

Commentary



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Managing protest in Canada

Ken S. Coates

These are tumultuous times. The 2020s may not match the “power to the people” protests of the 1960s or even the Occupy movements and anarchist uprisings of the 2010s but recent Canadian conflicts have a nasty and angry edge. The country may have avoided the kinds of very destructive conflicts experienced south the border. However, the re-emergence of bitter confrontations challenges democracy and once more tests the ability of our government to sustain the rule of law.

The parameters are clear. Governments make laws and regulations. The police and the courts enforce these rules. Protestors express their points of view and, to attract attention and reinforce their points, disrupt regular activities. Provided the protests are time-limited, non-destructive and without immediate consequences for people, resources and facilities, the police and governments tolerate short-term disruptions.

Problems emerge when the protests are prolonged, when there is violence, if commercial interests are disrupted, or if broader society is seriously inconvenienced. When protests become unruly, when the law is ignored, when the duly constituted authority is threatened, lines have clearly been crossed.

Canada enters this current age of unrest weakened in its capacity and willingness to respond and unsure of how to cope with an assertive citizenry. The public at large is quite cynical about many of the protests, writing off

activists as naïve, ignorant, dangerous, uninformed or easily manipulated by environmental organizations, political parties, or special interest groups. Governments have been reluctant to act, partially out of fear of an escalation of conflict but also because of the lack of a national strategy for the management of protests.

The most memorable uprisings of 2021 are those associated with the anti-vaxxer movement and libertarians protesting government intrusions in their lives. Their most high-profile actions – blocking access to hospitals and throwing gravel at the prime minister – have been appropriately condemned (with an arrest in the latter case).

But the pandemic-related protests are outliers in a pattern of general government inaction and disturbing passivity in the face of disruptive protests. In these instances, and in earlier conflicts over resource developments, the Royal Canadian Mounted Police and other police forces have been placed in the uncomfortable position of enforcing Canadian laws and regulations in the face of determined citizen protests and often without solid backing from the government.

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Consider the pre-pandemic pipeline related protests. Over the last few years, supporters of some of the Hereditary Chiefs of the Wet’suwet’en First Nation tried to block construction of a portion the Coastal GasLink pipeline, sparking sympathetic protests across the country. These actions were not supported by the elected Chief and Councils of the Wet’suwet’en, nor does it seem the majority of the Wet’suwet’en people. A small group of activists blocked the mainline of the CN Railway, disrupting Toronto-area commuters and causing millions of dollars in economic harm. The government response to these clearly illegal acts was tepid, at best.

Canadians have been tolerant of a growing number of protests that carry substantial social and economic costs. Where the protests interfere with clear federal objectives – as with the anti-vaccination uprisings – Prime Minister Justin Trudeau quickly promised new legislation to criminalize actions that interfered with hospitals and medical activities. When the protests are more closely aligned with unofficial government objectives, as with the anti-pipeline actions, the government has been loath to move quickly, if at all.

In the case of the Wet’suwet’en, the federal and provincial governments responded by providing substantial funding to the Hereditary Chiefs while

largely ignoring the elected chiefs and councils, who favoured the pipeline. The governments of Canada and Ontario should have stopped the CN rail protests on the first day; a temporary protest makes a critical point, but prolonged actions transfer the pain and inconvenience from the political actors to the public at large. Many innocent people paid an unacceptable price for the actions of self-appointed activists reacting to a development project thousands of miles away.

Another high-profile protest, at the logging sites along Fairy Creek on Vancouver Island, speaks to other disquieting realities. To the degree that the number of arrests reflect the intensity of the struggle, this resistance has become the largest in Canadian history, an “achievement” much heralded within the environmental movement. The British Columbia government, local First Nations governments and the company involved, Teal Cedar Products, have had the backing of the courts and are determined to proceed, with discussions about harvesting plans under way with the First Nations. The protestors are not satisfied with the decisions of the politicians or the courts and continue to push for much broader protection of the old growth forest.

