

LEGAL REPRESSION
BEING ARRESTED AT A DEMONSTRATION

For Patti McGillicuddy,
A.W.C.C.A. Program

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The legal process I've decided to tackle for this paper is what you go through when you are arrested at a political demonstration. This is inspired by the strong women activists I know and have read about. I've included a lot of very detailed and practical information that I think is useful to put out; it's hard to strategize about how to deal with legal repression if you don't know what it's like. I've also focussed a lot on the police, since they are the frontline enforcers who make the arrests. I had planned to include the information I have about the Police Complaints Commission and petitioning the Police Services Board, but this just got too big; maybe another time, another paper...

Arrests at demonstrations must be seen in the whole context of state repression of dissidents/political activists. Expensive, state-backed, secret operations, like the COINTELPROs (FBI lingo for counter-intelligence program) of the late 60s and early 70s, have a profound and devastating effect on activist movements. As Ward Churchill and Jim Vander Wall, in their book, Agents of Repression: The FBI's Secret Wars Against the Black Panther Party and the American Indian Movement, write:

what former Vice President Spiro Agnew and Attorney General John Mitchell called "the chilling effect" on political dissent had been demonstrably achieved: the movement for social change loosely described as the "New Left" had been shattered, its elements fragmented and factionalized, its goals and methods hugely distorted in the public mind, scores of its leaders and members slain, hundreds more languishing in penal institutions as the result of convictions in cases which remain suspect, to say the least. (1)

Programs to frame-up activists into legal tangles and prison, programs to alienate the public from supporting activist movements (keeping them criminalized and isolated), programs to divide and rule activists into

suspicious, warring factions, and operations that include the murder of activists are all weapons in the arsenal of state repression.

The legal system can act as a conveyer-belt of control: from police to court to prison. Kim Jackson, in her article, "Patriarchal Justice and the Control of Women", writes:

Prisons are the force behind the law, the threat which coerces a population into conformity; as jails are largely filled with non-white peoples, they can only be seen as a continuation of colonial domination which is in constant threat of a social and/or political challenge to its discriminatory social order. (2)

and:

The ultimate function of prison remains to control, isolate, stigmatize, and disarm disenfranchised people. Women are especially vulnerable to this as they make up a large proportion of those inhabiting the "bottom rung of society". (3)

Jackson points out that activists, like women, people of colour working class people, and in general all "disenfranchised" people are criminalized, whether because of doing social/political change work, or trying to survive, or just being.

Local police departments also gather information, target groups and individuals, and carry out secret operations (if on a lesser scale than the FBI, the RCMP, or CSIS. (4)) In Toronto, the Black Action Defense Committee (BADC) formed in 1988, to protest racist police violence (especially the ongoing police murders of members of the Black community) and work for police accountability to the public. According to a recent leaflet put out by the Toronto Coalition Against Racism (TCAR) and Anti-Racist Action (ARA), the Toronto police department has targeted

BADC member Dudley Laws. (Laws has been charged "with violating the Immigration Act by conspiring to "smuggle" people across the Canada-U.S. border."(5)) The leaflet says:

50 "officers of the law", including several undercovers, worked for over a year and spent about 2.5 million dollars to set Laws up in a campaign they called "Operation Bob". This operation was initiated not because they had any reason to suspect Laws of "criminal" activity, but because of BADC's consistent activism and effectiveness. (6)

Generally though, local police, particularly your regular cops on the job, are not privy to any secret operations. Rather, they are trained to "serve and protect", maintaining order with an infuriating, selective double vision: to serve some and to criminalize most. This has been observed time and again. Clifford Shearing notes:

[A] fundamental distinction is made by the police between people they serve and the troublemakers they control... (7)

Shearing researched "police subculture" in "a large urban Canadian police department"(8) in 1971. He writes:

I found that policemen made a fundamental distinction between 'the public' on the one hand, and 'third- and fourth-class citizens', 'the dregs', or more expressively, 'the scum', on the other. The public consisted of those the police believed they should serve and protect. The scum were very different. They were the people whom the police prosecuted in the course of helping the public. The scum were troublemakers who impelled the public to seek police assistance. In supporting the public, the police controlled the scum. (9)

It's important to note here that this selective categorizing on the part of

the police affects who they will choose to arrest in any given situation. For example, at political demonstrations, police repeatedly tend to arrest a disproportionate number of people of colour.

