

KNOW YOUR RIGHTS

Protesters' Edition

During the G20 Summit, the Toronto Police have been granted extraordinary powers within the fenced security perimeter in downtown Toronto and possibly an area extending 5m around it. The police purport that these powers permit them to detain, demand ID and search any person "attempting to enter" the red zone. Failure to comply with a police order can result in an arrest, a \$500 fine or two months imprisonment. **These powers substantially alter the legal information provided below – this information is intended for those OUTSIDE the immediate vicinity of the G20 security fence.**



The *Canadian Charter of Rights and Freedoms* protects your right to protest by guaranteeing your freedom of expression, freedom of association, and freedom of peaceful assembly. There are, however, limits to these rights. The most common limits restrict where and how you can express your dissenting views. Particularly during high-security events, police presence will be very visible. Police-protesters interactions vary; they may be friendly, intimidating, or at times lead to arrests or even violence.

Knowing your basic rights, as well as the main charges that are often leveled against protesters, can help you in your dealings with the police and in planning protests. It is important to remember, however, that you should always use your judgment. Depending on the circumstances, it may be easier for you to cooperate with the police, even though you don't have to. It is also important to realize that rights violations do happen, and just because you know what your rights are does not mean that they will be respected.

For the most part, the best time to seriously address rights violations is after they happen – NOT while they are happening. If you are concerned that your rights may be or are being violated, politely tell the officer what your rights are. Do not fight or struggle – this will only make things worse.

What are my rights if the police are asking me questions?

The police may approach you to ask questions or try to have a conversation. In general, you do not have to talk to the police or answer their questions if you don't want to, and you do not have to identify yourself or give them any information. If you lie to them, however, you may be charged with obstruction.

There are some situations in which you have to give the police basic information about yourself. If you are under arrest or the police are trying to give you a ticket or appearance notice, you have to provide your name and address. If the police stop you while you are driving a vehicle, you have to show your driver's licence, car registration and insurance. If you are in a bar, you can be asked to prove your age.

Can the police stop me?

The police can pull you over at any time if you are driving.

If you are walking, you are usually free to walk away from the police at any time. If the police stop you, however, it is a good idea to ask them if you are free to go before you walk away. If they tell you that you are not free to walk away, it means you are being 'detained'.

The police can detain you without putting you under arrest. In order to detain you, the police must have a reasonable suspicion that you are connected with a crime, and that your detention is reasonably necessary in the totality of the circumstances. If the police haven't specifically said you are being detained, you can ask, "am I being detained?" If they say yes, you have a right to know why you are being detained.

If you are being detained, you cannot walk or run away – but you do not have to answer any questions. If you do not want to talk, you can say "I want to remain silent". Use your judgment: depending on the circumstances it might be a good idea to talk with the police to show you are being co-operative. And remember: if you were driving, are under arrest, or are being ticketed for some offence, you have to give your name and address.

You also have the right to call a lawyer if you are being detained. The police must inform you of this right, and provide you with a reasonable opportunity to talk to a lawyer.

If the police stop you, you can ask politely if you are free to go. You can also ask if you are being detained or arrested. If you are not being detained or arrested, you can just walk away.

Even if you are being detained, you do not have to answer any questions. If you have been arrested or are being ticketed for something, you have to give your name and address.

Can the police search me?

In most cases, the police can only search you if you give them permission. The police can't legally threaten or force you to agree to a search. If they ask to look in your bag, or ask you to empty your pockets, you can say no.

The police can search you without your permission if:

- they have a warrant
- you are being detained
- you have been arrested or
- there are reasonable grounds to believe you have evidence, and there are 'exigent circumstances' that would make it impracticable to get a warrant. Exigent circumstances can include police safety or the need to secure and protect evidence.

If you are being detained but aren't under arrest, the police can do a safety pat-down search, and depending on the circumstances may be able to look in your bag. In order to justify any search, the police officer must have reasonable grounds to think that his or her safety, or the safety of others, is at risk.

If you are being placed under arrest, the police can search you, your clothes, and anything you are carrying. They can also search your "immediate surroundings", which could include your car if that was where you were arrested. Any search, however, has to be done for valid reasons (eg. safety, finding evidence, preventing escape), cannot be conducted in an abusive fashion, and must be reasonably necessary in the totality of the circumstances.

