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Protester's Guide to Arrests, Court and Custody in BC

"I'm grateful we tried." Kate Dibiasky,
Jennifer Lawrence's character
in *Don't Look Up*



**Brunette River 6: (left to right) Zain Haq, Janette McIntosh, Catherine Hembling,
Ruth Walmsley, Tim Takaro, Bill Winder. Photo by Cynthia Lee.**

"I would be ashamed, on my deathbed, if I had spent the last years of my life sitting on the sidelines, closing my eyes, merely amusing myself, and doing nothing to stop this monstrous pipeline expansion pouring carbon into the Earth's atmosphere." Catherine Hembling

"My heart breaks with the knowledge of the damage which has already been done, for the lives we can never bring back. I grieve the reality that life as we have known it is not something my children and future generations can be assured of. I ask you to look into the future, and consider how the choices we are making today will be judged seven generations from now." Ruth Walmsley

"Justice requires questioning whether the rules themselves are just. Justice requires fairness, inclusion, compassion and understanding. Justice requires the recognition of power and resource imbalances between ordinary people and big corporations. Justice requires everything that was absent from the Trans Mountain expansion decision: Truth was not told fully, and this has compromised justice and democracy. This deficient process enables politicians and Trans Mountain to act above the law, with impunity." Janette McIntosh

"I am not motivated much by hope. I am telling the truth about the urgency of the climate catastrophe because I am doing my duty. If you hope to see impact, you will burn out. Instead, I remember that this is the last chance to have a habitable planet. If I get arrested, it is not the end of the world. The end of the world is the end of the world." Zain Haq

"Fossil fuel companies have lied to the public, manipulated governments and public opinion and knowingly geo-engineered the Earth in a way they knew would kill. No rule of law stopped corporations from putting profit over planet. Injunctions are being used now by corporations to protect their interests. No injunction protects the victims of climate breakdown." Bill Winder

"The climate risks of burning the fuel that will be transported by this pipeline were disallowed in the approval process. The health risks from the pipeline and the health impacts of added emissions adding to climate change were ignored. As a public health physician, my duty is to protect public health, and that is why I am compelled to block the project. COVID-19 has shown us that we can respond to a health emergency with incredible strength by citizens and government. We've known that we must transform our energy system for decades and now is the time to bounce back better from COVID-19 by phasing out fossil energy sources. The pipeline is not in the national interest and will harm the planet. Future generations depend upon us to do the right thing now, and spend our money on the future, not the past." Dr. Tim Takaro

Background

The Brunette River Six are six climate activists who breached the Trans Mountain Pipeline Expansion (TMX) project injunction and were arrested at the Brunette River TMX construction site in the fall and winter of 2021. This document describes our experience with the arrest, the court and custody, and what we learned about the justice system. It also builds on the experience of previous arrestees who kindly shared their experience with us. We hope it will serve those who may be arrested at other climate and environmental protests in BC: Fairy Creek, XR's protests, Indigenous land defenders, and others.

Ruth Walmsley's [Guide to the Alouette Correctional Centre for Women](#) collects the experiences of her and her sister inmates, Catherine Hembling and Janette McInstosh, during their stay at Alouette in February 2022. William Offley's [Guide to North Fraser Pretrial Centre](#) documents his pre-COVID 2019 experience. Bill Winder and Zain Haq annotated Will Offley's text with their stay in February 2022. Others have preceded us on the same path of arrest, court and custody:

- Earle Peach's [Notes from North Fraser Pretrial](#)
- Emilie Teresa Smith's [Letters from Alouette](#)
- Rita Wong's [Lessons from Prison](#) (Alouette)
- [Arrest Stories](#) (interviews)

Although we are speaking almost exclusively about breaches due to the TMX injunction, some of our remarks may apply generally. Obviously, we are not lawyers: You must confirm any legal matter with your lawyer.

It is also important to note that our experiences in custody, and to some extent our court experiences, were affected to different degrees by COVID restrictions.