The police's role in the repression of activists and the maintenance of the status quo/social order, regardless of whether they view activists as "dangerous political dissidents" or as criminalized "scum", is that of frontline enforcers, who use the law freely to this end. Richard Ericson, in his article, "The Police as Reproducers of Order", notes:

The law provides 'cover' [...] through the wide range of substantive offences available to handle any troublesome situation the officer is likely to confront. (10)

and Shearing says:

[L]aw is used as a resource, or weapon, in the preservation of power relations. [...] [T]he egalitarian safeguards built into the law in liberal democracies (via a formal emphasis on universalistic and behavioural, rather than status, criteria) are systematically undermined in practice by law enforcers who in making decisions emphasize extra-legal criteria that identify persons as members of 'problem populations'... (11)

So, if the police slot you into their "scum" category, they will treat you accordingly, and will legitimize this with a practiced use of the law. (For more of an idea of what law resources/weapons are available to police, see APPENDIX B: SOME CHARGES.)

The final point I want to make about the police is that their evidence is given authority in the courts, despite common knowledge of police manipulating/lying about "the facts", which they have complete control over. In "Miscarriage of Justice -- A Root Treatment", A. Zuckerman says:

The police case does not contain just raw objective facts. The police

present an entire picture of reality which is interlaced with evaluative conclusions (such as the description of the conduct to fit a particular legal definition) [...] As the outcome of official action by an organ of the state, the police case comes before the court stamped with a seal of authority which gives it a powerful influence. (12)

Dianne Martin, in her article "Organizing for Change: A Community Law Response to Police Misconduct", points out that:

Police control over the gathering and presentation of evidence is so complete that even in the absence of judicial complicity the police can generally rely on winning any courtroom credibility battle. However, police frequently take extralegal steps to ensure victory. When the legitimacy of policing is challenged directly, as in a disciplinary proceeding, overt lying is widely recognized as a common occurrence. (13)

and:

Manipulating the evidence to ensure that their conduct fits within the legal rules by which they are bound is described by Steven Box as simply "business as usual" for police officers. (14)

Well, so, repression is big business with a whole lot of backing, but wouldya look at all the time and energy and resources they put into this, and *we ain't dead yet*.

PROCESS AND STRATEGIES

WHAT HAPPENS TO YOU WHEN YOU'RE ARRESTED

It's important to realize that exactly what happens to you when you're arrested is very arbitrary; there isn't only one scenario. For example, when and how will you be released? You may be released from the station.

In most cases (not all) the cops can release you from the station if you

promise to appear in court on a date they specify. For some offences, they MUST release you from the station. Your lawyer will know... (15)

If the cops decide not to release you from the station, you may be taken to bail court on the same day of your arrest, or you may be kept overnight. This is supposed to depend on how late in the day it is, but the cops could string out the time they take processing you, until the court closes. Or, you may be detained and then released without charge.

I once walked out of a Toronto police station, despite being arrested, charged and supposedly in custody, and escaped any consequences (the charges must have been dropped or forgotten), because my arresting officer, in the words of the commanding officer at the station, "fucked up." Of course, I was not a target receiving special attention from the police.

