

Canadian Civil Liberties Association



KNOW YOUR RIGHTS

A Citizen's Guide to Rights When Dealing With Police

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KNOW YOUR RIGHTS

When dealing with the police, it is important to know what your rights are. This pamphlet is designed to provide you with information about what you must do, what you do not have to do, and what you may wish to do in situations involving the police.

What if I am stopped by the police?

Police officers can stop you under three general circumstances¹:

- 1. If they suspect that you have committed a crime*
- 2. If they see you committing a crime*
- 3. If you are driving*

If the police do not arrest you or if they do not have grounds to detain you, they must let you be on your way. To find out if you are under arrest or detention, politely ask the officers, "Am I under arrest?" If they say yes, you can ask why. Alternatively, you may ask the officer "Am I free to go?", and if the answer is no, ask "why not?"

Do I have to answer their questions?

The police are allowed to approach you and ask you questions. In most cases, you do not have to answer their questions if you don't want to. However, it is always a good idea to be polite.

If you have been involved in a car accident, and the police ask you questions about the accident, you could be charged with an offence if you do not provide any answers.²

If you are detained by the police, they must inform you that you can talk with a lawyer and provide you with an opportunity to do so. It may be a good idea to not answer questions from the police until you have spoken with a lawyer.

Anything you say to the police could be used as evidence in court. Under some circumstances, statements that you are required by law to provide, such as accident reports, cannot be used against you, but this rule is not absolute.³

What if the police ask who I am?

If stopped by the police, they will likely ask for your name and address. They may also ask you for identification. In most cases, you are not required to provide this information.

However, if you lie about your name or address you may be charged with obstructing justice or obstructing the police.⁴

If you are stopped while driving, the police may ask to see your driver's licence, car registration and insurance. You are required to provide this information, and if you fail to do so you may be

charged with an offence.⁵

If you are riding a bicycle, and the police see you commit an offence (such as failing to stop at a red light), they can stop you.⁶ If asked, you must provide your name and address to the police in these circumstances.⁷ They can arrest you if you refuse to do so.⁸



What if I am stopped by the police while driving?

The police can stop cars at any time to determine if a driver has consumed alcohol or drugs, to see whether a car is mechanically fit, to check whether a driver has a valid licence, or to make sure a driver has insurance.⁹ The police may also stop your car if they suspect that you have committed a driving offence.¹⁰

If the police ask to see your driver's licence, car registration and insur-

ance, you are required by law to produce these documents.¹¹ If any of these documents are in the glove compartment, tell the officer that you are reaching for the document before doing so.

Can the police check to see if I have been drinking alcohol?

If the police suspect that you have been drinking alcohol, they can make you do a roadside breath test. They can also ask you to do

a physical sobriety test, such as walking in a straight line, on the side of the road.¹² You do not have a right to speak to a lawyer before taking a roadside test.¹³

If the police have reasonable grounds to suspect that you have more alcohol in your blood than the legal limit, or that your ability to drive has been affected by

Can the police search my car?

If your car has been stopped by the police to check your sobriety, the mechanical condition of the car, or your licence, registration or insurance, the police cannot search your car. They are, however, allowed to look in the windows of your car, and may use a flashlight to do this if it is nighttime.¹⁶



alcohol, they can take you to the police station to do a breath test, sometimes called a "breathalyzer test".¹⁴ You do have the right to speak to a lawyer before taking a breath test at a police station.¹⁵

The police are only allowed to search your car if they have reasonable and probable grounds to believe that there are illegal drugs or alcohol or evidence relating to the commission of a crime in the car. They must also believe that the evidence, drugs or alcohol would be removed or destroyed if they were to get a search warrant.¹⁷

When can the police search me?

In most cases, the police can only search you only if you have been placed under arrest or if you have consented to the search. However, there are exceptions. These include:

1. If the police find you in a place where they are searching for drugs, and they have reason to believe that you have drugs.¹⁸

If the police search you for any of these reasons, you must allow the search. If you believe that you have been wrongly searched, tell the police that you object to the search, and speak to a lawyer afterwards about your concerns.