The Arrest

Getting arrested is a personal choice, but it has effects on those around you as well. Consider what it means to be absent from home for an extended period of time, for you and for those around you. Arrest is one tactic; there are others that may be just as effective in opposing the climate destroying policies of the government.

The Charges

Criminal Contempt of Court is legalese for public (criminal) non-compliance (contempt) with a court order. The Crown will try to prove that your action was both public and knowingly in violation of the order. If the Crown fails in either of these, you will be found not guilty at trial. Some arrests have been dropped because elements of the evidence were not airtight. Only a good lawyer will know how airtight their evidence is in your case. So far, Burnaby RCMP have been very good at collecting airtight evidence.

Criminal Contempt of Court is a civil offence. You will not have a criminal record and Justice Affleck has instructed the court to keep all records at the court. In other words, your record on

this matter will not be shared with border or immigration services. (We do not have a reference for that order.)

- The TMX injunction states: “[6] Any police officer is hereby authorised to arrest and remove any person who the police officer has reasonable and probable grounds to believe is contravening or knowingly has contravened the provisions of this Order. For the sake of clarity, such police officer retains his or her operational discretion as to whether or not to arrest or remove any person pursuant to this Order.”
- All the other indications about how the police are to act are recommendations, not restrictions on their action. The 5-step process is qualified by “Without limiting paragraphs 6 or 10 of this Order”, which means that [6] is the only necessary step. (This is an interpretation: Confirm with a lawyer!)

The Undertaking

At the time of your arrest, you will be asked to sign an *Undertaking*. The Undertaking is your pledge to not reoffend. If you sign the undertaking, you will be released. If you don't sign the undertaking, you will be detained in a local jail. The Undertaking includes a *disclosure date*, which is the date and time of your first court appearance.

The Court

[Addressing the court](#). When the judge enters the courtroom, the courtroom stands and the judge bows perfunctorily and the Crown bows. Old school RCMP bow on arriving and leaving the courtroom.

COVID restrictions limited the courtroom audience to about eight masked people. In the past, very large audiences were possible.

Lawyers and Self-Representation

- If you retain a lawyer, the court will only communicate with your lawyer. You will have to count on your lawyer to keep you informed about how your case is proceeding.
- Self-representation is a viable option in the case of the TMX injunction charges because there have been so many other cases that can serve as models for your defence.
- A general recommendation is to at least consult with a lawyer. It is best to find someone who has experience with breaches of an injunction. Injunctions are not the ordinary fare of lawyers.
- If unrepresented, you have the right to an assistant, (i.e., a “Buddy”) in the courtroom. They should not speak. They may or may not be allowed to sit beside you in the prisoner's dock, at the discretion of the judge. (So far, buddy requests have been granted.)

Court Dates

Disclosure date

In court, you will receive the *Disclosure*. It is the Crown's evidence against you (though the Crown can add other items any time) and the Crown's initial sentencing position - the sentence the Crown will be asking the judge to impose.

- This is your first appearance in Court and the date is given in the Undertaking (see above).
- For breaching the TMX injunction, the Disclosure came on a memory stick and included video as well as a PDF. Your public statements can be part of the Disclosure since they indicate how public your breach was, such as to what degree you were encouraging others to offend.
- The judge will ask “How would you like to proceed?”. You will answer: “I would like to consider my options after reading the Disclosure.”
- Go through the documents carefully; there have been corrupt electronic documents in the Disclosure. You can email or phone the Crown and request them to correct anything you find ambiguous.
- A court date will be set (often months later) for the next stage: pleading.

Pleading date

You can either plead guilty or not guilty.

You can contact the Crown (email, phone or letter) any time before the pleading date. On the pleading date, you will be asked to plead guilty or not guilty. If you plead not guilty, a trial date will be set.

If you decide to plead guilty and let the Crown know before the pleading date, the **pleading date will be turned into a sentencing date as well**. A guilty plea is final: **You cannot reverse a guilty plea**.

