

Protests and Crackdowns

Key highlights of the review
of the right to protest in Québec

LDL



The *Ligue des droits et libertés* (LDL) is a non-profit, independent, and non-partisan organization based in Quebec, and affiliated with the Worldwide Human Rights Movement (FIDH). The LDL advocates for the protection and the advancement of all human rights recognized by the Universal Declaration of Human Rights.

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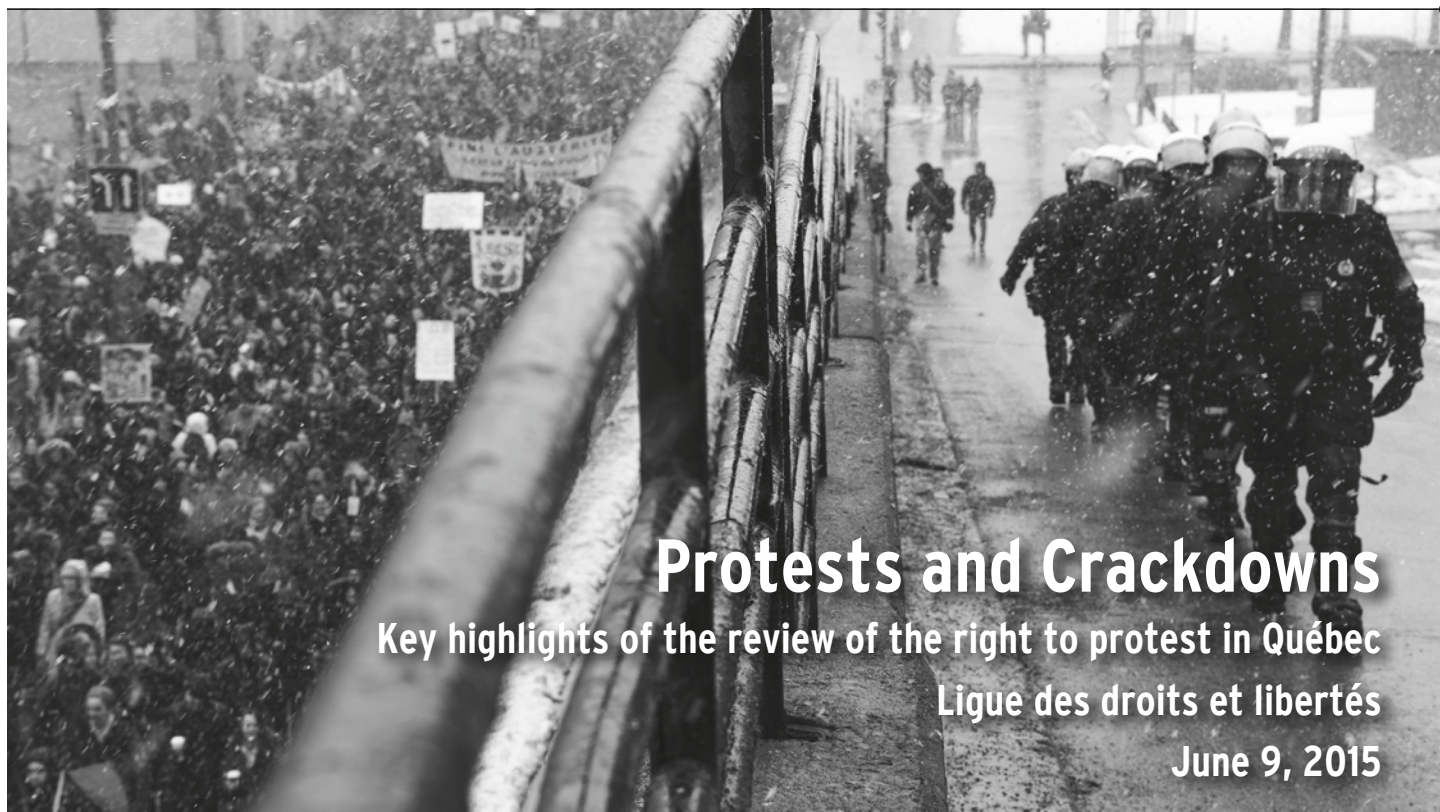


Photo : Isabelle Lévesque

Introduction

Protesting is an exercise of freedom of expression. Protesting is one of the principal means available to social groups, historically excluded from other channels and processes of institutional decision-making, to put forward their demands¹. An infringement of the right to protest is an attack on democracy.

Protesting is a constitutional right. In this sense, exercising this right should be neither limited nor regulated; the conditions for protesting should be neither dictated nor limited by political and police powers. If criminal acts are committed during a protest, they are susceptible to punishment, but these should not serve as a pretext for sanctioning the protest itself.

The undermining of the right to protest is not a new phenomenon; nor does it happen only under dictatorships and authoritarian regimes. In a democratic state, the repression of the right to protest re-emerges during political crises or during social movements contesting the established order. For example, in Quebec, the 60s, the 70s and the 90s saw the repression of social and political protests undertaken by separatist, union, student, and anti-globalization movements.

