

<b>Policy Name:</b>	<b>CIVIL COURT INJUNCTIONS</b>		
<b>Policy #:</b>	OP 4.14.1	<b>Last Updated:</b>	2022-04-07
<b>Issued By:</b>	COMMUNITY POLICING BUREAU	<b>Approved By:</b>	SURREY POLICE BOARD
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**RELATED POLICIES**

OP 4.14 *Crowd Management, Protests and Disturbances*

OP 6.2 *Emergency Operations and Planning*

**1. PURPOSE**

- 1.1. To provide guidelines to assist Surrey Police Service (SPS) Members tasked with enforcing civil court injunction orders.
- 1.2. To ensure Members understand their limited roles and responsibilities when dealing with civil court injunction orders.

**2. SCOPE**

- 2.1. This policy applies to all Members.

**3. POLICY**

- 3.1. In all civil disputes, the role of SPS is to preserve the peace, prevent offences, maintain crowd control, enforce the law including offences against persons and property, and enforce court orders in accordance with powers and discretion available to a police officer under the law.
- 3.2. Members always must be impartial regarding civil court orders. The enforcement of an injunction order upholds the rule of law and does not indicate that SPS is “taking sides” in a civil matter.
- 3.3. An injunction is a court order that is intended to prevent one party from interfering with the legal rights and interests of another party.
- 3.4. A party to an injunction may include an individual, a corporation, a government, or a First Nation.

- 3.5. An injunction maybe granted on a temporary or permanent basis.
- 3.6. Injunctions that contain an enforcement clause, provide police with a civil legal authority to arrest and remove persons in violation of the order. The arrest is pursuant to the injunction and is not an arrest for an offence under the *Criminal Code*, although the requirements for an arrest in section 495 apply.
- 3.7. SPS retains operational discretion whether to arrest or remove any person in violation of injunction orders with a police enforcement provision.
- 3.8. Whenever practicable, SPS will engage the Emergency Operations and Planning Unit prior to taking enforcement action of a civil court injunction order. This will ensure that a detailed Operational Plan is developed with sufficient resources to ensure Member and public safety, including those persons who may be subject to arrest.
- 3.9. If unauthorized protesters are occupying private premises without a colour of right and will not leave at the request of the property owner or authorized representative, Members may arrest and remove them without an injunction or arrest warrant, using s. 430(1)(c) and (d) of the *Criminal Code* (mischief to property). A *Feeney* warrant is not required for police to enter, arrest and/or remove unauthorized protesters from private property, where the protesters have no right to enter and remain in that private property.

#### 4. PROCEDURE

- 4.1. An injunction may or may not contain a police enforcement order, and is issued by the British Columbia (BC) Supreme Court with the following markings:
  - i. a stamp mark bearing the BC Coat of Arms and the wording “Supreme Court of British Columbia”;
  - ii. a BC Court Registry Stamp bearing the date and registry number;
  - iii. an original (not photocopy) stamp mark certifying the document as a true document;
  - iv. the date of certification and an original signature; and
  - v. a signature of a Judge.

#### Member Responsibilities

- 4.2. A Member must, when presented with a civil court injunction containing an enforcement order:
  - i. notify the Operational Communications Centre and request the attendance of a Supervisor;
  - ii. make detailed notes of:
    - a. date of the order;
    - b. the jurisdiction of the Court Registry;
    - c. the date of registry;
    - d. the registry number;

- e. relevant court markings to establish the order is valid and enforceable in British Columbia; and
- f. the wording of the enforcement provisions in the order.

4.3. Prior to taking any enforcement action, a Member must have reasonable grounds to believe one or more of the provisions outlined in the injunction has been breached.

#### **Supervisor Responsibilities**

4.4. A Supervisor must, when requested by a Member or made aware of an incident involving the enforcement of an injunction order:

- i. attend the scene;
- ii. review the injunction order to ensure validity and enforceability;
- iii. conduct an assessment regarding the need for immediate enforcement of the injunction order;
- iv. if the assessment determines the need of immediate enforcement, notify the Duty Officer, and request their attendance; and
- v. when operationally feasible, inform the plaintiffs whether SPS will be taking immediate enforcement action.

#### **Duty Officer**

4.5. The Duty Officer must, when requested or made aware of an incident involving the enforcement of an injunction order:

- i. attend the scene and obtain a briefing from the supervisor on scene;
- ii. based on the initial assessment, if the need for immediate enforcement is warranted, ensure sufficient police resources are present to enforce the order adequately and safely; and
- iii. if determined no immediate need for enforcement is required, notify the Sergeant – Emergency and Operational Planning Unit to develop an Operational Plan.

#### **Sergeant – Emergency and Operational Planning Unit**

4.6. When the Sergeant, Emergency and Operational Planning Unit is notified of a civil court injunction with an enforcement order relating to a protest or civil dispute in Surrey, the Sergeant will start developing an Operational Plan (see OP 6.2 *Emergency Operations and Planning*).

