tractor-cades)
- marches and parades
- port, rail line or bridge blockades or disruption

### **Spectacles:**

- banner drops
- graffiti
- chalking / sidewalk chalking
- die-ins or mock funerals
- guerilla theatre
- street theatre

### **Targeted disruption:**

- “haunting” individuals / zaps / bird-dogging
- pickets of specific sites
- information pickets
- disruption of formal events (e.g., parliament, turning of backs)
- disruptive rallies
- disruptive teach-ins
- sit-ins or shutting down of specific sites
- baby occupations

### **Non-cooperation:**

- walk-outs
- strikes (including roving or lightning strikes)
- boycotts
- shunning
- rent refusal

## Sidebar: Don't talk to police

**Myth:** Being friendly, talkative, and cooperative with the police will get you better treatment.

**Reality:** We have essentially nothing to gain from speaking with police, but we have a lot to lose. It is best not to talk to them, other than to provide the basic information (name, address, and date of birth) that is required in order to be released.

One of the few exceptions to this rule would be if you are having a medical emergency and need help.

Some people think that if we are friendly with police they will be friendly with us. This is false, and this belief is usually based on privilege, a lack of action experience, or both.

It's generally good to avoid unnecessarily antagonizing police. But being friendly to the police does not guarantee friendly treatment. When we use civil disobedience, the police are not our friends—they are our opponents.

The police want to gather information about us that will allow them to a) support charges against us in court, b) identify the people we are working with so that they can disrupt our groups, surveil our allies, or lay more charges, and/or c) find divisions and fracture lines in our movements that they can exploit.

CD/NVDA work by causing disruption, but the job of the police is to restore order and obedience. They will use whatever tactics they think will get us out of the way.

The police may use friendly tactics to put us off our guard. Or they may use misleading statements or tricks, since police are legally allowed to lie. Or they may use arrests and physical force.



The tactics the police choose are not based on how nice we are—the police will do what they think will work, and what they feel they can get away with in the eyes of the public.

The police are well-trained experts at getting people to talk when it is against their interests to do so, and their tricks are sophisticated. No matter how smart you are, unless you are a former police officer, you are not likely to realize when you are being manipulated or tricked.

As a polite and pro-social person, you may feel great pressure to respond when spoken to in a respectful and polite manner so as not to be rude, or in order to win favour with people who have a lot of discretion and control over you. Police will make it feel very emotionally and interpersonally uncomfortable for you to remain silent and may try to make you think that your silence is an admission of wrongdoing, is rude and unjustly hostile to them, or that you are foolishly missing opportunities to improve your legal situation which is getting worse the longer you say nothing.

These are all very powerful psychological tricks. It is very difficult to resist such pressure unless you have prepared yourself by setting very clear boundaries that you can easily remember and stick to, such as a single repeated phrase asserting your right to silence and your wish to speak with a lawyer.

A good general approach with police is to be polite but firm, so that it is clear that we are not interested in a conversation but also that we will not be intimidated.

There's a general rule to follow before, during, and after an action, and that's ***don't talk to police***.

**Before an action: Don't talk to police.** While planning for civil disobedience, such as blocking a bridge or highway, some groups want to warn authorities about possible disruptions to transportation, including emergency services.

That can be okay if you are willing to give up the element of surprise and you are consciously choosing a strategy of transparency. But don't go to the police. If necessary, you can notify the municipality (along with the general public) and the

municipality can inform fire, ambulance, and public transit service providers.

And definitely don't *meet* with police! Police can hear about your planned actions at the same time as members of the general public. Police will only use meetings as opportunities to gather extra information and probe for weaknesses and disagreements within your group.

Besides, emergency dispatchers and first responders are used to routing around disruptions like road or bridge closures due to accidents. It's part of their job.

Some groups want to talk or cooperate with police as a gesture of "respect." But we must be careful about where we truly wish to allocate our respect.

If you choose to "respect" and cooperate with police, you may be unintentionally causing disrespect to other groups.

For example: How does it look if you speak with police, but have not notified, consulted, or partnered with Indigenous groups on whose territory the action is taking place? If you reach out to police but not Indigenous peoples, it looks like you are picking sides. How will that be perceived by groups that have fought against colonialism or police violence, such as Idle No More or Black Lives Matter?

If you are seen to meet or cooperate with police, you scare off potential allies, especially more experienced allies, who will worry that you will share information about them with police, or that you are naïve about the risks police and the courts pose to activists from marginalized communities.

In general, it's also unnecessary to request a march or protest permit from the police. We do not need permission from them to exercise our democratic rights. Requesting a permit will mean extra police attention on the people making the request, and the police may attempt to hold those people "responsible" for laws broken after the fact, or to intimidate those people before or during an action.



Besides, what if the police say “no” to the request? It is better not to ask. The refusal to request a permit can be considered a first, small act of civil disobedience.

**During an action: Don’t talk to police.** If your action has a police liaison, and police are trying to communicate with you, you can tell them to speak with the police liaison. Communication opens up opportunities for police bullying, manipulation, and so on.

Individual people who engage the police in conversation are likely to be targeted for more police attention—especially unwanted attention—and may be treated as de facto “leaders” by the police.

**After arrest: Don’t talk to police.** We have all heard the Miranda warnings on U.S. television: “You have the right to remain silent. Anything you say can and will be used against you in a court of law.” A common Canadian version reads: “Anything you say can and will be used in court as evidence.”

*Anything you say can and will be used against you.* This is critical to understand and remember. Nothing you can say to the police will exonerate you. But they can use anything you say against you, possibly misquoted or taken out of context.

After arrest, *remain silent* as much as possible, with the possible exception of giving your name, address, and birthdate to facilitate your release. If you are chatty with the police, that will get you *more* attention, not less. If you talk to police about any subject (even “neutral” topics like the weather) you are more likely to be separated from a group and interrogated further, as police will believe that you are a possible source of information.

Police are tricky, and will try to use minor or tangential questions to open up a conversation. Don’t fall into their traps.

Before, during, or after an action: ***Don’t talk to police.***

# Roles

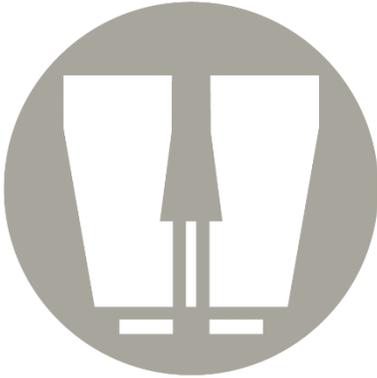
*Pamela Cross*

When a group of people decides to engage in direct resistance to state or corporate authority, there is a lot of work to do and many roles to play. It is important not to be drawn into the notions that some roles are more important, involve more courage, prove that someone is a true revolutionary; ideas that many of us have absorbed from the culture we live in and that we resist.

Every role is equally important to the successful execution of a direct action event.

	Onsite	Offsite
Before	reconnaissance	planners trainers facilitators communication legal
During	police/security liaison communication arrestable legal (observer)	communication legal
After		communication arrest/jail support legal

**Reconnaissance/planners:** These people visit the site for the action early in the planning process. Their job is to consider different possible scenarios for the action, learn the physical logistics (e.g., How many entrances to the place are there? Where are security cameras? Are there security guards? Dogs?) and identify challenges and opportunities. They then report back to the group, making suggestions and participating in discussions and decision-making. They often remain involved in the action,



**Further reading:** For more information on scouting and reconnaissance, check out Chapter 8, **Intelligence & Reconnaissance**, in Volume 2 of *Full Spectrum Resistance* by Aric McBay.

providing ongoing scouting and updated information about the site, as well as, perhaps, engaging in the law-breaking activities as well.

People who take on this role should be good at waiting and watching and have strong observational skills.

**Trainers or facilitators** assist the group in preparing for the action. They provide training about:

- the substance of the issue so other activists are well-informed and can make statements or answer questions before, during and after the action
- what non-violent direct action is: its history, its successes, its challenges
- what roles people are needed for
- the legal aspects of the action, including those related to possible arrests and criminal charges
- communication, including with police, bystanders and the media

The trainers/facilitators may or may not be planning to be involved with the event itself. They should have experience with direct action campaigns, including some knowledge about criminal law.

**Communication:** Whether or not to develop a communication strategy is a strategic decision. There may be actions where you decide this is not something you want to do, which is perfectly fine. Just remember, though, that direct action by its nature is usually an attempt to communicate something to someone, even if that “only” means showing solidarity with allies or defiance to authority.

When thinking about this, you could ask yourselves whether you want media attention at all or whether mainstream/corporate attention or independent media are more appropriate for what

you are trying to communicate. Your answers to these questions will depend on who you are as a group, what issue your action is directed towards and what communities of people you want to engage with.

If you decide to develop a communications strategy, this task starts long before the day of the action with the development of a strategy to communicate with the community, the media, and sometimes the police about the issue that has led to the resistance. Media releases, op eds, flyers distributed to households, public events, engagement with independent and social media: all of these require communications expertise and all are critical to laying the groundwork for the action itself.

If you are using the media to communicate with the public, on the day of the action, the communications person or team needs to be ready with prepared statements for the media, passersby, the police, and the target of the action as well as be ready to answer questions, which may be hostile at times. The group should decide ahead of time whether it will also use social media as a way to send real time images and reports about the action and, if so, whether there will be official messages (as well as what is sent by individual participants), a hashtag, etc.

This is a very dynamic role that requires people who can think quickly on their feet, are confident in front of a microphone and who are not flustered easily. The communications people should be well-informed about the issue. They need to participate in all training so they are up to speed with the group decisions and positions.

The communications team might also take on the task of watching the media, including social media, to keep track of what/who they are filming. State or corporate security could be filming action participants for their own purposes while passing themselves off as media. While there is little you can do about this, it is worth trying to keep track of what is going on. Perhaps video or still photos from the media can be helpful later in any legal case, so the communications team should collect contact information from any friendly media who are present.

**Police/security liaison:** Not all groups use this role, preferring to conduct the action without communicating with the police. There is no right or wrong answer to this question; different approaches are appropriate for different situations.

If you decide to have a police/security liaison, this person or people—ideally there are two people—communicates information between the activists and the police. The role is intended to reduce risk for everyone, but often the police try to use the liaison person to “negotiate” with the resisters. This can be a difficult role and should be filled by someone who is confident, able to be firm with the police without being overly aggressive and who has experience with CD/NVDA.

It’s important to clarify this role ahead of time, especially with respect to the group’s decision-making process so the person in the liaison role does not get pressured by the police into agreeing to anything without consulting with the group. The liaison person should always refer questions back to the larger group unless the answer is something the group has already discussed and decided. For example, if the police ask how long the action is planned to last, the liaison person could say: “You want to know how long we plan to be here? I can’t answer that question on my own. I am going to talk to the group and come back to you once we have a response.”

**Legal:** When people are planning an action that could lead to legal consequences, it is a good idea for them to be as informed as possible about what those consequences could be. The legal person or team participates in planning to explain to the group what legal issues could arise in different scenarios. They work with the trainers/facilitators in planning and carrying out the training—their role is to provide information to the group about the legal issues they will face by participating in the action. They need to be able to answer the many, many questions that will

come up, especially if there are people in the group who are new to direct action.

They also need to be available during the event and immediately after, either on-site, in a clear non-arrest position, or off-site, by telephone, to provide information and support as the action unfolds and to assist in having people released if there have been arrests.

If people are arrested, this role extends beyond the day of the action to meetings with the group post-arrest to discuss legal strategy, assist with finding lawyers (if people have decided to use them), coordinate jail support and, if necessary, discuss a trial strategy.

The legal and communications people will likely work closely together if there are arrests so that accurate information can be provided to the media and the community/public.