Since the student strike of 2012, there has been an intensification of political repression, with the proliferation of mass arrests and police brutality on a large scale. The *Commission populaire sur la répression politique* defines the political repression of social protests :

Political repression consists of any “state or private act intended to prevent, control, or constrain collective and non-institutional action, including its initiation.” Thus, political repression includes all methods that seek to increase the difficulty of mobilization and political activity or to reduce their benefits, including discourse in public and in the media². (*translation*)

The repression of the right to protest, which is a component of political repression, is multifaceted: it contains legislative, policing and judicial elements. Moreover, it is applied in discriminating ways since it specifically targets certain types of protests and certain categories of protesters. Due to its scale, this repression has major impacts on the persons and groups affected by it. Furthermore, the current political climate, which banalizes police abuse and violations of the constitutional right to protest, further reinforces the repression.

1. Marcos Ancelovici, « Rapport d'expertise pour la Ligue des droits et libertés : Les manifestations comme moyen d'expression politique » (*Expert report for the Ligue des droits et libertés : Protests as a medium of political expression*) (2013), online : <<http://liguedesdroits.ca/wp-content/fichiers/rapport-ancelovici-02-12-2013final.pdf>> at pp 5-6.

2. Commission populaire sur la répression politique, « *Présentation du projet* » (Presentation of the project), online : <<https://www.cprp.info/files/projetcprp-fr-v2014.pdf>>. This definition is based on the one developed by Jennifer Earl in “Political Repression: Iron Fists, Velvet Gloves, and Diffuse Control” (2011) *Annual Review of Sociology* 37 at pp 261-284.

The language used by politicians and transmitted by the media, condemning protests and equating protests with violence, is everywhere and has been met with little indignation. During the student strike of 2012, ministers of the Charest government did not shy away from loudly proclaiming that the red square (the symbol of the student protest) and those who wore it were synonymous with violence and intimidation. The current Minister of Education, François Blais, declared during the 2015 student strike that it would be a good idea to expel two or three students per day from their educational institutions. This type of message, transmitted by the politicians and the media, contributes to the banalization of repression, police brutality and the violation of the constitutional rights of the protesters, and thus makes them acceptable to the public.

In this context, the *Ligue des droits et libertés* (LDL) undertook to examine the exercise of the right to protest in Quebec since 2012. The LDL hopes that this review will reveal certain strategies for resisting the restrictions of the right to protest, and will contribute to restoring this right which is under attack.

The data used in this review originate from: surveys carried out by advocacy groups that organized or participated in protests, and from people who were arrested during protests; access to information requests submitted to different institutions from lawyers, researchers, and activists; and finally, from a daylong workshop and dialogue with key

actors. For more details on the methodology and a complete description of the data collected, you are invited to examine the extended version of this overview at the following URL: <http://liguedesdroits.ca/?p=2895>.

The following pages outline the key points:

1. Legislative tools for the repression of the right to protest;
2. Police repression of the right to protest;
3. Criminalization of social protest;
4. Mobilization of detained persons and strategies of legal challenges;
5. Impact on activist groups of the repression of the right to protest;
6. Strategies for reinforcing the right to protest.



Photo : Danik Laporte

1. LEGISLATIVE TOOLS FOR THE REPRESSION OF THE RIGHT TO PROTEST

In addition to using offences from the *Criminal Code* (CC) and the *Highway Safety Code* (HSC), police can make use of an impressive number of municipal by-laws to repress protesters.

These by-laws on peace and order, adopted during the 1960s and 1970s—some of which have been amended between 2007 and 2012 in response to the student movement—regulate and restrain the right to protest. They are generally vaguely worded and broad in scope. Many of the by-laws require obtaining a permit before a protest, without defining which authority will issue the permit or specifying the conditions for granting the permit. The vague and imprecise wording allows for a totally discretionary, if not arbitrary, exercise of power.

Some by-laws are more precise; in such cases, the requirements may be particularly difficult to respect. The City of Gatineau's by-laws³ are amongst the most repressive. In order to obtain a permit, the person who makes the application must undertake to respect the date, the time and the route specified in the authorization; must respect other conditions imposed by the police; must not use a loudspeaker or a megaphone unless expressly authorized; must collect all signs, flags, banners, and other publicity materials after the participants disperse; must respect every instruction of the police before and during the authorized activity; must set up and maintain in good condition all required signage; must assume liability for all damage caused during the activity to city property, to urban communication networks or to the property of others, and must obtain liability insurance of \$2,000,000.

In Montreal, the *By-law concerning the prevention of breaches of the peace, public order and safety, and the use of public property* (P-6), which created an offence of unlawful assembly, was adopted in its first version in 1969. Important amendments were made to this by-law in May 2012 at the height of the student strike. The exact location and the itinerary of a gathering, a march, or a gathering must be communicated to the authorities beforehand, and it is forbidden to wear a mask during a protest⁴. The fines for violating these rules are now a minimum of \$500 for the first offense.

In Quebec City, the *Règlement sur la paix et le bon ordre* (R.V.Q. 1091) was also amended in June 2012 during a special session of the City Council, just before the St. Jean-Baptiste Day celebrations and the student mobilization of June 22. A protest is illegal if the police have not been notified of the time, the location, and the itinerary of the protest, or if the

EXAMPLES OF REQUIREMENTS IN BY-LAWS

- **Personal information** about the protest organizers
- Obligation to provide **an itinerary** to the police
- **Banning of masks** at protests
- Respecting the **conditions imposed by the police**
- Obtaining **liability insurance**

itinerary announced is not respected. Furthermore, it is now forbidden to gather at a park or to be part of an assembly on the public domain between 11 pm and 5 am; thus, any attempt to re-launch a movement such as *Occupy* would be illegal.