If the police search you in relation to one offence, and find evidence that you may have commit-



2. The police find you in a vehicle where people are transporting or drinking alcohol illegally, and they believe that you have alcohol.¹⁹

ted another offence, you can be charged in relation to the second offence.²¹

3. The police believe that you have an illegal weapon or one that was used to commit a crime, and suspect that it might be removed or destroyed in the time it would take to get a search warrant.²⁰

For example, if they search you on suspicion of having drugs, but find an illegal weapon, you can be charged with possession of the illegal weapon.

What if I am detained?

The police have a right to briefly detain you if they are investigating a crime and have reasonable grounds to believe that you are connected to that crime.²² This type of detention is different from being placed under arrest.

If you have been detained but not arrested, and a police officer believes that there are reasonable grounds to think that his safety or the safety of others is at risk, the officer may do a “pat-down” search of you to check for weapons.²³

If you are being detained, you do not have to answer any questions posed by the police.

What if I am arrested?

If you are placed under arrest, the police may search you, your clothes and anything you are carrying. They can also search your “immediate surroundings,”²⁴ which could include your car if that is where you are arrested.²⁵

The police are allowed to search you after you have been arrested as long as they believe that the search is necessary for the safety of the police and the public, to protect evidence from destruction, or to discover evidence that may relate to your guilt or innocence.²⁶

What are my rights if I am arrested?

The *Canadian Charter of Rights and Freedoms*, which is part of Canada’s constitution, sets out the rights that individuals have when they have been arrested.

Will the police tell me why I am under arrest?

You have the right to be informed promptly of the reason for your arrest. If you are unsure, you should politely ask the police officer why you are being arrested.

Do I have to speak to the police if I am arrested?

If you are arrested, you have the right to remain silent. This means that you do not have to answer any questions asked by the police.

Can I speak to a lawyer?

Once you are arrested, you have a right to speak to a lawyer, and the police must advise you of this right as soon as possible. The police must also tell you about Legal Aid and your right to free legal services.²⁷

If you wish to contact a lawyer, the police must provide you with a telephone.²⁸ They must also allow you to make more than one phone call in order to reach a lawyer, if necessary.²⁹ The police must also stop questioning you until you have been given an opportunity

to contact a lawyer.³⁰ You have the right to speak to a lawyer in private.³¹

Once you have spoken to your lawyer, the police may continue to ask you questions. You do not have to answer these questions.

What if the police come to my home?

The police are allowed to come to your home to talk to you, but you are not generally required to answer their questions or grant them access to your home.

When can the police enter my home?

There are a number of circumstances in which the police are allowed to enter your home. These include:

- 1. The police have a warrant to enter your home to arrest someone*
- 2. The police have a search warrant*
- 3. The police have permission from you or someone else in authority in your home*
- 4. There are urgent circumstances that require the police to enter your home*

The police may also enter your home if they suspect that a crime has been committed in relation to property in your home. In this case, the suspected criminal activity must have been committed against you, not by you.³²

What are my rights if the police have a warrant?

A search warrant allows the police to search your home and take certain items that they find. Police are allowed to take items that you are not legally allowed to have, such as illegal drugs, or items that may be evidence of an offence.³³ If the police take something that was legally in your possession, they are generally required to return it to you within 3 months.³⁴ If it is not returned to you, contact the police.



If the police come to your home with a search warrant, they must identify themselves and ask permission to come in. If they have a valid search warrant, you must let them in. If you refuse, they may enter your home without permission.³⁵ If you try to prevent them from coming into your home, you may be charged with obstructing the police.³⁶

In most cases, the police must also show you a copy of the warrant.³⁷ If they do not offer to show you the warrant, you can ask them to see it. Make sure that the information on the warrant is correct. For example, check that the correct name and address are listed and see if there are any time limits about when the police can use the warrant.