The people taking on the legal role do not have to be criminal lawyers. They need to have a good understanding of the basics of criminal law, which they may have learned from their own involvement in past direct actions. If there are criminal lawyers who support the concept of direct action resistance, who agree with the group's position on the issue being resisted and who are prepared to think outside the narrow box of standard criminal law, they can be enormously helpful to the group, especially if they are able to provide their time on a volunteer basis.

**Arrest:** In most actions, some participants are prepared to risk the possibility of being arrested, even if this is not the goal or hope for the event. These people need to be able to:

- participate in all discussions and training about the action
- be able to commit to the agreements made by the group
- have flexibility in their personal/work lives in case they are arrested and kept in custody for a day or two or longer

Anyone prepared to risk arrest should be well-informed about the issue and why they are risking arrest. They need to be able to manage situations that can be fast-paced, with many unknowns, and be capable of making decisions quickly as well as adapting to sudden changes in plans.

This role may be over when the action ends if no one is arrested. It could last for several hours, if arrests are made but people are later released without being charged. Or, it could go on for weeks, months or even more than a year, if people are charged and the group decides to take the charges to a trial.

**Arrest/jail liaison:** An action that contains the risk of arrest needs a team of people available to support anyone who is arrested. Ideally, anyone who is risking arrest has completed a form with all the information the arrest/jail support team may need so, on the day of the action, they can, as needed:

- carry ID and medication for people risking arrest if they don't want to carry it themselves
- contact people on behalf of those arrested (partner, work, etc.)
- provide medical and other relevant information about the arrested person to the police
- provide the police with medication required by the arrested person
- take a child whose parent has been arrested to an agreed-upon temporary caregiver
- provide follow-up support as the arrestees have asked
- keep track of who has been arrested and pass that information on to the legal and communications teams

If people are held in jail for more than a few hours, the arrest/jail support team may assist with arranging visits and/or taking care of other details for the people in jail.

This is not a legal role, but these people will work closely with the legal team. Anyone considering playing this role needs to be

available to participate in all the discussions and trainings and be at the action in a clear non-arrest role as well as have time available after the action ends and possibly some time available in the days and weeks following the action. On the day of the action, they should have a fully charged phone so arrestees and others can reach them as needed.



**Above:** Demonstrators blockade the access road to the Whitehaven Coal Processing Plant in New South Wales, Australia. They have erected a special tripod to make the blockade harder to disperse; a saxophone player is suspended from the top of the tripod.

Hundreds of people have been arrested as part of ongoing direct action and community blockades. *(March 5, 2014. Leard State Forest via Flickr.)*

# What to bring (or not bring) to an action

*Aric McBay*

## What to bring:

- **Legal number (in sharpie).** With proper planning (as discussed above) you will have a legal support number that arrestees can call after arrest to access legal support. Because any paper is usually confiscated, most people write this number on their forearm or inner calf using a sharpie or permanent marker. (Because of the stress of arrest, this is more reliable than memorization.)

You will want to be able to call this number to let the legal support team know that you have been arrested, where you are being held, and your general wellbeing. If a large number of people have been arrested at once, you may have to leave a voicemail.

- **Identification.** Typically, the police will not release a detained person without confirming their identity. The police want to find out if arrestees have previous charges or warrants, and may detain people until they can be identified. So generally speaking, you will want to bring government-issued identification. Direct actionists may decide as a group to refuse to identify themselves to police, in the hopes that police will release everyone without charge, but this is extremely rare.
- **Prescription meds (with prescription).** While the police are not supposed to detain someone for more than 24 hours without charge, in reality it's difficult to control exactly how long you may be jailed after an action. Depending on the timing of bail court or the number of people arrested, arrestees may be detained for longer than 24 hours.

Because of this, if you anticipate being arrested it's important to bring to an action any medications that you need to take on a regular basis, as well as medication that you might need accessible in an emergency (e.g., asthma inhaler). Bring

appropriate documentation such as your prescription and original packaging for pills.

- **Dressing for safety.** Give some thought to the clothing that will make you most comfortable and safe at the action and, potentially, in jail. If you are having an action on a construction site, consider safety boots. If you are planning a prolonged action on a hot, sunny day, make sure that you have a hat, water, and clothing to help protect you from sunburn or heat stroke. Consider wearing long shirts that can be tucked into your pants so it is harder for the police to intentionally pull up your shirt and expose your chest/breasts. If you have long hair, wear it braided or pinned up so it can't be pulled. Likewise if you are wearing pants that require a belt, know that the belt may be confiscated in jail. These are not legal considerations, but they are factors that can make you more comfortable if arrested, and limit the sources of stress that you have to deal with in an already challenging situation.
  
- **Pocket Reference Guide.** We have compiled a single-page pocket guide that you can print out and bring to actions. (See the end of this document.) Just remember that if you are arrested, the police are likely to confiscate it and that you won't be able to refer to it in jail.

## What not to bring:

- **Anything weapon-like.** Be careful not to bring any objects on your person that the police might interpret as weapons. This could include anything from a pocket knife to a screwdriver, so you need to think carefully about what equipment you plan to use during the action itself. Weapon-like objects or objects associated with law-breaking (for example, bolt cutters) could lead to increased charges after arrest. They might also be confiscated and displayed at a police press conference in an attempt to smear your group or the demonstration.
- **Address book/names or information of other activists.** Police want to identify potential activists and resisters so that they can be surveilled or harassed. In particular, they want to map networks of resistance, which they can then try to disrupt, potentially through infiltration. Make sure not to bring address books or any information that could bring unwanted attention on your allies and comrades. (For more information and tools to deal with this, see *Full Spectrum Resistance*, Chapter 6: Security & Safety, and Chapter 9: Counterintelligence & Repression.)
- **Unlocked/unencrypted phones.** If you are like most people, your phone contains a huge amount of information about you, your friends and comrades, your conversations and emails, your beliefs, and your daily movements. Your phone, if tampered with, is also a powerful personal surveillance device that can be used to track your whereabouts and record your organizing conversations.
- Because of these factors, it's important to keep your phone physically out of the hands of police or other government agents. If you think it is likely that you will be arrested at a protest, it's best not to bring your personal phone to a protest.
- If you must bring a phone, it's better to bring a disposable pay-as-you go phone that has no personal information.

- If you do decide to bring your own phone to a protest or other action, consider the following steps at least for the duration of the action:
  - Keep your phone locked with a strong password, and set your phone so that a password must be entered again as soon as the screen is turned off.
  - Set your privacy settings so that no personal content (e.g., text messages or emails) are displayed on the lock screen without entering your password.
  - If your phone allows it, require a password to connect via USB. (That may also mean disabling “developer mode” or “USB debugging” if they are enabled.)
  - If your phone allows it, encrypt all data.
  - For a more detailed and up-to-date phone security guide, see the resources from:
    - The Electronic Frontier Foundation: <https://ssd.eff.org/en>
    - Riseup.net autonomous tech collective: <https://riseup.net/en/security>
    - Security in a box: <https://securityinabox.org/en/>
- **Illegal drugs.** Again, you should avoid bringing anything to an action that could lead to additional charges or unnecessary police attention.
- **Anything you treasure.** Because things can get broken and disappear during an action and during and after an arrest, avoid bringing anything that matters a lot to you. Don’t wear expensive jewelry or bring any kind of family heirlooms with you, for example. Unless you are the official photographer for the event, it is probably a good idea to leave your expensive camera at home.

## What about masks?

Since 2013, it has been illegal to wear a mask or other disguise during a riot or unlawful assembly. We discuss this charge further on page 83. Whether or not to wear a mask is a strategic discussion. There can be good reasons to wear one; for example, to cover your face or distinctive markings to maintain some privacy and anonymity from TV cameras, bystanders and the police, or to protect yourself from tear gas. There are also good reasons not to wear one; for instance, it may escalate police response. There is no right or wrong approach to whether or not you should wear masks during an action.

If people in your group plan to cover their faces, this decision should be discussed in advance and then respected. For safety reasons, it is a good idea for the group to know ahead of time if anyone is planning to cover their face. Otherwise, if someone arrives at the action wearing a mask, people will not know whether that individual is part of their group or someone who is infiltrating the action.



# Case Study: Save Our Prison Farms

## Context

As of 2009, there were six “prison farms” across Canada. These were farms located at prisons, where prisoners worked to grow food for themselves, their fellow prisoners, and for local food banks. Prisoners in this program were able to spend time outside, learn new skills, and express empathy and care by working with animals like dairy cows.

In 2009, the Conservative federal government of Steven Harper decided to shut down the farms; one of Harper’s cronies explained that it was “coddling” prisoners to allow them to work outside or care for animals.

Many groups in the public were opposed to this decision (especially around Kingston, Ontario, where two of the six farms were located).

Farmers were offended by the government’s assertion that farming did not involve any “useful skills” and began mobilizing through organizations like the National Farmers Union.

Prisoner advocates and former prisoners worried that the closure of the farms indicated a shift toward a for-profit, American-style prison system; that the closure of the prison farms meant that the government was abandoning even the pretense of “rehabilitation” and job training, and that Harper wanted the prison farms shut down so that public money could be used to buy much more expensive outside food from private contractors as part of the Prison Industrial Complex.

Some advocates also argued that the prison farms made the Kingston community safer and that participants had a lower rate of recidivism (i.e., participants were less likely to return to prison after being released).



**Above:** Collins Bay Penitentiary, the location of one of the prison farms in Kingston, as shown in a still from the documentary “Til the Cows Come Home”.

*All margin photos in the following section are from the same source.*

One of the prison farms, at Collins Bay Penitentiary, included 1,000 acres of farmland in the middle of Kingston, surrounded by residential, commercial, and industrial areas. Through the early 2000s, Kingston had a vigorous local food movement, which understood issues like climate change and the need for local food production. Members of the public understood that Kingston might need this land to feed itself in the future, and that if the prison farm were closed, the farmland would likely be destroyed by development or used as the site of a new super-prison.

### **Awareness-raising**

In 2009, community organizers began an awareness-raising campaign around the prison farm closures. Those organizers convened town halls and public events, where former prisoners were able to speak about the positive impact they had experienced through working on the prison farms. During this time, the campaign's tactics included letter-writing, small demonstrations, petitions, and meeting with bureaucrats at the Correctional Service of Canada (or CSC, which administers prisons).

A year of awareness-raising work built a strong public understanding of the importance of the prison farms.

The federal government, however, continued to stonewall the movement, and refused to release basic information about the program including the budget and recidivism rates.

Because of this, the campaign expanded to focus also on *democracy*—people saw the planned closures as yet another example of the Conservative government undermining democracy, ignoring the wishes of the public, and ruling in secret instead of being transparent.

By spring of 2010, it was clear that the government was about to close down the farms, dismantle the infrastructure, and ship the



dairy cows away to sell at auction. It was also clear that the tactics used to date were not enough to keep that from happening.

So campaign organizers decided to shift toward civil disobedience.

### **Preparing for civil disobedience**

It was not clear, before this shift, whether campaign *supporters* would want to participate in higher-risk tactics. While there was strong public support in general, most of the early symbolic protests had only involved 15-20 participants.

At a public meeting, one of the campaign organizers announced that the campaign would use civil disobedience to block any attempt to remove equipment or dairy cows from the farm at Collins Bay. The response of the audience was not trepidation, but uproarious applause. People were ready to fight. Five hundred people signed up on the spot to participate in blockades.

Organizers knew that we could not go straight from petitions to mass civil disobedience. So we took time to train participants and escalate our tactics.

First, we set up a phone tree of those 500 participants. We didn't know whether the government would attempt to sneak out equipment or cows, so we wanted to be able to mobilize 500 people as quickly as possible at any time of night or day.