- You will be asked to plead before the Crown presents the “agreed statement of facts” about your offence.
- If you plead guilty, you can still challenge or add to the agreed statement of facts that the Crown will present after your guilty plea. Generally, that statement is a short version of your Disclosure. If you have challenged an item of the Disclosure before the pleading date, the Crown may write up an agreed statement of facts before the pleading date and ask you to sign it. A written statement is an exception, however.
- The defendant can negotiate with the Crown about the Crown’s sentencing recommendations.
- A guilty plea wraps things up quickly; a not-guilty plea will use the Crown’s time. The Crown seeks an early guilty plea. There seems to be nothing that can alter the Crown’s sentencing position on the TMX injunction breaches. It closely follows the [2018 sentencing guidelines](#).
- The Court is bound by a single question: “Did you or didn’t you violate the injunction?”

Important Note: The Crown will offer a lower sentence for an early guilty plea, and that guilty plea may come at any time within the “early” plea window that extends to right up to the moment before the trial begins. (**Verify this! It may change.**) Lawyers’ impression about the court: The court’s patience and tolerance for special requests and (privilege to negotiate) is very thin. The court is backlogged due to COVID-19, and now Fairy Creek arrestees. And, this is a long in-effect injunction with no room for broader arguments to be heard.

Sentencing date

The Crown describes the evidence against you and justifies their sentencing recommendations to the judge.

You may **reply** to the Crown's sentencing position. This is the moment when you can make whatever statement you feel moved to make. The Court does not restrict the subject matter or the length of your presentation. For TMX, the judge appears only to look at what justifies your sentence. The judge will not address the core of your presentation if in his or her opinion it is considered irrelevant to the case.

Can you change the sentencing?

The Court has heard it all, such as arguments based on conscientious objection, defence of necessity, statutory duty, climate crisis, economic injustice etc. These arguments amount to "collateral attack" on the injunction and will not be allowed. In other words, if you are questioning the injunction, you have to challenge the injunction in a separate court case, not by justifying your breach of the injunction.

- In particular, the necessity defence has been tried all the way to the Appeals Court without success. (See the extensive [documentation](#) on Gooderham and Nathan's case.) Charter challenges have not worked either.
- The Court just wants to find a way to stop the breaches and jail is the only blunt instrument it has.
- Aggravating circumstances that may increase your sentence: Repeat offences, publicly encouraging breaches of the injunction, complications in the arrest (such as a tree-sit), public comments about other issues than the injunction that the judge finds offensive.
- TMX sentencing: The judge has added a probation period to the Crown's sentencing for a repeat offender and has indicated in one case was prepared to accept more jail time had the Crown asked for it.
- The judge will remind you that whatever the Crown or you may say, it is the judge who decides on the sentence.

Courtroom to Custody

A Checklist

On the way to court and custody

- Sentencing statement (if you have a written one prepared).
- Clothing: Dress in layers. You won't be able to keep your coat or shoes. Wear two pairs of socks, and a pull-over sweater. You're likely to stay in the holding cell at the courthouse till 4:30pm, and it's cold.
- If you have food/drink, plan to consume prior to sentencing/custody, as they take away all your possessions once you are taken into custody.
- Any special items, such as a mouth guard or medications, will require a signed doctor's note. Glasses are allowed without a doctor's note.
- \$100-\$150 cash for prison (they will put it into a trust fund you can use for ordering from the 'canteen' or for phone calls)
- Printed visitors list (include full name, address, date of birth, phone #, relationship)
- Phone (turn it off with a start-up password. It's handy to have when you are released) or leave at home.
- Driver's license
- Leave at home: Jewellery, wallet. (They will take everything, such as wedding rings etc., and give it back when you are released)
- In the court holding cell, check for toilet paper before using the toilet. The sink has water but no soap or towels.