What happens to you between being arrested and being released is almost entirely up to the police involved, but you can sometimes affect the process, especially if you have a lawyer advocating for you. Also, it's good to know what's possible; you could be put through the entire thing, as outlined below, and *generally, the police never tell you what's going on and refuse to answer any of your questions.*

The following outline is based on one woman's experience (I will call her "Beverley".) The quotes and all the information are from her, unless otherwise noted. She was arrested at a demonstration in Toronto, in the fall of 1993. (16)

THE ARREST

The police supposedly use only the minimum amount of force necessary; you could be hurt. Also, there isn't necessarily any clearly official arrest. You may not know what's going on at first.

The first thing Beverley heard was, "You two, outta the demo!" She

was grabbed by a man she didn't know (who turned out to be an ununiformed cop in the demonstration), wrestled and wrenched away from her friend. Police in uniform got involved at some point. She was isolated from the other demonstrators, pulled aside and put in handcuffs, then kept standing with her back to the demonstration for a while. She noted that the police seemed to have videotaped the whole thing. She was then taken to nearby police cars, searched, put in a car and driven to 51 division. When I asked Beverley if she was ever told she was under arrest, she said, "Maybe they did at the car, when they searched me, I'm not sure."

BEING TAKEN TO THE STATION

The police will likely ask you questions, as they take you to the station. Although you have the right to remain silent, the cops don't make this easy. Beverley describes:

They asked me a billion questions. They're intimidating. They have all the power and they make you feel like you're in trouble if you don't talk. They threaten you; maybe it's their tone of voice. Women, they call "darling", "sweetheart" and shit like that. People of colour get racial slurs. The best thing to do is dull out right away and not respond to their stupid questions and comments, but it's hard because you're mad.

AT THE POLICE STATION (51 Division)

- **SURVEILLANCE:** When you are walked in, the cops stop you at a sign that announces camera surveillance in the station; they read the sign to you.
- **CHARGE(S) & RIGHTS:** You're told what the charges are against you and read your rights. You have the right to remain silent and the right to talk to a lawyer. The cops ask you if you understand your rights and make sure you say yes clearly.

- **STRIPSEARCH:** No opposite sex stripsearches allowed. Also, it's not the same thing as a cavity search, which the cops can only legally do in certain circumstances. Before going to a situation where you may be arrested, **make sure you're not carrying anything you don't want the police to see** (like your friends' phone numbers?); they look through everything.

Beverley was taken to a cell, where she was told to strip, turn her back to the guard and squat. (Apparently, anything jammed up your vagina will fall out if you squat.) The guard, wearing gloves, checked ^{Beverley's} ~~Zed's~~ hair and looked through all of Beverley's clothing and belongings. After the search, the guard took everything, including cigarettes, except the clothes on Beverley's back.

- **PHONECALL:** In Beverley's case, when the police allowed her to make her phone call, she had to stay in the cell. They dialed the number and shoved the phone receiver (on a long cord) through the cell door, which they left open, slightly.

ASK for your phone call! As the Law Union, in its draft, Offence/Defence: Survival Seminars for Activists, points out:

The fact that they don't offer won't matter in court. You must ask. And the right to call your lawyer is not one you can only have "later". You can call a lawyer immediately. Insist on it. Now, when you call your lawyer, don't discuss the case with him/her. The cops may have all the phones tapped. Just tell your lawyer what the charge is. (17)

Hopefully, the demonstration organizers have lawyers lined up that you can call. This is a class issue that organizers have a responsibility to address, just like the responsibility to warn demonstrators in advance if arrests are possible/likely, so that each person can choose her/his own

level of risk. If this hasn't been organized and you don't know a lawyer's number, call someone you can count on to rattle up a lawyer for you. You need a lawyer to advocate on your behalf, to help get you released. Also, the police are more likely to treat you better if they know your rights are being advocated for by a lawyer.

If you don't have any way of getting in touch with a lawyer, this means that there is no official legal type arguing for your immediate release. The police may release you from the station anyway, or you may have to wait for Duty Counsel to argue on your behalf in bail court (see DUTY COUNSEL OFFERED, below.)