Second, we set up a "Community On Watch Station" (COWS) in a trailer across the street from Collins Bay Penitentiary. This was a 24-hour a day surveillance station, staffed by five shifts of volunteers who watched the penitentiary non-stop. They had a dedicated cell phone, and if they saw anything suspicious they could initiate the phone tree immediately.

This participatory approach gave people a way to take action in advance of a blockade, normalizing our tactics and heightening their commitment to the campaign.





Third, we held a series of civil disobedience trainings to help participants role-play and practice the mechanics of keeping a blockade line, while also giving them information about the legal risks and the process of arrest.

### **The blockades**

All of this very open preparation and action was intimidating to prison administrators. They weren't used to such a high level of public scrutiny. They were familiar with handling imprisoned people who lacked rights and freedoms, but they didn't know what to do with a large and defiant movement.

As a result, the planned removal of the cows for action was postponed for months. This was good, in that it indicated the strength of the campaign. But those in power often delay to try to wait out the popular attention span.

We didn't want to lose our campaign momentum, so we organized a one-day blockade of CSC headquarters in Kingston as a show of strength and to allow participants to practice their blockade skills.

Finally, at the beginning of August 2010, we got a tip from our inside network that the government was planning to remove the cows from Collins Bay on Sunday, August 8. We activated our phone tree, and more than 500 people arrived that morning to blockade access to the entire prison.



On that first day, blockaders held solid despite heavy rainfall in the afternoon. A series of empty cattle trucks arrived, but were kept outside the prison. Kingston Police arrested a handful of participants from the three-row-deep blockade line—seemingly at random—but participants refused to be intimidated. Eventually the police, who didn't have enough cells to arrest everyone, gave up trying to arrest people.

Instead, police changed their tactics from intimidation to trickery. They pressured specific organizers to cut a deal, warning that if

the blockade line were not dismantled, everyone would be arrested (which was transparently false). But, police promised, if cattle trucks were allowed in, everyone could return to protest the next morning.

Under this pressure, and because some of the leaders lacked experience dealing with police, the agreed-upon decision-making process was not followed and one of the organizers (without getting consensus from all the other organizers) told participants to go home for the night.

Blockaders listened to those instructions, and backed off to watch the demoralizing sight of cattle trucks—which they had successfully blocked all day—entering the prison grounds.

After that sight, only about 200 participants returned the next morning to continue the blockade. Overnight, however, the police had fortified the site with concrete barricades. They also bussed more than 100 Ontario Provincial Police (OPP) officers, many of whom had been part of the brutal repression of G20 protests in Toronto a few weeks earlier.

The blockade was never able to fully re-establish itself, and a number of participants were roughly arrested. The cattle trucks, now full, were able to leave the prison.

Twenty-four people, ranging in age from 14 to 87, were arrested on the two days of the blockade. (Many were released on bail the day after the blockade, on August 10: Prisoners' Justice Day.)



### **The struggle continued—restoration**

Still, the campaign did not give up. In the days that followed, campaign supporters raised \$50,000 and bought 23 of the prison farm cows at auction. They formed the Pen Farm Herd Co-op and billeted those cows out to farms in the Kingston area, promising that those cows would form the basis of a new herd when the prison farms were, one day, restored.



At the same time, a group of supporters organized a vigil in front of Collins Bay, which they held Monday nights on the weekly anniversary of the blockade. To keep the dream of prison farm restoration alive, they held a vigil every single Monday, in every season and kind of weather, for more than 400 weeks in a row without a single break.

Both the New Democratic Party and the Liberal Party of Canada promised that they would re-open the farms if elected to federal government. And finally, those promises came to fruition in 2019. After announcing the farms would be restored, they brought cows from the Herd Co-op back to Collins Bay in the summer of 2019.

A public dialogue continues about exactly what the prison farms should look like and how they should operate. But after a long struggle, we can consider the prison farm campaign a success.



**Above:** A prison farm demonstration near the gates of Collins Bay Penitentiary. The margin photos in this section are stills from the great documentary "Til the Cows Come Home", which can be viewed online; see [prisonfarmfilm.org](http://prisonfarmfilm.org).

# Demystifying the law

*Pamela Cross*

We live in a culture that both reveres and reviles the law. “The law” is held out as the ultimate arbiter of right and wrong. Those who break certain laws are seen as bad, dangerous and not welcome, while those who break other laws are, themselves, lawmakers and corporate leaders.

Many people who are not part of the legal world feel intimidated by law, which gives it greater power than it already has. Many of those who work within the law—lawyers, police, judges and others—like to encourage this because it gives them more power.

The criminal law is not really that complicated. Canada has decided to govern the behaviour of those who live here by creating, essentially, a code of conduct for all of us. This is the Criminal Code, and it applies to everyone in Canada, even those who lived here long before the Criminal Code was created and who had their own systems to govern people’s behaviour.

The Criminal Code sets out offences, the elements of those offences, and the consequences for those who commit those offences.

Provinces and territories also have rule books to govern people’s behaviour. These set out behaviour that is seen to be less serious than that governed by the Criminal Code: trespass, traffic, harm to pets, etc.

Many behaviours appear in these pieces of legislation that probably shouldn’t, and other behaviour that likely should be included is not.

Generally, the approach of the criminal law—those offences covered by the Criminal Code—is highly punitive.

There are two important principles that underlie the application of the criminal law in Canada:

- people are presumed to be innocent until they are proven guilty
- for someone to be found guilty, the Crown Attorney, who is the lawyer acting on behalf of the state, must prove the case **beyond a reasonable doubt**. This means there can be no other reasonable explanation than that the person who has been charged with the offence did it. The accused person does not have to prove they are innocent: To be acquitted, they must show that the Crown has not provided enough evidence to prove they did it.

These principles are intended to ensure that innocent people are not convicted unless there is very strong evidence to prove their guilt.

Another important piece of legislation that has a close relationship with the criminal law is the *Charter of Rights and Freedoms*. This sets out the legal rights of people in this country, including the right to be treated equally before and under the law.

However, as we know, despite the *Charter* and the principles underlying criminal law, people are treated very differently depending on their social status.

People who cannot afford to hire a lawyer, for example, may find themselves convicted even if there is evidence that would exonerate them. Racialized and Indigenous people often face explicit or implicit racism when they become involved with criminal law. People with disabilities can be very vulnerable. And so on.

It is also the case that people are often treated more harshly if their actions are seen to disrespect or threaten the legitimacy of the law or the Canadian state, which is how CD/NVDA is often interpreted by those who enforce the law. Even though judges are, in theory, independent and autonomous from the

government, their rulings often show a bias in favour of upholding the status quo, meaning that those who engage in acts of resistance are often seen as especially heinous.

In other words: People in Canada are required to live by a set of rules that has been decided upon by the government and that, in theory, applies equally to everyone. When we fail to do so, we must face the consequences. In fact, the impact of the criminal law is highly differential on both people accused of committing crimes and people against whom crimes have been committed.

We talk about some of the specifics related to the law that can arise for people who engage in direct action resistance on page 105.

# When do you need to talk to a lawyer?

*Pamela Cross*

If you are new to direct action resistance, you may be very nervous about the possibility of getting arrested. This is completely understandable. As we have just discussed, the law in Canada is held up as a very powerful tool/weapon, and the thought of facing a criminal charge can be really scary.

Good action planning always includes plenty of opportunities for people to talk about their legal concerns with someone—a lawyer or someone with a lot of direct action experience—who can explain what is likely to happen.

There are few if any definite and absolute answers, though, and people have to be ready to accept that. Everyone on the enforcement side of the law—police officers, jail guards, Crown Attorneys, Justices of the Peace (JPs)—has considerable discretion to interpret the law and legal process as they see fit. One police chief may be quite relaxed in their approach to a large political action; another may move in quickly and firmly to disperse the crowd or to arrest individuals they see as key to the event. One officer may be sympathetic to an arrestee who needs to make a phone call to arrange child care; another may take the attitude that no good parent would engage in potentially criminal activity.

This will be the experience throughout the criminal process, with people's treatment affected by attitudes about the politics of what the group has done as well as towards you individually.

If there are no members of your group who are lawyers or who have experience with the legal aspects of direct action resistance, it is probably a good idea to build relationships with one or two criminal lawyers in your community. Here are some suggestions of what you should look for:

- experience with criminal law;
- a progressive political perspective;
- someone who is willing to work with a group rather than an individual client. This is difficult; partly because of solicitor-client privilege, which is a rule prohibiting a lawyer from sharing information about a client with anyone else and partly because, culturally, few lawyers are used to working in a group setting;
- someone who is willing to think outside the very narrow box of formal criminal law. You want a lawyer who will work with you even if some of what you are planning to do in the courtroom or media is political and not the usual approach to handling a criminal case;
- someone who is committed to working with an intersectional analysis that understands the role of racism, misogyny, homophobia, and classism in the criminal law as well as more generally; and
- someone who can work for free, at a reduced rate, or on a barter basis.

It will not be easy to find such a lawyer, but they are out there. You may find one by following criminal cases in your community to see which lawyers tackle the more political ones or seem to bring a broad political analysis to their work. You may hear about a good lawyer through the grapevine.

You may need to be prepared to do some educating of your lawyer so that your approach aligns. You will also have to be willing, at times, to let the lawyer handle some things in the way they think is best. Put simply, you and the lawyer(s) working with you will have to develop a relationship of trust.

If you work with a lawyer, always remember that you are in charge of your action. Because lawyers are prohibited from counselling people to break the law, it may be their instinct to discourage you from engaging in any illegal activity. This should not discourage you from continuing with your plans. Remind

yourselves and the lawyer that you are looking for their expertise about what the legal consequences might be of different kinds of activities, not their opinion about whether or not you should do what you are planning to do. (That said, there are times when understanding the letter of the law can help you to “optimize” your action to have equal or greater impact with a reduced legal risk.)

Ideally, you can find a lawyer or two well before your action who will work with you on an ongoing basis. It can be very frustrating for you and for the lawyer if you are calling around while an action is underway to find someone to help out.

There are risks in working with lawyers. Largely, this is because of the culture of criminal law itself. It is highly individualistic; criminal lawyers tend to work on their own, some have inflated egos, and, even when they work with colleagues, there tends to be an in-culture that it is difficult for outsiders to crack. You may find that some of the lawyers you approach assume they know everything, in which case they may not be willing to work collaboratively with you or to accept your ideas for the politics you want to bring into the case.

While lawyers can be very helpful in many ways—and many of them are highly supportive of what activists are doing—if you cannot find a lawyer who meets most of the criteria set out above, you may find yourselves better off to work on your own, connecting with direct action groups in other communities for legal assistance. Defending yourself, in situations where the stakes are not very high, could also be good practice and an educational experience.

You also need to consider the cost of working with lawyers. While you may be fortunate enough to find a lawyer who will do some work for you for free, most lawyers who are interested in political activism are not making a lot of money themselves, and you don’t want to take advantage of them.

Depending on what charges people are facing, some may qualify for assistance through Legal Aid Ontario (LAO) or through one of

LAO's community or student legal clinics. Generally, if you have never been criminally charged before and there is little likelihood you will face a jail term if you are found guilty, you will not qualify for legal aid.

You may also need to build legal fundraising into your plans for both before and after the action. This could involve fundraising appeals to progressive people in your community or public events like dances or speakers to draw in money.

The bottom line is that individual participants in direct action should not be left to sort out paying for their own lawyer, and good, political lawyers in your community should not be expected to do endless work for no compensation.

## Additional considerations

*Pamela Cross*

While the purpose of direct action/resistance is not necessarily for the individuals to get arrested or criminally charged, direct challenges to state and/or corporate authority almost always carry this risk.

Anyone thinking about participating in an activity that could be interpreted as breaking the law needs to consider the possible consequences of being arrested, criminally charged, and, perhaps, found guilty of a criminal offence.