There are many who are contesting the legitimacy and constitutional validity of such restrictions in the by-laws, since they violate the right to protest and to freedom of expression and peaceful assembly in an unjustifiable manner.



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Photo : Isabelle Lévesque

3. Two Gatineau by-laws: the *Règlement concernant le maintien de la paix publique et du bon ordre sur le territoire de la ville de Gatineau* (By-law 42-2003) and the *Règlement concernant la circulation et le stationnement dans les limites de la ville de Gatineau* (By-law 300-2006).

4. Additionally, wearing a mask is explicitly banned by by-laws in Alma, Clermont, La Malbaie and Shawinigan.

2. POLICE REPRESSION OF THE RIGHT TO PROTEST

A. Recurring instances of abusive arrests

Police repression manifests itself in different ways: through mass and abusive arrests; the use of many kinds of weapons, and by physical and psychological brutality. This repression aims to stop protests and to silence social movements. Based on our own data collection—the police do not publish statistics on this subject—we can list 5,895 arrests during 185 protests or other actions which took place between March 15, 2011 and December 8, 2014. This type of police intervention has continued unabated, as we have identified 1006 arrests in Montreal and Quebec City between March 15 and May 1 of 2015.

During the period examined, there were 46 mass arrests, as well as 9 more mass arrests from March 15 to May 1, 2015. Mass arrests are cases where protesters are first encircled and trapped (kettled), and then handcuffed, filmed, detained on buses and eventually released.

Number of arrests in Quebec between March 15, 2011 and December 8, 2014

5,895 arrests during 185 activities

- 281 in 2011
- 3,636 in 2012
- 1,539 in 2013
- 439 in 2014

B. The “neutralization” approach and the use of dangerous weapons

Mass arrests, which sometimes take place even before the demonstration has started, and the kind of police repression which typically accompanies them are characteristic of a crowd control approach referred to as “strategic neutralization”. These tactics target social movements that are judged to be radical, including anti-globalization, anti-colonial, and anti-capitalist movements as well as the student movement. This crowd control approach distinguishes itself from the “negotiated management” model, developed during



Photo : Dylan Schaub

the 1970s which emphasized dialogue with protestors and a flexible application of the law⁵.

The prevailing police approach since the 1990s has consisted of rapidly neutralizing the capacity of groups to mobilize. This model is characterised not only by the use of mass arrests, but also by the use of surveillance and infiltration techniques.

Police forces in Quebec make use of a vast arsenal of crowd control tools, including intermediary, non-projectile devices (batons, shields, sound grenades), projectiles (plastic and rubber bullets) and chemical weapons (tear gas and pepper spray). The use of these weapons, which is becoming increasingly frequent, is evidence of a growing militarization of police forces.

Mass arrests between March 15 2011 and December 8 2014

City

- Montréal : 27
- Québec : 8
- Sherbrooke : 5
- Gatineau : 2
- Victoriaville : 2
- Alma : 1
- Sainte-Thérèse : 1

Theme

- Student 76%
- Anti-capitalist 11%
- Police Brutality 9%
- Other 4%
(environmental,
anti-colonialist,
against P-6)

5. Francis Dupuis-Déri, “Émergence de la notion de “profilage politique”: répression policière et mouvements sociaux au Québec” (2014) *Politique et Sociétés*, 33 : 3, at p. 33. See the bibliography for other authors who have participated in the development of these concepts.

Intermediate Impact Projectile Weapon (IIPW)



ARWEN-37 launcher (Anti-Riot Weapon Enfield) used to launch 37mm projectiles.

Chemical Weapon



Skat Shell 37mm CS produced by Safariland, used with a 37mm gun, which launches five metal capsules of CS tear gas into a crowd.

Intermediate Impact Projectile Weapons (IIPW), deployed most often against a barricaded person or in hostage situations⁶, were first used at the demonstrations during the 2001 Summit of the Americas in Quebec City. The Arwen (Anti-Riot Weapon Enfield) gun was originally designed as a grenade launcher, but has been adapted for use with other projectiles, such as rubber and plastic bullets.

According to a 2005 report recently made public from the École nationale de police du Québec (ÉNPQ)⁷, a police agent is not to use an IIPW other than for self-protection or to protect another person from an immediate threat of death or serious injury. Thus, it is not acceptable to use such a weapon for general crowd control or to protect property.

The use of these weapons is not regulated in Quebec police forces⁸, which results in investigations of police ethics complaints regarding their abusive or unjustified use being frequently concluded with no finding of responsibility⁹. And yet these weapons, when used at protests, have caused many injuries, including in some cases permanent physical harm, such as loss of an eye, injury to the jaw or serious head trauma.

Cayenne pepper spray and CS tear gas canisters are the two chemical weapons most frequently used by the police at protests since 2012. As an example, in the case of the Victoriaville protests, 252 gas grenades and other chemical irritant capsules were launched against demonstrators in a period of just a few hours¹⁰.

The large scale use of chemical weapons often forces crowds of several hundred to disperse rapidly, preventing the demonstration from taking place. These weapons also have the ability to cause serious injury, as demonstrated by the example of a student who was hit directly in the face with part of a tear gas canister on March 25, 2015¹¹.