At the jail

- General information from BC Corrections [here](#).
- Prison terms: Your *CS number* or *inmate number* or *ID* is the number that is assigned to you on arrival at jail. Example: 13.651.092. A *C.O.* is a corrections officer (guard) and *Seg* is the Segregation unit that is used typically for difficult prisoners, but also for COVID isolation.
- Each day in prison counts towards 1.5 days of your sentence. Thus, a 21 day sentence means 14 days in prison. The arrival and departure days count as full days. In the case of a 21 day sentence, only 12 full days will be in prison. You can confirm the length of your custody with the counsellor.
- You will be asked if you have a religion. Choose one and you will be assigned a chaplain (the same for all religions) who can get you books, and perhaps help get you other things you need.
- Those susceptible to Seasonal Affective Disorder (SAD) will find that there is very little direct sunlight in jail. The lack of direct natural light is often compounded by sleep deprivation. Exercise and song are some possible compensations, but it is important to alert the counsellor to your condition on entry.
- A jail tradition is that there is no whistling; you will be reminded if you whistle. Singing is fine.
- There is no 'orientation'. You are expected to find your way to the forms in racks on the wall or request them from the C.O.. Different Correctional Officers treat you differently - much like outside. Some C.O.'s may be snarky or unpleasant, but generally speaking, most were pleasant and congenial and the other inmates were friendly and helpful.

Contact

North Fraser Pretrial Centre

- 1451 Kingsway Avenue
- Port Coquitlam, BC, V3C 1S2
- **Mail:** same
- **To Book a visit to an inmate:** (604) 468-3566
- **Leave a message** (need the CS number of the inmate. Example: 12561009): 1 844 369 7776
- **Public service line:** 888 952 7968
- **General Inquiries:** 604 468 3500, press:
 - o 0: general information
 - o 1: emergency call
 - o 2: scheduling visits
 - o 3: money and personal effects to and from prison
 - o 4: location of an inmate
 - o 5: address of the jail
 - o 6: police and court business
 - o 7: lawyers contacting inmates
 - o 0: lawyers teleconferencing with inmates or having trouble with teleconferencing

Alouette Correctional Centre for Women

- 24800 Alouette Road,
- Maple Ridge, B.C.
- **Mail:** PO Box 1000, Maple Ridge, B.C. V2X 7G4
- **Booking visits to an inmate:** 604-476-2688 Call between 10:30-11:15 am Mon.-Fri
- **Leave a message:** 1-855-200-1250. Need inmate CS number; costs money(?)
- **Other:** 1-866-676-9029.
- **General inquiries:** 604 476-2660, press:
 - o 0: general information
 - o 1: emergency
 - o 2: police, probation, and court business
 - o 0: lawyers scheduling contact with an inmate
 - o 3: lawyers asking for an inmate callback
 - o 4: Information on visits
 - o 5: money and personal effects to and from prison
 - o 6: location of an inmate
 - o 7: address of the jail

Life in Custody



Letters

Getting letters

All letters sent to North Fraser Pretrial Centre and Alouette Correctional Centre will be opened and read by the prison administration. Any letters that violate a restriction will be put into a dead letter pile or returned to the sender. (See the Appendix for a more complete list of restrictions.) These are the rules on the BC Corrections website relating to mail:

- Only letters and appropriate photographs are accepted
- Don't send personal or homemade items
- Don't use wax crayon, glitter pens, gel pens or lipstick
- Don't mail any personal or homemade items
- Don't spray mail with any scents
- Don't decorate with glitter or stickers, or by gluing items to mail
- All mail is searched. **Mail that does not meet security guidelines will be returned or put in a dead letter file.**

Dead letters and returned letters

- Letters rejected by the prison will be returned to sender if there is a return address on the envelope. The returned mail will include a form letter that indicates why it was returned.
- Letters without a proper return address (which includes the full name of sender) will be put into a dead letter file. You are not given those letters on leaving prison, but you are allowed to return to prison to pick them up at specific times (see information number above: 604 468 3500, press 3). During COVID they will be mailed to you if you call the information line (press 0) with your CS ID number. You have 30 days from release to pick-up your letters and other effects.

Emailing letters

- Activists have set up an email service for delivering emailed letters to activist inmates. Letters to you will be collected at jail4justice@protonmail.com, printed (colour printer) and sent in batches to you.

- Ask your supporters to indicate your name, the prison, the sentence, and the incarceration start date in their email. This information is necessary to determine if the postal service will deliver the letter before your release. Emails received too late for postal delivery will be forwarded to your email address if available.
- If you wish to receive letters of support from people you don't know, your name and information will be listed on our prison support page.