While this is important for everyone because, as we explore later in this handbook, even being arrested by the police can have long-term impacts on employment, movement within and beyond Canadian borders, police surveillance, and other aspects of daily life, there are some categories of people for whom the risks are especially high.

**If you do not have final and complete legal status in Canada,** being arrested can have an immediate or longer term negative impact on your ability to remain in Canada and complete your immigration/refugee process. The impact will depend on many factors: the stage of the process you are at, the charge that is laid against you, and the final resolution of the charge, among other things. You may also be treated differently during the bail process than your companions.

This does not mean you should not get involved in resistance activities where there is a possibility of arrest, but you should consider speaking with someone who can accurately advise you of the extent of the risks you will face if you are arrested (for example, an immigration lawyer). You may also decide that you need to have more legal support available to you during the resistance activity or that you want to play a role that minimizes your exposure to possible arrest.

**If you already have a criminal record or are “known to the police,”** you may find that the police respond differently to you than to others in your group.

For example, police may, rightly or wrongly, single you out as the person in charge (i.e. the person most responsible for what is going on), which could lead to different or additional charges, should people get arrested. Your bail conditions may be more onerous or, especially if you are already on bail, you may have trouble being released from custody at all. If you are charged and then found guilty, your criminal record can be entered into evidence when the judge determines the appropriate sentence, which could mean you face a more severe consequence than people who do not have a criminal record. For example, people with no prior criminal record may be given a discharge—either conditional or absolute—whereas you might find yourself on probation or spending some time in jail.

If you are not sure whether or not you have a criminal record, you can ask your local police force or begin a Freedom of Information request to the government. However, be warned: You may not get all the details about your record even when you ask for it.

This is no reason not to become involved with direct action resistance. It just means you need to be aware that you may face a different outcome from your companions.

**If you have children for whom you are responsible,** you need to consider a number of things. If you have brought your children with you and you are arrested, you should have an adult present who is not in a position in which they could be arrested who your kids know and who can take responsibility for them. If your kids are physically with you when you are arrested and there is no obvious other “responsible” adult nearby, your children may be taken into the care of child protection authorities.

Usually, the police will ask the parent who has been arrested whether there is someone who can come to get the kids before they call the Children's Aid Society. If you don't have someone at the event with you, you should try to have someone available by telephone who is prepared to pick the children up and keep them for a few hours or even overnight. Make sure you have this phone number with you and that your kids know who this person is.

If you have left your children (or other dependents such as elderly parents or pets) at home while you have gone to the action, you should make arrangements for their care in the event you are arrested. Line up someone who can come over to your house to handle dinner or who can pick kids up from school or the day care centre or who can let a dog in or out and feed it.

It's a good idea to talk to your kids ahead of time about what you are planning to do, why, and what might happen. This will make them feel included and less afraid for you, but it will also make it more likely that they can speak up for themselves if any state authorities try to interfere with them.

**If you are under 18 years of age:** The criminal law applies differently to people under 18 years of age. The treatment of young people is governed by the *Youth Criminal Justice Act (YCJA)*. While you can face the same charges as an adult, the *YCJA* sets out different procedures and consequences for people under 18. For example, if you are under 18 and get arrested with people who are 18 or over, you will be held and transported separately from them. You have the right to talk to a lawyer **and** to your parent(s) or another adult before you make any statements to the police. You also have the right to have a lawyer **and** your parent(s) or another adult with you when the police question you, whether or not you are going to make a statement. The police will notify your parents if you are arrested, whether or not you want them to.

If you are under 18, you should let your group know. You may want to consult with a lawyer before the action to find out more about your rights.

**If you have special physical or emotional needs of any kind**, you should think through what safety issues and barriers you might encounter at the direct action itself, in the arrest process, at the police station and, possibly, later at the jail.

If you need medication on a regular basis, bring it, in its original prescription bottle that sets out what the drug is and when you need to take it.

Police are not always gentle when arresting political activists and, sometimes, are intentionally invasive or intrusive in this process. For instance, you might have your cane knocked out of your hand or another mobility device taken away from you to embarrass you and make you more vulnerable. If you wear glasses or a hearing aid, the police may remove or break these.

If your special needs are invisible—mental health, literacy, cognitive—it is really important for you to consider what supports you will need during the action and, if you are arrested, throughout that process, which can last for hours or even more than a day. For example, if you are seriously claustrophobic or have significant panic or anxiety attacks, you may want to consider a role in the action that keeps you well away from possible arrest.

**Gender, gender identity, gender expression, and sexual orientation** can also create unique challenges. Some police officers—male and female—seem to enjoy humiliating women while arresting them. They may demonstrate this by making offensive comments about the woman's appearance, making highly sexualized remarks about what they would like to do to her, intentionally pulling up her shirt to expose her breasts, being unnecessarily rough, pulling her hair and so on. After arrest, the

officer supervising the holding cells may refuse to assist someone who needs menstrual pads or other anatomically-specific items.

LGBTQ folks may face situations that are emotionally and/or physically unsafe. They may not be placed in holding cells that are consistent with their gender identity or may be placed with other inmates who are not safe for them to be around. They may be subjected to humiliating and offensive comments. They may be threatened with or subjected to sexual violence.

While everyone who gets involved in direct action politics needs to be conscious of situations that can trigger them, folks who identify as women or LGBTQ need to pay special attention to this as well as to what they need to be both emotionally and physically safe. This can help them decide what role they want to play in the action.

**Racism** is a serious concern for both people of colour and Indigenous peoples who come into contact with police/security and the legal system generally. There has been a long history of oppressive treatment of Indigenous peoples in particular by the state's security forces. Your group, especially those with white skin privilege, needs to be prepared to watch for and call out any behaviour that targets racialized or Indigenous resisters.

**No matter what the special consideration is**, it is really important for people to share this information with their affinity group. It could have an impact on everyone, so each member needs to know what every other member is dealing with. This way, everyone can look out for everyone else, the affinity group can carry what it needs with it (telephone numbers, medication, an extra pair of glasses or hearing aids) and be ready to respond to state violence against the vulnerable members of the group.

## Sidebar: Police and intelligence agencies in Canada

There are many different police forces in Canada with different roles and jurisdictions. Depending on the nature and location of your protest or action—such as a blockade of a roadway near a military base—you may even encounter multiple police at the same time (such as military police, provincial police, and municipal police).

Conversely, you may want to choose the site of an action because you would prefer to interact—or avoid interacting—with particular police forces, based on their jurisdictions.

- **Royal Canadian Mounted Police (RCMP).** The RCMP is the national police force of Canada and has jurisdiction (authority) across the entire country (including Quebec and Ontario). It has a very broad mandate to enforce federal laws around everything from counterfeiting to counter-terrorism, and is responsible for local policing in much of the country, especially in rural areas.

It has often been responsible for the repression of dissent in Canadian history. It was founded in 1873 as the North-West Mounted Police and tasked with patrolling the “frontier” and putting down Indigenous resistance in the prairies. In the 1920s and 1930s, the RCMP was responsible for the surveillance and infiltration of immigrant communities, deportation of suspected radicals, and had special constables dedicated to strike-breaking and the suppression of labour organizers. It was also responsible for enforcing the residential schools.

Given that history, it is not surprising that the RCMP is the organization most responsible for the surveillance and infiltration of activist communities across Canada. That surveillance is sometimes meant to be conspicuous, as a form of intimidation.

- **Canadian Security Intelligence Service (CSIS).** CSIS provides the government and other police agencies with intelligence services on threats to “national security.” It was created in 1984 to take

over RCMP intelligence work after a scandal involving illegal RCMP covert operations against Quebec separatists. However, CSIS is not responsible for law enforcement and is not a police agency; you are not going to encounter uniformed CSIS officers at a protest.

Nonetheless, CSIS can do surveillance and intelligence-gathering that would lead to arrest or criminal charges by other agencies (typically the RCMP), and has used intimidating visits and aggressive questioning tactics against immigrants and Muslim communities in particular.

The secretive organization has also been criticized for “sloppy” research, deliberately misleading judges, mishandling and destroying evidence, a racist and homophobic workplace culture, and for funneling government funds to white supremacist groups.

- **Provincial police forces.** Three provinces have their own police forces: Ontario (the Ontario Provincial Police), Quebec (la Sûreté du Québec), and Newfoundland (the Royal Newfoundland Constabulary, which is mostly limited to metropolitan areas). The forces in Ontario and Quebec have jurisdiction across their respective provinces and are the sole police force for many rural areas, smaller towns, and highways. However, they may be deployed anywhere, especially to support municipal police in dealing with larger protests.
- **Regional and municipal police forces.** Many localities across Canada have their own police forces which have jurisdiction within their respective city or regional limits. Their histories and attitudes toward protesters and dissent can vary greatly from city to city.

Some municipal police forces in smaller cities are hesitant to deal with Indigenous actions in particular, and may prefer to wait for provincial police or RCMP to respond. Likewise, some First Nations Reserves have their own small police forces, but these are typically tied to the government and not to traditional Indigenous leadership.

- **Canadian Forces Military Police (CFMPs).** CFMP officers are members of the military and they are responsible for policing other members of the military. They have jurisdiction on Department of National Defence (DND) property, and have the legal power to search, arrest, and charge civilians while on DND property. CFMP can also enforce traffic laws through military bases. (Because of their role on military bases, CFMP jurisdiction can include bases outside of Canada.)
  
- **Railway police.** There are three police forces in Canada with jurisdiction on railway property for three major railway corporations: Canadian National (CN), Canadian Pacific (CP), and Via Rail. While small in number, these railway police have typical police powers on railway property including rail lines and crossings. (As with the Military Police, the railway police have some jurisdiction outside Canada, on some rail lines in the United States.)
  
- **Other police forces.** There are other law enforcement agencies, federal and provincial, with specific jurisdictions and powers. At the federal level these include Correctional Service of Canada (prisons), the Canada Border Services Agency (border crossings), Parliamentary Protective Service, and Canadian Air Transport Security Authority (airport screening). There are also provincial and regional law enforcement agencies, including transit police (select mass transit), provincial Conservation Officers (for hunting and fishing), and provincial Corrections Officers.

If you think you might encounter these other agencies during your work, consider doing some research and asking other organizers about past experiences.



**Above:** A Bahraini human rights campaigner (above) is arrested by London police during a blockade of an reception of arms manufacturers at the Science Museum in London, England. **Right:** Organizers from Sisters Against Arms Trade address participants at that same demonstration. (July 11, 2016. Campaign Against Arms Trade via Flickr.)



# During an action

*Pamela Cross*

It would be impossible to create a complete list of every possible charge that could be laid as the result of direct action resistance. What charges the police consider laying depends significantly on what the resisters are doing.

We will discuss some of the more common charges shortly, but first we want to talk about the idea of avoiding arrest.

Some approaches to non-violent direct action, in particular acts of civil disobedience, have arrest as one of the goals. The action may be, for instance, a blockade, in which participants commit to remaining in position until they are removed by police, which often—although not always—leads to arrest and criminal charges. Or, resisters may enter a facility to do damage to property, then remain there until the police arrive to arrest them.

There are a number of reasons people choose this approach: they see it as being accountable for their actions; they see it as an opportunity to take the political issue into the legal arena through their criminal trial; they want to try a particular criminal defence; or they think it will make them more credible to the public.

This may be the kind of action you are planning and, if so, the information we provide will be relevant and helpful for you.

Or, you may want to consider an action that, while illegal, does not have the arrest of participants as one of its goals. There are good reasons for this, some of which we explore further below: you may be able to accomplish your goal and leave the site before the police arrive; you may feel your resources are better spent continuing with direct action than spent dealing with the fallout from criminal charges; or participants in your action may have too much at stake to risk arrest (see section above on “Additional considerations”).