- FINGERPRINTS, ID, ETC.: This is the part where the police gather information about who you are. Fingerprinting involves each finger getting printed separately and then your whole hand, so ink gets all over your hands. They give you a weird (petroleum-based?), bad-smelling soap that gets most of it off. Your photograph is taken and imaged directly onto a computer, with your name. The cops will also ask you your address, age, education, religion, income, job... If you weren't born in Canada, they'll ask you about when you arrived and where (what "port of entry")... You don't have to answer these questions (18), but answering some of them can help get you released, because:

no one, cop or judge, is going to let you out of custody if they don't know how to find you again. (19)

If there's any doubt about your identity, the police can hold you as long as it takes to establish who you are.

- CELL: There's no clock in the cell. It's boring. Beverley was arrested in the morning. After being charged and searched, she was

allowed her phone call. Then she waited, was fingerprinted etc., and waited some more. All together, she had to wait for hours, with nothing to do.

You can't really hear anything outside. The cops can hear you if you're talking loudly or if you kick the wall or pound on the door. If you have to go to the bathroom, you kick on the door and they take you. If they want to be assholes, they can handcuff you for that, or pretend not to hear you.

The food Beverley was given was take-out ham & cheese sandwiches and coffee (with milk and sugar already added) for lunch and supper. (Breakfast the next morning was cheese sandwiches and coffee-with-milk-and-sugar.)

You may not be put in a cell or stripsearched. You may be made to wait on a bench somewhere in the police station. You may or may not be fingerprinted and photographed. The police who've arrested you decide these things.

BEING KEPT OVERNIGHT

There are no overnight cells for women at 51 division, so Beverley was taken to 55 division.

- STRIPSEARCH AGAIN: Same as before.
- OVERNIGHT CELL: In an overnight cell, there's a metal bed, a stainless steel toilet, and a video camera that watches you all the time (which means the cops can't beat you up there.) The lights are on all night. There's no smoking allowed. There's no clock. The night matron (guard) might get you a snack, or not, and might give you an extra blanket (it's cold), or not.
- EARLY IN THE MORNING: Beverley was woken up at about 6 am

and taken to College Park courthouse to wait for a bail hearing. (Hurry up and wait.) Probably, which courthouse you're taken to depends on which station you were busted at. The paddy wagon that transported Beverley, picked up other people along the way; women and men were kept separate in the wagon, which had two cages for this purpose.

AT COLLEGE PARK COURTHOUSE (BEFORE APPEARING)

- **IN THE COURTHOUSE HOLDING CELL (BASEMENT):** Yup, another search (just pat-searched this time) happens before you're put in the holding cell, with other women, to wait for bail court to open, at around 10 am. Beverley describes:

There's lots of coming and going. It's cold. There are no smoking signs everywhere, but everybody smokes. The women from Metro West detention had cigarettes hidden on them, and matches, no lighters. And everyone shares what they have. You better share, cos no one will take any snooty shit... Also, the cops can beat you up here.

Beverley also says that if you're assaulted by a cop, go to a doctor immediately, that same day/when you're released, and get it documented. And ask the doctor whether s/he'll testify in court.

- **DUTY COUNSEL OFFERED:** The cops will ask if anyone in the holding cell needs Duty Counsel. This is if you don't have your own lawyer for the bail court hearing. Duty Counsel is a lawyer, hired by the court as a public defender. If you say yes, you will be taken to a little "listening" room, where you can talk to the lawyer privately. Unfortunately, Duty Counsel lawyers are overworked and won't give you a lot of time.

- **ANOTHER HOLDING CELL (NEAR COURTROOM):** When the court opens, you will be handcuffed to another woman and taken to another holding cell on the same floor as the courtroom. Here, you wait until it's

almost your turn in court. Then, you're taken into the court to wait a ^{little} ~~little~~ longer in "the box" (the holding area of the court.) This is the only place that women and men aren't kept separate.