Internal employee training documents of the SPVM related to chemical weapons also recognize the risks associated with the use of these weapons. In one of these documents, the following is stated with regard to the Skat Shell 37mm CS: "Despite the fact that the projectile does not have a large penetration force, it can cause serious injury and death if fired at an individual. Because this pyrotechnic device splits into five pieces, the risk of fire is also increased [...]"¹². (*translation*)

The ÉNPQ report cited earlier mentions, for its part, that the guiding principle underlying crowd control intervention is that "only the individual who represents a danger should be

6. Centre d'intégration et de diffusion de la recherche en activités policières, "Les armes intermédiaires d'impact à projectiles et leur utilisation en contexte de contrôle de foule", rapport de recherche de l'école nationale de police, Québec (2005), at p 32 [ÉNPQ Report].

7. Ibid.

8. Ibid., at p 32 "We tried, at first, to see what regulatory tools governed the use of intermediate weapons in some large police forces. We could not but notice the absence of any such regulations at these police departments. A letter sent by the École nationale de police du Québec to seven police organisations * allowed us to conclude that these organizations had not given themselves any regulatory framework on police activities using Intermediate Impact Projectile Weapons (IIPW)"

*Sûreté du Québec, (Quebec Provincial Police), Montréal (SPVM), SM Gatineau, SM Québec, SM Laval, SM Sherbrooke and SM Longueuil

9. For example: Commissaire à la déontologie policière c Iacovone, 2014 QCCDP 22 (CanLII), online : <<http://canlii.ca/t/g6k6h>>.

10. Commission spéciale d'examen des événements du printemps étudiant de 2012, Final report, Québec (March 2014), at p 272.

11. "La manifestante blessée par un policier réclame excuses et dédommagement, Radio-Canada (2015-04-08), online <http://ici.radio-canada.ca/regions/quebec/2015/04/08/005-mise-en-demeure-naomie-tremblay-trudeau-blessurelemaire.shtml>>. The abusive use of Cayenne pepper spray or tear gas rarely results in sanction. See for example the case of SPVM Officer 728, who was absolved of all criminal responsibility for her abusive use of pepper spray on May 20, 2012.

12. SPVM, "Programme de formation. Préposés aux irritants chimiques", internal training document, Montréal (2009-06-05), at p 31. This document was obtained in May 2015 as a result of an access to information request to the SPVM.

the object of the action”¹³. (*translation*) However, contrary to this basic principle, intermediate impact projectile weapons and chemical weapons are used indiscriminately to disperse crowds.

C. Political Profiling

It is impossible to establish a direct correlation between the non-disclosure of a demonstration’s itinerary and the fact that it became the object of a repressive police intervention. Some demonstrations where the itinerary was not provided to police, and therefore illegal according to the municipal bylaws, were nevertheless tolerated while others were subject to repression by police. In Montreal, for example, dozens of demonstrations where no itinerary was provided to the police took place in 2013 and 2014. In this two year span, 23 demonstrations without an itinerary were repressed using weapons, individual arrests or kettling, sometimes even before the demonstration began. In contrast, 116 demonstrations without itineraries on issues dealing with housing, the postal service, employment insurance, women’s rights, and the Charter of Values proceeded without incident.

This data demonstrate that a substantial number of demonstrations take place every year without having provided an itinerary, belying the political myth advanced by the police that the provision of an itinerary is an absolute necessity.

While it may be impossible to make a link between the provision of an itinerary and police repression, it is nevertheless possible to draw a link between this repression and the types of protestors and the themes of the protests.



Photo : Dylan Schaub

In most cases, the protests repressed by police intervention and where mass arrests took place dealt with student cause, with opposition to police impunity and brutality, or with environmental, anti-capitalist, and anti-colonialist causes. These are the categories of protest in which youth, or students, or anarchists, or people assumed to belong to these groups, participate.

In some cases, such as on the eve of demonstrations opposing police brutality, the police announce their intention to stop the protest well in advance. Typically the justifications given, such as the non-provision of an itinerary or the presence of protesters whose faces are not completely visible, are simply pretexts to preemptively put an end to the protest¹⁴.

It is appropriate here to talk about the discriminatory profiling facing certain activists based on their political convictions, either real or presumed, and which lead to differential treatment by the police, compared to the treatment of citizens at large. This differentiated application of the rules in respect to certain groups, on the basis of political issues and the identity of the organizers is precisely the definition of political profiling:

Political profiling is any action taken by those in positions of authority toward a person, or groups of people, for reasons of security, safety, or public protection, which is based on factors such as their political convictions, their allegiance to a political cause or group, or participation in certain political activities, in the absence of any real cause or reasonable suspicion, which has the effect of exposing that person toward differential treatment¹⁵. (*translation*)

The absence of an itinerary: a pretext for repression

The example of the City of Montréal in 2013 and 2014*

	Demonstrations With an itinerary	Demonstrations Without an itinerary that were tolerated	Demonstrations Without an itinerary that were repressed
2013	64	56	16
2014	70	60	7

*This compilation contains data from the SPVM, obtained by access to information requests, and from the Collective Opposed to Police Brutality (COBP) and accessible on their website. <https://cobp.resist.ca>

14. May 5, 2015, in an interview on the Radio-Canada program “15-18”, SPVM spokesperson Ian Lafrenière affirmed that the police had a “toolkit” which included P-6, the *Criminal Code* and the Highway Safety Code. “P-6 is one of our tools. It depends on the demonstration.” (*translation*)

15. Francis Dupuis-Déri, *supra* note 5, at pp 43-44. See also the comments of Céline Bellot in Marie-Andrée Chouinard’s article “Manifs à géométrie variable”, *Le Devoir* (April 4 2015), online : <<http://www.ledevoir.com/societe/actualites-en-societe/436429/profilage-politique-manifs-a-geometrie-variable>>.