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Both approaches are valid. It is important for the group planning the action to discuss which they want to use so everyone is in agreement. However, even if the group's plan is to attempt to avoid arrest, everyone should be prepared for the possibility of arrest because events at an action do not always roll out as people have planned.

All criminal offences in Canada fit into one of three categories: summary conviction, indictable, or hybrid.

- **Summary conviction offences** tend to be for less serious things. They are dealt with in front of a judge alone. The person charged does not have to be present for every court date if they are represented by either a lawyer or an agent. An agent can be a paralegal or, in political action cases, another member of the group—they do not have to have any legal training or qualifications. All summary convictions carry a maximum penalty of two years less a day in jail, a \$5,000 fine, or both.
- **Indictable offences** are more serious. Someone charged with an indictable offence must appear personally for every court proceeding, even if they are represented by a lawyer. They cannot use an agent to represent them. They have the option of proceeding with a trial in front of a judge alone or a judge and jury. If they are found guilty, the penalties are more severe and are different from one offence to another.
- **Hybrid offences** are ones where the Crown can choose whether to proceed by summary conviction or by indictment.

The list of possible charges we are providing here is **not** exhaustive, but reflects some of the most common charges laid in CD/NVDA. Of course, the charges laid will depend on the action itself as well as on the approach of the police who are involved. Each charge has a maximum penalty, but these are not automatic. You can get a sense of what kind of penalty you will likely face by looking at previous cases for similar kinds of actions in your community. Penalties are almost always lighter for people who do not have a long criminal record.

➤ **Trespass to property** is a provincial offence and appears in the *Trespass to Property Act*. Section 2 sets out that it is an offence to be on property without a legal right to be there, to engage in a prohibited activity on that property, or not to leave that property when directed to do so by someone who has the authority to do so.

Someone who is found guilty of this offence may have to pay a fine of up to \$10,000. This is a provincial offence, not a criminal offence, so people do not get a criminal record if they are found guilty.

➤ **Breach of the peace** is not actually a charge. However, the police can arrest you to prevent you from doing something “criminal,” and hold you until the risk that you might do so is over (e.g. the event you were planning to disrupt has ended). You don’t have a record if you have been arrested for a breach of the peace.

➤ **Causing a disturbance** is a criminal offence, appearing in section 175(1) of the *Criminal Code*, and includes such actions in a public place as fighting, shouting, swearing, singing, using obscene or insulting language, obstructing people, or loitering.

This is a summary conviction offence.

➤ **Disguise with intent** is a criminal offence, appearing in section 351(2) of the *Criminal Code*. Anyone who, with the intent to commit an indictable offence, has “his face covered or coloured or is otherwise disguised” is guilty of a separate indictable offence that is punishable by a maximum penalty of 10 years in prison.

➤ **Mischief** is a criminal offence, appearing in section 430 of the *Criminal Code*. It is defined as any act that:

- destroys or damages property
- renders property dangerous, useless, inoperative or ineffective
- obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property

- obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property

Mischief is a hybrid offence.

If someone is convicted of mischief where the actions created actual danger to life, the offence is indictable and the person could face up to a life sentence.

If the mischief was against property with a value of more than \$5,000, the Crown can proceed by way of indictment, in which case the maximum penalty is 10 years' imprisonment, or by way of summary conviction, with the maximum penalty (as set out above) of up to two years less a day in jail and/or a fine of up to \$5,000.

If the mischief was committed against property with a value of \$5,000 or less, the Crown can proceed by way of indictment, with a maximum penalty of two years' imprisonment or by way of summary conviction, with the maximum penalty as set out above.

- **Resisting or obstructing a police officer**, section 129 of the *Criminal Code*, is the charge that can be laid if you obstruct a police officer in executing their duty. Going limp or refusing to unlock yourself is not resisting, but holding onto a pole or struggling as an officer attempts to arrest you is. If you lock yourself to another person or an object after a police officer has placed you under arrest, you could be charged with resisting. The same is true if you attempt to interfere with other actions the police are undertaking by, for example, lying down in front of a police car or trying to stop the police from arresting someone else, or if you lie to the police.

This is a hybrid offence. If the Crown proceeds by way of indictment, the maximum penalty is two years' imprisonment.

- **Riot**, section 64 of the *Criminal Code*, is an unlawful assembly (see below) that has become tumultuous. If the police order the group to disperse and it does not, you may face this charge, regardless of what you actually do.

This is an indictable offence carrying a maximum penalty of two years' imprisonment.

- **Unlawful assembly** appears in section 63 of the *Criminal Code* and consists of three or more people gathering together with the intention of engaging in a common purpose in a way that would cause people nearby to fear that they will "disturb the peace tumultuously" or provoke others to do so.

This is a summary offence.

There are other legal and quasi-legal consequences of different kinds of direct-action resistance:

- If the action takes place on private property (a corporate office, shopping mall, a politician's home), the person who owns the property can send you a **no-trespass letter**. This is not a criminal charge, but if you breach the terms of the letter, you can face charges
- You could receive a **banning letter**, even if your action has taken place on public property. For instance, you could be banned from returning to the House of Commons or the Legislature. If you do return, you are likely to be charged.
- While relatively rare in Canada at this time, the police could lay a charge of **conspiracy** against people who have worked together to plan an action that involves illegal activity. This charge appears in section 465(1)(c) and (d) of the *Criminal Code*. If the conspiracy was to commit an indictable offence, then the conspiracy charge is an indictable offence and carries the same punishment as the indictable offence being conspired about. If the conspiracy was to commit a summary conviction offence, the conspiracy offence is summary and carries the same penalty as the act being conspired about.
- You could face a **civil lawsuit** for alleged damage or harm that your action caused. For example, a corporation could claim that your blockade impeded their ability to conduct business and sue you for their so-called lost monies.

**Conspiracy in Canada:** A major conspiracy case against activists in Canada took place around the G20 meetings circa 2010.

To learn about that case, and subsequent jail sentences, you can read the archives at: [conspiretoresist.wordpress.com](http://conspiretoresist.wordpress.com)

You can also read Mandy Hiscock's prison blog at: [boredbutnotbroken.tao.ca](http://boredbutnotbroken.tao.ca)

To read more about the details of police infiltration leading up to that case, read Chapter 9 of *Full Spectrum Resistance* by Aric McBay.

- The government or corporation could obtain an **injunction** preventing any future such actions on or near their property or prohibiting specific individuals or organizations from being on or near their property or from engaging in particular activities such as setting up a camp
- **SLAPPs** (strategic lawsuit against public participation) have become increasingly popular as a way to stop active resistance to government or corporate behaviour. A SLAPP is a civil lawsuit in which the “injured” party (e.g. the entity being resisted) sues the activists for damages. The amount of money is usually extremely high, and the goal is not to actually collect the money but to intimidate the activists. Ontario, B.C., and Quebec have anti-SLAPP legislation, which is intended to encourage public participation and limit the scope of SLAPPs.

As we discussed earlier (see “Additional considerations” above), if you are already facing criminal charges for something else, these new charges could have an impact on your existing bail conditions. If you have children and there is no other responsible adult to care for them, child protection authorities could become involved or, if they are already involved, the charges could have a negative impact on your child protection case. If you have not obtained final and complete legal status to live in Canada, criminal charges could have a negative impact on that process.

# Managing the unexpected

Unexpected situations almost always arise during direct actions. Some may come from circumstances among the activists: e.g. someone is unable to participate or someone new appears at the action and wants to change the decisions made by the group. Some come from the physical environment: e.g. there is an unexpected change in the weather that affects the plan. Some come from the authorities: e.g. the corporation decides to close its offices for the day of the action, the local police bring in police from other jurisdictions or the authorities have blocked off access to the action site before the activists arrive.

Circumstances can change during an action as well. Perhaps police response is much more aggressive than anticipated and some activists are no longer comfortable proceeding with the planned activities. Or, someone gets hurt. Or, an individual activist steps outside what the group has agreed on and engages in behaviour that is not acceptable to other activists.

While having a carefully thought out and well-made plan is critical, you also have to be ready to change that plan when circumstances change. You need to be able to think creatively, sometimes when you don't have much time.

Making decisions in this kind of situation can be challenging. The better the members of the group know one another, the better you will be able to make decisions. During the action planning stage, you should develop a decision-making model that will work in a crisis. This may mean a modification of a traditional consensus decision-making model. If the group is large, it helps to have subgroups; this way, decisions can be made first in the smaller groups, where people know one another better, and then a spokesperson for each group can assemble and make a collective decision for the large group.

If you are at an action where the situation has changed, especially if tensions or police response is escalating, you need to keep

track of everyone in your group to make sure people are safe. This is another reason having smaller groups within the large group can be a good idea. When planning the action, come up with an on-site communication system among your small group as well as an emergency meeting location that is close to but not in the centre of the action. Making sure you are all safe is the most important thing.

No matter how passionate you are about the action and how carefully you have planned it out, you may need to be prepared to make the decision to significantly modify the plan or even to call the action off entirely, at least for that day.

As you make decisions to change your plans, you may need to keep the police informed. The communications team should be ready to communicate new information to the media, once firm decisions have been made.

# Media

As we discussed earlier, whether or not to work with the media is a strategic choice and not a default decision. If you do decide to engage with the media, working effectively with them during your action is extremely important. As discussed above, the communications team will have worked with the media long before the day of the event, developing op eds and media releases as well as a social media strategy to begin to inform the community about the issue the action is focused on, the goals of the group, and the plans for the day (unless it is a clandestine action, of course). This advance work can also include stories that demystify who you are: You are members of the community who care enough about the issue to get involved in addressing it.

The communications team should develop key talking points for the day of the action that are shared with the entire group. The group as a whole needs to decide who will talk to the media. Will it just be people on the communications team or can anyone respond to an interviewer who wants to ask a question? If people are uncomfortable talking to the media, what are some tips for what they should say to a reporter?

The members of the communications team will be responsible for seeking journalists out, giving longer statements to them, suggesting who among the group they might like to talk to, tweeting, and, generally, managing the media.

But it is important for other people to also speak with the media. Ideally, the entire group will have done some media training and everyone will also be familiar with the key talking points so that most of the activists can respond at least to such questions as: “Why are you here today?” “What is the issue you are protesting about?” Human interest stories that show the activists as real people help the community—and beyond—feel sympathetic to the action.



**Further reading:** For more tips on how to frame radical messages effectively, see Chapter 7, **Communications**, of *Full Spectrum Resistance* by Aric McBay.

The communications team should also keep the media informed about what is happening: Has the group been successful in shutting down the plant? Why did an ambulance come? Who did it take away? Who has been arrested?

And, once the action at the site comes to an end, if there have been arrests or injuries, the work of the communications team will continue, because it is important to keep the media informed as the story continues to unfold later that day and over the upcoming days, weeks, and even months. Every court date provides an opportunity to get the issue that led to the action back in front of the public.

# Being detained and charged

Whether you are planning an action where getting arrested is an intentional part of the event or one where you want to avoid arrest but realize it may happen, you need to think through what happens if and when people do get arrested so you are prepared should that happen.

What you say and do at the point of arrest and in the following hours will affect how the police and other authorities treat you. It may also affect how those people treat your comrades and how they think about the issue your action is about.

**Being detained** and **getting arrested/charged** are two separate steps in the criminal process.

It is not uncommon, at political actions, for the police to detain a wide swath of people. In a blockade or occupation, for instance, they want to clear the area, get rid of everyone and open up access to whatever space the activists had been interfering with. If the action is focused on a specific event—a speaker, for example—the goal of the authorities may be to allow the event to proceed unimpeded by opponents.

In these kinds of situations, people may be detained, but then released without being charged.