WHEN YOUR TURN COMES UP: BAIL COURT

This court hearing is about deciding whether or not to release you from custody and what the conditions of your release will be. (The court can deny you bail and require that you be kept in jail until your trial if, for example, you have prior convictions.) More information about bail conditions follows. Basically, what happens in bail court is, you stand there and:

- THE CROWN READS YOUR CHARGES & MAKES RECCOMMENDATION FOR YOUR BAIL.
- YOUR LAWYER AGREES/DISAGREES; MAYBE THE LAWYERS ARGUE ABOUT YOUR BAIL.
- THE JUDGE DECIDES.

(You are obligated by the judge's decision to promise to come back to court when they tell you and to live up to the bail conditions they set. Your friend(s) promise to pay money if you don't turn up at your trial.)

Now you're free to go, right? WRONG; you're taken back to the holding cell (the one in the basement) to wait for the paperwork to be done. This is where your friend(s) sign for you; it's important to have someone there at your bail hearing, who brings some proof (like a bank book) that they can pay the amount set by the court. It can take a couple of hours. In the end, you sign the conditions for your release and are given a date for your next court appearance (probably in about a week.) Then, you can go.

BAIL CONDITIONS

Once you've been arrested and charged, the court has the authority to place conditions on you. The conditions are generally about making sure you'll come to your trial and trying to prevent you from doing whatever crime you were charged with again. This can be a kind of paternalistic punishment-in-advance; because, even though you have not been convicted and may be found not guilty of any crime, you must agree to live up to whatever conditions the court imposes on you, before you will be released. The principle of "innocent-until-proven-guilty" does not apply to bail conditions.

Looking at the legal system as a whole, dealing with many different crimes, the issue of bail conditions is more complex. In the context of police making arrests at demonstrations, using the law to achieve politically repressive goals, I think it is clear that bail conditions are a punitive infringement of individuals' rights and freedoms. However, I do feel differently about this when it is a bail condition that is protective of an actual person, such as requiring that a alleged rapist not associate with the woman he allegedly raped. *Not that it's really useful or anything.* Time and again, restraining orders do nothing to prevent violence against women. Besides, the courts have shown that they are not in the business of preventing violence against women; the rate of conviction for sexual assault charges in Ontario is less than 5%.⁽²⁰⁾ The issue is: what responsibility does the court have to prevent the possibility of further crime, despite the innocent-until-proven-guilty principle vs how much the court paternalistically imposes punitive conditions. I think the track record of the legal system speaks for itself; I do not look to it to protect

me. As Dianne Martin, lawyer and professor of law at Osgoode Law School, puts it:

[The legal system] disproportionately jails blacks and minorities, whitewashes deaths caused by police, and offers little real protection from racist and sexist violence. (21)

Failure to comply (not living up to the conditions given to you) can result in another charge added. For some examples of bail conditions, see APPENDIX A.

A TINY BIT ABOUT THE REST OF THE PROCESS (up to the trial)

- **FIRST SET DATE HEARING:** What happens in your first set date is: your charges are read; maybe some are dropped and/or made less serious and maybe some are added; and you are given a **charge screening form**. Then, you're given another set date, usually in 3 to 6 weeks. (This is the time you have to find a lawyer, if you don't have one yet, and deal with Legal Aid.)

- **LEGAL AID:** You can't go to Legal Aid until you have that charge screening form, because they have an authorized fee scale that depends on your charges. Beverley says:

Legal Aid is a pain in the ass. It closes at 3:30. It's like welfare. You have to wait and bring all kinds of financial information: a bank statement for the past 6 months, rent receipts, an outline of your expenses...

It will take Legal Aid about 3 weeks to process and confirm.

- **MORE SET DATE HEARINGS:** The point of these hearings is to set a date for your trial. There will probably be about 3 or 4 of them before this finally happens. Beverley's comment on them is, "Nothing gets decided or

done. You just have to go. It's a waste of time." It's good to have your lawyer there to make sure the next date is ok for both your schedules. (The court is more likely to listen to a lawyer, instead of just handing you a date.) Apparently, you don't necessarily have to appear at set dates; your lawyer can appear on your behalf. You have to give a reason (kids? job?) and arrange it with your lawyer, and then it depends on the judge.