13. ÉNPQ Report, *supra* note 6, at p 18.

“In any case, the reaction from the police is unpredictable and arbitrary, whether the itinerary is announced or not. It is much easier to make a link between repression and the subject of the demonstration, rather than whether or not the itinerary is known.” (translation)

– Response from a women’s rights organization

3. THE CRIMINALIZATION OF SOCIAL PROTEST

In addition to putting an end to demonstrations, this police repression leads to the criminalization of social protest. Many individuals have been accused under municipal by-laws, the *Highway Safety Code*, or the *Criminal Code* simply for participating in a demonstration. Out of 5,895 arrests which took place during demonstrations, 56.5% were under Montreal By-law P-6, 21% under the *Highway Safety Code*, 13.5% under the *Criminal Code*, and 9% under other municipal by-laws or for reasons not evident in the data.

In Montreal, since the amendments to By-law P-6 in May 2012, the police have most frequently used sections 2 (unlawful assembly) and 2.1 (itinerary) of the by-law to stop demonstrations, notably during mass arrests. Article 500.1 of the *Highway Safety Code* has predominantly been used during arrests related to blocking streets, for the arrest of small groups or of individuals. Since the beginning of 2015, the declarations of a demonstration’s illegality continue to be based on By-law P-6, but the charges now typically mention section 6 of the by-law (refusal to follow the order of a peace officer) and, in certain cases, the *Highway Safety Code*, the *Criminal Code*, or article 5 of the City of Montreal’s By-law P-1 (another by-law concerning peace and order on the public domain).

CHARGES

- **56,5%** under the City of Montreal’s **By-law P-6**
- **21%** under the **Highway Safety Code**
- **13,5%** under the **Criminal Code**
- **9%** under other municipal by-laws or unknown

In Quebec City, Gatineau and Sherbrooke, the majority of arrests were under the *Highway Safety Code*¹⁶.

Some demonstrators in each of these cities have also received tickets for “incivilities” such as “having emitted an audible noise”, “having driven a bicycle and failed to stop at a red light”, or “having urinated in a public space”¹⁷.

Criminal accusations of obstructing the work of the police, of assault and of mischief were often brought against those arrested individually during demonstrations, blockages and occupations. In rarer cases, criminal charges were laid against demonstrators in a mass arrest¹⁸. Section 31 of the *Criminal Code*¹⁹ has also been used in arrests for persons “about to join in... the breach of the peace” when buses were intercepted going to or returning from demonstrations and during the Montreal F1 Grand Prix in June 2012. 24 people were also preventatively arrested during a student protest on March 24, 2015. This section does not involve a criminal charge.

In this manner, the police do not hesitate to make use of - and sometimes knowingly abuse - certain municipal by-laws, sections of the *Highway Safety Code*, and preventative detention for apprehended “breach of the peace” to suppress and criminalize collective expression and social contestation.



Photo : Mario Jean / MADOC

16. In Québec City, several arrests of individuals in 2013 and a mass arrest in 2015 were under section 19.2 of the *Règlement sur la paix et le bon ordre de la ville de Québec*, R.V.Q. 1091.

17. This last technique was used to penalize demonstrators who had been detained for several hours and for whom access to a bathroom was refused.

18. This was used during the occupation of the cafeteria at the Université du Québec, April 19 2012, during the blockade of the Jacques-Cartier Bridge on May 15, 2012 and the May 1st 2015 anti-capitalist demonstration.

19. Section 31 of the *Criminal Code* permits a police officer who witnesses a breach of the peace to arrest any person whom he finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace.

4. MOBILIZATION OF DETAINED PERSONS AND STRATEGIES FOR LEGAL CHALLENGES

The authorities dragged protesters before the courts, but the protesters kept them there. The law is both an instrument of those in power and an instrument to take back power. According to Guy Rocher, the law, as an instrument of power, constitutes the basis of domination and the ability to coerce and to punish. At the same time, the law, as an instrument of power, can also be used by social movements to oppose that domination. The demonstrators and their representatives therefore had to mobilize in order to defend themselves in court following their arrests. They also used the law and legal procedures as tools for struggle and contestation.

A. Defence against the charges

Hundreds of people challenged their charges in court. Many formed groups to combine their forces against the judicial system, and many others chose to represent themselves before the courts. Several activist groups were formed to support individuals who had been arrested, such as legal committees, the legal clinic staffed by and for activists called Contempt of Court (in Montreal), and a Wiki platform for those arrested. Fundraising activities were also organized by activist groups and arrested individuals to cover the costs of their defense.

A group of individuals representing themselves was the first to achieve a legal victory against By-law P-6, a dismissal of the charges under section 2.1 which led to their acquittal²⁰. Subsequently, this judgement resulted in a City of Montreal directive to withdraw charges for all tickets issued under sections 2 and 2.1 of By-law P-6.

We estimate that approximately 83%²¹ of tickets issued in Montreal under By-law P-6 between 2012 and 2014 resulted in acquittals, halted procedures for unreasonable delay²², charges withdrawn on the basis of insufficient evidence, or were dropped following the directive issued by the City of Montreal following the *Thibeault Jolin* judgment.