The police are expected to act reasonably in their search. This means that they are not allowed to use excessive force or damage property for no reason.³⁸

In what urgent circumstances can the police enter my home?

The police can enter your home without your permission in the following urgent circumstances:

- *A 911 call has been made from your home, and the police believe that entry is necessary to prevent death or serious injury.*³⁹
- *Where the police believe that someone in the home is in need of emergency services.*⁴⁰
- *To help someone who has reported a domestic assault to safely remove their belongings.*⁴¹
- *To protect people from injury if the police suspect that there is a drug laboratory in the home.*⁴²



This pamphlet contains general information only. It is not a substitute for legal advice and is not intended to replace legal advice from a qualified lawyer. Persons seeking legal advice or guidance with a particular problem should consult with a qualified lawyer.

How do I make a complaint about the police?



Complaints can be made about police policies, services or the conduct of particular police officers, and will generally be dealt with according to strict timelines. In most provinces and with the RCMP, a person does not need to be the victim of misconduct or a Canadian citizen to submit a complaint. Many provinces and the RCMP have independent agencies set up to investigate police complaints. In other provinces, individuals are first required to complain directly to the police chief in charge of the officer involved. In these jurisdictions, complainants will usually have the opportunity to appeal the chief's response to an external body. The websites of the police complaints agencies listed below generally provide greater detail on the complaints process.

RCMP

Commission for Public Complaints Against the RCMP (CPCRCMP)

The CPC is responsible for investigating all complaints against RCMP officers anywhere in Canada.

Telephone: 1-800-665-6878; TTY 1-866-432-5837

Mail: 7337 137 Street, Suite 102, Surrey, BC, V3W 1A4

E-mail: org@cpc-cpp.gc.ca

Website: <http://www.cpc-cpp.gc.ca/>

British Columbia

Office of the Police Complaint Commissioner (OPCC)

BC's OPCC handles all complaints against police in the province which do not involve the RCMP.

Telephone: In Victoria (250) 356-7458; in Vancouver (604) 660-2385; toll free 1-800-663-7867

Mail: 3rd Floor - 756 Fort Street, PO Box 9895, Stn. Prov. Govt., Victoria, BC, V8W 9T8

E-mail: info@opcc.bc.ca

Website: <http://www.opcc.bc.ca/>

Alberta

To file a complaint about the actions of a non-RCMP police officer in Alberta, you may contact either the province's Public Complaint Director, or the chief of the police department for which the officer(s) involved in the complaint is employed. If an individual is unsatisfied with the response to his or her complaint, they may appeal to Alberta's Law Enforcement Review Board.

Website: https://www.solgps.alberta.ca/programs_and_services/public_security/law_enforcement_oversight/policing_oversight_complaints/Pages/default.aspx

Saskatchewan

Public Complaints Commission

The Public Complaints Commission deals with complaints against police that do not involve the RCMP.

Telephone: In Regina (306) 787-6519; in Saskatoon (306) 964-1450; toll free 1-866-256-6194

Mail: In Regina 300-1919 Saskatchewan Dr., Regina, SK, S4P 4H2; in Saskatoon 3rd Avenue North, Saskatoon, SK, S7K 2H6

Website: <http://www.justice.gov.sk.ca/publiccomplaintscommission>

Manitoba

Law Enforcement Review Agency (LERA)

The LERA investigates complaints against police officers in Manitoba not involving the RCMP.