If you are detained, you are not allowed to walk away, even though you have not been charged with anything. The police are only allowed to detain people if they have reasonable grounds to suspect you are connected to a crime. You do not have to answer any questions if you have been detained.

Before the police can arrest you, they must have:

- seen you committing a criminal offence OR
- a warrant for your arrest OR
- reasonable grounds to believe you have committed or are about to commit a criminal offence

The police can also arrest you if they believe you:

- have broken a law and won't provide your name and/or address OR
- have breached the peace or are about to do so OR
- are intoxicated and are a danger to yourself or others

The process of being arrested will look different from situation to situation and from one set of authorities to another. As noted above, people under the age of 18 will be transported and held separately from adults.

If you are blockading a street, for example, you may be removed from the blockade one at a time and placed under arrest. Or, the police may remove many of you at once. Or, they may tell the whole group that everyone is under arrest and then remove people one by one.

You may be put in a police cruiser or a police bus or, less commonly, a police van.

If you are being arrested while you are on private property or in a government building, you may be removed from where you are and held by security guards, who may have the authority to arrest and charge you, but will then turn you over to the police to be processed. They could also just hold you until the police arrive and let the police make the decision about whether or not to arrest/charge you.

You might also be arrested as you are leaving the action site, in which case the situation is more likely to be one-to-one, which can be a bit lonelier and scarier.

You could even be arrested later in the day, the next day, or even days or weeks later, which means almost certainly you will be on your own without the comfort and support of being arrested with your comrades.

In any of these circumstances, once you are arrested, it is an offence to get up and walk/run away. Before the police will release you, you will have to provide your name, address and date of birth. Lying about any of this information can lead to further charges. Do not give extra information.

In certain circumstances, the police have the legal right to **search you and your possessions**. You can object to a search by police, but you should not interfere with it, because this could lead to charges, including obstructing police. Even when the police have the right to search you, they are not allowed to be aggressive or abusive when doing so.

If you are detained, the police can **pat you down** to ensure you do not have any weapons. The police often execute a pat down search of activists at the site of the action.

If you are arrested, the police can search you whether or not you consent. This search can include you, your possessions and your immediate surroundings (e.g. a car you are in or standing by). This search could take place at the action site or once you have been transported to the police station. It must be done in a way that does not put your health or safety at risk.

**Strip searches** are quite intrusive and intimidating, and the police sometimes conduct a strip search for just this reason. They generally happen at the police station. They should happen in a place that provides privacy. You should be strip searched by an officer of the same gender as you, but this is not a right. If you are told you are going to be strip searched, you can register your opposition but you should not interfere with the search.

Once you get to the police station, you will be booked, which just means you will be searched (you will likely have been searched at the action site) and anything in your pockets, backpack, etc. will be taken away from you. You won't be photographed and fingerprinted unless you are charged.

After you are searched, you will be put in a cell. Depending on the facilities, you may be put in a large cell (usually the drunk

tank) as a group or you may be put in regular cells by twos, threes, or fours. Women and men will be separated, and anyone under 18 will be held separately. People who are gender non-conforming or whose bodies do not match their self-identified gender may experience challenges being properly housed. The group should be ready for this so they can advocate for the individual and assist them with safety planning.

You may be placed in custody with other people who have been arrested; people who were not involved in an intentionally political act and for whom being arrested is a devastating event. You need to be respectful towards these people and, if possible, consider ways to act in solidarity with them and to assist them when you are released.

You may be held for some time before the police decide whether or not to lay charges. The police may be waiting for instructions from their superiors; there may be a discussion between the police and whatever entity has authority for the space where you were about the pros and cons of charging people, or the police may simply be waiting until they have everyone arrested before they begin laying charges.

You should be discreet about what you say to your comrades (or anyone else) during this time, because if you say anything incriminating about yourself or anyone else and the police hear it, they can use it when deciding on what charges should be laid.

It's also wise, out of respect for other people being held by the police who may not have access to the supports and resources that you do, that you minimize your requests to the police. You don't have the right to be fed, for instance. Nor can you expect a special meal even if your health requires one. You will usually get something to eat if you are held for several hours or more, but it will likely be a cheap hamburger from a fast food chain. You don't have the right to have visitors.

If you have serious medical needs such as medication, it's a good idea to have this with you and to explain to the police officer who is booking you what it is and when you need to use it.

Your group may want to discuss, ahead of time, whether you intend to cooperate with the authorities when you are arrested. Will you walk once they place you under arrest? If not, you will be dragged, which can be at the least unpleasant and more likely quite uncomfortable or even painful. If you are chained together or chained to a fence/building etc., once you are arrested, will you unlock yourself?

Will you give your name? Eventually, if you wish to be released, you will have to provide your name, address and date of birth, but you do not have to do so immediately.

Another issue your group may want to discuss ahead of time is whether you will engage in **jail solidarity**; that is, each person refusing to be released until you know that everyone is going to be released. Because police station holding cells and most jails are not equipped to handle an unexpected, large group of people, this may encourage the police or the Justice of the Peace to release everyone on reasonable and similar conditions. You can do this by refusing to give your personal information (although with face recognition technology, often the police will know who you are even if you don't tell them) or by telling the police or Justice of the Peace that you will not agree to any conditions until everyone is brought together and can hear everyone else's conditions. This can be especially helpful if someone in your group is dealing with any of the additional considerations discussed at page 70.

As we discussed on page 39, talking to the police is never a good idea, at any stage of an action. It is very easy to inadvertently say something that can be used against you or one of your fellow resisters, so it is better just to say nothing at all.

In particular, you should be sure that you **do not lie to police**. You will probably be caught in any lie you tell, and then you can face further repercussions.

## Getting charged

At some point after you have been arrested, the police will decide whether or not they are going to charge you. You can be held for up to 24 hours without being charged.

If they decide not to, you will be released. You should have a plan in place before the action for this. Members of the arrest/legal support team should be at the police station to welcome you, make sure you are okay and help you find a safe way home. Someone should remain at the station until the last person who is going to be released has been.

If the police decide to charge you, they will read you the formal charge. You will be photographed and fingerprinted. You may also be asked about any scars, tattoos or other distinctive markings on your body. If you answer these questions, be sure to tell the truth.

You will be told you have the right to remain silent, but anything you say can be used against you. You will be told you have the right to have a lawyer and that one will be provided for you if you cannot afford one yourself. You will get to make a phone call—but if there are many people who have been arrested and charged, it will take a while before everyone has their turn with the phone.

### **Making phone calls**

Once you have been detained, you have the right to speak with a lawyer of your choice “promptly.” You do not have to call the 1-800 duty counsel number that the police may give you, so if you have a lawyer lined up, it is a good idea to have their telephone number memorized or written on your arm or hand.

**This is the only right to a phone call that you have.** As a result, it needs to be used carefully; for instance, perhaps the lawyer should be prepared to pass information about the whole group on to the jail support coordinator.

While the only phone call to which you have a legal right is the call to a lawyer of your choice, you may have the opportunity to make a phone call to the legal support number for the action. To be prepared for this, you should have this telephone number written on your arm or somewhere you can find it. If you are able to call this number, you should share as much information as possible with the jail support person: Who is with you? Is anyone injured or sick? Do people have what they need for the next while? The jail support person can then check the forms all of you filled out and make any necessary phone calls, including to a lawyer, if the group has decided to work with one. (Remember, however, that the police can record and listen to these phone calls, so do not say anything on these calls that you would not say in front of a police officer.)

## Getting released

Once you have been charged, you may be released from the police station or held for a bail hearing.

If the police decide to release you themselves, you will have to provide them with your name, address and date of birth. If for any reason they doubt that you are telling the truth, then you will have to show them proof of who you are (passport, driver's license, birth certificate, etc.)

Before you can be released, you will have to sign a document that says what you have been charged with, when you are to appear in court, and stipulates that you are to keep the peace and be of good behaviour.

**Consider any conditions carefully before agreeing to them.** Don't let your enthusiasm for being released lead you to sign conditions that will unduly restrict your daily life, as they may be in place for months or even longer. If you were arrested with your housemates, for instance, agreeing to a non-association clause would mean you will all have to find new housing. A requirement that you stay a set distance away from the action site might make it impossible for you to get to work or visit your family. If your work or personal life requires you to leave the community or province on a regular basis, you should not agree to "no travel" conditions.

Consult your lawyer before making any public statements (including on social media) and remember that *anything* you say publicly may be used against you.

### **Bail:**

If you are not released directly from the police station, you will be held for a bail hearing. Often, if you refuse to accept the conditions proposed by the police for immediate release, you will be able to negotiate better (i.e., less onerous) conditions through a bail hearing.

You must be brought in front of the Justice of the Peace within 24 hours of being arrested. How quickly this happens is mostly a matter of scheduling: if you were arrested after bail court is over, you will have to wait. Most communities now have bail court on weekends as well as during the week, but even so you could have to wait for a couple of days for your appearance.

Bail hearings take place in provincial court in front of a Justice of the Peace, who will decide whether or not you should be released from custody and, if so, what conditions—if any—should be placed on you.

You can have a lawyer of your choice assist with your bail hearing. You can also get help from duty counsel. These are lawyers paid for by Legal Aid Ontario who assist people who don't have their own lawyers. If your charge is a summary conviction offence (see above), you can have an agent assist with your bail hearing. Or you, individually or with your comrades, can handle it yourself.

Very few people in Canada are denied bail in the context of collective civil disobedience. The Justice of the Peace (JP) must decide, based on the evidence provided by the Crown Attorney and the accused (or the accused's lawyer) whether the accused person is likely to show up for court appearances and whether they pose a risk to public safety. The JP will consider a number of factors:

- Does the person have a permanent residence and reason to remain in the community (i.e. a job, family members, etc.)?
- Does the person have a history of breaching any previous bail conditions?
- Is there a significant chance the person will re-offend if they are released? For example, did the activist stand up in court and say: "As soon as I am released, I am going back to the nuclear power plant."?

If the JP decides to release the person, they will consider what conditions to set for them; again, this will be based on what the Crown and the accused have introduced in evidence. Common conditions include:

- a prohibition on returning to the site of the action or a certain radius around it, related sites (i.e. other government offices or other places the same corporation carries on business) or even entire streets or neighbourhoods
- a prohibition on associating with anyone else involved in the “crime,” which can be highly problematic in a group arrest, whether people may be arrested with their partner, family members, housemates, etc., and where the group often needs/wants to meet to discuss legal strategy
- a requirement to check in with the police on a set schedule
- a requirement that the accused not leave the area or the province
- a prohibition against consuming illegal drugs or alcohol
- a curfew
- a prohibition against using cell phones or the internet

Everyone has to agree to keep the peace and be of good behaviour and to show up in court for all scheduled appearances.

In many cases, the JP will require a surety. This is a person—often a family member or friend/work colleague—who agrees to oversee the accused person when they are released and to contact the authorities if they breach any of their conditions. It’s a good idea to line up someone who is prepared to be your surety before the action takes place, so they are ready to show up at court on short notice. This should be someone who does not have a criminal record and who will appear credible to the JP.

Even if you are told you can apply to have your bail conditions changed after you are released, be aware that this is actually very difficult to do.

Remember also that bail conditions are not just a problem for you, but for your community. Consider how the conditions you accept will affect other organizers and people who will support you. Onerous conditions are meant as a form of pre-trial punishment, and we should minimize those conditions as much as possible.

If a large number of people were arrested, the system is not likely equipped to manage all of you for very long. This gives you some bargaining power, because the authorities likely want to release you to avoid continued inconvenience for them. You may be able to have the conditions reduced or even eliminated if everyone is able to stand firm and refuse to accept them.

If you are denied bail, you will remain in custody until your case comes to court.

If, as is much more likely, you get bail, you will be kept in custody until the paperwork is completed and, once you sign it, you are free to go, as long as you follow any conditions set on your behaviour.