Sending letters

- You are entitled to 7 free letters per week. They will provide postage, and loose sheets of lined paper, envelopes and lousy pens. Otherwise, there are writing materials through the canteen.

Phones

- Make sure you have at least one phone number you know by heart. You will not be able to bring anything into the prison so at least one number has to be in your memory. Alouette's policy is more relaxed: You may well be allowed to bring in a list of phone numbers, but should have a plan B in case that is not allowed.
- The only tip for the automated telephone service setup is to choose a short, repeatable voice password. After keying in your inmate number followed by #, the automated system will ask you to state the prison name and your name as the voice password. That "password" will be replayed to the person you are calling and therefore has the double duty of identification. Make it as short as possible. Example: "North Fraser Homer", or even "Fraser Homer". Some suggest that there are no constraints on the password. It could simply be "Homer". It is important that it be easily repeated in a way that mimics the setup model and is loud enough.
- After the setup, you can call. If you get through the password stage, you will have to wait (with music) while a long message is played to the person you called. It states that the call is coming from the prison and includes the warning that the call is monitored. Be patient. If you have reached an answering machine, the phone will hang up and no message will be left. If your call is accepted and you do connect, you will have a limited but sufficient time for the call -- perhaps 20 minutes.
- If someone has left you a voice message, when you try to call out you will be given the chance to listen to your messages. Callers can leave messages for you by using your CS number.
- Callers who want to leave you a voice message will need your CS number. That number is given when you call someone, but it is hard for the receiver of a call to write down that number in the flow of automated messages. Make sure you give your CS number to anyone who plans to leave you a voice message.
- There is normally a charge for phone calls, but under the COVID "no visitors" policy phone calls were free, even long distance.

Visits

- Inmates must submit a form listing those who will visit, including name, date of birth, address, relationship, phone #. It takes about 2-5 days for names on the visitors' list to be approved.

- Once approved, visitors can book their visit at least a day ahead by calling the institution. Visits happen Tuesday through Sunday. One visitor per visit.
- During COVID, there were no in-person visits allowed. Arrangements could be made for a video visit. The teleconferencing service was overbooked so it is best to schedule immediately on arrival. The C.O. will have the form for video conferencing.
- Any person who has been recently incarcerated cannot come for a visit for at least three months after they were in jail.

Leaving

There is no particular time or warning about when you will be leaving the prison. A guard arrives and says "Get your things." Therefore, it is not possible to schedule a pickup hour.

- You will change into the street clothes you wore to prison.
- You will go through a check-out procedure where they return your unspent money and verify your identity.
- You get to keep your prison-issue shoes! (NFPTC: And boxer shorts too, if you wish!)
- Your sealed court belongings will be given to you at the door on your way out -- you will not have access to them in the prison.
- If you are not being picked up, the prison gives you a 3 zone bus ticket and pays for a taxi to the bus stop. Any bus from the stop goes to the Port Coquitlam skytrain.
- You can ask to call someone before leaving prison.
- **Careful:** If you are counting on your cell phone, the battery may not last to the end of your stay and you will not know whether it works until you are released.

Resources

- [Injunctions and Contempt of Court](#)
- [TMX injunction; TMX 2018 sentencing schedule](#)
- [Sandborn](#): an example of Justice Affleck's sentencing for breaching the TMX injunction.
- [Winder and Haq](#): an example of Justice Fitzpatrick's sentencing for breaching the TMX injunction.
- [Gladue report](#) for Indigenous defendants.
- Philosophy of civil disobedience ([here](#)).
- Leo McGrady on civil disobedience ([here](#)).
- Brunette River 6 *Vancouver Sun* [OpEd](#).
- Zain Haq's [Letter from North Fraser Pretrial](#) : Why arrest is necessary.
- Brunette River 6 [Arrest and Protest page](#) at Protect the Planet. Court statements and interviews are there.
- [What do We Want to Sustain?](#) Thinking about Faith and The Climate. Dr Carmody Grey: Hook Lecture 2021.