While the vast majority of these charges have been dropped, it remains that certain demonstrations did not take place, or ended abruptly, and that hundreds of demonstrators

Withdrawal of charges, acquittals, and stays of proceedings

83% of tickets issued under By-law P-6 between 2012 and 2014 have resulted in a **stay of procedures, withdrawn charges or acquittals**.

This situation parallels what took place at the Toronto G20 in 2010, where 95% of the 1140 people arrested were never accused or were never found guilty.

were arrested, searched, identified, and detained for countless hours in conditions that were frequently humiliating and punitive. They were accused without cause, sometimes with release conditions that prevented their further political participation. Defending oneself before the courts is an expensive process in terms of time, resources, and emotional investment, even when it ends in an acquittal or a withdrawal of charges which might occur months, or even years later.

This situation is in many ways similar to the G20 in Toronto in June 2010, where, eventually, 95% of the 1140 people who were arrested were not charged, or saw their charges dropped, withdrawn or suspended, or underwent alternative procedures to the criminal justice system²³. We can conclude that a large number of the arrests made during these demonstrations are made without basis, motivated by a desire to put an end to the demonstrations and to discourage social protest movements²⁴.

Despite the effect of the judicial proceedings which individualizes the events and isolates those affected, the resistance in front of the courts was collective and characterized by solidarity. This solidarity gave strength to the activist community to go on the offensive.

B. Taking the offensive

As well as defending themselves against individual charges, activists used various institutional and judicial platforms to contest, to denounce, to demand compensation and to assert their rights.

They have thus challenged the constitutionality of the municipal by-laws of both Montreal and Quebec City, as well as the use of section 500.1 of the *Highway Safety Code* which restricts the right to demonstrate. Judicial decisions are pending in these cases.

20. Montréal (Ville de) c. Thibeault Jolin, 2015 QCCM 14 (CanLII), online: <<http://canlii.ca/t/gg7tm>>.

21. This number was determined based on the number of tickets issued under By-law P-6 between 2012 and 2014, obtained through an access to information request to the SPVM, in addition to available information related to the number of acquittals, withdrawn charges, and stays of procedures for the same period, drawn from reports from activists, lawyers representing the arrested groups, and newspaper articles.

22. Montréal (Ville de) c. Beaugard et al., 2014 QCCM 259 (CanLII), online: <<http://canlii.ca/t/gf708>>.

23. Ontario, Ministry of the Attorney General, "Update On G20 Prosecutions" online: <http://www.attorneygeneral.jus.gov.on.ca/english/g20_case_update.asp>.

24. Me Natacha Binsse-Masse, Étude présentée dans le cadre du Programme de contestation judiciaire, 2007-12-22 (unpublished).

Hundreds of protesters have launched class actions in Montreal, Quebec City and Gatineau against police departments and the municipalities seeking compensation for the violation of their constitutional rights. Between March 15, 2011 and the present, 20 class actions have been filed and 9 have already been authorized. The alleged violations of rights in all cases are more or less the same, including unlawful arrest, abusive detention and search, violation of the right to counsel, undermining of the freedom, safety and dignity of the individual, interference with freedom of expression and peaceful assembly. Some people have also filed individual lawsuits for damages claiming physical injury, moral damages, and political profiling.

Likewise, as of March 19, 2015, the Commissioner of Police Ethics had received 216 complaints in 2012 and 12 in 2013. Of these, 78 were terminated at the conciliation stage and 62 cases have been closed for various reasons which include lack of evidence, failure to identify the police officers involved, a complaint not related to conduct or not constituting a breach of the Code of ethics of Québec police officers. In sum, 88 investigations have been conducted and, to date, only 21 complaints have been reviewed by the Committee for Police Ethics, which has issued four decisions, two of which found police misconduct and two in which the officer was acquitted. This lengthy process is therefore not efficient for demonstrators seeking to have the abusive conduct of police recognized.

As well, individuals arrested in 2012 and 2013 have acted together, with the support of the *Ligue des droits et libertés* (Quebec section), the LDL, or the *Réseau québécois des groupes écologistes* (RQGE), to bring complaints of discrimination before the *Commission des droits de la personne et des droits de la jeunesse* (CDPDJ). The plaintiffs allege that the differential application of municipal by-laws or the *Highway Safety Code* has been abusive and constitutes political profiling.

THE JUDICIAL OFFENSIVE

Constitutional challenges to municipal by-laws and section 500.1 of the *Highway Safety Code*

20 class actions

10 individual actions seeking damages

Numerous ethics complaints

3 complaints to the *Commission des droits de la personne et des droits de la jeunesse*



Photo : Isabelle Lévesque

5. IMPACT ON ACTIVIST GROUPS OF THE REPRESSION OF THE RIGHT TO PROTEST

Beyond the impacts experienced by demonstrators who have been brutalised, arrested and turned over to the judicial system, we wanted to know the effects of the repression of the right to demonstrate on activist groups that organize or participate in demonstrations in public spaces in Quebec. Thirty groups, from several Quebec regions, having differing political perspectives, responded to our questions.

Requirements set out in by-laws, such as the obligation to disclose the route to be taken, to demonstrate with one's face visible, to take out civil-liability insurance or to obtain a permit to demonstrate within some municipalities all constitute limitations on the right to demonstrate.