If you fail to follow your bail conditions, you can be re-arrested, have your bail taken away (i.e. you are kept in jail) and you can face a new charge of failing to follow an order of the court.

## Sidebar: Injunctions

The winter of 2020 saw a flurry of injunctions against resistance to pipeline development in western Canada, centered around struggles on unceded Wet'suwet'en land.

An injunction is a *court order* that either requires or forbids a person or group to perform a given act. Most injunctions contain an enforcement clause, e.g., allowing police to remove and arrest those who violate the injunction.

An injunction can be made either before or after a demonstration happens. It allows the authorities to move more quickly to enforce such offences as trespass, which are provincial (rather than criminal) offences.

For example, in February 2020, the British Columbia Supreme Court granted an injunction (at the request of the provincial government) to prevent people from blocking the doorways to and preventing everyday work at the B.C. Legislature. The injunction authorized the police to either detain and release (without arresting) or to arrest and remove those who defied the injunction. One likely charge for anyone the police decided to arrest would be mischief.

This injunction was obtained before the activity it sought to prevent had occurred, so it could be thought of as pre-emptive.

Earlier in the same month, the same court granted an injunction in favour of Coastal GasLink to remove anyone who was on land that the corporation intended to use for its pipeline, which gave police the authority to enter that land and arrest and remove people who did not leave voluntarily. In the opinion of the court, the Wet'suwet'en occupation of their traditional territory was doing "irreparable harm" to the company.

In the past, injunctions were used in some provinces to prevent anti-choice demonstrators from coming too close to abortion clinics, in order to protect the safety and privacy of clients and

staff. Some municipalities continue to maintain those injunctions. Two provinces, Ontario and British Columbia, have passed legislation creating buffer or bubble zones around clinics that extend that protection to law.

Injunctions have wide-reaching power and can be used in many different kinds of situations. The person seeking the injunction must satisfy the court on a balance of probabilities that there is a serious issue at stake and there could be irreparable harm if the injunction is not ordered. The application for the injunction can be *ex parte*, meaning that court can make a decision having only heard the story from the person who wants the injunction.

If a person is arrested while engaging in non-violent direct action that constitutes a criminal offence (e.g., mischief for blocking a public transportation route) **and** an injunction is in place to prohibit such activity, that person could be charged with the criminal offence. They could also face a criminal or civil proceeding for violating a court order (i.e., the injunction). If that person is found guilty of the criminal offence, the presence of the injunction could be an aggravating factor in sentencing.

If the action itself is not criminal (e.g., a provincial offence like trespassing), the person can be charged with *contempt of court* for knowingly violating the injunction, which can lead to jail time.

People found to be in contempt of court may be able to avoid jail time if they apologize for what they have done and “enter into an undertaking” not to do it again.

*For detailed information about both injunctions and contempt of court in the context of civil disobedience, see this very useful guide from the BC Civil Liberties Association:*

<https://bccla.org/wp-content/uploads/2019/03/Injunctions-and-contempt-of-court-guide-1-2.pdf>







A demonstrator (above) is arrested as part of a sit-in for the rights of Walmart workers. (October 16, 2014 in Washington, DC. UFCW International Union via Flickr.)



# After an action

*Pamela Cross*

## Forming and working with a legal/political strategy group

A lot of difficult decisions will need to be made if people are arrested and charged. Because those decisions can affect the public perception of the issue and the action, these decisions should not be made just by the people who were arrested. Of course, ultimately, the person arrested needs to follow a direction that they feel comfortable with, but initially decisions about how to deal with the charges should be discussed by as many of the people who were involved in the action as are interested.

The group will need to decide:

- whether or not to work with lawyers and, if so, how to pay for them
- how to deal with the media
- how to support arrestees whose bail conditions may interfere with their usual pattern of activities
- what legal strategy they want to use
- how to support anyone who has to spend time in jail

It's important for anyone who is arrested and charged to feel comfortable with the strategies the group decides on, as they are facing most of the immediate consequences. They may face pressure from the police, their lawyer, family, or friends to disavow what they have done or to separate themselves in some

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way from others to get a better outcome in criminal court. Such disavowals can damage other defendants and/or the group as a whole. The group should talk about this before the action so they can establish some base political principles to uphold as they move through the court process.

One way to approach this, so the group does not expend all of its energy and resources on the criminal charges, is to discuss as much of this as possible in the planning stage, then to reconvene after the action and after anyone who has been arrested has been released from custody for a follow-up strategy discussion. At this meeting, a smaller legal support group could be formed, which will usually involve all of the arrested people and a few others who have expertise or interest in the legal process. These people can continue to meet on a regular basis and make decisions, conveying information to the larger group and, in particular, the communications team.

Others in the group can turn their efforts to ongoing work on the issue that led to the action; perhaps beginning to plan another direct action.

## **Political/legal strategy**

There are many possible ways to deal with criminal charges. It is ideal if you have had some discussions about this before the action so that people know how the group plans to proceed when they are deciding whether or not they are prepared to risk arrest. Different approaches make sense in different circumstances.

For example, if your action took place in a community far from where most of the resisters live, it may not make sense to engage in a long and protracted legal defence to the charges because the time and cost of travel will interfere with people's lives as well as ongoing political work.

You could decide to mount a large-scale, very political defence against the charges that people face, challenging the law itself by using unusual defences and using the courtroom as a way to keep public attention focused on the issue at the heart of the action.

This approach will require considerable resources and time. You may need a lawyer, or a team of lawyers if many people have been arrested. This can be expensive. You will need a lot of time for meetings to decide on trial strategy as well as the time involved in going to court. The process could take months or years to come to a conclusion, which can make life difficult for people who are living with restrictive bail conditions. You need to keep the media engaged, which can be difficult as time goes by because the media tend to move on quickly to the next interesting story. The day of the action itself is a good news story, but repeated court appearances where little happens are not.

It can also be difficult to keep the group engaged over this time. For example, people who were not arrested may not be interested in continuing to attend meetings to discuss trial strategy, preferring to put their time towards planning the next action. (There are extra challenges in legal strategy if those on bail have non-association conditions with each other.)

Another approach is for people to acknowledge to the court that they did what they were charged with ("Yes, I was there that day and remained on the property after the police officer told me to leave.") while providing a political explanation for why they did what they did. This is almost guaranteed to lead to a guilty finding, but it allows the activists to make individual political statements on the court record.

If the charges are relatively minor and the people have no prior record, the consequences are likely to be relatively mild.

This approach lets you deal with the criminal charges quickly (perhaps within a few days or weeks of the action), get rid of bail conditions, and get back to working on the political issues that led to the action.

If you have a straightforward legal defence to the charges, it is important to consider working with a lawyer who can assist you in fighting them. For example, if you were charged with assaulting a police officer after you and a cop had an intense argument, but you did not commit an assault, or with resisting arrest because you went limp when the officer grabbed your arm, you have a case to make to the court. People should not be found guilty of things they did not do. While this can be time- and resource-consuming, it is very different from the approach described above of creating a political trial for everyone who was charged.

Decision-making about trial strategy can be really difficult. You may have gone into the action thinking you wanted to have a big political trial if you were charged, but the process of being arrested, booked, charged, going through a bail hearing, and living with restrictive bail conditions may have left you just wanting the whole thing over with. Or, perhaps your circumstances have changed and you need or want to move to another country, which will be more difficult with outstanding criminal charges hanging over your head.

On the other hand, perhaps the arrest and charging process has made you keen to politicize the complicity of the law itself in the issue your action was focused on, and now you want to have a political trial.

The group needs to be able to talk through each individual's situation; including people who did not intend to be arrested and have special circumstances as discussed above. It may be that some individuals proceed one way and others, alone or in a smaller group, in another.

The group needs to stay cohesive even if not everyone is doing the same thing. This requires ongoing discussions and good communication, which can be challenging over a long period of time.

It is also important for the arrest group to be supported by the larger action group, even if not all of those people can be involved in every meeting and discussion.

The communications group will need to work with the arrest group to ensure that regular updates are provided to the media.

## **Jail time**

While not common, it is possible that people charged for civil disobedience or NVDA will have to spend some time in jail. This could happen at the bail stage, if you are not released, in which case you will be held until your case is resolved (unless you appeal the bail decision, in which case you might be released).

Or, if you are found guilty, you could be sentenced to a short time in jail.

While these outcomes are the exception, it is important to be prepared. In particular, stay calm, don't be overly inquisitive towards or about other inmates, and be civil but not chummy with prison guards. Be aware of your privilege; you did something intentionally knowing it might put you in jail, have had time to prepare for this possibility and have support from your fellow activists, none of which is the case for most people who are in jail.

Your group should put together a jail support team before the action. These folks can be in regular contact with anyone who is in jail, coordinate visits so everyone does not show up on the same day, do what they can to get the people in jail what they need in terms of medical care, medications, special food, and so on, and organize people to be there when they are released.

The action isn't over until everyone is out of jail and off any conditions, so support needs to be provided to ensure no one feels abandoned, which will maintain their participation in ongoing activism for a long time.

# Possible outcomes of the criminal court process

There are a number of common ways that a criminal court proceeding may resolve, if you are not acquitted.

If you choose to negotiate a resolution with the Crown Attorney (through diversion or a guilty plea), you can have some assurance about what the outcome will be (as a judge will usually accept an agreed-upon resolution). If you choose to have a trial and are found guilty, the Crown will usually argue for a more serious consequence and you would have to make an argument to the judge, who will decide on the sentence.

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## Possible criminal court outcomes (in order of severity)

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- (1) Diversion
  - (2) Absolute Discharge & Conditional Discharge
  - (3) Suspended Sentence / Fine
  - (4) Conditional Sentence
  - (5) Jail Sentence
- 

These are some of the most common outcomes when a matter goes to court:

### (1) Diversion

“Diversion” is often offered by the Crown to people who are accused of a minor offence and have no prior criminal record. With an effective lawyer it may be possible to have charges “diverted” even in more challenging situations. Diversion does not involve a finding of guilt and does not result in a criminal conviction or a criminal record. It generally involves the charged person taking responsibility for the act in question and making amends in some way, such as by paying restitution, making a charitable donation, and/or doing a certain amount of community service. Once the agreed-upon thing has been done, the Crown

usually stays or withdraws the charges and the legal matter is done. (Note that if some members of the group already have criminal records, diversion may be offered to some group members but not others.)

## (2) Absolute Discharge & Conditional Discharge

A "Discharge" occurs where a judge makes a finding of guilt (on a guilty plea or after trial), but does not "convict." A Discharge would not result in a permanent criminal record, unless you are convicted of another offence within a certain period of time.

An "Absolute Discharge" has no conditions, but is simply a finding of guilt with no penalty attached. After one year, an Absolute Discharge is automatically removed from your record (though the police and Crown Attorney will know about it).

A "Conditional Discharge" is a discharge that has certain conditions attached, usually in the form of a probation order (often for 12 to 18 months). The probation order may require you to keep the peace and be of good behaviour, keep the authorities updated about your address, report to a probation officer, pay restitution, stay away from certain areas, to do a certain amount of community service, etc. If you breach the conditions of your probation order you can be charged with a criminal offence, and you can also be re-sentenced for the initial offence. If you do not breach the conditions, a Conditional Discharge is automatically removed from your record 3 years after the conditions have been completed.

If you receive a discharge, it is often recommended not to cross the USA border until the discharge has been removed from your record.

## (3) Suspended Sentence / Fine

A suspended sentence or fine both involve a criminal conviction, and give you a criminal record. A suspended sentence generally involves a probation order (often 12 to 18 months) which can involve various conditions such as those described above. A fine is generally seen by judges as a more serious penalty than a

suspended sentence, but you may prefer a fine if you want to continue to engage in NVDA/CD without being constrained by the conditions of a probation order (breach of a probation order is a serious offence of its own and can result in jail).