Telephone: In Winnipeg (204) 945-8667; toll free 1-800-282-8069

Mail: 420-155 Carlton Street, Winnipeg, Manitoba, R3C 3H8

E-mail: lera@gov.mb.ca

Website: <http://www.gov.mb.ca/justice/lera/complaint.html>

Ontario

Office of the Independent Police Review Director (OIPRD)

The OIPRD handles complaints against police in Ontario, including the Ontario Provincial Police (OPP), which relate to incidents on or after October 19, 2009. (To complain about incidents which took place before October 19, 2009, contact the Ontario Civilian Police Commission <http://www.ocpc.ca/>)

Telephone: In Toronto (416) 246-7071; toll free 1-877-411-4773; TTY 1-877-414-4773

Mail: 655 Bay Street, 10th Flr., Toronto, Ontario, M7A 2T4

E-mail: oiprd@ontario.ca

Website: <https://www.oiprd.on.ca/cms/>

Quebec

Police Ethics/Déontologie policière

Made up of a Police Ethics Commissioner, who receives and examines complaints, and a Police Ethics Committee, which hears appeals of those complaints, the Police Ethics system handles complaints about all law enforcement officers in Quebec.

Telephone: In Quebec (418) 643-7897; in Montreal (514) 864-1784; toll free 1-877-237-7897

Mail: In Montréal 454 place Jacques-Cartier, 5th Flr., Montréal, QC, H2Y 3B3; in Quebec 1200 route de l'Église, bur. 1-40, Québec, QC, G1V 4Y9

E-mail: deontologie-policiere.quebec@msp.gouv.qc.ca

Website: <http://www.deontologie-policiere.gouv.qc.ca/index.php?id=75&L=1>

Nova Scotia

Police Complaints Commission

Nova Scotia's Police Complaints Commissioner's Office investigates complaints alleging misconduct by non-RCMP police officers in the province.

Telephone: (902) 424-3246

Mail: 1550 Bedford Highway, suite 720, PO Box 1573, Halifax, NS, B3J 2Y3

E-mail: polcom@gov.ns.ca

Website: http://www.gov.ns.ca/just/Policing_Services/complaints.asp

New Brunswick

New Brunswick Police Commission

Investigates complaints related to the conduct of municipal and regional police officers in New Brunswick.

Telephone: (506) 453-2069

Mail: City Centre, Suite 202, 435 King Street, Fredericton, NB, E3B 1E5

E-mail: nbpc@gnb.ca

Website: <http://www.gnb.ca/0075/index-e.asp>

Prince Edward Island

Office of the Police Commissioner

PEI is in the process of establishing its Office of the Police Commissioner, which is expected to begin receiving complaints involving municipal police officers directly from the public on March 1, 2010, at which time information on the Police Commissioner's role and the complaints process will become available on the Internet.

Newfoundland & Labrador

Royal Newfoundland Constabulary Public Complaints Commission

The RNC Complaints Commission investigates complaints against officers of the

Royal Newfoundland Constabulary.

Telephone: (709) 729-0950

Mail: Suite E-160 Bally Rou Place, 280 Torbay Rd., St. John's, NL, A1A 3W8

E-mail: RNCComplaintsCommission@gov.nl.ca

Website: <http://www.justice.gov.nl.ca/rncpcc/>

Northwest Territories, Yukon & Nunavut

The Territories are policed by the RCMP – see the contact information above for the Commission for Public Complaints Against the RCMP.



