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CRIMINAL JUSTICE BRANCH, MINISTRY OF JUSTICE  
**CROWN COUNSEL POLICY MANUAL**

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ARCS/ORCS FILE NUMBER: <b>56740-00</b>	EFFECTIVE DATE: <b>December 1, 2014</b>	POLICY CODE: <b>CIV 1</b>
SUBJECT: <b>Civil Disobedience and Contempt of Related Court Orders</b>		CROSS-REFERENCE: <b>CHA 1</b>

### **POLICY**

All charge assessment decisions relating to acts of civil disobedience and decisions to prosecute contempt of related court orders, should immediately be brought to the attention of Regional Crown Counsel who should consult with the Director, Prosecution Support about the appropriate action to be taken. Charge assessment should take place as soon as possible once all the relevant information is available.

#### **Use of Charges under the *Criminal Code***

Acts of civil disobedience, including conduct involving public demonstrations, may come into conflict with the law and obstruct or interfere with the rights of others. The use of criminal sanctions in these situations may not always be in the public interest. Factors that favour prosecution may include:

- the conduct involves violence resulting in physical harm or assaults with a reasonable apprehension of physical harm
- serious property damage has been caused or there is property damage with a reasonable apprehension that serious property damage will be caused
- persistent less serious offending is significantly disrupting public access to, or enjoyment of, lawful public activities
- an assault on a peace officer has occurred
- the circumstances are such that the public interest clearly requires a prosecution, for instance, where the safety of emergency personnel, police or other persons is jeopardized

When Crown Counsel are consulted, they should encourage the police to exercise discretion in selecting an appropriate response for each case based on its unique facts, while ensuring that the general public is not unduly inconvenienced.

### Alternative Remedies

Where prosecution under the *Criminal Code* does not appear to be appropriate, Crown Counsel should consider the following guidelines in determining an appropriate response to a situation involving civil disobedience:

1. Where an act of civil disobedience affects only a small number of individuals, those individuals may be advised to seek legal advice regarding the availability of a civil injunction.
2. In the event that civil disobedience continues after an injunction is granted, the party obtaining the injunction should be encouraged to proceed with civil contempt proceedings in the court in which the injunction was obtained.
3. Subject to paragraph 4, Crown Counsel should not become involved in civil contempt proceedings commenced pursuant to Rule 22-8 of the Supreme Court Civil Rules or where the conduct is “in facie” during civil proceedings, other than to consult with the Legal Services Branch of the Ministry of Justice where necessary.
4. Crown Counsel should intervene on behalf of the Attorney General in civil contempt proceedings where the contempt is criminal in nature. This will usually occur where the conduct disobeying the court order tends to bring the administration of justice into public ridicule or scorn or otherwise interferes with the proper administration of justice.

In cases where there are reasonable grounds to believe that injunctive relief would not be granted or would be ineffective, prosecution under provincial or non-*Criminal Code* federal statutes should be considered (e.g. under section 79 of the *Transportation Act*, section 4 of the *Trespass Act*, or the federal *Fisheries Act*).

### Breach of Court Order

Where there is an alleged breach of a court order in relation to acts of civil disobedience, both criminal contempt proceedings (common law) and charges under section 127 of the *Criminal Code* are available options.

In certain cases, s. 127 charges may be an appropriate alternative to proceeding with contempt charges as both may be proceeded with summarily (though contempt charges are “summary” in the B.C. Supreme Court).

Whether to proceed by criminal contempt (in the B.C. Supreme Court) or by s. 127 may depend on the gravity of the conduct, the sentence contemplated, the availability of court dates, and other factors relating to the local administration of justice. The public interest criteria remain the same whether the matter proceeds by contempt or s. 127. As with proposed contempt charges, s. 127 charges should be referred to the Regional Crown Counsel and the Director, Prosecution Support in accordance with this policy.

Where the court is concerned that a breach is criminal in nature and invites the Attorney General to assume conduct of the prosecution of the contempt or otherwise participate, Crown Counsel should indicate that the court will be advised as soon as possible whether Crown Counsel will assume conduct of the prosecution.

Crown Counsel may intervene and assume conduct of the prosecution where the allegations meet the charge assessment standard under the Branch policy on Charge Assessment Guidelines - CHA 1. The Assistant Deputy Attorney General should be consulted before the court is advised of a decision not to assume conduct of the prosecution.

If the allegations do not meet the charge assessment standard, the Director of Prosecution Support will refer the matter to the supervising counsel responsible for injunctions at the Legal Services Branch so that counsel from that Branch may consider civil contempt proceedings and appear to address the court.

#### Occupation of Offices and other Premises

In addition to the factors outlined above, where protestors occupy and refuse to leave private or public offices or other residential or business premises, Crown Counsel should consider the following factors in deciding whether the public interest requires a prosecution:

- whether the public is normally invited to the premises
- whether there is a major security risk as a result of the occupation
- whether the occupation endangers the building, goods or persons
- whether the initial entry was unlawful
- any aggravated conduct during the occupation
- whether in the presence of the police, there has been a clear revocation of any right to be on the premises by the person in charge of the premises, accompanied by a clear demand to leave
- whether there has been a clear explanation by the police to the protestors that they are breaking the law and that they must comply with the demand to vacate the premises and that a failure to do so may result in arrest and criminal charges
- whether the dispute is not likely to be resolved
- whether there is a previous history of similar conduct by the protestors or an associated group
- whether there is any indication that the protestors plan to repeat their behaviour
- whether there is a major impact on the owner or occupier of the premises or members of the general public

- whether the owner, occupier or member of the general public wishes a prosecution
- the conduct of the protestors during and following any arrests

## **DISCUSSION**

*Criminal Code* charges commonly considered under this policy include assault, mischief and obstruction of a highway under section 423(1)(g).

Section 9 of the *Criminal Code* preserves the common law power of punishing for criminal contempt of court. Rule 22-8 of the Supreme Court Civil Rules governs civil contempt proceedings.

Crown Counsel may conduct contempt proceedings where the contempt is committed “in facie” during the course of a criminal proceeding or where it is “ex facie” and relates to a criminal proceeding.

The Supreme Court has jurisdiction to try all forms of criminal contempt. The jurisdiction of the Provincial Court is limited to contempt “in facie” (see section 484 of the *Criminal Code* and section 52 of the *Offence Act* and section 2.1 of the *Provincial Court Act*) and to charges under s. 127 of the *Criminal Code* as outlined above. The relationship between s. 127 and the civil rules relating to contempt is found in *R. v. Gibbons*, [2012] 2 S.C.R. 92.

In appropriate cases, where a large sector of the public is affected by demonstrators and the demonstration affects public property such as highways or waterways, the Legal Services Branch of the Ministry of Justice may bring an application for an injunction.

It is the character and nature of the conduct that determines whether a contempt is civil or criminal; the nature of the proceedings is irrelevant. A civil contempt involves a breach of a court order and the dispute remains between the parties in the action. In a criminal contempt, the issues transcend the dispute between parties and involve the public interest in the proper administration of justice. A criminal contempt often involves a mass disobedience of a court order which tends to bring the administration of justice into disrepute or scorn (United Nurses of Alberta v. Alberta Attorney General [1992] 89 D.L.R. 4<sup>th</sup> 609 (S.C.C.)).

Crown Counsel should be aware that police have the power of arrest to prevent the continuation of an offence under a provincial statute (Moore v. The Queen (1978) 43 CCC (2d) 83). Also, under the *Criminal Code* and under the common law, the police have the power to arrest for a breach of the peace.