A. The disclosure of the route

The duty to disclose the itinerary of a protest is a major constraint for most of the groups surveyed, but they are divided about the decision on whether to disclose or not. For political reasons, 17 groups refuse to do so all or most of the time. The groups involved in housing law, the rights of the unemployed and those who question the power structures almost unanimously refuse to provide a disclosure. They have made a choice which conforms to their understanding of the right to demonstrate freely, to act in solidarity with other groups that do not disclose itineraries, to prevent their demonstrations from becoming "parades encircled by the police" or because they do not trust the police.

On the other hand, 11 groups have chosen to disclose their itinerary, all or most of the time, for reasons that are often more pragmatic than political: to ensure safety, to avoid repression, arrests and demobilization of their members, or to preserve their charitable status which is an important element of their funding.

The decision to disclose their itinerary or not has created internal conflicts in about a dozen groups, often taking the form of continual debate since 2012. This consumes much



Photo : Isabelle Lévesque

time and energy that the groups would prefer to invest in their political activities; as well it creates divisions between those members in favour and those against the disclosure of the route.

When groups jointly organize events with others, the decision may become a major “bone of contention” even reaching paralyzing effects.

Despite these differences of views between groups and within them, the vast majority of groups are in agreement with the call for the abolition of this regulatory requirement that gives the police an abusive discretionary power which becomes a tool for the repression of social protest.

To disclose the itinerary or not?

(results of the survey of activist groups)

17 groups refuse to disclose their itinerary to police all or most of the time

11 groups disclose their itinerary to police all or most of the time

A large majority of groups, including those who choose to disclose their itinerary, believe that **this requirement should be abolished**

may deploy a massive and disproportionate number of officers (which in itself is an intimidation tactic which can deter or prevent people from physically reaching the gathering point for an event); they may threaten to arrest targeted activists or the event organizers.

The different responsibilities that fall upon the organizers of an event since the adoption of the new by-laws constitute significant impediments. For example, they must contact and negotiate with the police and face threats that they will be held responsible for the conduct of the demonstration. They may also be asked to play the role of “moral police” vis-à-vis the demonstrators. Furthermore, when there are arrests, they assume the additional responsibility for supporting those who have been arrested and for fundraising for their legal defence

According to the groups who responded to the survey, these crackdowns have an effect on mobilization, including deterring people who would otherwise take part in collective action in the public space. In some cases, the deterrent effect is directly related to the requirements of the by-laws; e.g. the obligation to demonstrate openly discourages unemployed job seekers who fear being identified by a future employer. In other cases, the deterring effect is due to a combination of factors related to police behaviour and the fear that this generates. Many people will participate less in demonstrations or other types of actions for fear of being jostled and abused by police, of being surrounded and arrested, of acquiring a criminal record or having to pay high fines.

Despite the repression, mobilization continues. Most of the groups surveyed continue to demonstrate and are developing strategies to deal with the repression.

B. Other forms of control

Groups from different municipalities have denounced the fact that the police interpret and apply the by-law requirements arbitrarily. In some situations, police exercise control by exploiting the protesters’ lack of legal information. This control takes different forms: for example, the police may require that a demonstration stay on the sidewalk; they may change an agreed-upon route without notice; they may refuse to ensure the safety of protesters in regards to traffic; they



Photo : André Query

6. STRATEGIES FOR STRENGTHENING THE EXERCISE OF THE RIGHT TO DEMONSTRATE

The scale and brutality of the repression of which certain protest groups are victims are not without consequences: the activists must devote much energy to defending themselves, to using the courts as an instrument of struggle and protest; they must support each other, continue their mobilizations and convince people who are reluctant to take part in events to join in.

The right to protest is being undermined and, to deal with this, the vast majority of individuals and groups who were consulted agree on the need to pursue various types of activities and strategies to improve the state of right to protest and, more generally, the conditions for mobilization in the public domain.

From the perspective of political actions, the most common demand from the groups is for the repeal of the various anti-demonstration by-laws. However, as the political class is giving no sign of moving in that direction, and considering also that the demonstration has been an important tool in the history of Québec to advance social causes, it is clear for the vast majority of activists that mobilizations must continue and that protesters must take to the streets to defy those by-laws which foster profiling and political repression. For many groups, the issue of profiling is fundamental and must be denounced.

In this regard, the issue of police impunity remains a serious issue; the establishment of an independent investigation mechanism with authority to initiate investigations of police actions, including systemic analyses, must continue to be the

subject of mobilizations. This issue will also be submitted to the UN Human Rights Committee in June 2015 as part of the review of Canada's commitments to civil and political rights.

From the perspective of ongoing militant activities, "citizen" surveillance teams have been established during demonstrations to document cases of brutality and police violence and practices of political profiling. There are also plans to continue efforts to inform the public so that the right to protest once again becomes a real right, formally recognized and protected.

On the legal front, actions must continue before the courts to present a collective defence against the tickets for violation of the by-laws, to contest the constitutionality of the anti-protest measures and to achieve definitive recognition that the right to demonstrate is an integral part of freedom of expression. The struggle, thus, is also a legal one. From this perspective, one hopes that the issue of political profiling becomes a key element in the defence trials and in the class action lawsuits.

CONCLUSION

The repression of social and political protest in Quebec is assuming alarming proportions. Police forces in Quebec have an arsenal of crowd control weapons that they use with impunity to put an end to demonstrations. These weapons constitute dangers to the lives and the physical integrity of demonstrators: their use must stop. The police also have a diverse anti-demonstration legislative arsenal; they carry out mass arrests based on the political beliefs of the demonstrators and the prejudices they have towards them; this constitutes political profiling.