#### (4) Conditional Sentence

A Conditional Sentence is basically house arrest with very severe conditions, such as only being allowed to leave your home for work, health, and legal appointments and, perhaps, once a week for groceries, etc., usually with other punitive restrictions on your liberty (no alcohol, reporting any visitors, etc.). It is a serious sentence, and is often referred to as a sentence of jail to be served in the community; it has the important advantage of allowing you to continue to parent your children and keep your job.

#### (5) Jail Time

Jail sentences are relatively rare for participants in NVDA/CD in Canada, but might be ordered in cases involving very serious property destruction or breach of a court order. Sentences of less than two years are served in a provincial jail; two years or more, in a federal penitentiary.

A criminal record can affect many aspects of your life:

- **Employment:** Some employers won't hire people with a criminal record.
- **Volunteer activities:** Some organizations require their volunteers to have a clean criminal record.
- **Travel:** You may have trouble crossing international borders with a criminal record.
- **Sentence:** You may be placed on a term of probation, with conditions similar to those attached to your bail, you may be required to pay a fine, or you may be sentenced to spend time in jail.
- **Relationships:** Information about your conviction will likely appear in the media in your community, which could affect some people's relationships with you.

All of these consequences are possible, but there are many people with criminal records for political activism who have been able to travel, be employed, do volunteer work, and even become lawyers. As well, your participation in CD/NVDA can create opportunities for you to talk with family and friends, people who think of you as a reasonably responsible person, about why you made the decision to break the law and risk arrest, which can lead to more and more people joining you the next time.

It is important to remember that, in the criminal law system, the power rests with the state. For example, the Crown can decide to change the charges you are facing as the case proceeds. In a broader context, the police, the Crown, and the judiciary all have a great deal of discretion. How they respond to you in terms of charges, bail, the vigorousness of the prosecution, and sentencing if you are found guilty will be influenced by their own attitudes and values as well as by how challenged or threatened they feel by political activism generally.

### **Other approaches to the law**

The handbook has focused on breaking laws as they are set by the *Criminal Code of Canada* which, of course, is a set of laws that are settler-developed. Many Indigenous activists in Canada look at legal frameworks and struggles differently and use different legal systems and strategies to resist and fight back. We settlers have much to learn from them.

Many Indigenous communities have their own governance system and laws, which allow them to control, occupy, and benefit from their lands as well as to defend those lands when necessary. The chiefs and councils that have been elected under the *Indian Act* have no authority under those traditional governance systems and laws.

International laws also provide a framework for Indigenous rights and struggles. The United Nations Declaration on the Rights of

Indigenous Peoples (UNDRIP), is one example of this. While Canada has supported UNDRIP at the U.N., it has not yet been ratified by the federal government, which means it has no effect in Canada at this time. If and when it is ratified, it will ensure Indigenous peoples have the right to the lands, including the resources on those lands, that have traditionally been theirs, prohibit the forcible removal of Indigenous peoples from those land, and require that Indigenous peoples provide full and informed consent before any project affecting their lands and resources be approved.

There have been a few legal cases in which courts at various levels have upheld these principles even though UNDRIP is not yet ratified in Canada.

Some Indigenous activists have found international arenas, attention, and laws to be very helpful in having their rights upheld. Campaigns have focused on bringing cases to international trade tribunals, the World Trade Organization, the North America Free Trade Agreement and other such entities, where Indigenous concerns have received a positive response. These international actions often are partnered with NVDA on traditional lands in Canada.

The Defenders of the Land is a network of Indigenous communities and activists, with settler allies, that is dedicated to building a fundamental movement for Indigenous rights. Its Charter establishes the starting point for its activism:

“We are sovereign nations. We have the inherent right to self-determination. We will determine our own destinies in accordance with our own customs, laws, and traditions—and not in a way dictated to us by Canadian and provincial governments, and without interference by these governments.”





**Above:** Pamela and David Rothfield celebrate their 21st wedding anniversary by locking onto a piece of machinery at the proposed Whitehaven Coal Maules Creek Mine site in Australia. (April 9, 2014. Leard State Forest via Flickr.)

# Conclusion

*Aric McBay*

In the courts, power may rest with the state.

But in so many places, that power can belong to us. Civil disobedience and NVDA can let us reclaim that power in our streets, our workplaces, our institutions, and many other points of intervention.

We can have that power if we are willing to build movements, defy authority, and take risks.

Those risks are real, but it's important that we put them in context.

In NVDA workshops, I often ask small groups to answer two questions: What do we risk when we take action? And what do we risk if we fail to take action?

The risks of action are evident: The risk of police violence, the risk of arrest. The risk of going to jail. The risk of missing work, or losing a job. The risk of alienation from friends and family.

Workshop participants are also clear about the risks of inaction: A worsening climate change emergency and more extreme weather. The continued rise of right-wing authoritarians around the world. The claw-back of labour rights, civil rights, and human rights. Famine and human displacement. Global ecological collapse.

Clearly the risks of inaction—or delayed action—are worse. But I'm also struck that the risk of *action* are almost always individual risks, while the risks of *inaction* are almost always collective risks.

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One of the most important things that a group or movement does is reduce those individual risks, and to share them over a larger group of people. We take collective action, and we support each other, so that people don't have to face these risks alone.

The purpose of this handbook is to help people understand the risks they are taking and how to reduce them. So that we can plan and make good decisions before an action. To have clear roles and effective tactics during an action. And to understand and cope with legal risks afterward.

All of the information in this handbook can help us control the amount of risk we face and, more importantly, make the most *impact* for the risks that we do take.

Civil disobedience is about so much more than avoiding risk. It is about seizing an opportunity. An opportunity to take action. To do something that really matters. An opportunity to be part of something historically important, and that future generations will remember.

When I read or hear about amazing movements in other times or places, I often think: "Wow! I wish I had been there. I wish I had been a part of that."

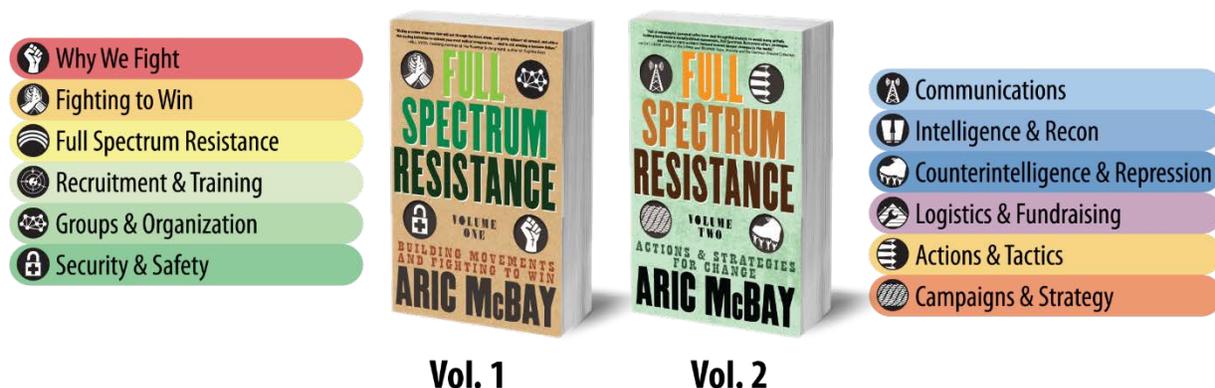
So here is our chance.

Let's seize an opportunity to change the world.

## Further Reading and Resources

The law, and the way the law is enforced, does change over time. As a result, suggested readings also need to be kept up to date. Visit [directaction.works](http://directaction.works) for some links to additional resources, and email us at [info@directaction.works](mailto:info@directaction.works) to share resources that have been useful to you.

For a comprehensive guide to many aspects of action and movement building, check out Aric McBay's newest book *Full Spectrum Resistance* (Seven Stories Press, 2019):



In a time when human rights and our living planet are under attack, only powerful social movements and resistance movements can fight back and ensure a future of social and environmental justice.

In his new book *Full Spectrum Resistance*, author and organizer Aric McBay leads us through key lessons of movements through history and around the world. From the Suffragists to the Black Panthers, from Nelson Mandela to Gay Liberation, McBay illuminates the paths and pitfalls that movements must navigate, and the principles that make them succeed.

Full of stirring case studies and practical checklists, this book showcases the hard won lessons that movements for justice and freedom have learned.

[www.fullspectrumresistance.org](http://www.fullspectrumresistance.org)

# Workshop discussion questions

*Here are some discussion questions for groups or facilitators who want to run their own workshops or CD / NVDA trainings.*

*If you want to contact Aric McBay and Pamela Cross about facilitating a workshop, email [info@directaction.works](mailto:info@directaction.works).*

1. What brought you to this training?
2. What examples of CD/NVDA have inspired you?
3. Have you ever heard of a CD/NVDA event that you thought was a bad idea/poorly executed/backfired?
4. In the list of reasons people might use CD/NVDA, which is the most/least compelling for you?
5. How do you understand the terms CD and NVDA? Do you think they mean different things? How?
6. Based on the list of things to consider, do you think CD/NVDA is right for you/your group at this time? Why/why not?
7. Do you think you understand how consensus decision-making works? Do you see challenges with it for your group? What are they?
8. What personal strengths do you bring to working in a group that is considering CD/NVDA? Where are you not so strong?
9. Group discussion: Pick an issue/event and use the "planning an action" section to think about whether you have what you need to plan and carry out a CD/NVDA.
10. Which of the roles associated with a CD/NVDA suit your skills and interests? Which roles would you like to learn the needed skills for?
11. What is your biggest legal question/concern/fear?

12. How would your group ensure inclusivity for people with special legal considerations?
13. Do you think it is better to plan an action to try to avoid arrest or to make arrest an intentional part of the action?
14. Do you have any fears about being arrested and spending time in jail? What are they? What would help you address those fears?
15. Do you think lawyers should be part of your legal support group or act more as consultants following the decisions made by the legal support group?
16. What do you think about using resources (time, energy, money) on a big trial vs getting the legal issues out of the way as quickly as possible? Are there different situations that would warrant different choices?
17. What else do you need/want to know before making a decision to engage in CD/NVDA?

## Pocket reference guide

### What to bring to an action:

- legal number (sharpie on arm / below)
- identification
- prescription meds (with Rx)

1

### What not to bring to an action:

- anything weapon-like
- address book/names or information of other activists
- unlocked/unencrypted phones

*See inside for what to do if arrested...*

visit [DirectAction.works](http://DirectAction.works)

2

## If you have been arrested...

### What to say:

- Name
- Address
- Birthdate
- (you got NABbed)

### What not to say:

- *anything else*
- especially, do not lie to police

3

### You have the right to contact a lawyer.

**Talk to a lawyer**, or consider your options carefully, **before signing any bail conditions.**

*For the full legal handbook, visit [DirectAction.works](http://DirectAction.works)*

4



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<sup>1</sup> Multiple sources, including: *Athlii Gwaii: Upholding Haida Law at Lyell Island* (Locarno Press, 2018), *Athlii Gwaii: 25 Years Down the Road* (Haida Laas - November 2010)

<sup>2</sup> Please note that the formal name of the island is Tllga Kun Gwaay.aay. Athlii Gwaii is the movement that came together to protect that land, and which is now often used to refer to that island.

<sup>3</sup> Letter from a Birmingham Jail, Martin Luther King, Jr.

<sup>4</sup> <https://www.ctvnews.ca/canada/student-group-vows-to-fight-petty-1-444-bill-to-clean-up-sidewalk-chalk-at-queen-s-park-1.4480126>

<sup>5</sup> Letter from a Birmingham Jail, Martin Luther King, Jr. [Emphasis added.]