According to Beverley, this is new:

It used to be that, if you failed to appear at a court date, you'd get 30 days in jail, just like that. But now, there are very few judges who'll do that anymore. It's like, the system isn't so morally paternalistic anymore. It's more like a machine now.

Before your trial, the state must disclose its entire case against you, in writing (including photocopies of the cops' notes); they give this to your lawyer. Also, there may be a pre-trial conference.

- PRE-TRIAL CONFERENCE: (You don't go to this.) This is where plea bargaining happens. Your lawyer and the crown lawyer meet. The crown will tell your lawyer what kind of sentence s/he's asking for. They'll feel each other out. The point is to speed things up and save the judge's time. Hopefully, your lawyer will tell you what happened.

And finally, there is your trial. (Going into what happens at trials is beyond the scope of this paper.)

CONCLUSIONS: IMPACT

The possible legal impact is clear; you could be convicted of criminal charges, have a criminal record attached to your name, and be fined, be required to do community service, be sent to jail, be required to report to a

parole officer... (See APPENDIX B for information about some charges and maximum jail terms.) But regardless of whether there's a conviction, going through this process has an impact.

Your time is stolen from you, by the state, and there's nothing you can do about it. Waiting in a cell, waiting for your turn in court, waiting at Legal Aid, waiting through seemingly endless set date hearings, it is frustrating and seems calculated to make you feel small and unimportant.

A financial impact can happen in two ways. Lawyers cost money and if Legal Aid disqualifies you, you must pay. Also, the time stolen from you can have an impact on your job; you could lose it, you could be unable to take shifts, you could lose the pay from hours you didn't work.

Some of Beverley's statements have already suggested the degree of possible emotional impact. You can experience fear, rage, intense stress, with the knowledge that the state is messing with your life. Your immigration status could be adversely affected. If you have children, the time stolen from you and the stress you're subjected to can impact them.

Winsom, a Black woman who states her elbow was broken by cops when they arrested her near a demonstration protesting racist police violence in Toronto, says in the 1994 Everywoman's Almanac:

Emotionally, it's been a drain on me. I haven't been able to do lots of my art. I had to cancel a lot of stuff last summer, that usually makes me money to last me through the year and look after my two kids properly. (22)

and:

I think the police should pay for all the destruction in my life and my kids' lives. But, all the money will never compensate that I can't lie properly, I can't turn around at night, I can't use my hand to scratch my back, I can't have sex the way I want to have sex. (23)

The impact on activist movements is to tie up people's time and resources, dealing with a legal mess instead of doing their activist work. It can also lead some to re-evaluate what they're doing, what they're willing to put up with or suffer, and some may choose to take vacations from activist work, change what they do, or quit altogether. And some may just get angrier, work harder -- as Beverley says, "The fuckers, no way am I going to let them win."

in a group, arrests etc result in

differences in status being HIGHLIGHTED
(who can use what to get off -)

so unless there is a solidarity in the group
where each individual acts in a principled way

arrests can impact the group by creating DIVISIVENESS.