END NOTES

- 1 This is taken from *Police Powers: Stops and Searches*, online: Community Legal Education Ontario < <http://www.cleo.on.ca/english/pub/onpub/PDF/criminal/polpower.pdf>>.
- 2 *Highway Traffic Act*, R.S.O. 1990, c. H.8., s. 199, 200.
- 3 *R. v. White* (1999), 24 C.R. (5th) 201 (S.C.C.).
- 4 See e.g. *R. v. Harry*, [2003] O.J. No. 2022 (S.C.J.).
- 5 See *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25, s. 3(3).
- 6 *Highway Traffic Act*, R.S.O. 1990, c. H.8., s. 218(1).
- 7 *Highway Traffic Act*, R.S.O. 1990, c. H.8., s. 218(2).
- 8 *Highway Traffic Act*, R.S.O. 1990, c. H.8., s. 218(4).
- 9 *R. v. Ladouceur* (1990), 77 C.R. (3d) 110 (S.C.C.).
- 10 *Highway Traffic Act*, R.S.O. 1990, c. H.8., s. 216(1).
- 11 *Highway Traffic Act*, R.S.O. 1990, c. H.8, ss. 7(5) and 33; and *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25, s. 3(1).
- 12 *Criminal Code*, R.S.C. 1985, c. C-46, s. 254.
- 13 *R. v. Orbanski* (2005), 196 C.C.C. (3d) 481 (S.C.C.).
- 14 *Criminal Code*, R.S.C. 1985, c. C-46, s. 254.
- 15 *R. v. Therens*, [1985] 1 S.C.R. 613.
- 16 *R. v. Mellenthin* (1992), 76 C.C.C. (3d) 481 (S.C.C.).
- 17 James A. Fontana & David Keeshan, *The Law of Search & Seizure in Canada*, 7th ed. (Markham: LexisNexis Canada Inc., 2007), at p. 603.
- 18 *Controlled Drugs and Substances Act*, S.C. 1996, c. 19.
- 19 *Liquor Licence Act*, R.S.O. 1990, c. L.19, s. 32(5).
- 20 *Criminal Code*, R.S.C. 1985 c. C-46, s. 117.02, s. 117.04.
- 21 *R. v. Duong* (2007), 240 B.C.A.C. 104 (B.C.C.A.).
- 22 *R. v. Mann* (2004), 21 C.R. (6th) 1 (S.C.C.).
- 23 *R. v. Mann* (2004), 21 C.R. (6th) 1 (S.C.C.).
- 24 *Cloutier v. Langlois* (1990), 74 C.R. (3d) 316 (S.C.C.).
- 25 *R. v. Caslake* (1998), 13 C.R. (5th) 1 (S.C.C.).
- 26 *R. v. Caslake* (1998), 13 C.R. (5th) 1 (S.C.C.).
- 27 *R. v. Bartle* (1994), 74 C.R. (3d) 129 (S.C.C.).
- 28 *R. v. Manninen* (1987), 58 C.R. (3d) 97 (S.C.C.).
- 29 *R. v. Pavel* (1989), 74 C.R. (3d) 195 (Ont. C.A.).
- 30 *R. v. Manninen* (1987), 58 C.R. (3d) 97 (S.C.C.).
- 31 *R. v. Jones* (1999), 133 C.C.C. (3d) 1 (Ont. C.A.).
- 32 *R. v. Mulligan* (2000), 142 C.C.C. (3d) 14 (Ont. C.A.).
- 33 James A. Fontana & David Keeshan, *The Law of Search & Seizure in Canada*, 7th ed. (Markham: LexisNexis Canada Inc., 2007), at pp. 167-68.
- 34 *Criminal Code*, R.S.C. 1985, c. C-46, s. 490.
- 35 *Eccles v. Bourque* (1974), 19 C.C.C. (2d) 129 (S.C.C.); *R v. Feeney* (1997), 115 C.C.C. (3d) 129 (S.C.C.). See also Susanne Boucher & Kenneth Landa, *Understanding Section 8: Search, Seizure, and the Canadian Constitution* (Toronto: Irwin Law Inc., 2005).
- 36 *Criminal Code*, R.S.C. 1985, c. C-46, s. 129.
- 37 *Criminal Code*, R.S.C. 1985, c. C-46, s. 29.
- 38 *R. v. Genest* (1989), 45 C.C.C. (3d) 385 (S.C.C.); *R. v. Gogol* (1994), 27 C.R. (4th) (Ont. Prov. Div.).
- 39 *R. v. Godoy* (1997), 115 C.C.C. (3d) 272 (Ont. C.A.), aff'd (1998), 131 C.C.C. (3d) 129 (S.C.C.).
- 40 *R. v. Wu* (2008), 249 B.C.A.C. 311 (B.C.C.A.).
- 41 *R. v. Sanderson* (2003), 64 O.R. (3d) 257 (C.A.).
- 42 *R. v. Jamieson* (2002), 166 C.C.C. (3d) 501 (B.C.C.A.).

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