Strip searches are more invasive, and there are stricter rules about when you can be strip-searched. Strip searches are usually conducted at police stations, unless safety concerns make it necessary to conduct a strip search before going to a station. Any strip search must be done in a way that does not put your health and safety at risk. For example, if you had drugs in or near a body cavity, the police should give you the chance to take the drugs out yourself, or ask for help from a trained medical professional.

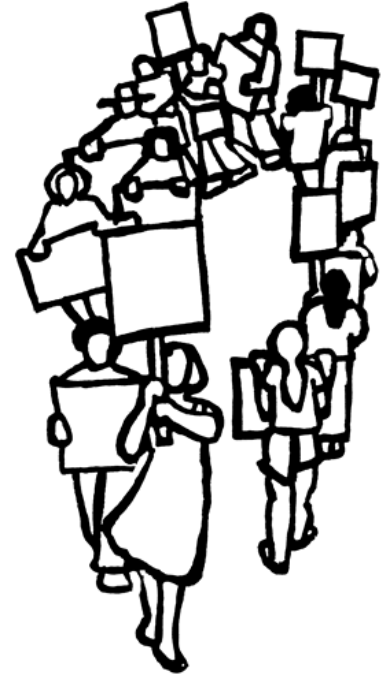
If the police say that they have a warrant that permits them to search a certain location, you can ask to see the warrant.



When can the police arrest me?

A police officer can legally arrest you if:

- The officer has a warrant for your arrest
- The officer sees you committing a criminal offence
- There are reasonable grounds to believe you have committed, or are about to commit an indictable offence (as opposed to a summary conviction offence which is less serious)
- There are reasonable grounds to believe that there is a warrant for your arrest
- You have broken a law (including provincial laws and city bylaws) and you won't give the police your name and address
- You have breached the peace or are about to breach the peace
- You are drunk or high in public and are putting the safety of yourself or others at risk
- A police officer has reasonable grounds to think you are a terrorist about to commit a terrorist act



What can the police arrest me for?

There are a number of 'common' offences that protesters can be arrested for, including:

- **Breach of the Peace**

A breach of the peace involves a disruptive act that results in actual or threatened harm. Usually simply being noisy, or creating a non-violent disturbance, is not enough for an arrest. Offending acts will often include a violent disruption or disturbance of public tranquility, peace and order. You can be arrested if police officers see you breaching the peace, or if they think that you are about to breach the peace. Although you can be arrested for breach of the peace, it isn't an actual criminal offence and you can't be charged. Often people who are arrested for breach of the peace at protests are detained, moved away from where they were, and released. You may be put in a cell for a short period of time.

- **Causing a disturbance**

You can be arrested if you cause a disturbance in or near a public place by being outside a home and being drunk, impeding or molesting other people, fighting, screaming, shouting, swearing, singing or using insulting or obscene language. A disturbance is something more than just causing offence or annoyance; your actions must cause a noticeable disturbance of the public peace, including an interference with people's normal use of the public place.

- **Mischief**
This is a broad category of criminal offences that includes willfully destroying or damaging property (eg. graffiti). You can also be charged if you interfere with the lawful use or enjoyment of property by intentionally blocking an entrance to a building, or chaining yourself to something so that it can't be used. Merely communicating information (e.g. picketing) is not enough to be convicted of mischief. The offence requires proof of some physical act on your part which operates as, or has the effect of causing, some sort of obstruction, interruption or interference with the use or enjoyment of the property.
- **Weapons offences**
A weapon can be anything that is used, designed to be used, or intended for use in hurting, threatening, or intimidating a person. It is a criminal offence to possess a weapon for a purpose that is dangerous to the public peace. It is also illegal to carry a concealed weapon. If the 'weapon' is an object that could be used for a peaceful purpose (eg. a steak knife) the prosecution must prove that the object is being hidden for an illegal purpose – ie. that it was intended to be used as a weapon.
- **Unlawful Assembly and Riot**
A gathering of people can become unlawful when three or more people assemble with a common purpose, and behave in a way that causes others to fear that they will disturb the peace tumultuously, or needlessly provoke others to do so. Tumultuous means more than just noisy or boisterous. To be unlawful, an assembly must be chaotic, disorderly, clamorous or uproarious – having an atmosphere of force or violence. Once the assembly actually begins to threaten or exhibit force or violence, it has become a riot.