APPENDIX A: SOME BAIL CONDITIONS

- **MONEY:** If it's your first offence, this will likely be less than \$1000. Usually, someone just has to promise to pay whatever the court says, in case you don't turn up at your trial. Maybe if it's a lot of bail, like \$10 000 or more, then someone will have to pay part of the bail money as a deposit up front. So anyway, it's important to have someone there at your bail hearing, who brings some proof (like a bank book) that they can pay the amount set by the court (or, if you think a deposit will be required up front (your lawyer should know), then someone has to bring their chequebook or whatever -- some way of paying the bail deposit.)
 - **NON-ASSOCIATION:** The court can require you not to see or talk to your co-defendants, and/or that you not come into contact with your "victim".
 - **LIMITS ON WHERE YOU CAN GO:** The court can require that you not go to a specific area, like, for example, a neighbourhood in Toronto.
 - **CURFEW:** The court can require that you must be at home and not be outside later than a specific hour (like 9 pm.)
 - **ON YOUR OWN RECOGNICANCE OR NOT:** The court can release you into someone else's custody, who then is responsible for you and is someone you must report to (this person must be willing to have you released into her/his custody.) Or, the court can release you on your own.
 - **WHERE YOU LIVE:** The court can require that you must live at a certain place, like, for example, young people may be required to live at their parent(s)' house and to follow their parent(s)' rules.
 - **BAIL REPORTING OFFICE:** The court can require that you must go to a reporting office and report regularly (like, once a week) to a bail officer. This usually takes only a few minutes, once you get there, depending on the lineup.
 - **DRUG/ALCOHOL COUNSELLING:** The court can require you to attend drug or alcohol counselling (if, for example, the police think you were drunk or high when they arrested you.)
 - **YOUR PASSPORT:** The court can confiscate your passport, if they're afraid you might leave the country to avoid standing trial. This only tends to happen if you have pretty serious charges.

APPENDIX B: SOME CHARGES

I've tried to translate the legalese into less confusing language; the following is all paraphrased from The Annotated 1994 Tremear's Criminal Code, David Watt and Michelle Fuerst, editors, Thomson Professional Publishing: Toronto, 1993.

SUMMARY or INDICTABLE?

Indictable means formal and summary means brief. Some offences can be either; in this case, it's up to the prosecutor (crown) to choose which to go for.

FOR A (MAJOR) INDICTABLE OFFENCE:

- if the offence is punishable by a maximum of 5 years in jail or more, the defendant can choose to have a jury trial (S.11 (f) in the Charter of Rights and Freedoms.)

FOR A (MINOR) OFFENCE PUNISHABLE ON SUMMARY CONVICTION:

- there is no right to a jury trial,
- there is a limitation that you can not be charged after 6 months of the offence being committed (S. 786 in the Criminal Code),
- if there is a conviction, the maximum you can be fined is \$2000 and the maximum jail sentence is 6 months, or both (S. 787 in the Criminal Code.)

UNLAWFUL ASSEMBLIES AND RIOTS (SS. 63-69)

An unlawful assembly is defined as three or more people, with a common purpose, who cause other nearby people to reasonably fear that the peace will be disturbed "tumultuously"-- which means disorder, noise, confusion, and maybe some element of violence or force, including threats.

- It's an offence punishable on summary conviction.

A riot is defined as three or more people, with a common purpose, who have begun to disturb the peace "tumultuously".

- It's an indictable offence: max jail = 2 years.

CAUSING DISTURBANCE (S. 175)

This includes fighting, screaming, swearing, singing in or near a public place (or maybe in a non-public place), causing uproar, disorder and/or reasonably causing someone else to be disturbed.

- Punishable on summary conviction.

MISCHIEF (S. 430)

Oof, this one is complicated; there are lots of subsections. Mischief includes destroying or damaging property, or interfering with someone's use or enjoyment of property (either by messing with the property -- which is anything you can own -- or by getting in the way of the person trying to use/enjoy the thing owned; this includes obstructing physically,

like being part of a "human barricade".) Um. Mischief can be an action or wilfully not acting, when it's your "duty" to.

- If the mischief causes actual danger to someone's life, it's an indictable offence: max jail = life.
- If the mischief causes property damage of more than \$1000, it's either an indictable offence: max jail = 10 years, or punishable on summary conviction.
- Otherwise, it's either an indictable offence: max jail = 2 years, or punishable on summary conviction.