There is no doubting the good intentions and the nobility of the cause of some of the protesters. Friends of my family – recent retirees with distinguished work histories, a long record of support for civil society, and generally upstanding Canadians – have two daughters at Fairy Creek. The young women are not long-time activists but they were drawn to the protests by the irreversible consequence of harvesting old growth forests. They did not move to activism incautiously. They studied the issues extensively and have immersed themselves in Indigenous culture while in the camps. They believe in the cause and remained on the front line when the police moved in; they are not crowd-followers, nor are they easily manipulated by environmental activists.

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Modern protests are recorded live, meaning that we need not rely on second- and third-hand accounts of protests. In Fairy Creek, there are lengthy, disturbing videos. The scenes of activists being pepper sprayed are excruciating to watch. The judge overseeing the case was not pleased with some of the police behaviours. And the women and their parents are also profoundly disturbed by what transpired: the obvious singling out of First Nations people at the protest lines, misogyny and even the alleged groping of women, seemingly deliberate efforts to inflict pain, wilful destruction of the protestors’ property, and palpable aggression. It has been reported that

protesters used a variety of tactics to thwart and frustrate police, but this is not Canada at its best; these police actions are simply not consistent with Canadian values.

In the end, however, Canada flourishes or founders on the rule of law. Whatever we might think of our politicians, political parties, parliaments, policies, and legal processes, these institutions collectively represent one of this country's greatest strengths. We ignore or reject political and legal processes at our collective peril. It is a thin line, but one that must be both defined and protected with ferocity by governments and citizens. Protestors have every right to try to change public opinion and change the government's mind; they do not have the right to set policy.

Government representatives must always act with integrity and decency. From the police through the judicial system, these officials must be the very best of us. Anything less diminishes them and the legal process and, even more, weakens respect for the country. In the context of Fairy Creek, the actions of the RCMP – and the fact that few of its members have been called to account for their behaviour to this point – is unacceptable.

However, moving forward, the government of British Columbia must properly enforce the injunction against the protestors at Fairy Creek and must protect the rights of the company and the First Nations involved. The authorities, in handling difficult and intense situations, must treat the protestors with dignity and not give the activists or the public reason to think ill of the state or the country. A vibrant democracy requires opposition and protest. But, throughout, the political and legal process, which includes the RCMP, it also requires decency and integrity on the part of authorities.

Judge Thompson of the BC Supreme Court reviewed the request for the extension of the Fairy Creek injunction and found himself caught in a dilemma: protect the rule of law (and the company's legal rights) or defend the protestors' rights in the face of police behaviour. In a judgment released in late September 2021, he wrote about the "irreparable harm if the injunction is not extended" and noted that "(s)tanding behind lawful rights in these circumstances promotes the rule of law and is undoubtedly in the public interest." However, despite this strong statement, Judge Thompson came down on the side of the protestors:

Most of these (interactions) have been respectful, and nearly all to this point have been non-violent. This is consistent with what I have come to know during many bail applications by even the most militant of the protestors. They are respectful, intelligent, and peaceable by nature. They are good citizens in the important sense that they care intensely about the common good. The videos and other evidence show them to be disciplined and patient adherents to standards of non-violent disobedience. There have only been occasional lapses from that standard.

Judge Thompson did note “the police have generally used reasonable force to effect arrests and control crowds, and reasonable means to remove protesters from trenches and devices.” Yet he also concluded the police at times had stepped beyond reasonable bounds – this behaviour he found disquieting and challenged the reputation of the Court in granting the injunction. In general, he “considered the infringements of civil liberties to be unjustified, substantial, and serious.”

Judge Thompson’s ruling speaks to broader issues about the nature and management of protest in Canada. As he notes:

methods of enforcement of the Court’s order have led to serious and substantial infringement of civil liberties, including impairment of the freedom of the press to a marked degree. And, enforcement has been carried out by police officers rendered anonymous to the protesters, many of those police officers wearing “thin blue line” badges. All of this has been done in the name of enforcing this Court’s order, adding to the already substantial risk to the Court’s reputation whenever an injunction pulls the Court into this type of dispute between citizens and the government.