- i. The operational plan must include protections for the public's right to freedom of expression, freedom of *peaceful* assembly, freedom of association with other persons, and freedom of mobility, subject to reasonable limitations on those fundamental freedoms (*Canadian Charter of Rights and Freedoms*, section 2). Protests must be lawful, peaceful *and* safe; and
- ii. The operational plan must include protections for the right of media to observe the protest and police enforcement actions, subject to the requirements for the safety of the public, protesters, and police officers.

### Enforcement of Injunction Orders

- 4.7. SPS has discretion as to when and how to enforce court orders. Injunction orders that contain a police enforcement clause normally recognize that independence by restating police discretion on the manner and steps of enforcement.
- 4.8. Prior to enforcing arrest provisions of an injunction order, the on-scene Supervisor in command must ensure:
- i. the injunction order is valid and in effect for the location;
  - ii. each person who is violating the injunction order is aware of the order and that they are in violation of the injunction order (police audio/video record of a Member warning each person should occur if practicable); and
  - iii. provide each person a reasonable but brief opportunity to comply with the order prior to making an arrest.
- 4.9. If SPS needs to establish exclusion zones to keep the public a reasonable and safe distance from the police enforcement actions, follow these rules:
- i. exclusion zones must be as small as possible in physical space, and brief enough in time to cause the minimum possible interference with the public's right to be in those areas;
  - ii. exclusion zones may be as large as required in physical space, and be in effect long enough to allow SPS to conduct police enforcement actions safely and quickly;
  - iii. exclusion zones are established to minimize threats and risks to public safety, the safety of protesters, and police officer safety;
  - iv. SPS may mark the exclusion zone boundaries with yellow police tape and other obstacles that tell the public not to enter;
  - v. media have the right to be at the boundaries of exclusion zones for observation and recording, subject to restrictions for public safety, the safety of protesters, and police officer safety. SPS must make every reasonable effort to allow media to observe, record and report, but the rights of the media must respect safety concerns;
  - vi. persons who interfere with the establishment and maintenance of exclusion zones, and persons who intentionally enter exclusion zones without advance authorization by police, may be subject to arrest for obstruction of a peace officer (*Criminal Code*, section 129) or under the civil injunction if there is a police enforcement order; and
  - vii. lawyers, clergy and elected politicians do not have the right to enter exclusion zones.
- 4.10. When Members and Supervisors receive an injunction, or are contacted in advance by plaintiffs who may apply for an injunction in the BC Supreme Court, consult the SPS General Counsel, Legal Services for legal advice **S. 22(1)**. Consultation with Provincial Crown Counsel is not required for civil injunctions, unless proceedings have been commenced by Crown Counsel in BC Supreme Court for criminal contempt of Court or where Crown Counsel is prosecuting related federal and/or provincial offences in the Provincial Court of BC.

4.11. Members may be required to swear or affirm Affidavits to describe what they observed, heard and did during police enforcement actions at the scene. Contact the SPS General Counsel, Legal Services for assistance.

#### **Report to Crown Counsel**

4.12. When a person has been arrested in relation to a breach of a civil court order injunction and acts of civil disobedience, contempt of Court proceedings and charges under s. 127 of the *Criminal Code* (violating a Court order) are available options.

4.13. Members should notify the plaintiffs (usually the company) of arrests made under the civil injunction. Members must provide the plaintiffs with a report similar to a Report to Crown Counsel, which identifies the arrested persons (known as “contemnors”), and provide details of the date, time, location and actions by the arrested persons. This disclosure includes video and audio recordings, if available. This disclosure may lead the plaintiff to commence civil contempt of Court proceedings in the BC Supreme Court.

4.14. Members must consult Provincial Crown Counsel regarding recommended charges under federal and/or provincial laws prior to submitting a Report to Crown Counsel. Crown Counsel may choose to proceed in the Provincial Court of BC for the prosecution of federal and/or provincial offences. As well, Crown Counsel may commence criminal contempt of Court proceedings in BC Supreme Court.

## **APPENDIX A: DEFINITIONS**

“Duty Officer” means the Frontline Policing Inspector.

“Member” means a sworn Police Officer appointed by the Surrey Police Board.

“OCC” means the Operational Communications Centre.

“Reasonable Grounds” includes both subjective and an objective component and means that the officer must personally believe that the decision or action is necessary, and in addition, the decision or action must be able to stand the test of whether an objective third person, who is acting reasonably – and is informed of the officer’s training, experience, and the factual circumstances at the time, would also reach the same conclusion.

“SPS” means Surrey Police Service.

“Supervisor” means a Sergeant, Staff Sergeant, Inspector, Superintendent, Deputy Chief Constable, Chief Constable, and any other person acting in a Supervisory capacity who is accountable for a particular area or shift on behalf of SPS.

## **APPENDIX B: REFERENCES**

*Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*

*Criminal Code, R.S.C. 1985, c. C-46*

*Police Act, R.S.B.C. 1996, c. 367*