In the course of 185 demonstrations or other actions, 5895 people have been subject to judicial procedures between March 15, 2011 and December 8, 2014 under various municipal by-laws, the provincial *Highway Safety Code* and the federal *Criminal Code*. The issuing of thousands of tickets and criminal charges has been followed by withdrawals of charges, acquittals or stays of procedures. This happened to 83% of the tickets handed out under By-law P-6 in Montreal. Yet the police continue to make mass arrests, targeting the groups doing the most protesting, without fear of being sanctioned.

With the endorsement of the political class, which is transmitted by the media, the police continue to repress social and political protest movements that they find upsetting. The indifference towards police abuse and the trivialisation of violations of the human rights of demonstrators are increasingly worrying.

In recent years the protesters, the activist groups and their allies have denounced and defied repression and continue to do so. They fight it on several fronts: by being present in the courts and in public spaces, but especially by continuing, collectively, to take back the street.

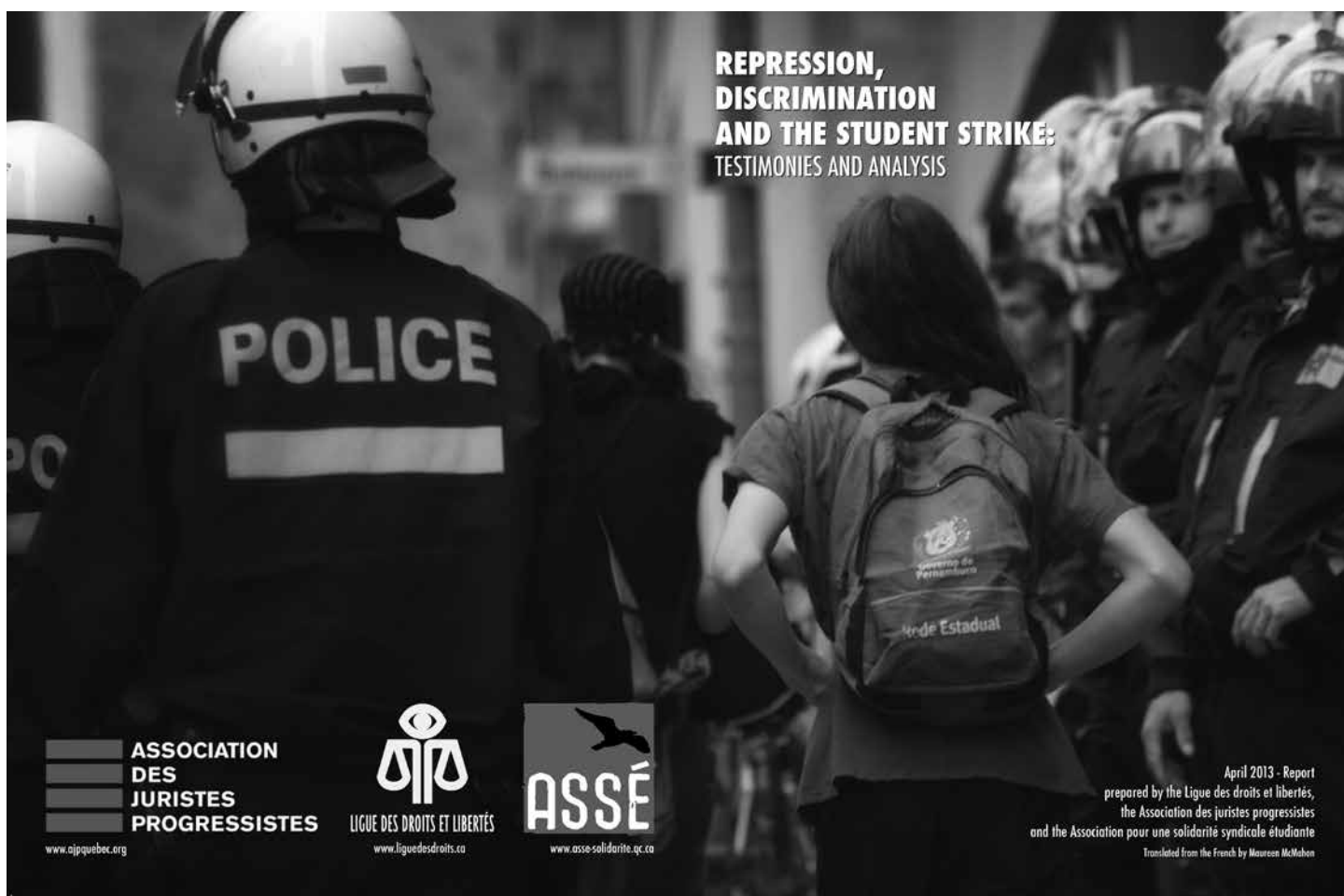


Photo : André Query

We invite you to read the report “Repression, Discrimination and the Student Strike: Testimonies and Analysis,” published in 2013 by the *Ligue des droits et libertés*, l’*Association des juristes progressistes* and l’*Association pour une solidarité syndicale étudiante*.

This report presents a startling portrait of the violations of rights that took place during the Quebec student strike of 2012.

<http://liguedesdroits.ca/wp-content/fichiers/repression-report-2012-final-web.pdf>



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