Even if you are not directly contributing to the violence or a chaotic atmosphere, you can still be guilty of participating in an unlawful assembly or riot by staying once the assembly has turned unlawful.
- **Blocking a road or highway**
You can be charged with this offence if you block a road without authority to do so, in order to stop someone else from doing something that person has a right to do.
- **Assault**
A person commits an assault by intentionally applying force to another person without that person's consent. Threatening or attempting to apply force is also an assault. The level of force does not have to be high – spitting on someone, for example, can be an assault.

- **Wilfully resisting or obstructing a peace officer**

This offence applies to anyone who willfully does something that impairs a police officer from fulfilling his or her duties. In general you do not have to assist the police by providing information. If, however, you refuse to provide information that you are required to give by law (eg. your name and address if you are arrested), you can be charged with obstruction. You could also be charged with obstruction if you willfully interfere with another person's arrest, hinder the police in their efforts to 'preserve the peace', or reveal the identity of undercover policemen, preventing them from doing their job.

Resisting a peace officer includes resisting arrest. You can be charged with resisting your arrest if you actively resist, including holding onto something, pulling, kicking, punching, or running. Going completely limp does not count as active resistance.

- **Assaulting a peace officer**

You could be charged if you assault a police officer while they are lawfully carrying out their duties, or assault anyone who is helping a police officer carry out their duties. This will include an assault intended to prevent a lawful arrest or detention. Remember, even spitting on someone is an assault.



What will happen if I am arrested?



You have the right to know why you are under arrest. If you are unsure, you should politely ask the officer why you are being arrested. Besides telling the police your name and address, you have the right to remain silent and do not have to answer any questions. You also have the right to speak to a lawyer in private, and the police must provide you with a telephone. You can make more than one call in order to reach a lawyer, if necessary.

The police can search your clothing, bags and your surroundings for anything that could hurt them, anything that you could use to escape, anything illegal, and any evidence.

Just because you are arrested, it doesn't necessarily mean that you will be charged with an offence. If you are arrested only for breach of the peace and the police do not think you have committed any other offence, they may take you to a holding cell, but you will be released without charge. Even if you are arrested for something more serious than breach of the peace, the police can still decide to release you without charging you. You may get a warning.

If you are charged with an offence you may be released and given a 'notice to appear', which tells you when you have to go to court. The police can also decide to take you to a holding cell. This might happen if the police think you will break the law again, are unsure of your identity, or think you will not show up for a scheduled court appearance.

Can the police take my property?

When the police search you upon arresting you, they can seize your property for the purposes of officer safety and preserving evidence.

The police can also seize things that are obviously evidence of a crime as long as the officers are already in a place legally, and the evidence is in plain view. This could include cameras or video cameras that the police saw catching images of a crime in progress.

As long as the item was lawfully yours, a court should order the property returned to you when it is no longer needed as evidence. It could take you a very long time to get your property back, because the police can hold your property as evidence until trial, which could be a year or more away. If you are having trouble getting your property back, you should contact a lawyer.

What about private security guards?

In some situations, private individuals – including security guards – can make arrests. They do not, however, have the same powers as police officers.

Anyone who witnesses a breach of the peace can interfere to prevent the continuance or renewal of the breach of the peace. Private individuals may detain people who commit, or are about to join in or renew a breach of the peace. The purpose of the detention must to hand the person over to a police officer. When a private person is detaining another person, they must use no more force than is reasonably necessary, and the force used must be proportionate to the danger feared from the activity.

Private individuals can arrest you if they actually see you committing certain criminal offences. While most offences are covered, there are some important ones that private individuals cannot arrest you for, including unlawful assembly. You can also be arrested by private individuals if you are being chased by the police, and there are reasonable grounds to believe that you have committed a criminal offence; this applies to all criminal offences, even unlawful assembly. Finally, property owners, and people authorized by property owners, may arrest individuals that are found committing a criminal offence on or in relation to their property.

If you are arrested by a private individual, that person must hand you over to a police officer as soon as possible.