The Fairy Creek conflict and the management of the protest by the activists, government officials, the police and the courts point to a fundamental tension in Canadian democracy. First, governments make laws and regulations; they are not and should not be created by a small number of activists or protestors. Second, protestors have the right to protest, within the limits of the law, and must follow the laws, regulations and, where relevant, court decisions. The police, when placed in a difficult situation, are duty-bound to follow appropriate procedures and codes of conduct. In all their actions, they represent the government, the court and the nation at large.



Canada has a superb model for sustained and meaningful protest: the Idle No More movement.

Canada has a superb model for sustained and meaningful protest: the Idle No More movement. This loosely coordinated community empowerment effort, particularly in 2012-2013, involved hundreds of specific events and actions. They were peaceful, minimally disruptive, powerful, and surprisingly effective. Idle No More did a great deal to advance many local and national causes for Indigenous peoples in Canada. Relations with the police were respectful; in more than a few occasions, the officers joined in with the marchers and dancers and listened with interest to the speakers. Protest need

not go beyond legal boundaries to have a major political impact, to grab the public's attention, and to spark policy changes.

Protests will likely escalate in the coming years. Climate change and related environmental concerns have drawn together well-organized environmental non-governmental organizations, local activists, and concerned citizens from outside the immediate areas. Clashes between protestors, companies, workers, and community representatives are escalating, as seen with the many anti-pipeline protests. Social media adds an explosive element to these already intense situations.

Governments have struggled to find the safe line between a sustainable economy and changing environmental standards. They have also been reluctant to act, particularly when Indigenous people and their allies are involved. But Fairy Creek reveals a complexity that is far more commonplace on resource issues than the public understands. That the Government of British Columbia is actively considering a moratorium on old-growth logging and, province-wide, giving Indigenous communities more of a say in development shows that public pressure is having a political effect and that the government is prepared, at a minimum, to enter into co-management arrangements with First Nations.

Judge Thompson has set a fine and appropriate standard for the management of protests in Canada: requiring respect for the law and for the decisions of governments, balanced by the unalterable commitment to treating protestors with dignity and respect. Judge Thompson's ruling clearly defines the issues at hand. He obviously wanted to rule in favour of the company. He knew that the rule of law provided obvious guidance. But he was upset by the behaviour of the police, whose actions brought the broader legal process into disrepute. The moral high ground had shifted to the protestors, in large part because of police misbehaviour.

The importance of this issue to Canada is also evident. Canadians should expect that conflict will become more commonplace in an era of environmental concern and global uncertainty. People will protest public action and they will do so with passion and determination in many instances. Governments will be called to defend their policies and protect the interests of society at large. Police will be placed in awkward and often tense situations. But the rule of law, protected by the police and overseen by the courts, must remain a cornerstone of the democratic processes in Canada.

About the author



Ken S. Coates is MLI's Munk Senior Fellow in Aboriginal and Northern Canadian Issues. He is the Canada Research Chair in Regional Innovation in the Johnson-Shoyama Graduate School of Public Policy at the University of Saskatchewan. He has served at universities across Canada and at the University of Waikato (New Zealand), an institution known internationally for its work on Indigenous affairs.

He has also worked as a consultant for Indigenous groups and governments in Canada, New Zealand, and Australia as well as for the United Nations, companies, and think tanks. He has previously published on such topics as Arctic sovereignty,

Aboriginal rights in the Maritimes, northern treaty and land claims processes, regional economic development, and government strategies for working with Indigenous peoples in Canada. His book, *A Global History of Indigenous Peoples: Struggle and Survival*, offered a world history perspective on the issues facing Indigenous communities and governments. He was co-author of the Donner Prize winner for the best book on public policy in Canada, *Arctic Front: Defending Canada in the Far North*, and was short-listed for the same award for his earlier work, *The Marshall Decision and Aboriginal Rights in the Maritimes*.

Ken contributes regularly, through newspaper pieces and radio and television interviews, to contemporary discussions on northern, Indigenous, and technology related issues.

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