RESISTING ARREST/OBSTRUCTION

OFFENCES RELATED TO PUBLIC OR PEACE OFFICER (S. 129)

This is basically about resisting or wilfully obstructing (getting in the way of) a cop doing his/her "duty". (It includes not helping a cop arrest someone else, if they tell you to and you don't have "reasonable excuse".)

- It's either an indictable offence: max jail = 2 years, or punishable on summary conviction.

ASSAULT (SS. 265 & 266)

Assault is defined as using force on purpose, including threats, on a person, without their consent. Assault is also confronting, getting in the way of, or begging someone, while openly wearing/carrying a weapon (or a fake, imitation-weapon.) There is a whole complicated thing about consent: if the victim submits or doesn't resist because of force, threat of force, fraud, or exercise of authority, there is no consent, but the accused can use honest reasonable belief of consent as a defence. (This applies to all forms of assault, including sexual assault.)

- It's either an indictable offence: max jail = 5 years, or punishable on summary conviction.

ASSAULT WITH A WEAPON/CAUSING BODILY HARM (S. 267)

This occurs when, in committing assault, a person carries, uses or threatens to use a weapon (or imitation-weapon), or causes bodily harm that is more than "transient or trifling" (that lasts more than a moment.)

- It's an indictable offence: max jail = 10 years.

ASSAULTING A PEACE OFFICER (S. 270)

The assault has to be proved, and can be in any situation, including intending to resist being arrested or prevent someone else from being arrested.

- It's either an indictable offence: max jail = 5 years, or punishable on summary conviction.

DEFINITION OF "WEAPON" (S. 2)

In the Criminal Code, a weapon is anything that is used, designed to

be used, or intended for use to threaten/intimidate or cause death/injury to any person. The point here is that the intention to use an object as a weapon makes that object a weapon.

POSSESSION OF A WEAPON OR IMITATION (S. 87)

This is defined as having a weapon (or imitation-weapon) in your possession with the purpose of committing an offence or doing something dangerous to the public peace. (You don't have to have used the weapon.)

- It's an indictable offence: max jail = 10 years.

POSSESSION OF A WEAPON WHILE ATTENDING A PUBLIC MEETING (S.88)

This is defined as having a weapon in your possession, without lawful excuse, while you are attending, or on your way to a public meeting.

- It's an offence punishable on summary conviction.

CARRYING A CONCEALED WEAPON (S. 89)

This one is defined as having a concealed weapon on you, without a permit. The intention to conceal the weapon is the point here.

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- NOTES

(SEE BIBLIOGRAPHY FOR BIBLIOGRAPHIC INFORMATION)

- (1) Ward Churchill and Jim Vander Wall, p. 61.
- (2) Kim Jackson, p. 164.
- (3) Kim Jackson. p. 170.

- (4) HOW TO GET YOUR FILES FROM CSIS (Canadian Security Intelligence Service): get a yellow personal information request form from the Post Office, and apply to: The Departmental Privacy Coordinator of CSIS, P.O. Box 9732, Ottawa Postal Terminal, Ottawa, Ont., K1G 4G4.

- (5) & (6) Toronto Coalition Against Racism & AntiRacist Action, leaflet.
- (7) Clifford Shearing, p. 352.
- (8) & (9) Clifford Shearing, p. 353.
- (10) Richard Ericson, p. 174.
- (11) Clifford Shearing, p. 350.
- (12) A. Zuckerman, p. 325.
- (13) Dianne Martin, p. 160.
- (14) Dianne Martin, p. 162.
- (15) The Law Union of Ontario, p. E-4
- (16) Interviews/conversation with "Beverley": January & February 1994.
- (17) & (18) The Law Union of Ontario, p. E-3
- (19) The Law Union of Ontario, pp. E-3 - E-4.

- (20) The 1986 Toronto Rape Crisis Centre's paper, "Three Alternatives to the Legal System", puts it at 2 - 4 %, for all of Canada.

- (21) Dianne Martin, p. 166.
- (22) & (23) Winsom, JUNE.

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